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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA–2020–0004]

Notice of Funding Availability; Coronavirus Food Assistance Program (CFAP) Additional Eligible Commodities

AGENCY: Office of the Secretary, USDA.

ACTION: Notification of funding availability.

SUMMARY: The Coronavirus Food Assistance Program (CFAP) helps agricultural producers impacted by the effects of the COVID–19 outbreak. As provided in the CFAP regulation, this document announces additional commodities that have been determined to be eligible for CFAP assistance. USDA carefully reviewed the additional information provided in the comments to develop the list of additional commodities. Additional review is ongoing, which will result in a subsequent announcement.

DATES: *Effective:* July 10, 2020.

FOR FURTHER INFORMATION CONTACT: William L. Beam, telephone (202) 720–3175; email *Bill.Beam@usda.gov.* Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720–2600.

SUPPLEMENTARY INFORMATION: The Coronavirus Food Assistance Program (CFAP) helps agricultural producers impacted by the effects of the COVID–19 outbreak. The CFAP regulations are in 7 CFR part 9. The CFAP regulations provide the general eligibility requirements, the application process, and payment calculation information. The CFAP rule was published in the **Federal Register** on May 21, 2020 (85 FR 30825–30835) and a correction published in the **Federal Register** on June 12, 2020 (85 FR 35799–35800).

This document announces additional agricultural commodities that are eligible for CFAP and the payment rates for each commodity. In the interest of announcing additional commodities as eligible for CFAP as quickly as possible, to ensure that eligible producers can apply for and receive their payments as soon as possible, we are issuing more than one document in response to the comments. This document includes those commodities for which we could make decisions quickly. For other commodities, we are reviewing additional information and will provide the responses to the comments on those commodities in a subsequent announcement. Our goal is also to make the subsequent announcement as soon after the publication of this document as possible.

USDA requested information to evaluate whether additional commodities suffered losses that should result in eligibility for CFAP. The CFAP notification that requested information from the public for additional commodities that suffered losses was published in the **Federal Register** on May 22, 2020 (85 FR 31062–31065) and a correction was published on June 12, 2020, (85 FR 30812). USDA specifically requested information in order to evaluate whether additional commodities suffered losses that should result in eligibility for CFAP. Comments were submitted through June 22, 2020, and USDA continues to review the information provided in the comments. USDA received a total of 1,740 comments. At the time of this document USDA had reviewed about half of the comments received. To expedite payment to growers, USDA is making recommendations for payment in this document based on this subset of comments and further review of market news data. Additional commodities, if they meet eligibility criteria, would be added later.

Comment: Individuals and organizations requested that a number of commodities be added to the list of eligible specialty crops. Commenters stated that these commodities experienced price decreases as much as other commodities originally included in the final rule and should be added to the list of eligible commodities to receive payments. Other commenters mentioned that certain commodities could benefit even when no price decrease was identified because they were affected by market chain disruptions. Some comments included sufficient data for USDA to make a determination. USDA reviewed Market News data and found data for some commodities listed by commenters. Accordingly, we are adding the following commodities, based on comments and Market News data: Alfalfa Sprouts, Anise, Arugula, Basil, Bean Sprouts, Beets, Blackberries, Brussel Sprouts, Celeriac (celery root), Chives, Cilantro, Coconuts, Collard Greens, Dandelion Greens, Greens (others not listed separately), Guava, Kale Greens, Lettuce Boston, Lettuce Green Leaf, Lettuce Lolla Rossa, Lettuce Oak Leaf Green, Lettuce Oak Leaf Red, Lettuce Red Leaf, Marjoram, Mint, Mustard, Okra, Oregano, Parsnips, Passion Fruit, Peas Green, Pineapples, Pistachios, Radicchio, Rosemary, Sage, Savory, Sorrel, Sugarcane (table), Swiss Chard, Thyme, Turnip Tops Green.

Response: We carefully analyzed the Market News data for the requested commodities that we evaluated and have determined that these additional commodities are eligible for CFAP, as requested by the commenters. The table below at the end of this document provides the payment rates by commodity.

Comment: A few commenters stated that USDA had miscalculated price decreases for commodities such as blueberries. The commenter ran the market news reports and came up with a different conclusion than the original data included in the May 21, 2020, final rule. Commenters also provided additional industry price information for potatoes and apples and requested that potatoes be separated between fresh, fresh russet, processed, and seed potatoes.

Response: While running reports for the new commodities requested, USDA found some inconsistencies in data points. USDA is correcting the regulation in 7 CFR part 9 in a final rule correction published in the **Federal Register** to eliminate these errors by adding eligibility for 5 commodities under sales losses. The commodities are: Blueberries, garlic, raspberries, tangerines and taro.

While doing this review USDA also found that two commodities no longer qualify for the sales losses category and is deleting their availability for this

category. The two commodities are: peaches and rhubarb. The corrected payment rates for these commodities are listed in the rule correction.

USDA also reviewed commenters information on apples and potatoes, including separating potatoes into fresh, processed, and seed. USDA agrees with commenters data and is providing corrected payment rates for these commodities in the rule correction. USDA is also correcting payment rates for apples, artichokes, asparagus, blueberries, cantaloupes, cucumbers, garlic, kiwifruit, mushrooms, papaya, peaches, potatoes, raspberries, rhubarb, tangerines, and taro in the rule.

PAYMENT RATES FOR SPECIALTY CROPS

[By commodity]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC payment rate ($/lb)
Alfalfa Sprouts	.....	$8.14	$1.59
Anise	$0.88	0.81	0.16
Arugula	.....	4.64	0.91
Basil	0.30	1.65	0.32
Bean Sprouts	.....	0.26	0.05
Beets	.....	0.30	0.06
Blackberries	1.72	2.11	0.41
Brussels Sprouts	0.26	0.34	0.07
Celeriac (Celery Root)	.....	0.52	0.10
Chives	.....	1.32	0.26
Cilantro	0.19	0.23	0.05
Coconuts	.....	0.25	0.05
Collard Greens	0.04	0.21	0.04
Dandelion Greens	0.06	0.26	0.05
Greens (others not listed)	0.08	0.16	0.03
Guava	1.52	1.73	0.34
Kale Greens	.....	0.22	0.04
Lettuce, Boston	0.09	0.34	0.07
Lettuce, Green Leaf	0.44	0.60	0.12
Lettuce, Lolla Rossa	.....	1.69	0.33
Lettuce, Oak Leaf—Green	.....	1.69	0.33
Lettuce, Oak Leaf—Red	.....	1.69	0.33
Lettuce, Red Leaf	0.42	0.60	0.12
Marjoram	1.06	1.42	0.28
Mint	.....	7.47	1.46
Mustard	.....	0.21	0.04
Okra	0.31	0.46	0.09
Oregano	.....	1.22	0.24
Parsnips	0.06	0.40	0.08
Passion Fruit	0.89	3.21	0.63
Peas Green	0.10	0.36	0.07
Pineapples	.....	0.23	0.04
Pistachios	.....	0.74	0.14
Radicchio	.....	0.72	0.14
Rosemary	.....	2.60	0.51
Sage	0.72	3.06	0.60
Savory	.....	0.62	0.12
Sorrel	.....	2.85	0.56
Sugarcane, table	.....	0.14	0.03
Swiss Chard	.....	0.25	0.05
Thyme	.....	2.63	0.51
Turnip Tops Greens	.....	0.19	0.04

The complete list of all eligible specialty crops and payment rates is available at *https://www.farmers.gov/cfap/specialty*. USDA is still evaluating comments and will issue another document with additional determinations and payment rates.

The correction in the payment rates and the resulting changes in the eligibility for specific types of payments per commodity will not change CFAP costs.

Stephen L. Censky,

Vice Chairman, Commodity Credit Corporation, and Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2020–14854 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–SC–19–0115; SC20–956–1 FR]

Sweet Onions Grown in Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2020 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. Part 956 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs''' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable Walla Walla sweet onions for the 2020 fiscal period and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from $0.10 per 50-pound bag or equivalent, the rate that was established for the 2017 and subsequent fiscal periods, to $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2017 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.10 per 50-pound bag or equivalent of Walla Walla sweet onions handled. That assessment rate continued in effect from fiscal period to fiscal period until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 13, 2020 and unanimously recommended expenditures of $84,200 and an assessment rate of $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were $99,800. The assessment rate of $0.15 is $0.05 higher than the rate previously in effect. The Committee recommended increasing the assessment rate to provide sufficient income, along with interest income and reserve funds, to cover all of the Committee's budgeted expenses for the 2020 fiscal period. Funds in the reserve are expected to be $104,377 at the end of the 2020 fiscal period, which is within the Order's requirement of no more than approximately two fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2020 fiscal period include $47,400 for administrative, $26,000 for promotions, $5,000 for travel, $5,000 for research, and $800 for miscellaneous expenses. Budgeted expenses for these items in 2019 were $47,400, $41,600, $5,000, $5,000, and $800 respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 389,952 50-pound bags or equivalents of Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $58,493 (389,952 50-pound bags or equivalent × $0.15 assessment rate), along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses of $84,200.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 15 producers of Walla Walla sweet onions in the regulated area and approximately 11 handlers of Walla Walla sweet onions who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for non-storage onions for the 2011–2015 marketing years ranged from $15.10 to $22.10 per hundredweight. The average over those years was approximately $18.30 per hundredweight, or $9.15 per 50-pound equivalent. NASS suspended reporting of non-storage onion prices in 2015. With total production at 414,800 50-pound bags or equivalent for the 2019 season, and using the price range from the 2011–2015 years for which there is NASS data, the total 2019 farm gate value of the Walla Walla sweet onion crop could be estimated to be between $6,264,688 and $9,168,848. Dividing the crop value by the estimated number of producers (15) yields an estimated average receipt per producer of between $417,646 and $611,257 which is well below the SBA threshold for small producers.

USDA Market News reported free on board (FOB) price of $1.00 per 50-pound bag or equivalent of Walla Walla sweet onions for the 2019 season. Multiplying this FOB price by total 2019 shipments of 414,880 50-pound bags or equivalent results in an estimated gross value of Walla Walla sweet onion shipments of $8,712,480. Dividing this figure by the number of handlers (11) yields estimated average annual handler receipts of $792,044, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, the majority of producers and all of the handlers of Walla Walla sweet onions may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2020 and subsequent fiscal periods from $0.10 to $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2020 expenditures of $84,200 and an assessment rate of $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The assessment rate of $0.15 per 50-pound bag or equivalent is $0.05 higher than the rate previously in effect. The volume of assessable Walla Walla sweet onions for the 2020 fiscal period is estimated at 393,953 50-pound bags or equivalent. Thus, the $0.15 per 50-pound bag or equivalent rate should provide $58,493 in assessment income (389,952 50-pound bags or equivalent × $0.15 assessment rate). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2020 fiscal period include $47,400 for administrative, $26,000 for promotions, $5,000 for travel, $5,000 for research, and $800 for miscellaneous expenses. Budgeted expenses for these items in 2019 were $47,400, $41,600, $5,000, $5,000, and $800 respectively.

In recent years, the Committee has utilized its reserve funds to partially fund its budget expenditures. The Committee recommended increasing the assessment rate to fully fund budgeted expenditures without drawing down the funds held in reserve too quickly. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and assessment rate the Committee discussed various alternatives, including maintaining the current assessment rate of $0.10 per 50-pound bag or equivalent rate and increasing the assessment rate to a different amount. However, the Committee determined that the recommended assessment rate will fully fund budgeted expenses and avoid drawing down reserves at an unsustainable rate.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 13, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and

assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on March 31, 2020 (85 FR 17768). Copies of the proposed rule were also mailed or sent via email to all Walla Walla sweet onion handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending June 1, 2020, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Reporting and recordkeeping requirements, Walla Walla sweet onions.

For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956—WALLA WALLA SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 956.202 is revised to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2020, an assessment rate of $0.15 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–13502 Filed 7–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–SC–20–0029; SC20–985–2 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to increase the assessment rate established for the 2020–2021 and subsequent marketing years. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Joshua Wilde, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2055, Fax: (503) 326–7440, or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of spearmint oil producers operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This final rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the Order are obtained from such assessments. The assessment rate will be applicable to all assessable spearmint oil for the 2020–2021 marketing year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to

review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from $0.10 per pound, the rate that was established for the 2019–2020 marketing year, to $0.14 per pound of Far West spearmint oil handled for the 2020–2021 and subsequent marketing years.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2019–2020 and subsequent marketing years, the Committee recommended, and USDA approved, an assessment rate of $0.10 per pound of Far West spearmint oil handled. That assessment rate would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 26, 2020, and unanimously recommended expenditures of $214,825 and an assessment rate of $0.14 per pound of Far West spearmint oil handled for the 2020–2021 and subsequent marketing years. In comparison, the previous year's budgeted expenditures were $272,850. The assessment rate of $0.14 is $0.04 higher than the $0.10 rate currently in effect. The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous six marketing years and financial reserves have been reduced to approximately $87,468. The Committee believes that drawing from reserves to fund operations is not a sustainable strategy and that the previous assessment increase from $0.09 to $0.10 per pound of spearmint oil handled, effective for the 2019–2020 and subsequent marketing years, was not sufficient to offset declining sales volume and increasing costs. The Committee projects expenses to exceed income by $63,525 if the assessment rate is left unchanged for the 2020–2021 marketing year. The Committee believes that the $0.14 per pound assessment rate will allow the Committee to adequately balance budgeted expenses with projected income for the 2020–2021 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2020–2021 marketing year include $169,000 for contracted administration by Ag Association Management, Inc., $26,025 for administrative expenses, $8,800 for Committee expenses, $6,500 for software/website maintenance, and $4,500 for market research and development projects. In comparison, major expenses for the 2019–2020 marketing year included $169,000 for contracted administration, $30,850 for administrative expenses, $15,000 for Committee expenses, $6,500 for software/website maintenance, and $13,000 for market research and development projects.

The Committee derived the recommended assessment rate by considering anticipated expenses, expected spearmint oil sales, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $210,000 (1,500,000 pounds of spearmint oil × $0.14 per pound assessment rate), along with $1,300 in other income and $3,525 from reserve funds, will be sufficient to cover budgeted expenses of $214,825. Funds in the reserve (estimated to be $87,468 at the beginning of the 2020–2021 marketing year) will be kept within the maximum permitted by § 985.42(a) of the Order and will not exceed approximately one marketing year's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020–2021 marketing year budget, and those for subsequent marketing years, will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 41 producers and 94 producers of Scotch and Native spearmint oil, respectively, in the regulated area and approximately 8 spearmint oil handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil range from $14.00 to $17.50 per pound. The National Agricultural Statistics Service (NASS) reported that the 2018 U.S. season average spearmint oil producer price per pound was $16.80. Multiplying $16.80 per pound by 2018–2019 marketing year spearmint oil utilization of 1,963,028 million pounds yields a crop value estimate of about $33.0 million. Total 2018–2019 marketing year spearmint oil utilization, reported by the Committee, was 717,952 pounds and 1,245,076 pounds for Scotch and Native spearmint oil, respectively.

Given the reporting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the $16.80 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 38 of the 41 Scotch spearmint oil producers and 89 of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third party or governmental entity that collects and

reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Multiplying 1.20 by the 2018 producer price of $16.80 yields a handler free on board (FOB) price estimate of $20.16 per pound.

Multiplying this estimated handler FOB price by spearmint oil utilization of 1,963,028 pounds results in an estimated handler-level spearmint oil value of $39.6 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about $5.0 million, which is well below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the eight handlers had a 2018–2019 marketing year spearmint oil sales value that exceeded the $30 million SBA threshold.

Therefore, many of the Far West spearmint oil producers may be classified as small entities and all of the Far West spearmint oil handlers may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2020–2021 and subsequent marketing years from $0.10 to $0.14 per pound of spearmint oil handled. The Committee unanimously recommended 2020–2021 expenditures of $214,825 and an assessment rate of $0.14 per pound of spearmint oil. The $0.14 per pound assessment rate is $0.04 higher than the rate previously in effect.

The Committee estimates that the industry will handle 1,500,000 pounds of spearmint oil during the 2020–2021 marketing year. Thus, the $0.14 per pound rate should provide $210,000 in assessment income. The Committee anticipates that income derived from handler assessments, along with $1,300 of other income and $3,525 from its reserve fund, will fully fund all budgeted expenses for the 2020–2021 marketing year. Furthermore, the Committee expects that assessment revenue will completely cover budgeted expenses for the 2021–2022 and subsequent marketing years.

The major expenditures recommended by the Committee for the 2020–2021 marketing year include $169,000 for contracted administration by Ag Association Management, Inc., $26,025 for administrative expenses, $8,800 for Committee expenses, $6,500 for software/website maintenance, and $4,500 for market research and development projects. Budgeted expenses for these items in the 2019–2020 marketing year were $169,000, $30,850, $15,000, $6,500, and $13,000, respectively.

The Committee recommended the assessment rate increase because expenditures have exceeded assessment revenue in the previous six marketing years and financial reserves have been reduced to approximately $87,468. The Committee believes that drawing from reserves to fund operations is not a sustainable strategy and that the previous assessment increase from $0.09 to $0.10 per pound of Far West spearmint oil handled was not sufficient to offset declining sales volume. The Committee projected expenses to exceed income by $63,525 if the assessment rate was left unchanged for the 2020–2021 marketing year. Increasing the continuing assessment rate will allow the Committee to adequately balance budgeted expenses with projected income for the 2020–2021 and subsequent marketing years.

Prior to arriving at this budget and assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.10 per pound and increasing the assessment rate to a different amount. However, leaving the assessment rate unchanged would have required the Committee to deplete its financial reserve to a fiscally unsustainable level. Based on estimated shipments, the established assessment rate of $0.14 per pound of spearmint oil should provide $210,000 in assessment income. The Committee determined assessment revenue will be adequate to cover most of the budgeted expenditures for the 2020–2021 marketing year and all of the Committee's budgeted expenditures for subsequent marketing years. Any excess funds will be used to replenish the Committee's monetary reserve in the future. Reserve funds will be kept within the amount authorized in the Order.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the average producer price for the 2020–2021 season is expected to be approximately $15.90–17.40 per pound of spearmint oil. Therefore, estimated assessment revenue for the 2020–2021 marketing year as a percentage of total producer revenue will be between 0.80 and 0.88 percent ($0.14 divided by $17.40 and $15.90, respectively).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Far West spearmint oil industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2020, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this action. Should any changes become necessary, they will be submitted to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2020 (85 FR 23243). Copies of the proposed rule were provided to all Far West spearmint oil handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 27, 2020, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/*

moa/small-businesses. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 985.141 to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2020, an assessment rate of $0.14 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–13614 Filed 7–9–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA–2020–0004]

RIN 0503–AA65

Coronavirus Food Assistance Program; Correction

AGENCY: Office of the Secretary, USDA.

ACTION: Correcting amendments.

SUMMARY: The Secretary of Agriculture implemented the Coronavirus Food Assistance Program (CFAP), which provides assistance to agricultural producers impacted by the effects of the COVID–19 outbreak, through a final rule published in the **Federal Register** on May 21, 2020. We realized that there were errors in some of the payment rates in that final rule. In addition, we were able to reevaluate the payment rates for certain specialty crops based on data that was available from industry in response to the CFAP notice of funding availability, which was published in the **Federal Register** on May 22, 2020. This document corrects payment rates and categories for those specialty crops that were published in the final rule.

DATES: *Effective Date:* July 10, 2020.

FOR FURTHER INFORMATION CONTACT: William L. Beam; telephone: (202) 720–3175; email: *Bill.Beam@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: This document corrects the CFAP regulations in 7 CFR part 9, which were implemented in the final rule that was published in the **Federal Register** on May 21, 2020 (85 FR 30825–30835). This is the second set of corrections. The first set of corrections was published in the **Federal Register** on June 12, 2020 (85 FR 35799–35800). This document augments those corrections.

In response to the notice of funding availability published in the **Federal Register** on May 22, 2020 (85 FR 31062–31065), a few commenters stated that USDA had miscalculated price decreases for certain commodities. USDA reviewed the data for all specialty crop commodities and found some inconsistencies in data points.

Accordingly, USDA is correcting the errors to make apples, blueberries, garlic, potatoes, raspberries, tangerines, and taro eligible for payment under 7 CFR 9.5(b)(1), and adding CARES Act payment rates for sales losses for those crops to Table 1 to § 9.5(h).

USDA found that peaches and rhubarb no longer qualify for payment based on sales losses under § 9.5(b)(1). Peaches showed a 3 percent sales price decrease and rhubarb showed an increase in sales price of 28 percent when corrections to the data sets were made. Therefore, we are removing the CARES Act payment rates for sales losses for these two crops from Table 1 to § 9.5(h).

USDA took into account data submitted by the apple industry to determine price eligibility under § 9.5(b)(1) for apples. The price data sets came from actual sales of 43.8 million bushels of apples that average 42 pounds. This quantity is more than half of all the apples marketed during the study period. The data came from surveys of marketers from the four largest apple producing states—Washington, New York, Michigan and Pennsylvania. Those four states' combined production is approximately 94 percent of the U.S. total. The Washington State Tree Fruit Association reflects approximately 85 percent of Washington apple sales. Washington state apple production comprises about two-thirds of the U.S. total, but an even higher share of total U.S. sales during the study period. Data submitted showed an industry average loss of 10.9 percent. Accordingly, USDA is adding apple eligibility for payment losses.

USDA is also adding eligibility for certain potatoes. Original prices used by USDA for the May 12, 2020, rule included all fresh potatoes and did not include prices for processing or seed potatoes as those are not obtained at shipping points or terminal markets. The potato industry submitted price data from industry surveys and reports. The industry data show that seed potatoes had a 15 percent price decline and fresh food retail and service potatoes had a 6.7 percent price decline over the rule stated period. However, the industry reported fresh price only for russet potatoes.

Another potato commenter used data from one potato producing state to determine shipping point price changes for non-organic russet potatoes in 50-lb units. Terminal market prices were also reported. A notable difference between the USDA payment calculations is that prices generated by USDA included prices from all states.

The potato industry also requested payments for seed potatoes. Seed potatoes can be any type of potato and can be diverted to the fresh market if needed. USDA agrees. Accordingly, seed potatoes is now a category of potatoes eligible for payment.

After reviewing all the data submitted by the potato industry USDA agrees that the potato category be corrected to be divided as follows:

- Potatoes fresh—Russets;
- Potatoes fresh—other;
- Potatoes—processing; and
- Potatoes—seed.

Payment rates for these categories are shown on the table below.

As discussed above, USDA is correcting the payment rates in Table 1 to § 9.5(h) for apples, artichokes, asparagus, blueberries, cantaloupes, cucumbers, garlic, kiwifruit, mushrooms, papaya, peaches, potatoes (separated into categories for fresh—Russets, fresh—other, processing, and seed), raspberries, rhubarb, tangerines, and taro.

The correction and addition in the payment rates and the resulting changes in the eligibility for specific types of

payments per commodity will not change CFAP costs.

List of Subjects in 7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

Accordingly, 7 CFR part 9 is corrected by making the following correcting amendments:

PART 9—CORONAVIRUS FOOD ASSISTANCE PROGRAM

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; and Division B, Title I, Pub. L. 116–136.

■ 2. In § 9.5, amend Table 1 to paragraph (h), as follows:

■ a. Revise the entries for ''Apples'', ''Artichokes'', ''Asparagus'', ''Blueberries'', ''Cantaloupes'', ''Cucumbers'', ''Garlic'', ''Kiwifruit'', ''Mushrooms'', ''Papaya'', ''Peaches''

■ b. Remove the entry for ''Potatoes'';

■ c. Add the entries for ''Potatoes Fresh—Other'', ''Potatoes Fresh-Russets'', Potatoes—Processing'', and ''Potatoes—seed'' in alphabetical order; and

■ d. Revise the entries for ''Raspberries'', ''Rhubarb'', ''Tangerines'', and ''Taro''.

The revisions and additions read as follows:

§ 9.5 Calculation of payments.

* * * * *

(h) * * *

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled or is unpaid due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
* * *	*	* *	*
Apples	$0.05	$0.22	$0.04
Artichokes	0.88	0.69	0.13
Asparagus		0.25	0.05
* * *	*	* *	*
Blueberries	0.20	0.93	0.18
* * *	*	* *	*
Cantaloupes		0.14	0.03
* * *	*	* *	*
Cucumbers	0.18	0.17	0.03
* * *	*	* *	*
Garlic	0.17	1.10	0.22
* * *	*	* *	*
Kiwifruit		0.44	0.09
Mushrooms		0.58	0.11
* * *	*	* *	*
Papaya		0.31	0.06
Peaches		0.30	0.06
* * *	*	* *	*
Potatoes fresh—other	0.01	0.04	0.01
Potatoes fresh—Russets	0.07	0.09	0.02
Potatoes—processing	0.02	0.03	0.01
Potatoes—seed	0.02	0.04	0.01
Raspberries	0.44	1.69	0.33
Rhubarb		0.76	0.15
* * *	*	* *	*
Tangerines	0.05	0.25	0.05
Taro	0.12	0.29	0.06
* * *	*	* *	*

* * * * *

Stephen L. Censky,

Vice Chairman, Commodity Credit Corporation, and Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2020–14855 Filed 7–9–20; 8:45 am]

BILLING CODE 3410–05–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Ratification of Bureau Actions

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Ratification.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), through its Director, is ratifying a number of previous actions by the Bureau. This includes the large majority of the Bureau's existing regulations, as well as certain other actions. This ratification provides the public with certainty, by resolving any potential defect in the validity of these actions arising from Article II of the United States Constitution.

DATES: This ratification is issued on July 10, 2020 and relates back to the original date of each action that it ratifies.

FOR FURTHER INFORMATION CONTACT: Christopher Shelton, Counsel, Legal Division, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau was established by the Consumer Financial Protection Act of 2010 (CFPA).[1] Section 1011(c)(3) of the CFPA provided that the President may remove the Director of the Bureau only for inefficiency, neglect of duty, or malfeasance in office.[2] The Bureau's first Director was appointed on January 4, 2012.[3]

On June 29, 2020, the Supreme Court held in *Seila Law LLC* v. *CFPB* that the CFPA's removal provision violates the separation of powers.[4] The Court further held that ''the CFPB Director's removal protection is severable from the other statutory provisions bearing on the CFPB's authority. The agency may therefore continue to operate, but its Director, in light of our decision, must be removable by the President at will.'' [5] ''The only constitutional defect we have identified in the CFPB's structure is the Director's insulation from removal.'' [6]

II. Overview of This Ratification

To resolve any possible uncertainty the Bureau, through its Director, has decided to ratify a number of official actions from January 4, 2012 to June 30, 2020 (Ratified Actions).[7] Under established case law, any agency may, through ratification, ''purge[] any residual taint or prejudice left over from'' a potential defect in a prior governmental action.[8] The Bureau is issuing this ratification out of an abundance of caution, and this ratification is not a statement that the Ratified Actions would have been invalid absent this ratification.

Part III of this document sets forth the ratification, while part IV discusses the ratification, part V discusses certain actions that are outside the scope of the ratification, and finally part VI addresses some additional administrative law matters.

III. Ratification

The Bureau, through its Director, hereby affirms and ratifies the following actions from January 4, 2012 to June 30, 2020 (collectively, the Ratified Actions):

1. Each document published by the Bureau in the ''Rules and Regulations'' category of the **Federal Register**,[9] except the July 2017 rule titled ''Arbitration Agreements'' [10] and the November 2017 rule titled ''Payday, Vehicle, and Certain High-Cost Installment Loans.'' [11] Aside from those two exceptions, this includes but is not limited to all amendments to the Bureau's regulations in 12 CFR chapter X, as well as the Bureau's actions in issuing joint regulations with other agencies.

2. Each consumer information publication issued by the Bureau under Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026.[12]

3. Each notice titled ''Fair Credit Reporting Act Disclosures.'' [13]

4. The official approval titled ''Final Redesigned Uniform Residential Loan Application Status Under Regulation B.'' [14]

5. The preemption determination titled ''Electronic Fund Transfers; Determination of Effect on State Laws (Maine and Tennessee).'' [15]

6. The Bureau's concurrences with respect to the April 2018 and October 2019 rules by the three Federal banking agencies and the July 2019 and April 2020 rules by the National Credit Union Administration, each titled ''Real Estate Appraisals.'' [16]

In the event that the Bureau's ratifying of any individual Ratified Action or the application of this ratification to any person or circumstance is held to be invalid for any reason, the remainder of this ratification is severable and shall continue in force.[17]

IV. Discussion of the Ratification

The Bureau's Director is familiar with the Ratified Actions and has also conducted a further evaluation of them for purposes of this ratification. Accordingly, the Director is making an informed decision to ratify them.

Based on the Director's evaluation of the Ratified Actions, it is the Director's considered judgment that they should be ratified. This decision is reinforced by the fact that, based on the Bureau's experience as a regulator of markets for consumer financial products and services, the Director is acutely aware that many of the Ratified Actions have engendered significant reliance interests. Consumers, the business community, State and local governments, and other individuals and entities have all relied upon the validity of the Ratified Actions in organizing their activities. This ratification secures those existing reliance interests by avoiding doubt as to the validity of the

[1] Public Law 111–203, title X, 124 Stat. 1376, 1955–2113 (2010).

[2] 12 U.S.C. 5491(c)(3).

[3] From January 4, 2012 until July 17, 2013, Director Richard Cordray served as a recess appointee, but his recess appointment was not constitutionally proper in light of the Supreme Court's subsequent decision in *NLRB* v. *Noel Canning,* 573 U.S. 513 (2014). *See CFPB* v. *Gordon,* 819 F.3d 1179, 1185–86 (9th Cir. 2016) (upholding the Bureau's ratification of actions from that period, 78 FR 53734 (Aug. 30, 2013)).

[4] 591 U.S.—(2020) (slip op.).

[5] *Id.* at 3.

[6] *Id.* at 32.

[7] Some of the Ratified Actions were previously ratified by the Bureau in August 2013. *See supra* note 3. The Bureau has used the end date of June 30, 2020, in an abundance of caution in order to include 85 FR 39055 (June 30, 2020), which the Bureau released on its website on June 23, 2020.

[8] *Guedes* v. *Bureau of Alcohol, Tobacco, Firearms & Explosives,* 920 F.3d 1, 13 (D.C. Cir. 2019).

[9] The Office of the Federal Register places each document published in the **Federal Register** in one of four categories: ''Presidential Documents,'' ''Rules and Regulations,'' ''Proposed Rules,'' or ''Notices.'' *See* 1 CFR 5.9.

[10] 82 FR 33210 (July 19, 2017).

[11] 82 FR 54472 (Nov. 17, 2017).

[12] These consumer information publications are reflected in the notices of availability at 79 FR 1836 (Jan. 10, 2014); 80 FR 17414 (Apr. 1, 2015); 80 FR 57154 (Sept. 22, 2015); 85 FR 35292 (June 9, 2020).

[13] 77 FR 20011 (Apr. 3, 2012); 77 FR 74831 (Dec. 18, 2012); 78 FR 79410 (Dec. 30, 2013); 79 FR 74068 (Dec. 15, 2014); 80 FR 72711 (Nov. 20, 2015); 81 FR 81745 (Nov. 18, 2016); 82 FR 53481 (Nov. 16, 2017).

[14] 82 FR 55810 (Nov. 24, 2017).

[15] 78 FR 24386 (Apr. 25, 2013).

[16] *See* 83 FR 15019 (Apr. 9, 2018); 84 FR 35525 (July 24, 2019); 84 FR 53579 (Oct. 8, 2019); 85 FR 23909 (Apr. 30, 2020).

[17] Additionally, this ratification does not waive any statute of limitations or other restriction on challenges to the Ratified Actions.

actions following the Court's decision in *Seila Law*. The Bureau's ratification does not foreclose the Bureau from revisiting the Ratified Actions through rulemaking or other initiatives when warranted going forward.

V. Actions Outside the Scope of the Ratification

As noted above, this ratification does not include two actions that were published in the ''Rules and Regulations'' category of the **Federal Register** during the relevant time periods. First, the July 2017 rule titled ''Arbitration Agreements'' [18] is not within the scope of the ratification. Prior to the compliance date of that rule, Congress passed, and the President signed, a joint resolution under the Congressional Review Act that ''disapproves the rule'' and provides that the ''rule shall have no force or effect.'' [19]

Second, the November 2017 rule titled ''Payday, Vehicle Title, and Certain High-Cost Installment Loans'' [20] is also not within the scope of this ratification. The Bureau has revoked the mandatory underwriting provisions of that rule. The Bureau has separately ratified the payment provisions of the rule. The entire rule is subject to litigation and its compliance date has been stayed.[21]

The Bureau is considering whether ratifications of certain other legally significant actions by the Bureau, such as certain pending enforcement actions, are appropriate. Where that is the case, the Bureau is making such ratifications separately. On the other hand, the Bureau does not believe that it is necessary for this ratification to include various previous Bureau actions that have no legal consequences for the public, or enforcement actions that have been finally resolved.

VI. Administrative Law Matters

Courts have ''consistently declined to impose formalistic procedural requirements'' for ratifications by agencies.[22] An agency need not ''repeat'' or ''redo'' the original administrative process, such as the notice-and-comment procedures of the Administrative Procedure Act (APA).[23]

Moreover, the APA's notice-and-comment procedures are not applicable by their terms to this ratification. As case law explains, a ratification ''relates back'' to the prior action, and it is treated as effective at the time the prior action was done.[24] It follows that this ratification is not a ''rule'' as defined by the APA, because it is not an ''agency statement of general or particular applicability and *future effect* . . . .'' [25] Instead, the Bureau is ratifying a number of existing actions, including existing rules, with effect on the original dates of those actions. Further, this is not a ''rule making'' as defined by the APA, because the Bureau is not ''formulating, amending, or repealing a rule.'' [26] Accordingly, this ratification is not subject to the APA's notice-and-comment procedures for ''rule makings.'' [27]

Even if notice-and-comment procedures were required for this ratification, they have already been satisfied by the original rulemaking processes for the relevant Ratified Actions.[28] Additionally, as a further alternative basis, the Bureau finds that new notice-and-comment procedures for this ratification would be ''impracticable'' and also ''contrary to the public interest.'' [29] This is because, based on experience as a regulator of markets for consumer financial products and services, the Bureau believes that prompt issuance of this ratification is important in order to avoid public uncertainty about the status of the Ratified Actions after *Seila Law.* Had the Bureau not promptly issued this ratification, that uncertainty could have had a deleterious effect on the ongoing operations of the affected markets, given the significant role of the Ratified Actions in these markets. This authoritative ratification resolves that uncertainty.

Dated: July 7, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2020–14936 Filed 7–9–20; 8:45 am]

BILLING CODE 4810–AM–P

[18] 82 FR 33210 (July 19, 2017).

[19] Public Law 115–74, 131 Stat. 1243 (2017).

[20] 82 FR 54472 (Nov. 17, 2017).

[21] Order, *Cmty. Fin. Servs. Ass'n of Am., Ltd.* v. *CFPB,* No. 1:18–cv–00295 (W.D. Tex. Nov. 6, 2018) (Dkt. No. 53).

[22] *State Nat'l Bank of Big Spring* v. *Lew,* 197 F. Supp. 3d 177, 184 (D.D.C. 2016) (citing *FEC* v. *Legi-Tech, Inc.,* 75 F.3d 704, 706 (D.C. Cir. 1996); *Doolin Sec. Sav. Bank, FSB* v. *Office of Thrift Supervision,* 139 F.3d 203, 214 (D.C. Cir. 1998); *Intercollegiate Broad. Sys., Inc.* v. *Copyright Royalty Bd.,* 796 F.3d 111, 120 (D.C. Cir. 2015)).

[23] *State Nat'l Bank,* 197 F. Supp. 3d at 184 (quoting *Legi-Tech, Inc.,* 75 F.3d at 706; *Doolin,* 139 F.3d at 214) (internal brackets omitted).

[24] *See, e.g., Advanced Disposal Servs. E., Inc.* v. *NLRB,* 820 F.3d 592, 602 (3d Cir. 2016).

[25] 5 U.S.C. 551(4) (emphasis added). Similarly, the procedures for certain ''rules'' under the Congressional Review Act are not applicable. *See* 5 U.S.C. 804(3) (providing that for purposes of the Congressional Review Act the ''term 'rule' has the meaning given such term in section 551'' of the APA, with certain exceptions).

[26] 5 U.S.C. 551(5).

[27] 5 U.S.C. 553. Similarly, the procedures for certain ''rules'' under the Regulatory Flexibility Act are not applicable. *See* 5 U.S.C. 601(2) (defining a ''rule'' for purposes of the Regulatory Flexibility Act as, in relevant part, ''any rule for which the agency publishes a general notice of proposed rulemaking pursuant to'' section 553 of the APA).

[28] In ratifying the Ratified Actions, the Bureau ratifies the procedural steps, including issuance of notices of proposed rulemaking, that were necessary to issue the Ratified Actions.

[29] 5 U.S.C. 553(b)(B). For the same reasons, even assuming this were a rulemaking, there would also be ''good cause'' to waive the normal requirement that a rule be published not less than 30 days before its effective date. 5 U.S.C. 553(d).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0840; Special Conditions No. 25–769–SC]

Special Conditions: The Boeing Company Model 777–300ER Series Airplanes; Dynamic Test Requirements for Single-Occupant Oblique Seats With Pretensioner Restraint Systems

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

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777–300ER series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is single-occupant, oblique seats equipped with pretensioner restraint systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2018, Boeing applied for a change to Type Certificate No. T00001SE for single-occupant oblique seats with pretensioner restraint systems, instead of airbags, which are the typical restraints used to protect the passengers from head injuries. These seats are to be installed in Boeing Model 777–300ER series airplanes. The Boeing Model 777–300ER series airplanes are twin-engine, transport-category airplanes with passenger seating capacity of 550 and a maximum takeoff weight of 775,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777–300ER series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777–300ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777–300ER series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–300ER series airplanes will incorporate the following novel or unusual design feature:

Single-occupant oblique seats with pretensioner restraint systems to protect the passengers from head injuries.

Discussion

Boeing will install, in Model 777–300ER series airplanes, oblique (side-facing) seats that incorporate seatbelts with a pretensioner system at each seat place, to comply with the occupant injury criteria of § 25.562(c)(5).

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique seat installations. However, the FAA research program is not complete, and the FAA may update these criteria as further research results are collected. To reflect current research findings, the FAA issued policy statements PS–ANM–25–03–R1, ''Technical Criteria for Approving Side-Facing Seats,'' November 12, 2012, which updates injury criteria for fully side-facing seats, and PS–AIR–25–27, ''Technical Criteria for Approving Oblique Seats,'' July 11, 2018, to define injury criteria for oblique seats. These policies provide background and technical information as well as applicable injury criteria.

The installation of obliquely oriented passenger seats are novel such that the current certification basis does not adequately address occupant-protection expectations with regard to the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane longitudinal centerline.

The installation of passenger seats at angles between 18 and 45 degrees from the airplane longitudinal centerline are unusual due to the seat occupant interface with the surrounding furniture, and which introduce occupant alignment and loading concerns with or without the installation of 3-point or airbag-restraint systems.

FAA-sponsored research has found that an unrestrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with the FAA Hybrid III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spinal-tension limit selected is conservative with respect to other aviation injury criteria because it corresponds to a no-injury loading condition, but the degree of conservatism is unknown because the precise spinal-loading level at which injuries would begin to occur is unknown. The small number of human-subject tests accomplished during this research project limits the robustness of the selected tension limit.

Other restraint systems have been used to comply with the occupant injury criteria of § 25.562(c)(5). For instance, shoulder harnesses have been widely used on flight-attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance exist that relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. This could result in the head injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 7 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t_1 is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second larger impact occurs.

The existing special conditions for Boeing Model 777–300ER series airplane oblique seat installations do not address oblique seats with 3-point restraint systems equipped with

pretensioners. Therefore, the proposed configuration requires special conditions.

Conditions 1 through 6 address occupant protection in consideration of the oblique-facing seats. Conditions 7 through 10 ensure that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 11 through 16 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–20–01–SC for the Boeing Model 777–300ER series airplane, which was published in the **Federal Register** on March 2, 2020 (85 FR 12227). The FAA received responses from one commenter.

Boeing suggested one edit for clarity, to the paragraph immediately preceding the list of conditions in the Special Conditions section, to change text that reads, ''. . . passenger seats installed at an angle 18 degrees and 45 degrees . . .'' to read, ''. . . passenger seats installed at an angle between 18 degrees and 45 degrees . . .'' The FAA concurs with the suggested change because the change more correctly conveys the installation angle range for oblique seats discussed in these special conditions.

Boeing recommended adding two sentences at the end of condition no. 7, regarding HIC, to be consistent with same-topic special conditions previously issued. It is the FAA's understanding that the proposed pretensioner restraint system is intended to replace the use of an airbag system as mentioned in the Background section of this document. Therefore, the information Boeing requested, pertaining to HIC associated with airbag contact, would not apply to these special conditions as originally proposed. However, in the event that an airbag device is incorporated in conjunction with a pretensioner restraint system, the FAA agrees to include the additional information consistent with the information provided in recently published oblique-seat special conditions. When present, the airbag device (*e.g.,* inflatable lap-belt airbag or structure-mounted airbag) must also meet the existing special conditions applicable to either inflatable lap belts or structure-mounted airbags.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777–300ER series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777–300ER series airplanes.

In addition to the requirements of § 25.562, passenger seats installed at an angle between 18 degrees and 45 degrees from the airplane longitudinal centerline must meet the following:

1. Body-to-Wall and Body-to-Furnishing Contact:

If a seat is installed aft of structure, such as an interior wall or furnishings, and which does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example if, in addition to a pretensioner restraint system, an airbag device is present, different yaw angles could result in different airbag-device performance, then additional analysis or separate tests may be necessary to evaluate performance.

2. Neck Injury Criteria:

a. The seating system must protect the occupant from experiencing serious neck injury. In addition to a pretensioner restraint system, if an airbag device also is present, the assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck injury potential would be higher for impacts below the airbag-device deployment threshold.

b. The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

F_{zc} = 1,530 lbs for tension
F_{zc} = 1,385 lbs for compression
M_{yc} = 229 lb-ft in flexion
M_{yc} = 100 lb-ft in extension

c. Peak F_z must be below 937 lbs in tension and 899 lbs in compression.

d. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward facing.

e. The neck must not impact any surface that would produce concentrated loading on the neck.

3. Spine and Torso Injury Criteria:

a. The lumbar spine tension (F_z) cannot exceed 1,200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE recommended practice J211/1, ''Instrumentation for Impact Test–Part 1–Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

4. Pelvis Criteria:

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

5. Femur Criteria:

Axial rotation of the upper leg (about the Z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

6. ATD and Test Conditions:

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609. The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.* armrests or walls) installed.

Note: Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS–ANM–100–2000–00123, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' dated February 2, 2000, is acceptable to the FAA.

7. Head Injury Criteria (HIC):

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

When an airbag device is present in addition to the pretensioner restraint system, and the anthropormorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited scored in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700. ATD head contact with the seat or other structure, through the airbag, or contact subsequent to contact with the airbag, requires a HIC value that does not exceed 1000.

8. Protection During Secondary Impacts:

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

9. Protection of Occupants Other than 50th Percentile:

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child-restraint device.

c. The seat occupant is a pregnant woman.

10. Occupants Adopting the Brace Position:

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

11. Inadvertent Pretensioner Actuation:

a. The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}).

b. The system must be shown not susceptible to inadvertent pretensioner actuation as a result of wear and tear, or inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

c. The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

d. Inadvertent pretensioner activation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

12. Availability of the Pretensioner Function Prior to Flight:

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}) between inspection intervals.

13. Incorrect Seat Belt Orientation:

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

14. Contamination Protection:

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

15. Prevention of Hazards:

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

16. Functionality After Loss of Power:

The system must function properly after loss of normal airplane electrical power, and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington, on June 22, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0841; Special Conditions No. 25–770–SC]

Special Conditions: The Boeing Company Model 787–10 Series Airplanes; Dynamic Test Requirements for Single-Occupant Oblique Seats With Pretensioner Restraint Systems

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

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 787–10 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is single-occupant oblique seats equipped with pretensioner restraint systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Airframe and Cabin Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2018, Boeing applied for a change to Type Certificate No. T00021SE for single-occupant oblique seats with pretensioner restraint systems, instead of airbags, which are the typical restraints used to protect the passengers from head injuries. These seats are to be installed in Boeing Model 787–10 series airplanes. The Boeing Model 787–10 series airplanes are twin-engine, transport-category airplanes with passenger seating capacity of 440 and a maximum takeoff weight of 560,000 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 787–10 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00021SE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 787–10 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 787–10 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 787–10 series airplanes will incorporate the following novel or unusual design feature:

Single-occupant oblique seats with pretensioner restraint systems to protect the passengers from head injuries.

Discussion

Boeing will install, in Model 787–10 series airplanes, oblique (side-facing) seats that incorporate seatbelts with a pretensioner system at each seat place, to comply with the occupant injury criteria of § 25.562(c)(5).

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique seat installations. However, the FAA research program is not complete, and the FAA may update these criteria as further research results are collected. To reflect current research findings, the FAA issued policy statements PS–ANM–25–03–R1, ''Technical Criteria for Approving Side-Facing Seats,'' November 12, 2012, which updates injury criteria for fully side-facing seats, and PS–AIR–25–27, ''Technical Criteria for Approving Oblique Seats,'' July 11, 2018, to define injury criteria for oblique seats. These policies provide background and technical information as well as applicable injury criteria.

The installation of obliquely oriented passenger seats are novel such that the current certification basis does not adequately address occupant-protection expectations with regard to the occupant's neck and spine for seat configurations that are positioned at an angle greater than 18 degrees from the airplane longitudinal centerline.

The installation of passenger seats at angles between 18 and 45 degrees from the airplane longitudinal centerline are unusual due to the seat occupant interface with the surrounding furniture, and which introduce occupant alignment and loading concerns with or without the installation of 3-point or airbag-restraint systems.

FAA-sponsored research has found that an unrestrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with the FAA Hybrid III anthropomorphic test device (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spinal-tension limit selected is conservative with respect to other aviation injury criteria because it corresponds to a no-injury loading condition, but the degree of conservatism is unknown because the precise spinal-loading level at which injuries would begin to occur is unknown. The small number of human-subject tests accomplished during this research project limits the robustness of the selected tension limit.

Other restraint systems have been used to comply with the occupant injury criteria of § 25.562(c)(5). For instance, shoulder harnesses have been widely used on flight attendant seats, flight-deck seats, in business jets, and in general-aviation airplanes to reduce occupant head injury in the event of an emergency landing. Special conditions, pertinent regulations, and published guidance exist that relate to other restraint systems. However, the use of pretensioners in the restraint system on transport-airplane seats is a novel design.

Pretensioner technology involves a step-change in loading experienced by the occupant for impacts below and above that at which the device deploys, because activation of the shoulder harness, at the point at which the pretensioner engages, interrupts upper-torso excursion. This could result in the head injury criteria (HIC) being higher at an intermediate impact condition than that resulting from the maximum impact condition corresponding to the test conditions specified in § 25.562. See condition 7 in these special conditions.

The ideal triangular maximum-severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the pretensioner setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t_1 is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Additionally, the pretensioner might not provide protection, after actuation, during secondary impacts. Therefore, the case where a small impact is followed by a large impact should be addressed. If the minimum deceleration severity at which the pretensioner is set to deploy is unnecessarily low, the protection offered by the pretensioner may be lost by the time a second larger impact occurs.

The existing special conditions for Model 787 oblique seat installations do not adequately address oblique seats with 3-point and pretensioner restraint systems. Therefore, the proposed configuration requires special conditions.

Conditions 1 through 6 address occupant protection in consideration of the oblique-facing seats. Conditions 7 through 10 ensure that the pretensioner system activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 11 through 16 address maintenance and reliability of the pretensioner system, including any outside influences on the mechanism, to ensure it functions as intended.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–20–02–SC for the Boeing Model 787–10 series airplane, which was published in the **Federal Register** on March 2, 2020 (85 FR 12230). The FAA received responses from three commenters.

Boeing suggested one edit for clarity, to the paragraph immediately preceding the list of conditions in the Special Conditions section, to change text that reads, ''. . . passenger seats installed at an angle 18 degrees and 45 degrees . . .'' to read, ''. . . passenger seats installed at an angle between 18 degrees and 45 degrees . . .'' The FAA concurs with the suggested change because the change more correctly conveys the installation angle range for oblique seats discussed in these special conditions.

Boeing recommended adding two sentences at the end of condition no. 7 regarding HIC, to be consistent with same-topic special conditions previously issued. It is the FAA's understanding that the proposed pretensioner restraint system is intended to replace the use of an airbag system as mentioned in the Background section of this document. Therefore, the information Boeing requested, pertaining to HIC associated with airbag contact, would not apply to these special conditions as originally proposed. However, in the event that an airbag device is incorporated in conjunction with a pretensioner restraint system, the FAA agrees to include the additional information consistent with the information provided in recently published oblique-seat special conditions. When present, the airbag device (*e.g.,* inflatable lap-belt airbag or structure-mounted airbag) must also meet the existing special conditions applicable to either inflatable lap belts or structure-mounted airbags.

An individual commenter states, ''Diagrams of the proposed seat installation with and without a person sitting in it would provide the visual context to the proposed regulation. Also, a seat diagram would help clarify how neck injuries will be mitigated by the restraint system is vague. Assuming a crash, would a person's neck just receive minor injuries resulting in whiplash [or] is the seat designed to reduce head movement during crashes?''

The pretensioner restraint system, which is incorporated into the seat design, is intended to eliminate slack in the shoulder harness, and to pull the occupant back into the seat prior to impact. This has the effect of reducing occupant forward translation and reducing head movement, thus minimizing the potential for injuries. Based on this description of the pretensioner restraint system, the FAA has determined that it is not necessary to provide a seat diagram to convey the same information. Further discussion regarding the development of criteria to address occupant injuries can be found in FAA Policy Statement PS–AIR–25–27, Appendix A.

Another individual commenter asks, ''Has an investigation been completed as to how much aircraft evacuations may be affected by canting the seats at an angle from centerline?''

An investigation of the effects of obliquely positioned (canted) seat installations on aircraft evacuations has not been conducted because it is not necessary to do so. Occupants in oblique seats have access to egress aisles as well as visibility of emergency exits and exit signs similar to occupants of non-oblique, forward-facing seats. Furthermore, for all interior configuration variants, it is the installer's responsibility to demonstrate evacuation capability of the airplane, via demonstration of compliance to § 25.803, prior to certification.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 787–10 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 787–10 series airplanes.

In addition to the requirements of § 25.562, passenger seats installed at an angle between 18 degrees and 45 degrees from the airplane longitudinal centerline must meet the following:

1. Body-to-Wall and Body-to-Furnishing Contact:

If a seat is installed aft of structure, such as an interior wall or furnishings, and which does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example if, in addition to a pretensioner restraint system, an airbag device is present, different yaw angles could result in different airbag-device performance, then additional analysis or separate tests may be necessary to evaluate performance.

2. Neck Injury Criteria:

a. The seating system must protect the occupant from experiencing serious neck injury. In addition to a pretensioner restraint system, if an airbag device also is present, the assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck injury potential would be higher for impacts below the airbag-device deployment threshold.

b. The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

F_{zc} = 1530 lbs for tension
F_{zc} = 1385 lbs for compression
M_{yc} = 229 lb-ft in flexion
M_{yc} = 100 lb-ft in extension

c. Peak F_z must be below 937 lbs in tension and 899 lbs in compression.

d. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward facing.

e. The neck must not impact any surface that would produce concentrated loading on the neck.

3. Spine and Torso Injury Criteria:

a. The lumbar spine tension (F_z) cannot exceed 1200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X

direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE recommended practice J211/1, ''Instrumentation for Impact Test—Part 1–Electronic Instrumentation.''

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

4. Pelvis Criteria:

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the seat bottom seat-cushion supporting structure.

5. Femur Criteria:

Axial rotation of the upper leg (about the Z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

6. ATD and Test Conditions:

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609. The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (*e.g.* armrests or walls) installed.

Note: Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS–ANM–100–2000–00123, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' dated February 2, 2000, is acceptable to the FAA.

7. Head Injury Criteria (HIC):

The HIC value must not exceed 1000 at any condition at which the pretensioner does or does not deploy, up to the maximum severity pulse that corresponds to the test conditions specified in § 25.562. Tests must be performed to demonstrate this, taking into account any necessary tolerances for deployment.

When an airbag device is present in addition to the pretensioner restraint system, and the anthropormorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited scored in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700. ATD head contact with the seat or other structure, through the airbag, or contact subsequent to contact with the airbag, requires a HIC value that does not exceed 1000.

8. Protection During Secondary Impacts:

The pretensioner activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering secondary impacts.

9. Protection of Occupants Other than 50th Percentile:

Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown. For shoulder harnesses that include pretensioners, protection of occupants other than a 50th percentile male may be shown by test or analysis. In addition, the pretensioner must not introduce a hazard to passengers due to the following seating configurations:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child-restraint device.

c. The seat occupant is a pregnant woman.

10. Occupants Adopting the Brace Position:

Occupants in the traditional brace position when the pretensioner activates must not experience adverse effects from the pretensioner activation.

11. Inadvertent Pretensioner Actuation:

a. The probability of inadvertent pretensioner actuation must be shown to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}).

b. The system must be shown not susceptible to inadvertent pretensioner actuation as a result of wear and tear, or inertia loads resulting from in-flight or ground maneuvers likely to be experienced in service.

c. The seated occupant must not be seriously injured as a result of inadvertent pretensioner actuation.

d. Inadvertent pretensioner activation must not cause a hazard to the airplane, nor cause serious injury to anyone who may be positioned close to the retractor or belt (*e.g.,* seated in an adjacent seat or standing adjacent to the seat).

12. Availability of the Pretensioner Function Prior to Flight:

The design must provide means for a crewmember to verify the availability of the pretensioner function prior to each flight, or the probability of failure of the pretensioner function must be demonstrated to be extremely remote (*i.e.,* average probability per flight hour of less than 10^{-7}) between inspection intervals.

13. Incorrect Seat Belt Orientation:

The system design must ensure that any incorrect orientation (twisting) of the seat belt does not compromise the pretensioner protection function.

14. Contamination Protection:

The pretensioner mechanisms and controls must be protected from external contamination associated with that which could occur on or around passenger seating.

15. Prevention of Hazards:

The pretensioner system must not induce a hazard to passengers in case of fire, nor create a fire hazard, if activated.

16. Functionality After Loss of Power:

The system must function properly after loss of normal airplane electrical power, and after a transverse separation in the fuselage at the most critical location. A separation at the location of the system does not have to be considered.

Issued in Des Moines, Washington, on June 22, 2020.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–13760 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0361; Airspace Docket No. 20–AEA–9]

RIN 2120–AA66

Amendment of the Class D and Class E Airspace and Revocation of Class E Airspace; Erie and Corry, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Erie International Airport/Tom Ridge Field, Erie, PA; revokes the Class E airspace area designated as an extension to Class D and Class E surface area at Erie International Airport/Tom Ridge Field; and amends the Class E airspace extending upward from 700 feet above the surface at Corry-Lawrence Airport, Corry, PA. This action is the result of airspace reviews due to the decommissioning of the Tidioute VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Erie International Airport/Tom Ridge Field, Erie, PA; revokes the Class E airspace area designated as an extension to Class D and Class E surface area at Erie International Airport/Tom Ridge Field; and amends the Class E airspace extending upward from 700 feet above the surface at Corry-Lawrence Airport, Corry, PA, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27174; May 7, 2020) for Docket No. FAA–2020–0361 to amend the Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface at Erie International Airport/Tom Ridge Field, Erie, PA; revoke the Class E airspace area designated as an extension to Class D and Class E surface area at Erie International Airport/Tom Ridge Field; and amend the Class E airspace extending upward from 700 feet above the surface at Corry-Lawrence Airport, Corry, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, 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.

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: Amends the Class D airspace to within a 4.3-mile (increased from a 4.2-mile) radius of Erie International Airport/Tom Ridge Field, Erie, PA;

Amends the Class E surface area airspace to within a 4.3-mile (increased from a 4.2-mile) radius of Erie International Airport/Tom Ridge Field;

Removes the Class E airspace area designated as an extension to Class D and Class E surface areas at Erie International Airport/Tom Ridge Field, as it is no longer required;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 7.4-mile) radius of the Corry-Lawrence Airport, Corry, PA; and removes the extension southeast of the airport, as it is no longer required;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile (increased from a 6.7-mile) radius of Erie International Airport/Tom Ridge Field; amends the extension to within 3.6 miles (decreased from 4.4 miles) each side of the 054° bearing from the Erie International Airport/Tom Ridge Field: RWY 24–LOC (previously the airport) extending from the 6.8-mile (increased from 6.7-mile) radius of the airport to 11.6 miles (decreased from 14 miles) northeast of the airport.

This action is the result of airspace reviews caused by the decommissioning of the Tidioute VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

AEA PA D Erie, PA [Amended]

Erie International Airport/Tom Ridge Field, PA
(Lat. 42°04′59″ N, long. 80°10′26″ W)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.3-mile radius of Erie International Airport/Tom Ridge Field. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AEA PA E2 Erie, PA [Amended]

Erie International Airport/Tom Ridge Field, PA
(Lat. 42°04′59″ N, long. 80°10′26″ W)

That airspace extending upward from the surface within a 4.3-mile radius of Erie International Airport/Tom Ridge Field. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AEA PA E4 Erie, PA [Removed]

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

* * * * *

AEA PA E5 Corry, PA [Amended]

Corry-Lawrence Airport, PA
(Lat. 41°54′27″ N, long. 79°38′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Corry-Lawrence Airport.

* * * * *

AEA PA E5 Erie, PA [Amended]

Erie International Airport/Tom Ridge Field, PA
(Lat. 42°04′59″ N, long. 80°10′26″ W)
Erie International Airport/Tom Ridge Field: RWY 24–LOC
(Lat. 42°04′32″ N, long. 80°11′12″ W)
St. Vincent Health Center Heliport, PA
(Lat. 42°06′43″ N, long. 80°04′51″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Erie International Airport/Tom Ridge Field, and within 3.6 miles each side of the 054° bearing from the Erie International Airport/Tom Ridge Field: RWY 24–LOC extending from the 6.8-mile radius to 11.6 miles northeast of the airport, and within a 6-mile radius of St. Vincent Health Center Heliport.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14863 Filed 7–9–20; 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

Amendment of Class E Airspace; Sedalia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Sedalia Regional Airport, Sedalia, MO. This action is the result of an airspace review due to the decommissioning of the Sedalia non-directional beacon (NDB). The name of the airport is also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class E airspace extending upward from 700 feet above the surface at Sedalia Regional Airport, Sedalia, MO, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 26901; May 6, 2020) for Docket No. FAA–2020–0324 to amend the Class E airspace extending upward from 700 feet above the surface at Sedalia Regional Airport, Sedalia, MO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 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 amends 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; updates the name of the Sedalia Regional Airport (previously Sedalia Memorial Airport) to coincide with the FAA's aeronautical database; and removes the Sedalia NDB and associated extension from the airspace legal description.

This action is the result of an airspace review due to the decommissioning of the Sedalia NDB which provided navigation information to the instrument procedures at this airport.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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 July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14858 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0355; Airspace Docket No. 20–AGL–18]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Jackson and Lakeview, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace and Class E airspace extending upward from 700 feet above the surface at Jackson County Airport-Reynolds Field, Jackson, MI, and the Class E airspace extending upward from 700 feet above the surface at Lakeview Airport-Griffith Field, Lakeview, MI. This action as the result of airspace reviews caused by the decommissioning of the Jackson and Muskegon VHF omnidirectional range (VOR) navigation aids as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates and names of the airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class D airspace and Class E airspace extending upward from 700 feet above the surface at Jackson County Airport-Reynolds Field, Jackson, MI, and the Class E airspace extending upward from 700 feet above the surface at Lakeview Airport-Griffith Field, Lakeview, MI, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 28523; May 13, 2020) for Docket No. FAA–2020–0355 to amend the Class D airspace and Class E airspace extending upward from 700 feet above the surface at Jackson County Airport-Reynolds Field, Jackson, MI, and the Class E airspace extending upward from 700 feet above the surface at Lakeview Airport-Griffith Field, Lakeview, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000 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.

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: Amends the Class D airspace at Jackson County Airport-Reynolds Field, Jackson, MI, by updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E airspace extending upward from 700 feet above the surface within a 6.5-mile (decreased from a 7-mile) radius of Jackson County Airport-Reynolds Field (previously the Jackson VOR/DME); updates the name and geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the Jackson VOR/DME from the airspace legal description;

And amends the Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius (decreased from a 7.6-mile radius) of Lakeview Airport-Griffith Field, Lakeview, MI; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of airspace reviews caused by the decommissioning of the Jackson and Muskegon VORs, which provided navigation information for the instrument procedures these airports, as part of the VOR MON Program.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

AGL MI D Jackson, MI [Amended]

Jackson County Airport-Reynolds Field, MI
(Lat. 42°15′38″ N, long. 84°27′44″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Jackson County Airport-Reynolds Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time 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.

* * * * *

AGL MI E5 Jackson, MI [Amended]

Jackson County Airport-Reynolds Field, Jackson, MI
(Lat. 42°15′38″ N, long. 84°27′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Jackson County Airport-Reynolds Field.

* * * * *

AGL MI E5 Lakeview, MI [Amended]

Lakeview Airport-Griffith Field, MI
(Lat. 43°27′08″ N, long. 85°15′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Lakeview Airport-Griffith Field.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14871 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0354; Airspace Docket No. 20–ASW–3]

RIN 2120–AA66

Amendment of Class E Airspace; Kountze/Silsbee, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Hawthorne Field, Kountze/Silsbee, TX. This action is the result of an airspace review caused by the decommissioning of the Hardin County non-directional beacon (NDB). The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class E airspace extending upward from 700 feet above the surface at Hawthorne Field, Kountze/Silsbee, TX, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27184; May 7, 2020) for Docket No. FAA–2020–0354 to amend the Class E airspace extending upward from 700 feet above the surface at Hawthorne Field, Kountze/Silsbee, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 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 amends the Class E airspace area extending upward from 700 feet above the surface to within a 6.4-mile (decreased from 6.6-mile) radius at Hawthorne Field, Kountze/Silsbee, TX; updates the header of the airspace legal description to read Kountze/Silsbee, TX (previously Kountze-Silsbee, TX) to coincide with the FAA's aeronautical database; removes the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

These actions are the result of an airspace review caused by the decommissioning of the Hardin County NDB which provided navigation information for the instrument procedures at these airports.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

ASW TX E5 Kountze/Silsbee, TX [Amended]

Hawthorne Field, TX
(Lat. 30°20′11″ N, long. 94°15′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hawthorne Field.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14860 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0426; Airspace Docket No. 20–AGL–22]

RIN 2120–AA66

Amendment of Class E Airspace; Coshocton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Richard Downing Airport, Coshocton, OH. This action as the result of an airspace review caused by the development of new instrument procedures at this airport.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class E airspace extending upward from 700 feet above the surface at Richard Downing Airport, Coshocton, OH, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 28897; May 14, 2020) for Docket No. FAA–2020–0426 to amend the Class E airspace extending upward from 700 feet above the surface at Richard Downing Airport, Coshocton, OH. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 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 amends the Class E airspace extending upward from 700 feet above the surface by adding an extension 2 miles each side of the 217° bearing from the Richard Downing Airport, Coshocton, OH, extending from the 6.5-mile radius of the airport to 9.3 miles southwest of the airport.

This action is the result of an airspace review caused by the development of new instrument procedures at this airport.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

AGL OH E5 Coshocton, OH [Amended]

Richard Downing Airport, OH
(Lat. 40°18′37″ N, long. 81°51′09″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Richard Downing Airport, and within 2 miles each side of the 037° bearing from the airport extending from the 6.5-mile radius to 8.6 miles northeast of the airport, and within 2 miles each side of the 217° bearing from the airport extending from the 6.5-mile radius to 9.3 miles southwest of the airport.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14864 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0356; Airspace Docket No. 20–ASO–14]

RIN 2120–AA66

Amendment of the Class E Airspace; Hazard, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Wendell H. Ford Airport, Hazard, KY. This action is the result of an airspace review caused by the decommissioning of the Hazard VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class E airspace extending upward from 700 feet above the surface at Wendell H. Ford Airport, Hazard, KY, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27189; May 7, 2020) for Docket No. FAA–2020–0356 to amend the Class E airspace extending upward from 700 feet above the surface at Wendell H. Ford Airport, Hazard, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 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 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile radius (increased from a 6.6-mile radius) of Wendell H. Ford Airport, Hazard, KY; adds an extension 2 miles each side of the 139° bearing from the airport extending from the 6.7-mile radius of the airport to 11.1 miles south of the airport; and updates the geographic coordinates of the airport

to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Hazard VOR, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

ASO KY E5 Hazard, KY [Amended]

Wendell H. Ford Airport, KY
(Lat. 37°23′15″ N, long. 83°15′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Wendell H. Ford Airport, and within 2 miles each side of the 139° bearing from the airport extending from the 6.7-mile radius of the airport to 11.1 miles south of the airport.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14862 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0245; Airspace Docket No. 20–ASW–2]

RIN 2120–AA66

Amendment of Class E Airspace; Athens, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Athens Municipal Airport and Lochridge Ranch Airport, Athens, TX. This action is the result of airspace reviews caused by the decommissioning of the Athens non-directional beacon (NDB). The geographic coordinates and names of airports and navigational aids are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, September 10, 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: 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 amends the Class E airspace extending upward from 700 feet above the surface at Athens Municipal Airport and Lochridge Ranch Airport, Athens, TX, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 27176; May 7, 2020) for Docket No. FAA–2020–0245 to amend the Class E airspace extending upward from 700 feet above the surface at Athens Municipal Airport and Lochridge Ranch Airport, Athens, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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 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: Amends the Class E airspace area extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 6.5-mile radius) at Athens Municipal Airport, Athens, TX; and removes the Athens NDB and the associated extension from the Athens, TX, airspace legal description;

And amends the Class E airspace area extending upward from 700 feet above the surface at Lochridge Ranch Airport, Athens, TX, by amending the extension to the north to 2.6 miles (decreased from 4 miles) each side of the 356° bearing from the Crossroads NDB extending from the 6.5-mile radius of the airport to 11.5 miles north of the airport; removes the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; and updates the geographic coordinates of the airport and the name of the Crossroads NDB (previously the Crossroads RBN) to coincide with the FAA's aeronautical database.

These actions are the result of airspace reviews caused by the decommissioning of the Athens NDB, which provided navigation information for the instrument procedures at these airports.

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 only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does 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 5–6.5.a. 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.

Lists 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 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.

* * * * *

ASW TX E5 Athens, TX [Amended]

Athens Municipal Airport, TX
(Lat. 32°09′50″ N, long. 95°49′42″ W)
Lochridge Ranch Airport, TX
(Lat. 31°59′21″ N, long. 95°57′04″ W)
Crossroads NDB
(Lat. 32°03′49″ N, long. 95°57′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Athens Municipal Airport, and within a 6.5-mile radius of Lochridge Ranch Airport, and within 2.6 miles each side of the 356° bearing from the Crossroads NDB extending from the 6.5-mile radius to 11.5 miles north of the Lochridge Ranch Airport.

Issued in Fort Worth, Texas, on July 6, 2020.

Steven T. Phillips,

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

[FR Doc. 2020–14859 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF02

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule with request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting and invites comment on an interim final rule amending its margin requirements for uncleared swaps for swap dealers (''SDs'') and major swap participants (''MSPs'') for which there is no prudential regulator (''CFTC Margin Rule''). The Commission is revising the compliance schedule for the posting and collection of initial margin under the CFTC Margin Rule to defer the compliance date of September 1, 2020, to September 1, 2021 (''Interim Final Rule''). The Commission is issuing the Interim Final Rule to address the operational challenges faced by certain entities subject to the CFTC Margin Rule as a result of the coronavirus disease 2019 (''COVID–19'') pandemic, consistent with the recent revision of the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions (together, ''BCBS/IOSCO'') implementation schedule for margin requirements for non-centrally-cleared derivatives.

DATES:

Effective Date: This rule is effective July 10, 2020.

Comment Date: Comments must be received on or before September 8,

2020. Comments submitted by mail will be accepted as timely if they are postmarked on or before that date.

ADDRESSES: You may submit comments, identified by RIN 3038–AF02, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act (''APA'')[2] and other applicable laws, and may be accessible under the FOIA.[3]

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov;* Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov;* or Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4s(e) of the Commodity Exchange Act (''CEA'')[4] directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps[5] that are (i) entered into by an SD[6] or MSP[7] for which there is no prudential regulator[8] (collectively, ''covered swap entities'' or ''CSEs'')[9] and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[10] To offset the greater risk to the SD or MSP and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held as an SD or MSP.[11]

BCBS/IOSCO established an international framework for margin requirements for uncleared derivatives in September 2013 (the ''BCBS/IOSCO framework'').[12] After the establishment of the BCBS/IOSCO framework, the CFTC, on January 6, 2016, consistent with Section 4s(e), promulgated rules requiring CSEs to collect and post initial margin (''IM'')[13] and variation margin (''VM'')[14] for uncleared swaps,[15] adopting the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.[16]

In July 2019, BCBS/IOSCO further revised the framework to extend the implementation schedule to September 1, 2021.[17] Consistent with this revision to the international framework, in April 2020, the Commission promulgated a final rule amending the compliance schedule for the IM requirements under the CFTC Margin Rule (''April 2020 Final Rule'').[18]

The World Health Organization declared the COVID–19 outbreak a global pandemic on March 11, 2020.[19] On March 13, 2020, President Donald J. Trump declared a national emergency

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[2] 5 U.S.C. Subchapter II.

[3] 5 U.S.C. 552.

[4] 7 U.S.C. 6s(e) (capital and margin requirements).

[5] CEA section 1a(47), 7 U.S.C. 1a(47) (swap definition); Commission regulation 1.3, 17 CFR 1.3 (further definition of a swap). A swap includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[6] CEA section 1a(49), 7 U.S.C. 1a(49) (swap dealer definition); Commission regulation 1.3 (further definition of swap dealer).

[7] CEA section 1a(32), 7 U.S.C. 1a(32) (major swap participant definition); Commission regulation 1.3 (further definition of major swap participant).

[8] CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term ''prudential regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of prudential regulator further specifies the entities for which these agencies act as prudential regulators. The prudential regulators published final margin requirements in November 2015. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule''). The Prudential Margin Rule is similar to the CFTC Margin Rule, including with respect to the CFTC's phasing-in of margin requirements, as discussed below.

[9] CEA section 4s(e)(1)(B), 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a prudential regulator must meet the margin requirements for uncleared swaps established by the applicable prudential regulator. CEA section 4s(e)(1)(A), 7 U.S.C. 6s(e)(1)(A).

[10] CEA section 4s(e)(2)(B)(ii), 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined the term uncleared swap to mean a swap that is not cleared by a registered derivatives clearing organization or by a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[11] CEA section 4s(e)(3)(A), 7 U.S.C. 6s(e)(3)(A).

[12] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (Sept. 2013), *https://www.bis.org/publ/bcbs261.pdf.*

[13] Initial margin is the collateral (calculated as provided by § 23.154 of the Commission's regulations) that is collected or posted in connection with one or more uncleared swaps pursuant to § 23.152. Initial margin is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out). *See* CFTC Margin Rule, 81 FR at 683.

[14] Variation margin, as defined in Commission regulation 23.151, is the collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided. 17 CFR 23.151.

[15] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission regulation § 23.160, 17 CFR 23.160, providing rules on its cross-border application. *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[16] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), *https://www.bis.org/bcbs/publ/d317.pdf.*

[17] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), *https://www.bis.org/bcbs/publ/d475.pdf.*

[18] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19878 (April 9, 2020).

[19] WHO Director-General's opening remarks at the media briefing on COVID–19 (March 11, 2020), *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

due to the COVID–19 pandemic.[20] The disease has impacted individuals across the world.

The COVID–19 outbreak has severely disrupted domestic and international business, and adversely impacted the global economy. In March 2020, a group of global financial market trade associations wrote a letter to BCBS/IOSCO requesting a suspension of the nearing compliance dates, set to begin on September 1, 2020, and September 1, 2021, in light of the pandemic.[21] The Trade Association Letter stated that staff at financial firms have been displaced and repurposed given the increased market volatility.[22] The letter further stated that working from home limits access to legal and operational documentation and also limits abilities to communicate with counterparties.[23] With operational teams working at full capacity to ensure proper business continuity, the trade associations declared that the strained working conditions at firms had ''impaired'' such firms' ability to undertake preparations to exchange IM, such as custodian onboarding and custodian documentation, by the upcoming September 1, 2020 deadline.[24]

Under these circumstances, the Trade Association Letter emphasizes the industry concern about diverting resources from ongoing business continuity efforts to the substantial preparations needed for the exchange of regulatory IM ahead of the September 1, 2020 deadline.[25]

In response to these concerns, BCBS/IOSCO decided to further extend the implementation schedule for the margin requirements for non-centrally cleared derivatives by one year.[26] BCBS/IOSCO, in a joint statement, stated that the extension would provide additional operational capacity for firms to respond to the immediate impact of COVID–19 and at the same time facilitate firms' diligent efforts to comply with the requirements by the revised deadlines.[27]

Recently, a Global Markets Advisory Committee (''GMAC'') subcommittee encouraged the adoption of the BCBS/IOSCO recommendation to extend the implementation schedule given the circumstances brought about by the COVID–19 pandemic. The subcommittee noted that the April 2020 BCBS/IOSCO action ''serves as confirmation by the collective international standard-setting bodies that it is critical for the industry to be able to divert and dedicate scarce resources to respond to the COVID–19 crisis and related market volatility and liquidity issues without jeopardizing compliance with upcoming regulatory obligations under uncleared swap margin rules.'' [28]

II. Interim Final Rule

The Commission is issuing the Interim Final Rule to amend the CFTC Margin Rule by deferring for one year to September 1, 2021, compliance with the IM requirements for entities subject to the September 1, 2020 deadline. The Commission is issuing this deferral in recognition of the extraordinary operational challenges and risk-management demands faced by the entities as a result of the COVID–19 pandemic, consistent with the recent revision of BCBS/IOSCO's implementation schedule.[29]

The CFTC Margin Rule requires covered swap entities to post and collect IM with counterparties that are SDs, MSPs, or financial end users with material swaps exposure (''MSE'') [30] (''covered counterparties'') in accordance with a phased compliance schedule set forth in Commission regulation § 23.161.[31] The compliance schedule applies progressively to CSEs and their covered counterparties in staggered phases, starting with entities with the largest average daily aggregate notional amounts (''AANA'') of uncleared swaps and certain other financial products, and then successively with lesser AANA.

The compliance schedule originally spanned from September 1, 2016 to September 1, 2020. The April 2020 Final Rule extended the schedule by one year by dividing the last compliance ''phase''—which would have brought into scope CSEs and covered counterparties with an AANA between $8 billion and $750 billion—into two compliance phases. Under the April 2020 Final Rule, CSEs and covered counterparties with an AANA between $50 billion and $750 billion must comply with the IM requirements beginning on September 1, 2020.[32] In addition, again pursuant to the April 2020 Final Rule, other remaining CSEs and covered counterparties, including financial end users with MSE, must comply beginning on September 1, 2021.[33]

This Interim Final Rule amends Commission regulation § 23.161, as revised by the April 2020 Final Rule,[34] by deferring for one year the April 2020

[20] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (March 13, 2020), *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[21] Margin Requirements for Non-Centrally Cleared Swaps Margin—Impact of COVID–19 on Initial Margin Phase-In (March 25, 2020), *https://www.isda.org/2020/03/25/joint-trade-association-letter-on-impact-of-covid-19-on-initial-margin-phase-in/* (''Trade Association Letter'').

[22] Trade Association Letter at 2.

[23] *Id.*

[24] Trade Association Letter at 3.

[25] *See id.*

[26] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (April 2020), *https://www.bis.org/bcbs/publ/d499.htm* (''2020 BCBS/IOSCO Margin Framework'') and Press Release, April 3, 2020, *https://www.bis.org/press/p200403a.htm* (''April 2020 BCBS/IOSCO Press Release'').

[27] Basel Committee and IOSCO announce deferral of final implementation phases of the margin requirements for non-centrally cleared derivatives (April 3, 2020), *https://www.bis.org/press/p200403a.htm.*

[28] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, at 3 (April 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.* The GMAC adopted the subcommittee's report and recommended to the Commission that it consider adopting the report's recommendations. The GMAC subcommittee was not tasked to respond to the COVID–19 pandemic. Rather, its establishment pre-dates the pandemic's impact and its directive was to address the ongoing challenges involving the implementation of the CFTC margin requirements during the last stages of the compliance schedule, which may be taken up at a later date by the Commission. *See* CFTC Commissioner Stump Announces New GMAC Subcommittee on Margin Requirements for Non-Cleared Swaps (Oct. 28, 2019), *https://www.cftc.gov/PressRoom/PressReleases/8064-19.*

[29] *See generally* 2020 BCBS/IOSCO Margin Framework. The Framework extends the BCBS/IOSCO implementation schedule to September 1, 2022, by deferring the compliance dates of September 1, 2020, and September 1, 2021, to September 1, 2021, and September 1, 2022, respectively. Given the immediate need to address the impact of the COVID–19 pandemic on entities nearing the September 1, 2020 deadline, the Commission is issuing the Interim Final Rule discussed herein. As discussed below, the Commission intends to issue a notice of proposed rulemaking with respect to the September 1, 2021 compliance date in the near term.

[30] Commission regulation § 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. A company is a ''margin affiliate'' of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in (i) or (ii) would have occurred if such principles or standards had applied. 17 CFR 23.151.

[31] 17 CFR 23.161.

[32] *See* 17 CFR 23.161(a)(6).

[33] 17 CFR 23.161(a)(7).

[34] 17 CFR 23.161.

Final Rule's compliance date of September 1, 2020. The Interim Final Rule reflects the recent revisions to the BCBS/IOSCO framework extending the margin implementation schedule.[35] More specifically, the Interim Final Rule defers compliance for entities that would come into scope beginning on September 1, 2020, requiring CSEs and covered counterparties with an AANA between $50 billion up to $750 billion during the three-month period of March–May of 2021 to come into compliance beginning on September 1, 2021.

By extending the September 1, 2020 deadline for compliance with the IM requirements under the CFTC Margin Rule, the Commission, consistent with BCBS/IOSCO's revision of the margin implementation schedule, seeks to alleviate the challenges, operational and otherwise, that COVID–19 poses to entities nearing the September 1, 2020 deadline. In the Commission's view, compliance with the existing requirements could exacerbate COVID–19's adverse impact on operations by causing entities to divert scarce resources from more pressing operational needs, which could hinder business continuity efforts and adequate management of volatility, liquidity, and other risks brought about by the pandemic.[36]

The COVID–19 pandemic has severely and adversely impacted preparations for the exchange of regulatory IM in advance of the current compliance deadlines, including procuring rule-compliant documentation, setting up custodial arrangements, and establishing internal processes for the calculation, collection, and posting of IM, among other things. In the midst of high market volatility, firms have experienced a reduction in operational capacity, carrying out remote operations, with employees performing critical functions from home or other temporary locations, which has limited access to legal and operational documentation and limited the ability to work with counterparties.

Service providers, such as custodians, are facing similar operational challenges. As the next phase of compliance, beginning on September 1, 2020, approaches, custodian onboarding is being impeded, resulting in further delays in the establishment of custodian accounts. Other vendors providing IM-related services are being similarly affected.

The Commission notes that the compliance delay provided by the Interim Final Rule applies to entities whose uncleared swap portfolios tend to be smaller than the portfolios of entities that came into scope in earlier phases of the compliance schedule. The CFTC's Office of the Chief Economist (''OCE'') has estimated that entities with such smaller uncleared swap portfolios represent only 8% of total AANA across all phases.[37] This modest share of notional amount, spread across many small entities, likely means that the uncollateralized swaps entered into by these entities—taking into account that no exchange of IM is required by the CFTC Margin Rule until the IM threshold amount has been exceeded [38]—pose less risk to the financial markets than the risk posed by uncleared swaps entered into by entities that have already come into the scope of IM compliance.

This Interim Final Rule does not address the last phase of compliance beginning on September 1, 2021. As discussed below, the Commission is making a finding that notice and public procedure on this rule is impracticable because the need for relief is immediate. Because there is more time to address the last phase of compliance currently set to commence on September 1, 2021, the Commission will address that compliance date through a notice of proposed rulemaking and public comment process. The Commission intends to take action with respect to the final compliance phase in the near term. The Commission notes that without an extension of the final compliance phase, approximately 700 entities would come into the scope of the IM requirements simultaneously on September 1, 2021.[39]

III. Request for Comment

The Commission is issuing this Interim Final Rule to revise Commission regulation § 23.161 to address concerns relating to the COVID–19 pandemic, as discussed above. Issuing an Interim Final Rule means that the amendment to delay the April 2020 Final Rule's compliance deadline of September 1, 2020, will take effect sooner than if the Commission followed the usual prior notice and comment rulemaking process. A discussion of the Commission's finding that there is good cause to omit the usual prior notice and comment procedures appears below in the section entitled ''Administrative Procedure Act.''

The Commission welcomes public comments from interested persons regarding any aspect of the changes made by this Interim Final Rule. The Commission also seeks comment on the following specific questions. The Commission will take into consideration comments received and may modify the Interim Final Rule if warranted.

(1) This Interim Final Rule delays by one year compliance with the IM requirements under the CFTC Margin Rule for entities subject to the September 1, 2020 deadline to alleviate the challenges, operational and otherwise, that COVID–19 poses to entities engaging in uncleared swaps nearing the existing compliance deadline as discussed above. Uncleared swaps that are entered into during the one year extension period will be legacy swaps not subject to the IM requirements (although they would be subject to VM requirements) and, as such, lesser amounts of margin would be collected for these swaps, potentially increasing counterparty risk and the risk of contagion.[40] In light of these risks, should the Commission consider any alternative to extending the compliance schedule? Please describe the alternatives if any can be identified.

(2) As an alternative to the Interim Final Rule deferring compliance for the entities coming into scope in September 2020, should the Commission consider

[35] 2020 BCBS/IOSCO Margin Framework.

[36] To be sure, the exchange of IM mitigates various risks, such as counterparty credit risk. However, given the relatively small share of the swaps market affected by this IFR, the Commission believes it is appropriate to defer covered entities' IM obligations to allow such entities to focus on immediate operational, volatility, and liquidity risks arising from the COVID–19 pandemic.

[37] Richard Haynes, Madison Lau, & Bruce Tuckman, *Initial Margin Phase 5,* at 4 (Oct. 24, 2018), *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf* (''OCE Initial Margin Phase 5 Study'').

[38] Under Commission regulation § 23.154(a)(3), there is no requirement to post or collect IM until the initial margin threshold amount has been exceeded. *See* 17 CFR 23.154(a)(3). The term ''initial margin threshold amount'' is defined in Commission regulation 23.151 as an aggregate credit exposure of $50 million from all uncleared swaps between a CSE and its margin affiliates on one hand, and a covered counterparty and its margin affiliates on the other. 17 CFR 23.151. For the definition of ''margin affiliate,'' *see* supra note 30.

[39] *See* OCE Initial Margin Phase 5 Study at 4.

[40] Pursuant to Commission regulation § 23.161, the compliance dates for the IM and VM requirements under the CFTC Margin Rule are staggered across a phased schedule that extends from September 1, 2016, to September 1, 2021. The compliance period for the VM requirements ended on March 1, 2017 (though the CFTC and other regulators provided guidance permitting a six month grace period to implement the requirements following the implementation date), while the IM requirements continue to phase in through September 1, 2021. An uncleared swap entered into prior to an entity's IM compliance date is a ''legacy swap'' that is not subject to IM requirements. *See* CFTC Margin Rule, 81 FR at 651 and Commission regulation § 23.161. 17 CFR 23.161.

a longer deferral period for such firms? Please describe the potential benefits and any costs were the CFTC to provide a longer deferral period.

Please refer to the **ADDRESSES** section above with respect to the submission of comments.

IV. Related Matters

A. Administrative Procedure Act

The APA generally requires Federal agencies to publish a notice of proposed rulemaking and provide an opportunity for public comment before issuing a new rule.[41] However, an agency may issue a new rule without publication in the **Federal Register** of a notice of proposed rulemaking with an opportunity for comment if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[42] The Commission for good cause finds that such notice and public procedure on the instant amendments to Commission regulation § 23.161 are impracticable and contrary to the public interest due to the COVID–19 pandemic. The World Health Organization declared the COVID–19 outbreak a global pandemic on March 11, 2020.[43] On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID–19 pandemic.[44]

The Commission for good cause finds that notice and public procedure on this rule are impracticable because the need for relief is immediate. With respect to the change to the compliance schedule for the CFTC Margin Rule, time is of the essence. Participants in the uncleared swaps markets have experienced diminished operational capacity due to stay-at-home orders, closures, and other community nonpharmaceutical interventions.[45] Efforts to comply with the IM requirements may divert manpower and funding resources from already strained operations, hindering business continuity efforts and focus on management of risks posed by the pandemic.

The practical effect of these contagion mitigation strategies is to require many businesses to carry out remote operations with employees performing critical functions from their homes or other temporary locations. Preparations in anticipation of IM compliance by, among other things, procuring rule compliant documentation, setting up custodial arrangements, and establishing internal processes for the calculation, collection, and posting, are more difficult to accomplish when personnel are working remotely.

Undertaking the regular rulemaking proceedings would therefore be impracticable to provide the immediate relief market participants need to focus on immediate COVID–19 response. Delays in the response could exacerbate the adverse impact of the pandemic on these entities' operations and detract from more urgent operational matters.

The next compliance phase commences on September 1, 2020. Entities coming into scope need to prepare for months in advance to comply with the IM requirements. These preparations may be affected by the entities' reduced operational capacity. A compliance delay until September 1, 2021, will alleviate the operational burden. This militates against the delay needed to conduct the regular notice and comment rulemaking.

The Commission for good cause also finds that notice and public procedure thereon are contrary to the public interest in the context of the COVID–19 national emergency. As explained above, participants in the uncleared swaps markets have an immediate need for operational flexibility due to the COVID–19 pandemic. The Commission has determined that issuing this Interim Final Rule, to be effective immediately upon publication in the **Federal Register**, is crucial to alleviate the burden associated with the exchange of regulatory IM for entities whose operations may be already strained given the effect of COVID–19 on their operations. Providing a notice and comment period pursuant to normal rulemaking process would delay relief and thus be contrary to the public interest.

For the above reasons, the Commission's implementation of this rule as an Interim Final Rule, with provision for post-promulgation public comment, is in accordance with section 553(b) of the APA.[46]

Similarly, for the same reasons set forth above under the discussion of section 553(b)(B) of the APA, the Commission, for good cause, finds that no transitional period, after publication in the **Federal Register**, is necessary before the amendment to § 23.161 made by this Interim Final Rule becomes effective. Accordingly, this Interim Final Rule shall be effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[47] requires Federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. Because, as discussed above, the Commission is not required to publish a notice of proposed rulemaking for this rule, a regulatory flexibility analysis is not required.[48]

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[49] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number.

The Commission believes that this Interim Final Rule does not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of OMB under the PRA.

D. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

This Interim Final Rule revises the compliance schedule for the CFTC Margin Rule by deferring compliance with the IM requirements from September 1, 2020, to September 1,

[41] *See* 5 U.S.C. 553(b).

[42] 5 U.S.C. 553(b)(B).

[43] *See* supra note 19.

[44] *See* supra note 20.

[45] *See* Nonpharmaceutical Interventions (NPIs) (describing strategies to slow the spread of COVID–19), *https://www.cdc.gov/nonpharmaceutical-interventions/index.html* (last visited April 28, 2020).

[46] 5 U.S.C. 553(b)(B); 553(d)(3).

[47] 5 U.S.C. 601 *et seq.*

[48] *See* 5 U.S.C. 603(a).

[49] 44 U.S.C. 3501 *et seq.*

2021, for CSEs and covered counterparties with an AANA ranging from $50 billion up to $750 billion.

The baseline against which the benefits and costs associated with the Interim Final Rule are compared is the uncleared swaps markets as they exist today and the current compliance schedule. As discussed in both the CFTC Margin Rule and the April 2020 Final Rule, the existing compliance schedule represented an attempt to balance the costs and benefits of requiring margin for uncleared swaps for different entities. For example, the CFTC Margin Rule noted that ''[t]he compliance dates have been structured to ensure that the largest and most sophisticated CSEs and counterparties that present the greatest potential risk to the financial system comply with the requirements first. These swap market participants should be able to make the required operational and legal changes more rapidly and easily than smaller entities [that] engag[e] in swaps less frequently and pose less risk to the financial system.'' [50] As discussed below, the COVID–19 pandemic has raised the cost of compliance for the next cohort of entities, and hence altered the calculus in setting the CFTC Margin Rule's compliance schedule, which is based on balancing costs and benefits.

1. Benefits

As described above, the Interim Final Rule defers compliance with the IM requirements for CSEs and their covered counterparties subject to IM compliance beginning on September 1, 2020. The Interim Final Rule creates a benefit as it is intended to mitigate the disruptive effect of COVID–19 and the attendant market volatility by permitting firms to allocate their resources to ensure proper business continuity and management of risks brought about by the pandemic.

Starting in March, 2020, entities that trade uncleared swaps have experienced diminished operational capacity, due to stay-at-home orders, closures, and other community nonpharmaceutical interventions.[51] These entities are currently conducting business operations remotely and employees are performing critical business functions from their homes or other temporary locations.

With reduced operational capacity, preparations to come into compliance with the IM requirements in the next phase of the compliance schedule represent a challenge to these entities. Compliance will require procuring documentation addressing the exchange of regulatory IM, setting up custodial arrangements, and establishing processes for the calculation, posting, and collection of IM, among other things. Absent the Interim Final Rule, which delays compliance with the IM requirements, some market participants may be unable to secure necessary documentation and establish processes for the exchange of IM by the September 1, 2020 deadline. As a result, these entities may be required to cease uncleared swap trading in September, with a resulting reduction in their ability to hedge their risk. The inability of some entities to trade uncleared swaps may reduce liquidity in this market, and thereby potentially harm other traders as well.

Another potential benefit of the Interim Final Rule is that it would mitigate the effect on entities that would have otherwise been required to collect and post IM beginning on September 1, 2020, under the April 2020 Final Rule. Many of these entities would likely have reduced cash reserves due to the effects of COVID–19 on their business operations. For these firms, the compliance delay in the Interim Final Rule may mitigate the temporary cash constraint by eliminating or suspending the cost of IM collateralization, allowing for continued hedging and the management of risks posed by the pandemic. By extending the September 1, 2020 compliance deadline, the Interim Final Rule defers the timeline for compliance, thereby promoting diligent risk management and allowing entities who might be precluded from trading uncleared swaps to continue to hedge using uncleared swaps.

2. Costs

The Interim Final Rule delays compliance with the IM requirements by one year for CSEs and covered counterparties that are subject to the September 1, 2020 compliance deadline. Uncleared swaps entered into between September 1, 2020, and the new deadline of September 1, 2021, may be treated as legacy swaps exempt from the IM requirements and, as such, lesser amounts of collateral would be collected to offset the risk of uncleared swaps, potentially increasing the risk of contagion and systemic risk to the United States.[52]

In addition, many entities in advance of the nearing September 1, 2020 deadline may have already engaged in preparations for the exchange of regulatory IM, procuring compliant documentation and setting up processes for the exchange of IM. Given the extension of the compliance deadline, these entities would likely need to re-negotiate the existing documentation and refresh processes put into place as the new compliance deadlines approach and would thus incur additional costs to come into compliance with the IM requirements.

The Interim Final Rule provides relief to entities whose uncleared swap portfolios tend to be smaller than the portfolios of entities that came into scope in earlier phases. The decision to defer the compliance date of September 1, 2020, to September 1, 2021, affects slightly fewer than 200 entities, representing approximately 8% of AANA across all phases, as estimated by the OCE. This modest share of notional amount spread across many small entities likely means that the uncollateralized swaps entered into by these entities—taking into account that no exchange of IM is required by the CFTC Margin Rule until the initial margin threshold amount has been exceeded [53]—pose less risk to the financial markets than the risk posed by uncleared swaps entered into by entities that have already come into the scope of IM compliance.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Interim Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

As discussed above, as a result of the COVID–19 pandemic, entities trading uncleared swaps are facing a reduction in their operational capacities due to stay-at-home orders, closures, and other community nonpharmaceutical interventions [54] to contain the spread of the virus and slow its progress. To alleviate the effect on entities nearing the September 1, 2020 deadline for compliance with the IM requirements, the Interim Final Rule delays compliance by one year for those entities, allowing them to continue to trade uncleared swaps and hedge their risk without incurring the full costs and operational demands of preparing for compliance while simultaneously responding to the COVID–19 pandemic.

The Interim Final Rule also allows entities that would otherwise be focused on implementing regulatory margin

[50] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR at 676.

[51] *See* supra note 45.

[52] *See* supra note 40 for the definition of ''legacy swaps.''

[54] *See* supra note 45.

requirements, in order to continue to trade uncleared swaps, to instead focus on and respond to the challenges posed by COVID–19.

Because the Interim Final Rule delays the implementation of mandatory IM for uncleared swaps, there may not be as much IM posted to protect the financial system as would be the case if the Interim Final Rule were not promulgated. This could potentially make market participants' positions more risky.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

Entities nearing the September 1, 2020 deadline for compliance with the IM requirements may face difficulties in preparing to exchange regulatory IM given the reduced operational capacity as a result of COVID–19. By extending the compliance deadline for these entities by one year, the Interim Final Rule may enhance efficiencies in several ways, as this extension allows these entities to shift their focus to emerging risks and to act diligently to comply with the IM requirements by the revised deadlines. As such, the Interim Final Rule promotes the financial integrity of the markets.

The Commission acknowledges that delaying compliance with the IM requirements will result in the collection of less IM overall, potentially making the uncleared swaps markets more susceptible to financial contagion where the default of one counterparty could lead to subsequent defaults of other counterparties. This could potentially harm market integrity. However, because this extension covers a relatively smaller share of the swaps market, the Commission believes that such a contagion is less likely to occur during the limited extension period.

(c) Price Discovery

Delaying the margin requirement for one year for some entities may have an effect on trading behavior, and consequently, may potentially have an effect on price discovery. Postponing the requirement may allow more firms to trade uncleared swaps (*i.e.,* those who would have an AANA above $50 billion based on March–May 2020, yet could not comply with the IM requirements by September 2020). This, in turn, could make the uncleared swaps market more liquid, so that trading would be more likely to result in prices that reflect fundamentals.

(d) Sound Risk Management

By deferring the September 1, 2020 deadline by one year, the Interim Final Rule will have the effect of relieving some of the burden on managerial resources, at a time when such resources are strained from the COVID–19 outbreak. As such, the Interim Final Rule allows covered entities to more readily undertake proper business continuity measures and address the market, liquidity, operational, and other risks brought about by the pandemic. In this sense, the Interim Final Rule promotes sound risk management.

Uncleared swaps entered into during the one year compliance delay may be treated as legacy swaps exempt from the IM requirement. As such, less collateral would be collected to offset the risk of uncleared swaps, increasing the risk of contagion and systemic risk to the United States.

As noted above, the Interim Final Rule addresses entities whose uncleared swap portfolios tend to be smaller than entities that came into scope in earlier phases, comprising approximately 200 entities that represent 8% of total AANA, as estimated by the OCE.[55] This modest share of notional amount spread across those entities likely means that the uncollateralized swaps entered into by these entities during the one year delay pose relatively less risk to the financial markets than the swaps entered into by the entities with larger swap portfolios that are already subject to the IM requirements.

(e) Other Public Interest Considerations

The Interim Final Rule amends the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework, promoting harmonization with international and domestic margin regulatory requirements and reducing the potential for regulatory arbitrage.

Request for Comments on Cost-Benefit Considerations. The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed amendment with their comment letters.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.'' [56]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the Interim Final Rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Interim Final Rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Interim Final Rule is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Interim Final Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the Interim Final Rule.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. Amend § 23.161 by revising paragraph (a)(6) to read as follows:

§ 23.161 Compliance dates.

(a) * * *

(6) September 1, 2021 for the requirements in § 23.152 for initial margin for any uncleared swaps where both—

(i) The covered swap entity combined with all its margin affiliates; and

(ii) Its counterparty combined with all its margin affiliates have an average

[55] *See* OCE Initial Margin Phase 5 Study at 4.

[56] 7 U.S.C. 19(b).

daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps in March, April, and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and where

(iii) In calculating the amounts in paragraphs (a)(6)(i) and (ii) of this section, an entity shall count the average daily notional amount of an uncleared swap, an uncleared security-based swap, a foreign exchange forward, or a foreign exchange swap between the entity and a margin affiliate only one time and shall not count a swap that is exempt pursuant to § 23.150(b) or a security-based swap that is exempt pursuant to section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o.10(e)).

* * * * *

Issued in Washington, DC, on June 1, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Chairman Heath P. Tarbert

If there were no uncertainty, there would be no derivatives markets. Indeed, the CFTC is in the business of regulating markets that enable market participants to hedge their risks. But there are some exogenous events that come but once a century—a so-called Black Swan—which even prudent risk management can neither foresee nor adequately prepare for. The United States and much of the world is now facing such an event in the form of the COVID–19 (coronavirus) pandemic.

Two months ago, the Commission voted to extend the compliance schedule for initial margin requirements for uncleared swaps for those entities with the smallest swaps portfolios.[1] This extension split Phase 5 of the schedule in two, creating a new Phase 6 composed of entities with swaps portfolios between $8 billion and $50 billion in average aggregate notional amount (''AANA'').

The Commission deferred the compliance deadline for entities in this new Phase 6 for one year. This was due to the complex operational burdens these entities will face and the fact these entities account for less than 3 percent of total uncleared swaps AANA.[2] Phase 5—which comprises entities with larger swaps portfolios [3]—remained subject to the prior compliance deadline.

These timelines did not factor in the most severe economic downturn the world has witnessed since the Great Depression. Today we are doing so. Accordingly, I support our interim final rule (''IFR'') deferring the compliance date for the Commission's initial margin requirements for uncleared swaps in response to the coronavirus pandemic. This rule would provide a one-year extension for Phase 5 entities, which would otherwise become subject to initial margin requirements in just three months, on September 1, 2020. I believe issuing this IFR is appropriate from both a substance and a process perspective.

Need for the Extension

First, allow me to explain the *substance* of why an extension is necessary. As everyone listening is painfully aware, we are in the midst of a global pandemic. Economies across the world have largely shut down in response to social distancing needs. Market volatility has reached historic levels. Financial firms, like so many other organizations, have been forced into a near-total remote-working posture. These extraordinary market conditions and operational shifts demand that financial firms—including those regulated by the CFTC—devote an inordinate amount of time and resources to day-to-day operational, business continuity, and risk-management efforts.

Preparation for compliance with initial margin requirements requires procuring compliant documentation; setting up custodial arrangements; and establishing internal processes for the calculation, collection, and posting of initial margin, among other things. These steps are both time intensive and resource intensive. For many firms, the intense effort necessary to meet the imminent compliance deadline would divert focus and resources from their respective coronavirus responses. Moreover, working from home has made it difficult to access required legal and operational documentation and communicate with counterparties.

Recognizing these concerns, the Basel Committee on Banking Supervision and International Organization of Securities Commissions have jointly extended their initial margin compliance schedule. Several BCBS/IOSCO members have already taken steps to implement this relief.

As I have said before, the CFTC's margin rules are a key systemic risk mitigant. However, the market participants receiving an extension under this IFR have some of the smallest uncleared swaps portfolios. Indeed, Phase 5 entities collectively represent only 8 percent of total AANA across all margin phases.

We must balance the critical need to marshal scarce operational resources for pandemic response against the relatively small risks posed by a one-year compliance delay. The circumstances here weigh clearly in favor of being consistent with our international counterparts in granting the extension.

Need for an Interim Final Rule

Now, I will address the *process* for granting this extension. I have made very clear in the past that I believe the Commission should regulate via notice-and-comment rulemakings where possible. This gives the public a voice in the regulatory process and provides the agency the benefit of commenters' expertise and experience. Indeed, since I joined the CFTC last July, we have issued 11 final rules and 15 proposed rules, not counting the two we are voting on today.

However, as I have said before, there are certain circumstances in which prior notice and comment is not an ideal regulatory vehicle. Congress recognized this in the Administrative Procedure Act. For example, the statute makes clear that agencies need not engage in the prior notice-and-comment process where doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' In those circumstances, agencies may issue an interim final rule—that is, a rule that is effective after issuance without further public comment and agency response. The public may comment on the IFR after it becomes effective, and the agency may issue a revised final rule if those comments warrant changes to the IFR.

Here, providing a public comment period before issuing the extension would be both impracticable and contrary to the public interest. Challenges related to the coronavirus pandemic have already become dire. And because the current deadline for Phase 5 firms is only three months away, initial margin preparation demands are extremely pressing right now. If we opened even the shortest permissible comment period and incorporated those comments into a final rule, any relief issued likely would already be moot. Although we are soliciting comments on the IFR, we believe that Phase 5 entities need relief that is effective now in order to maintain focus on the real business continuity and risk-management issues they are facing today.

By contrast, because the Phase 6 compliance date is not until September 2021, the CFTC will address an extension for Phase 6 through the traditional notice-and-comment rulemaking process. However, I recognize the importance of clarity and certainty for Phase 6 market participants. So I expect we will issue a proposed rule in that

[1] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19,878 (published in the **Federal Register** Apr. 9, 2020) (''March 2020 IM Rule'').

[2] Statement of CFTC Chairman Heath P. Tarbert in Support of Extending Relief for Initial Margin Requirements for Uncleared Swaps (Mar. 18, 2020), *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement031820* (citing Richard Haynes, Madison Lau, & Bruce Tuckman, Office of the Chief Economist, CFTC, *Initial Margin Phase 5* (Oct. 2018)).

[3] As a result of the March 2020 IM Rule, Phase 5 is now made up of entities with $50 billion to $750 billion in AANA.

regard in the very near term and proceed with that rulemaking as expeditiously as possible.

As previously demonstrated by our staff's coronavirus-related no-action relief,[4] the CFTC stands ready to do whatever is necessary to help regulated entities weather the current crisis. I hope today's compliance schedule extension will help give firms the capacity they need to do so.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I am pleased to support the interim final rule to defer the phase 5 compliance date of September 1, 2020 to September 1, 2021 in light of the unprecedented economic and social impacts of COVID–19. Under these difficult circumstances, I think it is appropriate to provide phase 5 firms with additional time to comply, ensuring that their already strained resources are not diverted from ongoing business continuity efforts. I would also support a one year deferral for the phase 6 compliance date, in line with the BCBS–IOSCO recent amendments to the recommended margin framework to push out, respectively, the phase 5 and phase 6 compliance dates by one year.[1] As I have noted previously, given the large number of firms brought into scope during phases 5 and 6, the estimated 7,000 initial margin relationships that need to be negotiated, and the small overall percentage of swap activity these firms represent, a one year deferral for these final phases is appropriate in order to facilitate an efficient, orderly transition for the market into the uncleared margin regime.

As we approach these final compliance deadlines, I also think it is appropriate to reflect on how the uncleared margin regime can be improved to address some of the compliance challenges experienced in earlier stages. During last week's meeting of the Global Markets Advisory Committee (GMAC), I found the presentation of the Subcommittee on Margin Requirements for Non-Cleared Swaps regarding its recommendations to improve our margin framework to be incredibly informative.[2] I look forward to working with staff to review all of the Subcommittee's recommendations and I appreciate the hard work, thoughtfulness, and dedication that went into producing the Subcommittee's report.

Appendix 4—Statement of Commissioner Rostin Behnam

A little over two months ago, the Commission cancelled a scheduled open public meeting due to the COVID–19 pandemic.[1] One of the three matters on the agenda for deliberation that day was the most recent amendment to the CFTC Margin Rule, which sought to align the compliance schedule for initial margin or ''IM'' requirements with recent changes to the BCBS/IOSCO framework extending implementation dates through September 1, 2021. The Commission ultimately voted to approve a final rule, the April 2020 Final Rule, extending the schedule one year by dividing the last compliance ''phase''—which had been phase 5—into two phases, now phases 5 and 6.[2] The primary stated purpose for the extension was to mitigate the potential for market disruption that could result from the large number of entities—approximately 700—coming into compliance with IM requirements at the same time.[3] The Commission's action reflected further efforts to coordinate and harmonize with international counterparts and U.S. Prudential Regulators, who establish the margin requirement for the uncleared swaps of swap dealers and major swaps participants for whom they are the primary regulator.[4]

Today's interim final rule will amend the CFTC Margin Rule a second time. The interim final rule will align part of the remaining compliance schedule—phase 5—with recent revisions to the BCBS/IOSCO framework further extending the implementation schedule for the margin requirements for non-centrally cleared derivatives by one year in response to concerns expressed by market participants in the early stages of the COVID–19 pandemic. The interim final rule does not address the last compliance phase, phase 6, beginning on September 1, 2021. While a similar extension would preserve both the intent of the recent amendments to the CFTC Margin Rule and consistency with the BCBS/IOSCO framework, the standards for foregoing notice and comment rulemaking procedures under the Administrative Procedure Act[5] are rightfully high and demonstrating separate exigency for the 2021 compliance deadline without notice and comment would be inappropriate given that there is adequate time for the process. Accordingly, the Commission is focusing its resources on entities that will need relief within the next several months.

I approved the April 2020 Final Rule cautiously; noting that this seminal part of the policy response following the 2008 financial crisis was perhaps becoming even more critical as we collectively faced the uncertainty of COVID–19.[6] As I highlighted in my statement, in times of market stress and volatility, margin not only provides confidence, but it embodies vigilance when responding to risks and real-world concerns. While I believed—and continue to believe—that it is important to address transition risks associated with IM implementation, it is nevertheless my expectation that covered entities will work diligently in the time they are given to come into compliance.

I have and continue to be fully prepared to respond to the fallout of current market conditions as a result of the pandemic, and will not hesitate to act within my capacity to preserve market interests and protect customers and market participants, I have no appetite for an indefinite deferral of the final phases for IM implementation. We are collectively working through the COVID–19 pandemic towards goals of continuity, resiliency, and normalcy. I do not believe that there is any circumstance where that equates to abandonment of core reforms at a time when the very relief being sought is a result of addressing market volatility and stress.

I support today's interim final rule deferring for one year compliance for the phase 5 swap entities that would come into scope beginning on September 1st of this year. I base my decision on representations that the COVID–19 pandemic has severely and adversely impacted preparations for the exchange of regulatory IM. Such disruption will undeniably make compliance with the September 1, 2020 deadline untenable if doing so diverts already strained resources from critical continuity functions. I have some concerns that by postponing the compliance deadline, we are inviting increased counterparty risk and the risk of contagion through the additional uncleared swaps that will be entered into during the one year extension period and will not be subject to IM requirements. Addressing claims for relief due to increased market volatility by delaying margin requirements for a subset of swaps seems counterintuitive, and I am pleased that the Commission is soliciting comments on the matter. I am hopeful that the Commission will take appropriate action if subsequent facts or comments so require.

In closing, I'd like to recognize Commissioner Stump and her leadership as Sponsor of the Global Markets Advisory Committee, which recently adopted recommendations in connection with implementation of the IM requirements for uncleared swaps for the Commission to consider.[7] Also, I wish to thank the staff in the Division of Swap Dealer and Intermediary Oversight for their diligent and thoughtful work on this interim final rule.

Appendix 5—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing the interim final rule to extend by one year the initial swap margin compliance deadline for ''Phase V'' financial entities that is currently set for September 1, 2020 (''IFR'').

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[4] These no-action letters are available at *https://www.cftc.gov/coronavirus.*

[1] *See* Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions, Margin Requirements for Non-Centrally Cleared Derivatives (Apr. 2020), *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD651.pdf.*

[2] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps (May 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.*

[1] Press Release Number 8131–20, CFTC, CFTC Cancels March Open Meeting (Mar. 16, 2020), *https://www.cftc.gov/PressRoom/PressReleases/8131-20.*

[2] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19878 (Apr. 9, 2020).

[3] *Id.* at 19879.

[4] *Id.*

[5] *See* 5 U.S.C. 553(b).

[6] 85 FR at 19883.

[7] *See Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps,* Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, April 2020, *https://www.cftc.gov/media/3886/GMAC_05192020MarginSubcommitteeReport/download.*

As I have stated previously, the Commission should be reluctant to extend compliance deadlines when a long lead-in period has been provided. The 2020 compliance date for the swap margin rule was originally set in January 2016. However, the COVID–19 pandemic is significantly impacting business operations just as the negotiation and implementation of the initial margin agreements and processes for Phase V are in full swing leading up to the September 1, 2020 deadline. These activities can be time consuming and require substantial human interaction given the need to negotiate terms and third party custodial agreements, and agree on margin calculation methods. Accordingly, while many firms were undertaking this process, it appears that a substantial amount of work remained for Phase V firms just as the COVID–19 pandemic erupted.

With respect to the length of the extension, the progress of the pandemic and speed at which work operations will normalize is uncertain. As discussed in the IFR, on April 3, 2020, the Basel Committee on Banking Supervision and Board of the International Organization of Securities Commissions (''BCBS/IOSCO'') amended its existing margin policy framework to extend the relevant comparable compliance date to September 1, 2021.[1] While the Commission is not obligated to follow this framework, doing so when reasonable and on the same timeline as other regulators will reduce the likelihood of regulatory arbitrage. Given that the existing September 1, 2020 compliance date is fast approaching, and recognizing the benefits of international cooperation on this issue, I will support the one-year extension as provided in the IFR.

At the same time, it is critical that we continue to emphasize the importance of requiring margin for uncleared swaps. During the 2008 financial crisis, when margin for uncleared swaps was not required, American International Group (''AIG'') would have failed as a result of its pending default on swaps that, according to AIG personnel, only months earlier presented little or no risk exposure for AIG. The Federal Reserve System and the U.S. Department of the Treasury provided over $180 billion of support to prevent that outcome.[2] A default by AIG would have substantially damaged its swap counterparties and left other market participants uncertain as to the knock-on effects of that default.

Requiring margin for uncleared swaps is a critical part of our regulatory framework that was put in place to help prevent another financial crisis. Uncleared swaps activity remains vigorous. The requirement to post initial margin helps mitigate systemic risk and reduce counterparty contagion and related effects by ensuring that collateral is available to offset losses from the default of counterparties. In response to the 2008 financial crisis, the Dodd-Frank Act required that the Commission establish minimum initial and variation margin regulations for certain swaps entered into by swap dealers.[3] The need for margin was also recognized by the G20 nations when the G20 directed the BCBS/IOSCO to establish the swap margin policy framework for global implementation of margin requirements.[4]

The IFR notes that Phase V is estimated to cover about eight percent of the swap trading activity for firms that may be subject to the margin requirements, and therefore that the uncollateralized swaps entered into by the entities in this phase ''pose less risk to the financial markets than the risk posed by uncleared swaps entered into by entities that have already come into the scope of IM compliance.'' [5] While literally correct, this statement only relates to *relative* risk with respect to other swap activities and says nothing about the absolute known or unknown risk posed by the swap activity covered by the Phase V extension. The Commission's statement regarding this relative risk should not be misinterpreted to provide justification for any further extensions or exceptions from the margin requirements for these entities.

[FR Doc. 2020–12033 Filed 7–9–20; 8:45 am]

BILLING CODE 6351–01–P

[1] The BCBS/IOSCO was directed to establish a policy framework for implementation of margin requirements globally. *See* G20 Information Centre, Cannes Summit Final Declaration, *http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.*

[2] *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292, 45293–94 (July 26, 2013).

[3] Commodity Exchange Act section 4s(e).

[4] G20 Information Centre, Cannes Summit Final Declaration, *http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.*

[5] IFR, Section II.

INTERNATIONAL TRADE COMMISSION

19 CFR Part 208

Implementing Rules for the United States-Mexico-Canada Agreement

AGENCY: United States International Trade Commission.

ACTION: Interim rule; request for comments.

SUMMARY: The United States International Trade Commission (Commission) is adopting interim rules that will amend the Commission's rules of practice and procedure to implement the provisions of the United States-Mexico-Canada Agreement (USMCA) Implementation Act (the Act) regarding investigations of United States-Mexico cross-border long-haul trucking services (cross-border long-haul trucking services).

DATES: Effective July 10, 2020 and applicable July 1, 2020.

Deadline for Filing Written Comments: August 10, 2020.

ADDRESSES: You may submit comments, identified by docket number MISC–045, Rulemaking regarding USMCA Implementation, by any of the following methods:

—*Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

—*Agency Website: https://edis.usitc.gov.* Follow the instructions for submitting comments on the website.

Instructions: All submissions received must include the agency name and docket number (MISC–045, Rulemaking regarding USMCA Implementation), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *https://edis.usitc.gov* and including any personal information provided. For access to the docket and to read background documents or comments received, go to *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning general inquiries, Lisa R. Barton, Secretary, United States International Trade Commission, telephone (202) 205–2000. Concerning part 208, William Gearhart, Office of the General Counsel, United States International Trade Commission, telephone (202) 205–3091. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these amendments to the rules of practice and procedure to implement sections 321–324 of the Act. This preamble provides background information, and a regulatory analysis, section-by-section explanation, and description of the new rules. The Commission encourages members of the public to comment on whether the language of the amendments is sufficiently clear for users to understand, and to submit any other comments they wish to make on the amendments.

These Rules are being promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553) (APA), and will be codified in 19 CFR part 208.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) (Tariff Act) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. In addition, sections 103(b), 322(f), and 324(e) of the Act (19 U.S.C. 4513(b),

4572(f), and 4574(e), respectively) authorize the Commission to prescribe implementing regulations necessary or appropriate to carry out actions required or authorized by the Act.

The Commission is amending its rules of practice and procedure to implement the provisions of the Act regarding its investigations of cross-border long-haul trucking services.

A. Part 208

Annex II of the USMCA sets out a process by which the United States may impose limitations on grants of authority to persons of Mexico to undertake cross-border long-haul trucking services where such limitations are necessary to address material harm or threat of material harm caused to U.S. suppliers, operators, or drivers of cross-border long-haul trucking services.

Subtitle C of Title III of the Act implements procedures to undertake investigations of cross-border long-haul trucking services. Section 322 of the Act requires that the Commission undertake an investigation, upon filing of a petition or request, and make a determination as to whether a grant of authority has caused material harm or threatens material harm to U.S. suppliers of cross-border long-haul trucking services, and if affirmative, to recommend a remedy to the President. Additionally, Section 324 of the Act requires that the Commission, at the request of the President or an interested party, undertake an investigation and make a determination as to whether an extension of relief granted by the President is necessary to prevent or remedy material harm. The Act specifies certain procedures for such investigations, including who may file a petition or request such investigations, the holding of hearings and publication of notices regarding investigations, the timelines for such investigations and determinations, and the issuance of reports that include the determination, an explanation thereof, and any recommendation for relief. These rules of procedure are implemented in the amendments to part 208 of the Commission's regulations.

Procedure for Adopting the Proposed Amendments

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the notice-and-comment rulemaking procedure in section 553 of the APA (5 U.S.C. 553). That procedure entails publication of proposed rulemaking in the **Federal Register** that solicits public comments on the proposed amendments, consideration by the Commission of public comments on the contents of the amendments, and publication of the final amendments at least 30 days prior to their effective date.

In this instance, however, the Commission is amending rules in 19 CFR part 208 on an interim basis effective upon July 1, 2020, when the USMCA goes into effect. The Commission's authority to adopt interim amendments without following all steps listed in section 553 of the APA is derived from section 335 of the Tariff Act (19 U.S.C. 1335), sections 103(b) and 322(f) of the Act (19 U.S.C. 4513(b) and 4572(f)), and section 553 of the APA.

Section 553(b) of the APA allows an agency to dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The rules in question are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public comment on the rules are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates that finding and the reasons therefor into the rules adopted by the agency. Section 553(d)(3) of the APA allows an agency to dispense with the publication of notice of final rules at least thirty days prior to their effective date if the agency finds that good cause exists for not meeting the advance publication requirements and the agency publishes that finding along with the rules.

In this instance, the Commission has determined that the requisite circumstances exist for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b)(3)(A) exemption from publishing a notice of proposed rulemaking that solicits public comment, the Commission finds that the interim amendments to part 208 are ''agency rules of procedure and practice.'' Moreover, the Commission finds under section 553(b)(3)(B) that good cause exists to waive prior notice and opportunity for comment. Rules of procedure are necessary to allow for the filing of petitions regarding cross-border long-haul trucking services consistent with the Act. The requirements of the Act thus make establishing necessary procedures a matter of urgency. It would be impracticable for the Commission to comply with the usual notice of proposed rulemaking and public comment procedure, and therefore the Commission has determined that interim rules are needed under these circumstances.

For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim amendments to part 208 at least thirty days prior to their effective date, the Commission finds the fact that the Act was signed by the President on January 29, 2020, but requires the Commission to have a complete process in place no later than July 1, 2020, makes such advance publication impracticable and constitutes good cause for not complying with that requirement.

The Commission recognizes that interim rule amendments should not respond to anything more than exigencies created by the new legislation. Each interim amendment to part 208 concerns a new rule covering a matter addressed in the new legislation.

After taking into account all comments received and the experience acquired under the interim rules, the Commission will replace them with final rules promulgated in accordance with the notice, comment, and advance publication procedure prescribed in section 553 of the APA.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed amendments to the rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993) and thus do not constitute a ''significant regulatory action'' for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute.

The interim rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because the proposed interim rules will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted annually for inflation), and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

These interim rules are not ''major rules'' as defined by section 251 of the Small Business Regulatory Enforcement

Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Explanation of the Proposed Amendments

Part 208—Procedures For Investigations Of United States-Mexico Cross-Border Long-Haul Trucking Services.

Section 208.1 describes the applicability of these regulations and the authority under the Act.

Section 208.2 provides definitions applicable to investigations under this part, as provided in the Act.

Section 208.3 outlines the applicability of provisions under subpart B of part 208, which concern investigations of material harm or threat of material harm.

Section 208.4 describes who may file a petition, request, or resolution for an investigation under this part.

Section 208.5 describes the information and contents required in a petition filed under this part, including a description of the identity of the claimant, the nature of the claim, the relief sought, and supporting information.

Section 208.6 describes the time for determinations and issuance of reports, consistent with the Act.

Section 208.7 describes information that will be included in a report to the president for an investigation under this part.

Section 208.8 describes information to be included in a public report for an investigation under this part.

Section 208.9 describes the applicability of provisions under subpart C of part 208, which concern investigations relating to an extension of relief.

Section 208.10 describes who may file a petition or request under this part.

Section 208.11 describes the time for filing a petition or request under this part.

Section 208.12 describes the information and contents required in a petition filed under this part.

Section 208.13 describes the information that will be provided in a report to the President in an investigation under this part.

Section 208.14 describes the applicability of provisions under subpart D of part 208, which addresses general notice and filing provisions.

Section 208.15 provides filing requirements for any petition, request, or resolution under this part.

Section 208.16 describes the Commission's institution and notice procedures for an investigation under this part.

Section 208.17 describes the contents of an institution notice and the procedures for public inspection of such notice.

Section 208.18 describes the notification of other federal agencies of an investigation instituted under this part, as required by the Act.

Section 208.19 describes the public hearing to be conducted by the Commission pursuant to an investigation under this part.

Section 208.20 describes the requirements for certifications, service, and filing of information pursuant to an investigation under this part.

Section 208.21 addresses procedures concerning the Commission's treatment of confidential business information and the provision of nonconfidential summaries pursuant to an investigation under this part.

Section 208.22 prescribes the procedures and requirements for limited disclosure of certain confidential business information under an administrative protective order; it also prescribes the procedures for an investigation of any breach of an administrative protective order under this part.

List of Subjects in 19 CFR Part 208

Administrative practice and procedure, Trade agreements.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR chapter II by adding part 208 to subchapter II to read as follows:

PART 208—INVESTIGATIONS OF UNITED STATES–MEXICO CROSS–BORDER LONG–HAUL TRUCKING SERVICES

Sec.

Authority: 19 U.S.C. 4574(e).

§ 208.1 Applicability of part.

Part 208 applies to proceedings of the Commission under sections 321–324 of the United States-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. 4571–4574 (19 U.S.C. 4501 note).

Subpart A— Definitions

§ 208.2 Definitions applicable to this part.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) *Act* means the USMCA Implementation Act.

(b) *Border commercial zone* means:

(1) The area of United States territory of the municipalities along the United States-Mexico international border and the commercial zones of such municipalities as described in subpart B of 49 CFR part 372.; and

(2) Any additional border crossing and associated commercial zones listed in the Federal Motor Carrier Safety Administration OP–2 application instructions or successor documents.

(c) *Cargo originating in Mexico* means any cargo that enters the United States by commercial motor vehicle from Mexico, including cargo that may have originated in a country other than Mexico.

(d) *Change in circumstance* may include a substantial increase in services supplied by the grantee of a grant of authority.

(e) *Commercial motor vehicle* means a commercial motor vehicle, as such term is defined in 49 U.S.C. 31132 (1), that meets the requirements of 49 U.S.C. 31132(1)(A).

(f) *Cross-border long-haul trucking services means:*

(1) The transportation by commercial motor vehicle of cargo originating in

Mexico to a point in the United States outside of a border commercial zone; or

(2) The transportation by commercial motor vehicle of cargo originating in the United States from a point in the United States outside of a border commercial zone to a point in a border commercial zone or a point in Mexico.

(g) *Driver* means a person that drives a commercial motor vehicle in cross-border long-haul trucking services.

(h) *Grant of authority* means registration granted pursuant to 49 U.S.C. 13902, or a successor provision, to persons of Mexico to conduct cross-border long-haul trucking services in the United States.

(i) *Interested party* means:

(1) Persons of the United States engaged in the provision of cross-border long-haul trucking services;

(2) A trade or business association, a majority of whose members are part of the relevant United States long-haul trucking services industry;

(3) A certified or recognized union, or representative group of suppliers, operators, or drivers who are part of the United States long-haul trucking services industry;

(4) The Government of Mexico; or

(5) Persons of Mexico.

(j) *Material harm* means a significant loss in the share of the United States market or relevant sub-market for cross-border long-haul trucking services held by persons of the United States.

(k) *Operator* or *supplier* means an entity that has been granted registration under 49 U.S.C. 13902, to provide cross-border long-haul trucking services.

(l) *Persons of Mexico* includes:

(1) Entities domiciled in Mexico organized, or otherwise constituted under Mexican law, including subsidiaries of United States companies domiciled in Mexico, or entities owned or controlled by a Mexican national, which conduct cross-border long-haul trucking services, or employ drivers who are non-United States nationals; and

(2) Drivers who are Mexican nationals.

(m) *Persons of the United States* includes entities domiciled in the United States, organized or otherwise constituted under United States law, and not owned or controlled by persons of Mexico, which provide cross-border long-haul trucking services and long-haul commercial motor vehicle drivers who are United States nationals.

(n) *Threat of material harm* means material harm that is likely to occur.

(o) *Trade Representative* means the United States Trade Representative.

(p) *United States long-haul trucking services industry* means:

(1) United States suppliers, operators, or drivers as a whole providing cross-border long-haul trucking services; or

(2) United States suppliers, operators, or drivers providing cross-border long-haul trucking services in a specific sub-market of the whole United States market.

(q) *USMCA* means United States-Mexico-Canada Agreement.

Subpart B—Investigations Relating to Material Harm or Threat of Material Harm

§ 208.3 Applicability of subpart.

The provisions of this subpart B apply to investigations under section 322(a) of the Act relating to material harm or threat of material harm. For other applicable rules, see subpart A and subpart D of this part.

§ 208.4 Who may file a petition, request, or resolution.

An investigation under this subpart may be commenced on the basis of a petition properly filed by an interested party described in § 208.2(i) of this part which is representative of a United States long-haul trucking services industry; at the request of the President or the Trade Representative; or upon the resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate.

§ 208.5 Contents of petition.

(a) *Nature of the claim.* Each petition filed under this subpart shall state whether the petition:

(1) Claims that a request by a person of Mexico to receive a grant of authority that is pending as of the date of the filing of the petition threatens to cause material harm to a United States long-haul trucking services industry; or

(2) Claims that a person of Mexico who has received a grant of authority on or after the date of entry into force of the USMCA and retains such grant of authority is causing or threatens to cause material harm to a United States long-haul trucking services industry; or

(3) Claims that, with respect to a person of Mexico who received a grant of authority before the date of entry into force of the USMCA and retains such grant of authority, there has been a change in circumstances such that such person of Mexico is causing or threatens to cause material harm to a United States long-haul trucking services industry.

(b) *Identity of the petitioner and basis for the claim that it is representative of a United States long-haul trucking services industry.* (1) Each petition shall state the basis for the petitioner's status as an interested party pursuant to the definition described in § 208.2(i).

(2) If the petition is filed on behalf of providers of such services in a specific sub-market, the petition shall include a description of the claimed sub-market. Specifically:

(i) If the petition claims the sub-market is a specific geographic area in the United States for such services, it shall define such market and provide a justification for such delineation;

(ii) If the petition claims a sub-market on criteria other than geographic terms, it shall define the applicable criteria and provide justification for such delineation.

(3) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of the firms represented in the petition and/or the entities employing or previously employing the suppliers, operators, and/or drivers represented in the petition and the locations of their establishments;

(4) Each petition shall also indicate, or estimate (and provide the basis therefor), the percentage of the United States long-haul trucking services industry as a whole, or of the claimed sub-market of the United States market, accounted for by the petitioning suppliers, operators, and/or drivers and the basis for claiming that such suppliers, operators, and/or drivers are representative of an industry; and

(5) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of all other domestic entities, including firms, trade or business associations, and/or certified or recognized unions, or representative group of suppliers, operators, or drivers known to the petitioner who are part of the United States long-haul trucking services industry or the specific sub-market in the United States market to which the petition pertains.

(c) Identification of Grant or Grants of authority. Each petition shall identify the grant or grants of authority, or those that are pending, upon which the petition is based. In addition, each petition shall indicate whether it is based on:

(1) A request for a grant of authority by a person of Mexico that is pending as of the date of filing of the petition (pursuant to section 332(a)(1) of the Act); or

(2) A grant of authority that was granted to, and retained by, a person of Mexico after the date of entry into force of the USMCA (pursuant to section 332(a)(2) of the Act); or

(3) A grant of authority that was received before the date of entry into

force of the USMCA and that the holder retains (pursuant to section 332(a)(3) of the Act); and

(d) *Identification of a Change in Circumstances.* Each petition that identifies a grant of authority pursuant to § 208.5(c)(iii) shall also identify the claimed change in circumstances, and provide supporting information with respect to this claimed change in circumstances, including:

(1) Where relevant, information relating to any increase in services supplied by a grantee of such grant of authority; or information relating to any other claimed change in circumstances; and

(2) An explanation of how the change in circumstances is believed to cause or threaten to cause material harm to the long-haul trucking services industry as a whole or in a claimed specific sub-market thereof, supported by pertinent data and available information.

(e) *Additional required information and data.* Each petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) Quantitative data and other information for the United States long-haul trucking industry as a whole, or for the claimed specific sub-market, for the most recent three (3) full calendar years, and part-year for the current calendar year if available, showing:

(i) Volume and tonnage of merchandise transported by the industry as a whole or within the claimed specific sub-market;

(ii) Employment, wages, hours of service, and working conditions relating to the industry as a whole or claimed specific sub-market;

(iii) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destination(s) within the United States for such shipments;

(iv) With respect to cargo originating in the United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or the border commercial zone, as defined in § 208.2(b);

(v) With respect to claims of material harm or the threat of material harm to the industry as a whole or within the claimed specific sub-market, data regarding whether there has been or is a threat of a significant loss in the share of the United States market as a whole, or in the claimed specific sub-market, to persons of Mexico, as defined in § 208.2(l); and

(vi) Any other relevant information, including pricing information and any evidence of cross-border long-haul trucking services lost to persons of Mexico in the market as a whole or claimed specific sub-market.

(f) *Cause of injury.* Each petition shall include an enumeration and description of the causes believed to be resulting in the material harm, or threat thereof, and a statement regarding the extent to which one or more grants of authority are believed to be such a cause of material harm or the threat thereof to the United States industry as a whole or in a sub-market thereof, supported by pertinent data and information;

(g) *Relief sought and purpose thereof.* A statement describing the relief sought.

§ 208.6 Time for determinations, reporting.

(a) *Determinations.* (1) The Commission will make its determination with respect to the petition, request, or resolution no later than 120 days after the date on which an investigation is initiated under section 322(a) of the Act, except that:

(2) If the Commission determines, before the 100th day after an investigation is initiated under section 322(a) of the Act, that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days after the date on which an investigation is initiated.

(b) *Reporting.* The Commission will submit its report to the President not later than the date that is 60 days after the date on which the determination is made under section 322(a) of the Act.

§ 208.7 Report to the President.

In its report to the President, the Commission will include the following:

(a) The determination made and an explanation of the basis for the determination;

(b) If the determination is affirmative or if the Commission is equally divided in its determination, the recommendation of members of the Commission who agreed to the affirmative determination for the action that is necessary to address the material harm or threat of material harm found, and an explanation of the basis for the recommendation.

(c) Any dissenting or separate views by members of the Commission regarding the determination.

§ 208.8 Public report.

Upon submitting a report to the President of the results of an investigation to which this part relates, the Commission will promptly make such report public (with the exception of information that the Commission determines to be confidential business information) and publish a summary of the report in the **Federal Register**.

Subpart C—Investigations Relating to Extension of Relief

§ 208.9 Applicability of subpart.

The provisions of this subpart C apply to investigations under section 324(d)(2) of the Act relating to an extension for relief. For other applicable rules, see subpart A and subpart D of this part.

§ 208.10 Who may file a petition or request.

An investigation under this subpart may be commenced upon the request of the President or upon receipt of a petition, properly filed, by an interested party described in § 208.2(i) of this part, which is representative of a United States long-haul trucking services industry, as defined by the Commission in its determination under section 322 of the Act.

§ 208.11 Time for filing.

A request or petition may be filed with the Commission not earlier than the date that is 270 days, and not later than 240 days, before the date on which any action taken under section 324 of the Act of is to terminate.

§ 208.12 Contents of petition.

The petition shall include information in support of the claim that action under section 324 of the Act continues to be necessary to remedy or prevent material harm to the industry, as defined by the Commission in its determination under section 322 of the Act, including information relating to changes since the action was taken with respect to:

(a) The volume and tonnage of merchandise transported by the industry;

(b) Employment, wages, hours of service, and working conditions relating to the industry;

(c) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destinations within the United States for such shipments;

(d) With respect to cargo originating in United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or inside a border commercial zone as defined in § 208.2(b);

(e) The share of the United States market as a whole, or the share of the specific sub-market, held by persons of Mexico; and

(f) Any other relevant information in support of the claim that action continues to be necessary.

§ 208.13 Report to the President.

The Commission will submit a report on its investigation and determination to the President no later than 60 days before relief provided under section 324(a) of the Act is to terminate, or such other date as determined by the President.

Subpart D—General Notice and Filing Provisions

§ 208.14 Applicability of subpart.

The provisions of this subpart D apply to investigations under sections 322(a) and 324(d)(2) of the Act.

§ 208.15 Identification and filing of petitions; filing of requests and resolutions.

(a) Each petition filed by an entity representative of a United States long-haul trucking services industry must state clearly on the first page thereof whether the petition is filed under section 322 or section 324(d)(2) of the Act as applicable. Unless otherwise directed or authorized by the Secretary, a public and confidential version of a petition must be filed electronically on the Commission's Electronic Document Information System (''EDIS''). One copy of each of the public and confidential versions of any exhibits, appendices, and attachments to the document may be filed on EDIS or in other electronic format approved by the Secretary.

(b) Each request or resolution may be submitted in paper form or filed on EDIS.

§ 208.16 Initiation and notice of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, after acceptance of a properly filed petition under this part 208, the Commission will promptly initiate an appropriate investigation and will publish notice thereof in the **Federal Register**.

(b) *Exception.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 322 of the Act with respect to the same subject matter as a previous investigation under section 322 of the Act unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

§ 208.17 Publication of notice; and availability for public inspection.

(a) *Contents of notice.* The notice will indicate whether the initiation is based on a petition, request, or resolution, as appropriate; and will identify the grant or grants of authority, or the request for a grant or grants of authority, that are the subject of the investigation; the nature and timing of the determination to be made; the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents; any limits on page lengths for briefs, statements, or other documents to be filed; and the name, address, and telephone number of the Commission office that may be contacted for more information.

(b) *Availability for public inspection.* The Commission will promptly make the public version of each petition available for public inspection through EDIS.

§ 208.18 Notification of other agencies.

For each investigation subject to the provisions of this part 208, the Commission will transmit copies of the petition, request, or resolution to the Trade Representative and the Secretary of Transportation, along with a copy of the notice of investigation.

§ 208.19 Public hearing.

(a) *Public hearing.* The Commission will provide notice of, and hold, a public hearing in connection with each investigation initiated under section 322(a) or section 324(d)(2) of the Act and under this part after reasonable notice thereof has been published in the **Federal Register**.

(b) *Opportunity to appear.* The Commission will afford all interested parties, as defined in section 321(8) of the Act and § 208.2(i) of this part, an opportunity to be present, to present evidence, to respond to presentations of other parties, and otherwise to be heard.

§ 208.20 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of any interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 208.22(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 208.22(a)(4), an application under § 208.22(a) is approved. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 208.22, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand, by overnight mail, or by electronic means. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission will make available through EDIS each public document placed in the docket file.

(c) *Filing generally.* Documents to be filed with the Commission must comply with applicable rules, including Part 201 of this chapter, as may be further explained in the Commission's Handbook on Filing Procedures. Failure to comply with these requirements may result in the rejection of the document as improperly filed.

(d) *Filing of confidential business information.* If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on or before the deadline and may file and serve the nonconfidential version of the document no later than one business day after filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: ''Bracketing of CBI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.,* at the same time as the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients

of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers that it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time that it files the nonconfidential version. No changes to the document, other than bracketing and deletion of confidential business information, are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

§ 208.21 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in § 208.22, in the case of an investigation under this part, the Commission will not release information that the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter, including such information obtained under section 322(e)(2) of the Act, unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President, the Trade Representative, and the Secretary of Transportation; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time that it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted, and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

§ 208.22 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.,* all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type that there is a clear and compelling need to withhold from disclosure, *e.g.,* trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''confidential business information'' is defined in § 201.6 of this chapter, and it includes information obtained under section 322(e)(2) of the Act.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance, but at least five days before the deadline for filing post-hearing briefs in the investigation, and they shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party that is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party that is a party to the investigation; or

(D) An authorized representative of an interested party that is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decision-making for an interested party that is a party to the investigation. Involvement in ''competitive decision-making'' includes past, present, or likely future activities, associations, and relationships with an interested party that is a party to the investigation, which involves the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (*e.g.,* pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible, but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought by a person to be protected from public disclosure do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who

presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph, along with adequate personal identification.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision-making on behalf of an interested party that is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.,* documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall destroy all physical and electronic copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to the applicant's personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of;

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) Upon the completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe that a breach has occurred and that the person has a reasonable opportunity to present views on whether a breach has occurred. If the Commission subsequently determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present views, the Commission shall determine what sanction, if any, to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two-year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two-year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions that include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 208.20(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 208.20(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted by enclosing such information within brackets, and it must be segregated from other material being submitted.

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this part, or any other submission to the Commission during the course of an investigation under this part. Such a request shall be granted only if the Secretary finds that such information is non-disclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, non-disclosable confidential business information is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and it shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the non-disclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 208.20(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 208.20(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

Issued: June 22, 2020.

By order of the Commission.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–13762 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket Number: 200626–0171]

RIN 0625–AB19

Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

ACTION: Temporary final rule; extension of effective period.

SUMMARY: In March, the Department of Commerce (Commerce) implemented temporary modifications to its service regulations to enable non-U.S. Government personnel responsible for serving documents in the Enforcement & Compliance's (E&C) antidumping and countervailing duty (AD/CVD) cases to work remotely. Through this extension, Commerce extends the duration of these temporary modifications until further notice.

DATES: The temporary final rule published on March 26, 2020 (85 FR 17006), which was extended on May 18, 2020 (85 FR 29615), is further extended indefinitely. At this time, Commerce is not establishing a termination date. Instead, the temporary modifications will remain in place until further notice, and Commerce will publish a document announcing the termination date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Evangeline D. Keenan, Director, APO/Dockets Unit, at (202) 482–3354.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2020, E&C published a temporary final rule in the **Federal Register**, temporarily modifying certain requirements for serving documents

containing business proprietary information in AD/CVD proceedings administered by E&C until May 19, 2020, unless extended. *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Final Rule*). On May 18, 2020, E&C published a notification extending the temporary modifications through July 17, 2020. *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020). The temporary modifications were implemented to facilitate the effectuation of service through electronic means, with the goal of promoting public health and slowing the spread of COVID–19 while at the same time permitting the continued administration of AD/CVD proceedings. E&C explained that the service requirements in its regulations are often effectuated by hand delivery or by U.S. mail delivery of hard copy documents, which frequently takes place in an office setting. In turn, this could pose a risk to the personnel tasked with serving or accepting service by hand or mail, as well as those around them. Based on these circumstances, E&C announced that it would temporarily deem service of submissions containing business proprietary information (BPI) to be effectuated when the BPI submissions are filed by parties in ACCESS, with certain exceptions. With the continued goal of promoting public health during these times while at the same time permitting the continued administration of AD/CVD proceedings, E&C is extending the date through which the modified service requirements in the *Temporary Final Rule* will be in effect. This is the second extension of the temporary final rule. For efficiency purposes, and with the continued goal identified above in mind, instead of again setting a termination date for the temporary final rule, the temporary final rule will remain in effect until further notice. Commerce will publish a document announcing the termination date in the **Federal Register**.

Extension

The modified service requirements announced in the *Temporary Final Rule* will remain in effect until further notice.

Classification

Administrative Procedure Act

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are waived for good cause because they would be impracticable and contrary to the public interest. (See 5 U.S.C. 553(b)(B)). Interested parties participating in E&C's AD/CVD proceedings are generally required to serve other interested parties with documents they submit to E&C. If notice and comment were to be allowed, parties submitting documents containing BPI information to E&C likely either would be unable to serve other parties in the manners prescribed in E&C's regulations, or potentially would put their health and safety at risk in doing so. COVID–19 was unexpected and this circumstance could not have been foreseen; therefore E&C could not have prepared ahead of time for this set of circumstances. The provision of the Administrative Procedure Act otherwise requiring a 30-day delay in effectiveness is also waived for those same reasons, which constitute good cause. (5 U.S.C. 553(d)(3)).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this temporary rule is not significant for purposes of Executive Order 12866.

Executive Order 13771

This temporary rule is not expected to be subject to the requirements of Executive Order 13771 because this temporary rule is not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This temporary rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Executive Order 13132

This temporary rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this action. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

Dated: June 29, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14404 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

[Docket No. MSHA–2013–0032]

RIN 1219–AB84

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final action.

SUMMARY: The Mine Safety and Health Administration (MSHA) is notifying the mining community and other interested parties of the Agency's determination that the existing standards addressing the frequency of miners' training on refuge alternatives for underground coal mines effectively protect miners' safety and will remain in effect without change. This determination responds to a decision from the United States Court of Appeals for the District of Columbia Circuit.

DATES: July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances, MSHA, 201 12th Street South, Arlington, VA 22202 (mail); *Fontaine.Roslyn@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2008, MSHA published a final rule, *Refuge Alternatives for Underground Coal Mines,* establishing requirements for refuge alternatives in underground coal mines.[1] *See* 73 FR 80656; *see generally* 30 CFR part 7, subpart L; *id.* part 75, subpart P. The final rule requires mine operators to provide training regarding the deployment and use of refuge alternatives, including three types of training—annual motor-task (hands-on), decision-making, and expectations training. 30 CFR 75.1504(c). Motor-task (hands-on) training consists of performing activities necessary to safely and effectively deploy and use a refuge alternative and its components. Decision-making training consists of learning when it is appropriate to use refuge alternatives rather than to

[1] A refuge alternative is a protected, secure space with an isolated atmosphere and integrated components that create a life-sustaining environment for persons trapped in an underground coal mine. 30 CFR 7.502.

attempt escape from the mine. Expectations training consists of anticipating and experiencing the conditions that might be encountered during use of a refuge alternative (*e.g.,* heat and humidity, confined space).

On January 13, 2009, the United Mine Workers of America petitioned the United States Court of Appeals for the District of Columbia Circuit (Court) to review MSHA's refuge alternatives final rule. The Court issued its decision on October 26, 2010. *See Int'l Union, United Mine Workers of America* v. *MSHA,* 626 F.3d 84 (D.C. Cir. 2010). The Court held that MSHA was not bound by recommendations of the National Institute for Occupational Safety and Health (NIOSH), but that MSHA had failed to adequately explain its departure from NIOSH's quarterly training recommendations. The Court found that MSHA's ''conclusory'' reliance on its ''knowledge and expertise'' was unsupported by the rulemaking record. *Id.* at 93. Among other considerations, the Court described analysis from a NIOSH study that found that, after 90 days, miners' ability to accomplish the six-step process for donning self-contained self-rescuers (SCSRs) severely deteriorated [2]—deterioriation that NIOSH presumed would be similar for the referenced eighteen-step process needed to operate refuge alternatives. *See id.* at 87–88, 93.

The Court remanded, but did not vacate, the final rule. It directed MSHA to explain the basis for the training frequency provision from the existing record or to reopen the record and allow additional public comment if needed. *Id.* at 86, 94. MSHA then reopened the record twice to obtain public comments on the appropriate frequency of motor-task (hands-on), decision-making, and expectations training for miners to deploy and use refuge alternatives in underground coal mines. *See* 78 FR 48592 (Aug. 8, 2013); 78 FR 68783 (Nov. 15, 2013).

II. MSHA's Current Standards Effectively Protect Miners

MSHA received three comments after reopening the record. Two of those comments favored retaining the existing rule.

The first commenter recognized that escape—not seeking refuge—is the first line of defense in an underground coal mine in an emergency. AB84–COMM–1. The commenter described the quarterly training miners currently receive in using SCSRs and additional quarterly training concerning storage locations for SCSRs, escapeways, and lifelines, as well as review of refuge alternative deployment and use. The commenter highlighted how training related to SCSRs in particular is likely the highest-quality training miners receive during their careers, and asserted that studies reveal ''the single-most important element of survival [in] a mining disaster [is] the ability to properly don the [SCSR] and exit the mine.'' The commenter believed that resources for quarterly deployment of refuges and related motor-task (hands-on) training would be better utilized if miners were prepared for prompt, orderly, and efficient escape during a mine disaster through comprehensive SCSR, lifeline, and escapeway training. The commenter also described costs associated with quarterly motor-task (hands-on) training for deploying refuge alternatives. The commenter concluded ''that the current refuge chamber alternative training requirements are adequate,'' and MSHA agrees.

A second commenter opposed changing the rule and agreed with MSHA that the final rule provided adequate miner training regarding when to use refuge alternatives. AB84–COMM–3. The commenter recognized that mine operators could supplement the mandated quarterly review of the procedures for deploying and using the refuge alternatives with limited motor-task (hands-on) training using a panel mock-up of the valve and door arrangements of the refuge alternatives in use at the mine, as well as video training. The commenter stated that training using a mock-up of the doors and valves would provide both motor-task (hands-on) and expectations training. MSHA agrees with the substance of these comments, which are consistent with MSHA's resolution of this issue, and the Agency supports initiatives, as deemed appropriate by individual operators, to supplement existing quarterly refuge alternative deployment and use training as described by the commenter and as discussed below.

The third commenter stated that annual deployment and use of a refuge alternative is inadequate and, based in part on NIOSH's 2007 report,[3] advocated quarterly motor-task (hands-on) training. AB84–COMM–2. The commenter argued that the task of donning an SCSR, for which quarterly motor-task (hands-on) training is required, is not as difficult as deploying a refuge chamber. This commenter also stated that decision-making and expectations training should be provided quarterly in order to adequately train miners for emergency situations. MSHA disagrees with the commenter's arguments and analysis, as explained below.

After considering these comments, MSHA believes it should retain the final rule without revision. This approach is consistent with the training requirements in West Virginia, the only state that specifies training for refuge alternative deployment requirements. MSHA concludes that annual motor-task (hands-on), decision-making, and expectations training, supplemented by existing mandated quarterly review of deployment and use procedures, as well as existing mandated quarterly evacuation training and quarterly evacuation drills with review of a mine's evacuation plan, which include discussion of emergency scenarios and options for escape and refuge, will prepare miners to deploy and use refuge alternatives appropriately and effectively in an emergency.

Motor-Task (Hands-On) Training

MSHA's determination regarding the appropriate frequency for motor-task (hands-on) training on refuge alternatives is supported by how miners are trained to use, and must use, SCSRs in emergencies; the overlap between the actions miners take in the normal course of mining and the actions necessary to deploy and use refuge alternatives; and how existing quarterly training already addresses the sequence of steps needed to deploy and use a refuge alternative.

Miners are trained to use—and, in emergencies, historically have used—SCSRs, which will facilitate miners' subsequent deployment of refuge alternatives when escape from the mine is not possible. When donning an SCSR, miners are faced with a perceived immediate threat to their lives. In a toxic environment, a single breath could kill a miner. A miner must don an SCSR immediately so he or she can continue breathing in the moments after ascertaining the need for the SCSR. Consequently, miners must be able to don the SCSR by instinct, relying on instant recall of the SCSR donning process, a process that requires performing actions not otherwise undertaken during the normal course of mining. Given the need to immediately don an SCSR in an environment in

[2] An SCSR is an apparatus worn by individual miners in underground coal mines that can be used to provide at least one hour of breathable air to enable miners to escape from the mine or to reach a refuge alternative when the mining environment, due to smoke, inadequate oxygen and/or carbon monoxide, would not support human life. *See* 30 CFR 75.2 and 75.1714.

[3] NIOSH, Office of Mine Safety & Health, *Research Report on Refuge Alternatives for Underground Coal Mines,* Dec. 2007.

which miners often cannot see instructional material, as well as the impracticality of associating instructional materials with individual SCSRs, miners cannot benefit from manuals and other guidance while donning an SCSR.

By contrast to the need to immediately don SCSRs without the benefit of written instruction, a miner deploying a refuge alternative will have the benefit of an SCSR and, therefore, significantly more time to deploy the refuge alternative. The 60-minute oxygen supply associated with an SCSR provides miners up to 30 minutes to travel to a refuge alternative and at least 30 additional minutes to deploy the refuge alternative.[4] Thus, miners will have time to review instructions/manuals located at (and inside) the refuge alternative and to be more deliberative in their recall of the skills and knowledge acquired during their training sessions. Once inside the isolated atmosphere after completing the initial actions necessary to deploy a refuge alternative, and where they are free from smoke and other contaminants that may be associated with the mine environment during an emergency, miners can refer to the available manual, quick-start guides, or signage, and they can work cooperatively (when there is more than one miner) and deliberately to complete deployment of the refuge alternative.

The rulemaking record supports MSHA's general understanding and approach. During a July 31, 2008, public hearing seeking comment regarding the proposed refuge alternative rule, a witness testified that, after clearing a refuge alternative's airlock, miners could start the flow of oxygen within minutes and would be in a safe environment, allowing them ample time to reference available placards and manuals, if needed, and undertake subsequent steps necessary to maintain a breathable environment within the unit. MSHA Public Hearing, 7/31/08, pg. 91; See *https://arlweb.msha.gov/REGS/Comments/E8-13565/Transcripts/20080731CharlestonWV.pdf.*

Additionally—and unlike the actions needed to use an SCSR—the actions that must be performed to deploy and use a refuge alternative are similar to many actions in which miners regularly engage during the course of normal mining operations. For example, the operation of valves on oxygen and acetylene compressed gas cylinders used when conducting maintenance activities, such as cutting and welding, is similar to the operation of valves associated with refuge alternatives. In addition, many miners carry, and routinely use, gas monitors like those used in the deployment and use of a refuge alternative to measure gaseous concentration levels during their shifts. Further, the design and use of access doors and latches located on refuge alternatives are similar to existing airlock doors and personnel doors that are located at various points of the mine where miners often travel and work. In part because of this overlap, MSHA has determined annual motor-task (hands-on) training on refuge alternatives is adequate.

In addition to having the benefit of SCSRs, as well as signage, brief written instructions (*e.g.,* quick start guides), and manuals, and familiarity with basic actions developed through their work experiences, miners also already receive quarterly training on the procedures to deploy and use refuge alternatives. 30 CFR 75.1504(b)(6) and (8). Because miners have familiarity with many of the underlying physical actions needed to deploy and use a refuge alternative effectively, MSHA has concluded that it is more important for miners to know the order in which those actions need to be performed—a sequence that is addressed during the quarterly training.

When deploying a refuge alternative, miners must perform the following steps: [5]

(1) Open/inflate the unit;

(2) enter the airlock and purge contaminants;

(3) enter the livable space and turn on oxygen;

(4) deploy carbon dioxide scrubbing material;

(5) begin to monitor air quality.

After performing the first three steps, the miners are in the habitable space and have ample time to safely perform the remaining actions. MSHA agrees with a commenter that the mandated quarterly review of deployment procedures, including these initial steps, effectively reinforces the annual training that miners receive (*see* 30 CFR 75.1504(b)(6); AB58–COMM–21, pgs. 3–4). MSHA's confidence that miners effectively will learn and remember the necessary steps, and the order in which they are performed, through annual motor-task (hands-on) training and quarterly review is supported by the facts that the steps are relatively few in number and the order in which they are performed is consistent with the manner in which one naturally would seek refuge from a dangerous environment into a secured, breathable environment—*i.e.,* prepare the unit for use; leave the dangerous mine environment for the enclosed airlock; purge hazardous gasses that may have entered the airlock during entry; enter the unit's livable space and start the flow of oxygen; activate the carbon dioxide scrubbing material; and monitor to assure the appropriate oxygen and carbon dioxide concentrations during habitation. Therefore, motor-task (hands-on) retraining on the deployment and use of refuge alternatives does not need to be as frequent as motor-task (hands-on) training for the donning of an SCSR, particularly in light of the related, quarterly refuge alternative deployment and use training mandated in 30 CFR 75.1504(b)(6) and (8).

MSHA notes that its conclusion regarding the appropriate frequencies for training miners parallels the frequencies at which miners must be trained under West Virginia state law. In response to mine accidents in 2006, the State of West Virginia also supplemented its provisions for protecting miners in an emergency, including provisions related to SCSRs and emergency shelters/chambers. Recognizing the critical importance of donning an SCSR immediately and effectively in an emergency (Mine Safety Technology Task Force Report—May 29, 2006 at *https://minesafety.wv.gov/PDFs/MSTTF%20Report%20Final.pdf*),[6] the West Virginia legislature mandates that miners receive quarterly SCSR training. See, WV Code section 22A–2–55(f)(1); W. Va. Code St. R, section 56–4–5.3. Conversely, pursuant to State law, miners receive training in the proper

[4] The final rule provides that miners never will be more than a 30-minute travel distance from either a refuge alternative or a safe exit from the mine. 30 CFR 75.1506(c).

[5] While the Court referenced an 18-step process for deploying an using a refuge alternative, *Int'l Union, United Mine Workers of America* v. *MSHA,* 626 F.3d at 87–88, 93, the referenced process includes discrete, minor actions that more appropriately are included within the five steps listed above. Indeed, NIOSH similarly has recommended development of four-step *Quick Start Guides* for the deployment and use of refuge alternatives [*Guidelines for Instructional Materials on Refuge Chamber Setup, Use, and Maintenance,* IC 9514, NIOSH 2009, page 7].

[6] MSHA notes that the West Virginia Task Force, which included two representatives from the United Mine Workers of America, as well as industry representatives, addressed training regarding the use of SCSRs extensively in their report, while providing more limited discussion of training to be associated with emergency shelters/chambers. See Mine Safety Technology Task Force Report at 36, 38–38, 42, 52–3, 59, 107–09. The Task Force ultimately recommended that mine operators provide a shelter/chamber plan that, among other things, ''ensure[s] that emergency shelters/chambers are included in initial mine hazard training in such a manner that it is in compliance with all manufacturer's requirements and is provided yearly in addition to annual refresher training.'' Id. at 17, 59.

use of emergency shelters/chambers on an annual basis. See W. Va. Code St. R, section 56–4–8.14.2.

When deploying refuge alternatives, miners have the benefit of SCSRs and written instruction, familiarity with basic actions needed to deploy and use refuge alternatives, and, in addition to annual motor-task (hands-on training), quarterly training on the sequence of steps and procedures for deployment and use. In light of these considerations, and consistent with training requirements contained in West Virginia law, MSHA believes annual motor-task (hands-on) training on the use of refuge alternatives effectively protects miner safety.

Decision-Making and Expectations Training, Collectively

MSHA's divergence from NIOSH's quarterly decision-making and expectations training recommendation reflects the absence of NIOSH-cited research and the limited analysis regarding the appropriate frequency for providing such training. While favorably referencing research and analysis underlying NIOSH's recommendation that motor-task (hands-on) training be performed on a quarterly basis, the Court's holding reflects that, while NIOSH recommended that decision-making and expectations training be included in conjunction with hands-on quarterly training, NIOSH had not performed any specific research regarding the appropriate frequency for providing decision-making and expectations training. *See Int'l Union, United Mine Workers of America* v. *MSHA,* 626 F.3d at 87–88, 93 (referencing NIOSH and UMWA-identified studies regarding recollection following motor-task (hands-on) training, while merely mentioning NIOSH's more cursory recommendation that decision-making training and expectations training be given at the same time as the motor-task (hands-on) training). MSHA agrees with NIOSH that decision-making and expectations training practically could be performed in conjunction with motor-task (hands-on) training. See NIOSH's *Research Report On Refuge Alternatives For Underground Coal Mines* at 15. However, NIOSH's recommendation appears to be based on utilizing an opportunity to provide these trainings in tandem, rather than on identified research and/or substantive analysis evidencing a verified improvement in safety outcomes associated with quarterly decision-making and expectations training. See, *e.g., Issues Regarding Refuge Chamber Training,* referenced on Page 3 of NIOSH's *Research Report On Refuge Alternatives For Underground Coal Mines* (''The optimum intervals for retraining on a refuge chamber are not known.''). MSHA finds the fact that decision-making training and expectations training could be conducted in conjunction with motor-task (hands-on) training to be an insufficient basis to justify the provision of such training at intervals more frequently than was demonstrated in the NIOSH report and research to be needed for miner safety.

Decision-Making Training

MSHA has determined that the decision-making training currently required on an annual basis is effective in protecting miner safety and is enhanced by other safety measures that inform miners' decision-making during emergencies.

MSHA requires annual training to include instruction on the deployment and use of refuge alternatives, including their component systems, and on decision-making training. *See* 30 CFR 75.1504(c)(3)(ii) (requiring ''[i]nstruction on *when* to use refuge alternatives during a mine emergency, emphasizing that it is the last resort when escape is impossible'' (emphasis added)). The existing rule also requires quarterly evacuation training and quarterly evacuation drills, as well as review of a mine's evacuation plan, which include discussion of emergency scenarios and options for escape and refuge. *See* 30 CFR 75.1502(c)(4) and 75.1504(a) and (b)(3)–(4). The quarterly evacuation training and quarterly evacuation drills complement the annual decision-making training because they require consideration of the best options for miners in various mine emergency scenarios, including the option to seek shelter in a refuge alternative and the application of survival strategies, which would address the relative merits of escape and shelter options in specific emergency situations, during realistic escapeway drills. *See* 30 CFR 75.1502(c)(4)(vi) and 75.1504(b)(3). Decision-making training materials developed by NIOSH help miners better understand the factors relevant to a determination regarding the ability to escape versus the need to take refuge. These and similar materials can and should be used during the quarterly training sessions and quarterly drills. *See* NIOSH materials at *http://www.cdc.gov/niosh/mining/content/refugechambers.html#TheRefugeChamberTrainingModules.*

In addition to this training, other factors enhance miners' decision-making. Real-time information concerning the specific nature of an emergency and actual post- accident conditions in the mine—in conjunction with miners' knowledge of the mine's layout and features from their daily work and travel in the mine—is critical to making sound determinations about when to escape and when to seek refuge. The Mine Improvement and New Emergency Response Act of 2006 (MINER Act) sought to provide miners with this situation-specific information. Since publication of the refuge alternatives final rule, emergency communication and electronic tracking systems mandated by the MINER Act have been installed in all underground coal mines. *See* 30 U.S.C. 876(b)(2)(F)(ii). These systems allow surface personnel to determine each miner's underground location and to convey real-time information to miners about the nature of the emergency and the mine conditions that they may encounter along various available escape routes. While these systems were not installed when the refuge alternatives final rule was promulgated, and thus not explicitly considered when establishing the rule's training intervals, MSHA recognizes that the present availability of these tracking and communication systems provides situation-specific, real-time information on conditions in an underground mine. In turn, better information and communication help miners make the right decisions in an emergency, such that the annual training, the quarterly drills, and the real-time information will allow miners effectively to choose whether to attempt escape or to seek shelter in specific situations that might be encountered during an emergency. Given these systems and existing quarterly and annual training, MSHA believes additional decision-making training is unnecessary and that the final rule effectively protects miners' safety.

Expectations Training

Expectations training involves the actual, annual deployment and use of a refuge alternative (*see* 30 CFR 75.1504(c)(3)) and simulates the experience of being enclosed with other miners in a refuge alternative with supplied air, limited space, and limited light. Given the unique and visceral nature of such an experience, MSHA has no reason to believe that quarterly training is necessary for miners to remember the experience of occupying a refuge alternative.

Moreover, expectations training is intended to provide miners a basic understanding of the general sensation associated with occupancy in a refuge

alternative, so as to minimize some of the stress and/or disorientation that otherwise may accompany occupancy in an emergency situation. The training goal is accomplished when miners experience and appreciate the physiological and psychological sensations that can be expected when occupying a refuge alternative, and is not dependent on miners mastering and remembering detailed or sequential information. Importantly, this type of training is materially distinct in nature from the type of training associated with SCSR use (which involves mastery of, and immediate, highly-accurate performance of, multi-step actions) that NIOSH referenced when generally suggesting quarterly training for all aspects of refuge alternative deployment and use. Given the experiential nature of expectations training, as well as the unique and visceral nature of the experience, MSHA has determined that annual expectations training provides an experience sufficient to enable miners to apply their knowledge, other training, and available written instruction to effectively use the refuge alternative in an emergency.

III. Conclusion

For the reasons stated above, MSHA concludes that annual motor-task (hands-on), decision-making, and expectations training—supplemented by existing mandated quarterly reviews, instructions, and drills—effectively will prepare miners to deploy and use a refuge during an emergency. Accordingly, the existing rule *Refuge Alternatives for Underground Coal Mines* remains in effect without change.

Authority: 30 U.S.C. 811.

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2020–13753 Filed 7–9–20; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2020–0143]

RIN 1625–AA08

Special Local Regulation; Upper Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain waters of the Upper Potomac River. This action is necessary to provide for the safety of life on these navigable waters located at National Harbor, MD, on September 27, 2020, during an open water swim event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Patrol Commander.

DATES: This rule is effective from 7 a.m. to 11 a.m. on September 27, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0143 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email 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
SNPRM Supplemental notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard published a notice of proposed rulemaking (NPRM) on April 1, 2020 (85 FR 18157), proposing to establish a special local regulation for the ''Washington, DC Sharkfest Swim,'' on the Upper Potomac River. The Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) on May 22, 2020 (85 FR 31099), to amend the date of the proposed special local regulation from June 7, 2020, to September 27, 2020, and reopened the comment period to account for the change. The comment period for the SNPRM closed June 22, 2020. The Coast Guard received no comments on either the NPRM or SNPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with this swim event will be a safety concern for anyone intending to operate in or near the swim area. The purpose of this rule is to protect event participants, non-participants, and transiting vessels on certain waters of the Upper Potomac River before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 1, 2020, and our SNPRM published May 22, 2020. There are no changes in the regulatory text of this rule from the proposed rule in the SNPRM.

This rule establishes a special local regulation to be enforced from 7 a.m. to 11 a.m. on September 27, 2020. The regulated area will cover all navigable waters of the Upper Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47′30.30″ N, longitude 077°01′26.70″ W, thence west to latitude 38°47′30.00″ N, longitude 077°01′37.30″ W, thence south to latitude 38°47′08.20″ N, longitude 077°01′37.30″ W, thence east to latitude 38°47′09.00″ N, longitude 077°01′09.20″ W, thence southeast along the pier to latitude 38°47′06.30″ N, longitude 077°01′02.50″ W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I–95/I–495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD. The regulated area is approximately 1,210 yards in length and 740 yards in width.

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after this swim event, scheduled from 7:30 a.m. to 10:30 a.m. on September 27, 2020. The COTP and the Coast Guard Patrol Commander (PATCOM) have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area.

Except for Washington, DC Sharkfest Swim event participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or PATCOM before entering the regulated area. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Vessel traffic will 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 will 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 will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area. Official patrol vessels will direct non-participants while within the regulated area. Vessels will be prohibited from loitering within the navigable channel. Only participant vessels and official patrol vessels will be allowed to enter the swim area.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, time of day and duration of the regulated area, which will impact a small designated area of the Upper Potomac River for 4 hours. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area. Moreover, the rule will allow vessels to seek permission to enter the regulated area, and vessel traffic will 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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 4 hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum For Record for Categorically Excluded Actions supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 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 § 100.501T05–0143 to read as follows:

§ 100.501T05–0143 Washington, DC Sharkfest Swim, Upper Potomac River, National Harbor, MD.

(a) *Regulated area.* The regulations in this section apply to the following area: All navigable waters of the Upper Potomac River, within an area bounded by a line connecting the following points: From the Rosilie Island shoreline at latitude 38°47′30.30″ N, longitude 077°01′26.70″ W, thence west to latitude 38°47′30.00″ N, longitude 077°01′37.30″ W, thence south to latitude 38°47′08.20″ N, longitude 077°01′37.30″ W, thence east to latitude 38°47′09.00″ N, longitude 077°01′09.20″ W, thence southeast along the pier to latitude 38°47′06.30″ N, longitude 077°01′02.50″ W, thence north along the shoreline and west along the southern extent of the Woodrow Wilson (I–95/I–495) Memorial Bridge and south and west along the shoreline to the point of origin, located at National Harbor, MD. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the Washington DC Sharkfest Swim event 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 7 a.m. to 11 a.m. on September 27, 2020.

Dated: June 29, 2020.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2020–14406 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0356]

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay, Seattle, Washington

AGENCY: Coast Guard, DHS.

ACTION: Notification of non-enforcement of regulation.

SUMMARY: The Coast Guard will not enforce the safety zone for the Fleet Week Maritime Festival on waters adjacent to Pier 66 in Elliott Bay, Seattle, WA in July and August 2020. The Captain of the Port Sector Puget Sound has determined that since the event is cancelled, enforcement of this regulation is not necessary.

DATES: The Coast Guard does not plan to enforce regulations in 33 CFR 165.1330 in July and August 2020.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of non-enforcement, call or email CWO2 William E. Martinez, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard normally enforces the safety zone in 33 CFR 165.1330 for the Fleet Week Maritime Festival on waters adjacent to Pier 66 in Elliott Bay, Seattle, WA. This event is held annually during the parade of ships on the last week of July or first week of August. This year, the event organizers cancelled Fleet Week. Therefore, the Coast Guard does not plan to enforce 33 CFR 165.1330, for July and August 2020.

In addition to this notification of non-enforcement in the **Federal Register**, if the situation changes and the Captain of the Port Sector Puget Sound (COTP) determines that the regulated area needs to be enforced, the COTP will issue a Broadcast Notice to Mariners and provide actual notice of enforcement to any persons in the regulated area.

Dated: June 23, 2020.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Sector Puget Sound.

[FR Doc. 2020–13981 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0359]

RIN 1625–AA00

Safety Zone; Tennessee River, Muscle Shoals, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Tennessee River from Mile Marker (MM) 407 to MM 409, on July 13, 2020 in conjunction with the operations

being conducted at the TVA Widows Creek Fossil Plant. This safety zone is needed to protect the public, vessels, and waterfront facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature from the hazards associated with demolition operations at the TVA Widows Creek Fossil Plant. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 7 a.m. through noon on July 13, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0359 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Second Class Paul Sanders, Marine Safety Detachment Nashville U.S. Coast Guard; telephone 615–736–5421, email *Paul.M.Sanders@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is a vital need to ensure the closure of the river due to the hazards associated with the explosive operations at the TVA Widows Creek Fossil Plant. A safety zone on the Tennessee River from MM 407 to MM 409 is necessary to provide appropriate protection to the public during the explosive operations. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before the temporary safety zone needs to be established by July 13, 2020.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is a vital need to ensure the closure of the river due to the hazards associated with the explosive operations at the TVA Widows Creek Fossil Plant. A safety zone on the Tennessee River from MM 407 to MM 409 is necessary to provide appropriate protection to the public during the explosive operations. It is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before the temporary safety zone needs to be established by July 13, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the demolition operations at the TVA Widows Creek Fossil Plant on July 13, 2020, will be a safety concern for anyone within the 2 mile segment of river. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone before, during, and after the demolition operations.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. until noon on July 13, 2020. The safety zone will cover all navigable waters of Tennessee River from MM 407 to MM 409. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the demolition operations. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. This rule is limited to the Tennessee River from MM 407 to MM 409 on July 13, 2020, and will be enforced only during the times specified. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees

who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, 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 determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 5 hours for a two mile segment of the Tennessee River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0359 to read as follows:

§ 165.T08–0359 Safety Zone; Tennessee River, Muscle Shoals, AL.

(a) *Location.* The following area is a safety zone: The entire width of the Tennessee River from mile marker (MM) 407 to MM 409.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 1–800–253–7465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from 7 a.m. to noon on July 13, 2020.

Dated: June 30, 2020.

A.M. Beach,

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

[FR Doc. 2020–14759 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB54

[Docket ID ED–2019–OESE–0068]

Indian Education Discretionary Grant Programs; Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Professional Development (PD) program, authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These final regulations update, clarify, and improve the current regulations. These regulations pertain to Catalog of Federal Domestic Assistance (CFDA) number 84.299B.

DATES: These regulations are effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: 202–205–1909. Email: *Angela.Hernandez-Marshall@ed.gov.*

SUPPLEMENTARY INFORMATION: These regulations implement statutory changes made to the PD program in section 6122 of the ESEA (20 U.S.C. 7442) by the ESSA and make other changes to better enable the Department and grantees to meet the objectives of the program.

We published a notice of proposed rulemaking for this program (NPRM) in the **Federal Register** on October 11, 2019 (84 FR 54806).

Publication of the control number notifies the public that the Office of Management and Budget (OMB) has

approved these information collection requirements under the Paperwork Reduction Act of 1995. These regulations apply to applications for the PD program for fiscal year (FY) 2020 and subsequent years. In addition, the most recently-funded cohort of PD grantees, which received grants for FY 2018, may use the flexibility offered by the definition of ''local educational agency (LEA) that serves a high proportion of Indian students'' in these regulations, in arranging teaching or administrative placements for project graduates as of the effective date of these regulations.

In the preamble of the NPRM, we discussed on pages 54807–54811 the major changes proposed in that document. These included the following:

- Amending § 263.2 to include institutions of higher education (IHEs) that are accredited to provide a Native American language certificate and making conforming changes to other provisions.
- Adding to § 263.3 a definition of ''local educational agency (LEA) that serves a high proportion of Indian students'' and making conforming changes to other provisions.
- Adding in new § 263.5 application requirements, including an application requirement for a letter of support from an LEA that serves a high proportion of Indian students.
- Amending renumbered § 263.6 to add priorities for administrator training for work in Tribal educational agencies (TEAs), and for administrator training for school start-ups.
- Amending renumbered § 263.7 to add new selection criteria.

These final regulations contain two substantive changes from the NPRM, which we fully explain in the *Analysis of Comments and Changes* section of this preamble, in addition to several technical changes.

Public Comment: In response to our invitation in the NPRM, 14 parties submitted comments on the proposed regulations.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows. We group major issues according to subject. Generally, we do not address technical and other minor changes.

General

Comments: We received comments from multiple parties expressing support for the PD program and for the program's expansion to include Native language certification. One commenter noted that allowing American Indian language certificate-earners access to the program should lead to greater student achievement.

Discussion: We appreciate the support for this program.

Changes: None.

Qualifying Job Placements That Satisfy the Service Payback Obligation and Letter of Support Application Requirement (§§ 263.3, 263.5, 263.12(c)(1))

Comments: Nine commenters stated their support for the Department's definition of ''local educational agency (LEA) that serves a high proportion of Indian students'' in § 263.3. One of those nine parties suggested including schools as well as LEAs in the definition. One of the commenters was supportive of the definition but stated that it benefitted mainly teacher placement in rural areas. Four of the commenters suggested expanding the definition in a variety of ways for both qualifying employment and for the application requirement of a letter of support from an LEA that serves a high proportion of Indian students, citing concerns about the source of evidentiary data that would be used to determine whether or not a proposed LEA meets the definition. For instance, one of the commenters was concerned that LEA and State-level data are often inaccurate and often undercount the number of American Indian/Alaska Native students. Several of these commenters suggested allowing Tribes to identify LEAs that would serve as qualifying placement, even if the LEA, or the school in which the participant works, did not have a high proportion of Indian students; other commenters suggested that the local Tribe be the entity to determine what data source to use for evidence of meeting the definition of ''high proportion.'' One of the commenters recommended using five percent to measure whether an LEA has a high proportion of Indian students. This commenter asked the Department to establish five percent as a non-binding threshold for ''high proportion'' in order to provide a clearer guideline. Another commenter suggested allowing all LEAs that receive Title VI formula grant funds to be considered qualifying employment.

Discussion: We appreciate the many positive and supportive responses we received regarding the definition of ''LEA that serves a high proportion of Indian students.'' In response to the comment asking that schools as well as LEAs be considered in the definition of ''high proportion,'' the Department's new definition of ''LEA that serves a high proportion of Indian students'' does, in fact, include consideration of schools as well as LEAs. The definition provides an alternative test under which service in a particular school that has a high proportion of Indian students compared to other LEAs in the State qualifies even if the LEA as a whole in which the participant works does not have a high proportion of Indian students. We do not believe it is currently clear whether the program will mainly benefit placements in rural areas, but this is something that the Department will be able to track in the years to come. The statutory text is clear that job placement must correspond to LEAs with high proportions of Native students.

With regard to concerns about evidentiary data sources, the Department agrees that it should consider a variety of different types of data in analyzing whether LEAs or schools constitute qualifying employment locations, and that local Tribes can play an important role in helping identify accurate data for the Indian student population. For example, an applicant's letter of support from an LEA may use as evidence its Indian student count based on valid and complete Title VI formula grant program Indian Student Eligibility Certification (''ED 506'') Forms (OMB Number: 1810–0021) to show a high proportion as compared to the proportion in other LEAs in the State. Tribes can provide critical aid to LEAs in ensuring the LEAs have complete and valid forms for all Indian students, in order to increase the accuracy of this count.

In the NPRM, the Department solicited public comment on sources of evidence beyond demographic information on State and district report cards; however, we received no suggestions on this topic. The Department plans to further examine this issue and develop technical assistance for applicants regarding the types of evidentiary data that would be considered in determining ''high proportion'' for qualifying placement. In addition, the Department plans to publish on the program's website the average school-level and school district-level Indian student population, by State, after publishing the notice inviting applications for new awards for fiscal year 2020, so that applicants will have that data for comparison purposes in choosing which LEAs to ask for letters of support. We do not, however, support allowing Tribes to identify an LEA that serves as qualifying placement without any specific criteria, as this runs counter to the legislative intent to place Indian teachers and administrators in schools and LEAs that

serve a high proportion of Indian students.

We decline to accept the suggestion of a threshold of five percent. We heard during Tribal consultation that a specific percentage cut-point would eliminate as job placements those LEAs that are located in States with very small Native student populations, even though the particular school or LEA may have a larger percentage than the State average. We are aware that the nationwide population of American Indian/Alaska Native (AI/AN) students is approximately one percent of all students, and we believe that a comparative analysis better meets the statutory purposes of this program. We also reject the suggestion of allowing all LEAs with Title VI formula grants to serve as qualifying placement because the formula grant program funds LEAs with as few as 10 AI/AN students—and even fewer in the three States excluded by statute from this minimum—a number that is highly unlikely to represent a ''high proportion'' of the student body.

Changes: None.

Application Requirements (§ 263.5)

Comments: One party recommended that, to ensure that participant training supports the Native students to be served, each grantee should be required to submit a letter of support from nearby Tribes to verify that Tribal consultation has occurred with LEAs, consistent with the ESEA consultation requirement for certain LEAs.

Discussion: The Department strongly agrees that participants should be trained to understand the unique needs of Native students, and the Tribal role in informing that work. To that end, the program regulations address these issues in multiple respects. First, the selection criteria, under quality of project services in § 263.7(d) of these final regulations, address cultural training by providing points for projects that prepare participants to adapt teaching and/or administrative practices to meet the breadth of Indian student needs. Second, the PD program grant competitions have consistently incentivized Tribal engagement by awarding competitive preference points to applicants whose lead entity is a Tribe, Tribal College or University (TCU), or Tribal organization, as well as points to non-Tribal entities that apply in consortium with a Tribe, TCU, or Tribal organization. These priority points implement the statutory requirement in section 6143 of the ESEA that we give preference to Tribal entities in awarding grants. More than two-thirds of the 43 grantees awarded from 2016 and 2018 received these points.

If an IHE applies that is not a TCU, and is not in consortium with a Tribe, we strongly encourage that IHE to involve or consult with any local Tribes in designing and implementing their project. As explained above, historically we have awarded additional points to IHEs that apply in consortium with Tribes, Tribal organizations, or TCUs, under the priority in renumbered § 263.6(a)(2); including a Tribe as a partner in a project more effectively ensures that Tribal views are heard than does consultation.

Finally, with regard to the commenter's suggestion to require an applicant to submit a letter from Tribes to evidence that Tribal consultation has occurred, we agree that the requirement in section 8538 of the ESEA for certain affected LEAs to consult with Tribes prior to submitting an application does apply to this program, if an affected LEA is the applicant for this program in consortium with an IHE or TCU. Affected LEAs are those LEAs that have 50 percent Indian student population or received a Title VI formula grant of more than $40,000. The consultation must provide for the opportunity for officials from Indian Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Although we have rarely, if ever, received applications for this program from LEAs or SEAs, we have added an application requirement to § 263.5 to highlight this important statutory requirement in section 8538 of the ESEA for affected LEAs.

Changes: We have added a new paragraph (d) to § 263.5 to include the application requirement described above.

Priority for Administrator Training for Work in TEAs (§ 263.6(b))

Comments: One commenter was concerned that program participants would have difficulty completing on-the-job administrator training in a TEA if they were already full-time employees while completing an administrator training program. The commenter also asked if a job in a TCU, such as professor or administrator, would qualify as service payback, under the assumption that a TCU is a TEA. Finally, the commenter expressed their hope that roles such as language and cultural curriculum coordinator, instructional coach, and Department chair, in either a BIE-funded school or LEA with a large Native student population, would count as qualifying employment.

Discussion: The Department agrees that an administrator training program participant's on-the-job training in a TEA could pose a challenge if they were also employed full-time as a teacher or other school staff. For this reason, the Department's new priority allows grantees flexibility to determine the length of time that the on-the-job training would need to take place. For example, a grantee may implement the on-the-job training in a TEA over the summer, when existing school jobs are likely on hiatus. Another option would be to allow the participant to seek a brief leave from their full-time job.

With regard to whether or not a job in a TCU would serve as qualifying employment under the new priority for pre-service administrator training for work in a TEA, TEA is defined in these final PD program regulations as an agency, department, or instrumentality of a Tribe that is primarily responsible for Tribal students' elementary and secondary education. A TCU, however, does not provide elementary or secondary education but rather post-secondary education. Therefore, a participant could not complete service payback in any IHE or TCU, unless that entity directly operates an elementary or secondary school.

On the issue of whether leadership roles such as instructional coordinator, Department chair, and similar positions are qualifying employment, this question is not unique to the new priority under which the question was posed but is also relevant to the existing priority for administrator training. Section 6122(h) of the ESEA requires that the participant perform work related to the training received. Thus, assuming that the job is in an LEA or BIE-funded school at the elementary or secondary level, if the position requires the degree and certification for which the participant received the training benefit, then the employment qualifies for service payback.

Changes: None.

Other Issues

Comments: None.

Discussion: As a result of our further review of the proposed regulations since publication of the NPRM, we have made two additional changes. First, we made a change to renumbered § 263.7. We are no longer including what we proposed as paragraph (d)(5) in the NPRM because, upon further review, we realized that information was captured in paragraph (c)(2). Second, we have revised renumbered § 263.8(b) regarding a participant's leave of absence. The existing regulations require that the participant have completed 12 months

of training before a project director can grant a leave of absence. However, we have learned that in some cases, teacher and administrator training programs are designed to be completed within one year, essentially prohibiting participants in these programs from being able to request a leave of absence from the program. The original language presumed that 12 months of program completion translated into having completed at least half of the program.

Changes: We have omitted proposed § 263.7(d)(5). We have revised § 263.8(b) to allow grant project directors to approve a participant's leave of absence only after the participant has completed at least 50 percent of their training.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These final regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

Discussion of Costs and Benefits: The potential costs associated with these final regulatory changes are minimal, while there are greater potential benefits. For PD grants, applicants may anticipate minimal additional costs in developing their applications due to the new required letter of support that the applicant must obtain from an LEA under § 263.5, estimated at two hours of additional work. We anticipate no additional time spent reporting participant payback information in the Professional Development Program Data Collection System (PDPDCS) and the costs of carrying out these activities would continue to be paid for with program funds. The benefits include enhancing project design and quality of services to better meet the objectives of the programs with the result being more participants successfully completing their programs of study and obtaining employment as teachers and administrators. Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that will be affected by these final regulations are LEAs, IHEs, TCUs, Tribes, and Tribally operated schools receiving Federal funds under this program. The final regulations will not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The final regulations will impose minimal requirements to ensure the proper expenditure of program funds, including reporting of participant payback information. We note that grantees that will be subject to the minimal requirements imposed by these final regulations will be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

Paperwork Reduction Act of 1995

Sections 263.5 and 263.7 contain information collection requirements.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections and related application forms to OMB for its review and approval. In accordance with the PRA, the OMB control number associated with the PD final regulations, related application forms, and ICRs for §§ 263.5 and 263.7 is OMB 1894–0006.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Table A–1 illustrates the status of both the previous collections and the collections under these final regulations associated with this program:

TABLE A–1—PD PROGRAM INFORMATION COLLECTION STATUS

OMB control No.	Relevant regulations	Expiration	Previous burden (total hours)	Burden under final rule (total hours)	Action under final rule
1810–0580	Sections 263.5, 263.6, and 263.7.	June 30, 2021	Applicants: 1,500	0	Discontinue this collection and use 1894–0006.
1894–0006	Sections 263.5, 263.6, and 263.7.	January 31, 2021 ...	0	Applicants: 1,500	Use this collection.
1810–0698	Section 263.12	August 31, 2022	Grantees: 2,040; Participants: 660; Employers: 304.	Grantees: 2,040; Participants: 660; Employers: 304.	Use this collection.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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.

In the NPRM we solicited comments on whether any sections of the proposed regulations could have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Number: 84.299B Professional Development Program.)

List of Subjects in 34 CFR Part 263

Business and industry, College and universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 263 of title 34 of the Code of the Federal Regulations as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

■ 1. The authority citation for subpart A continues to read as follows:

Authority: 20 U.S.C. 7442, unless otherwise noted.

■ 2. Amend § 263.1 by:
■ a. In paragraph (a)(1) removing the word ''people'' and adding, in its place, the word ''students'';
■ b. Revising paragraphs (a)(2) and (a)(3);
■ c. Adding paragraph (a)(4); and
■ d. Revising paragraph (b)(1).

The revisions and addition read as follows:

§ 263.1 What is the Professional Development program?

(a) * * *

(2) Provide pre- and in-service training and support to qualified Indian individuals to become effective teachers, principals, other school leaders, administrators, teacher aides,

paraprofessionals, counselors, social workers, and specialized instructional support personnel;

(3) Improve the skills of qualified Indian individuals who serve in the education field; and

(4) Develop and implement initiatives to promote retention of effective teachers, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

(b) * * *

(1) Perform work related to the training received under the program and that benefits Indian students in an LEA that serves a high proportion of Indian students, or to repay all or a prorated part of the assistance received under the program; and

* * * * *

■ 3. Amend § 263.2 by:

■ a. Revising paragraphs (a)(1) through (5);

■ b. Revising paragraph (b) introductory text; and

■ c. Revising paragraphs (b)(2) and (c).

The revisions read as follows:

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) * * *

(1) An institution of higher education, or a TCU;

(2) A State educational agency in consortium with an institution of higher education or a TCU;

(3) A local educational agency (LEA) in consortium with an institution of higher education or a TCU;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education or a TCU; or

(5) A BIE-funded school in consortium with at least one TCU, where feasible.

(b) BIE-funded schools are eligible applicants for—

* * * * *

(2) A pre-service training program when the BIE-funded school applies in consortium with an institution of higher education that meets the requirements in paragraph (c) of this section.

(c) Eligibility of an applicant that is an institution of higher education or a TCU, or an applicant requiring a consortium with any institution of higher education or TCU, requires that the institution of higher education or TCU be accredited to provide the coursework and level of degree or Native American language certificate required by the project.

■ 4. Amend § 263.3 by:

■ a. Removing the definition of ''Bureau-funded school''; b. Adding the definition of ''BIE-funded school'';

■ c. Revising the definition of ''Full-time student'';

■ d. Removing the definition of ''Indian institution of higher education'';

■ e. In paragraph (5) of the definition of ''Indian organization'', adding the phrase ''or TCU'' after the phrase ''any institution of higher education'';

■ f. Revising the definitions of ''induction services'' and ''institution of higher education'';

■ g. Adding in alphabetical order the definitions of ''local educational agency (LEA) that serves a high proportion of Indian students'', ''Native American'', and ''Native American language'';

■ h. Adding, in the definition of ''Pre-service training'' the words '', or licensing or certification in the field of Native American language instruction'' after the word ''degree''; and

■ i. Adding in alphabetical order the definitions of ''qualifying employment'', ''Tribal College or University (TCU)'', and ''Tribal educational agency''.

The additions and revisions read as follows:

§ 263.3 What definitions apply to the Professional Development program?

* * * * *

BIE-funded school means a Bureau of Indian Education school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

* * * * *

Full-time student means a student who—

(1) Is a candidate for a baccalaureate degree, graduate degree, or Native American language certificate, as appropriate for the project;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

* * * * *

Induction services means services provided—

(1)(i) By educators, local traditional leaders, or cultural experts;

(ii) For the one, two, or three years of qualifying employment, as designated by the Department in the notice inviting applications; and

(iii) In LEAs that serve a high proportion of Indian students;

(2) To support and improve participants' professional performance and promote their retention in the field of education and teaching, and that include, at a minimum, these activities:

(i) High-quality mentoring, coaching, and consultation services for the participant to improve performance.

(ii) Access to research materials and information on teaching and learning.

(iii) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction.

(iv) Clear, timely, and useful feedback on performance, provided in coordination with the participant's supervisor.

(v) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

* * * * *

Institution of higher education (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

(1) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or

(2) An LEA, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Native American means ''Indian'' as defined in section 6151(3) of the Elementary and Secondary Education Act, as amended, which includes Alaska Native and members of federally-recognized or State-recognized Tribes; Native Hawaiian; and Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

* * * * *

Qualifying employment means employment in an LEA that serves a high proportion of Indian students.

* * * * *

Tribal college or university (TCU) has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

* * * * *

■ 5. Amend § 263.4 by:

■ a. Removing the word ''and'' at the end of paragraph (c)(2);

■ b. Removing the period at the end of paragraph (c)(3) and adding, in its place, a semicolon; and

■ c. Adding paragraphs (c)(4) and (5).

The additions read as follows:

§ 263.4 What costs may a Professional Development program include?

* * * * *

(c) * * *

(4) Teacher mentoring programs, professional guidance, and instructional support provided by educators, local traditional leaders, or cultural experts, as appropriate for teachers for up to their first three years of employment as teachers; and

(5) Programs designed to train traditional leaders and cultural experts to assist participants with relevant Native language and cultural mentoring, guidance, and support.

* * * * *

§§ 263.5 through 263.12 [Redesignated]

■ 6. Redesignate §§ 263.5 through 263.12 as §§ 263.6 through 263.13.

■ 7. Add a new § 263.5 to read as follows:

§ 263.5 What are the application requirements?

An applicant must—

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders;

(2) Use funds made available under the grant to support the recruitment, preparation, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students; and

(3) Assist participants in meeting the payback requirements under § 263.9(b);

(b) Submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of ''LEA that serves a high proportion of Indian students''; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'';

(d) If it is an affected LEA that is subject to the requirements of section 8538 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, as required under ESEA section 8538; and

(e) Comply with any other requirements in the application package.

■ 8. Amend redesignated § 263.6 by:

■ a. In paragraphs (a)(1) and (a)(2)(i), removing the phrase ''Indian institution of higher education'' wherever it appears and adding, in its place, ''TCU'';

■ b. Adding a heading to paragraphs (a)(1) and (2);

■ c. Removing the word ''or'' at the end of paragraph (b)(1)(i)(B);

■ d. Adding the word ''or'' at the end of paragraph (b)(1)(i)(C);

■ e. Adding new paragraph (b)(1)(i)(D);

■ f. Revising paragraph (b)(1)(ii);

■ g. In paragraph (b)(1)(iii)(D), removing the word ''jobs'' and adding, in its place, ''employment'';

■ h. Revising paragraph (b)(2)(ii);

■ i. In paragraph (b)(2)(iii)(D), removing the word ''jobs'' and adding, in its place, the word ''employment'';

■ j. Revising paragraph (b)(3); and

■ k. Adding paragraph (b)(4).

The additions and revisions read as follows:

§ 263.6 What priority is given to certain projects and applicants?

(a) * * *

(1) *Tribal Applicants.* * * *

(2) *Consortium Applicants, Non-Tribal Lead.* * * *

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Training in the field of Native American language instruction;

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications, while participants are completing their work-related payback in schools in LEAs that serve a high proportion of Indian students; and

* * * * *

(2) * * *

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications while administrators are completing their work-related payback as administrators in LEAs that serve a high proportion of Indian students; and

* * * * *

(3) *Pre-service administrator training for work in Tribal educational agencies.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training on working for a TEA, and opportunities for participants to work with or for TEAs during the training period; and

(iii) Include efforts by the applicant to place participants in administrator jobs in TEAs following program completion.

(4) *Pre-service administrator training for school start-ups.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training to support the capacity of school leaders to start new schools that serve Indian students, such as charter schools or schools transitioning from BIE-operated to Tribally controlled; and

(iii) Include efforts by the applicant to place participants in administrator jobs with entities planning to start or transition a school to serve Indian students.

* * * * *

■ 9. Amend redesignated § 263.7 by:

■ a. Revising paragraph (a)(2);

■ b. In paragraph (c)(1)(iv), removing the word ''jobs'' and adding, in its place, the word ''employment'';

■ c. Revising paragraphs (c)(2) and (3);

■ d. Amending paragraph (d)(1) by removing the phrase ''schools with significant Indian populations'' and adding, in its place, the phrase ''LEAs that serve a high proportion of Indian students'';

■ e. Adding to the end of paragraph (d)(3) the phrase ''and that offer qualifying employment opportunities'';

■ f. Adding paragraph (d)(5); and

■ g. Removing paragraph (e)(3).

The additions and revisions read as follows:

§ 263.7 How does the Secretary evaluate applications for the Professional Development program?

* * * * *

(a) * * *

(2) The extent to which LEAs with qualifying employment opportunities exist in the project's service area, as demonstrated through a job market analysis, and have provided a letter of support for the project.

* * * * *

(c) * * *

(2) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program.

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a

job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students and developing programs that meet their employment needs.

(d) * * *

(5) The extent to which the applicant will assist participants in meeting the service obligation requirements.

* * * * *

■ 10. Amend newly redesignated § 263.8 by revising paragraph (b) to read as follows:

§ 263.8 What are the requirements for a leave of absence?

* * * * *

(b) The project director may approve a leave of absence, for a period not longer than 12 months, provided the participant has completed a minimum of 50 percent of the training in the project and is in good standing at the time of request.

* * * * *

■ 11. Amend newly redesignated § 263.9 by:

■ a. In paragraph (b)(1), removing the word ''people'' and adding, in its place, the word ''students'' and removing the words ''school that has a significant Indian population'' and adding, in their place, the words ''LEA that serves a high proportion of Indian students''; and

■ b. Adding a note at the end of this section.

The addition reads as follows:

§ 263.9 What are the payback requirements?

* * * * *

Note to § 263.9: For grants that provide administrator training, a participant who has received administrator training and subsequently works for a Tribal educational agency that provides administrative control or direction of public schools (*e.g.,* BIE-funded schools or charter schools) satisfies the requirements of paragraph (b)(1) of this section.

§ 263.11 [Amended]

■ 12. Amend newly redesignated § 263.11 by removing the word ''people'' in paragraph (b)(1) and adding, in its place, the phrase ''students in an LEA that serves a high proportion of Indian students''.

■ 13. Amend newly redesignated § 263.12 by:

■ a. Removing the word ''and'' at the end of paragraph (c)(1)(ii);

■ b. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv) and adding a new paragraph (c)(1)(iii);

■ c. Removing in paragraph (c)(2) the word ''seven'' and adding, in its place, the word ''thirty''; and

■ d. Revising the authority citation.

The addition and revision read as follows:

§ 263.12 What are the grantee post-award requirements?

* * * * *

(c) * * *

(1) * * *

(iii) A statement explaining that work must be in an ''LEA that serves a high proportion of Indian students,'' and the regulatory definition of that phrase; and

* * * * *

(Authority: 20 U.S.C. 7442, 25 U.S.C. 5304, 5307)

[FR Doc. 2020–13426 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0025; Catalog of Federal Domestic Assistance (CFDA) Number: 84.373M.]

Final Priority and Requirements—Technical Assistance on State Data Collection—IDEA Data Management Center

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Final priority and requirements.

SUMMARY: The Department of Education (Department) announces a priority and requirements under the Technical Assistance on State Data Collection Program. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements of the Individuals with Disabilities Education Act (IDEA). The IDEA Data Management Center (Data Management Center) will assist States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability by enhancing, streamlining, and integrating their IDEA Part B data into their State longitudinal data systems and will customize its TA to meet each State's specific needs.

DATES: This priority and these requirements are effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Bae, U.S. Department of Education, 400 Maryland Avenue SW, Room 5016C, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–8272. Email: *Amy.Bae@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; and the Further Consolidated Appropriations Act, 2020 give the Secretary authority to use funds reserved under section 611(c) to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.'' Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of Public Law 115–245; 132 Stat. 3100 (2018). Further Consolidated Appropriations Act, 2020; Div. A, Title III of Public Law 116–94; 133 Stat. 2590 (2019).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442; the Department

of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Div. B, Title III of Public Law 115–245, 132 Stat. 3100 (2018); and Further Consolidated Appropriations Act, 2020, Div. A, Title III of Public Law 116–94, 133 Stat. 2590 (2019).

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority and requirements (NPP) for this program in the **Federal Register** on November 13, 2019 (84 FR 61585). The NPP contained background information and our reasons for proposing the particular priority and requirements.

There are differences between the NPP and this notice of final priority and requirements (NFP) as discussed in the *Analysis of Comments and Changes* section of this document. The only substantive changes provide examples of potential stakeholders.

Public Comment: In response to our invitation to comment in the NPP, 18 parties submitted comments on the proposed priority and requirements.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority and requirements.

Analysis of Comments and Changes: An analysis of the comments and changes in the priority and requirements since publication of the NPP follows. OSERS received comments on several specific topics, including whether the establishment of two centers (*i.e.,* one center addressing the needs of Developed Capacity States, and another center addressing the needs of Developing Capacity States) would be an efficient and effective approach to meeting the diverse needs of States in integrating, reporting, analyzing, and using high-quality IDEA Part B data. Each topic is addressed below.

General Comments

Comments: All commenters expressed overall support for the proposed Data Management Center, and a number of commenters noted the positive impact of the valuable TA they received from centers previously funded under this program.

Discussion: The Department appreciates the comments and agrees with the commenters. Centers funded under this program provide necessary and valuable TA to the States.

Changes: None.

Providing TA to Developing and Developed Capacity States

Comments: In response to our directed question about whether to establish two centers, the majority of the commenters did not support establishing two data management centers (*i.e.,* one center addressing the needs of Developed Capacity States, and another center addressing the needs of Developing Capacity States). These commenters noted that creating two data management centers would (1) generate unnecessary redundancies and result in inefficient use of Federal TA resources; (2) make it difficult for States to learn valuable lessons regarding the integration of IDEA data into State longitudinal data systems from their colleagues; and (3) create confusion regarding the scope of the centers and which States would be served by which of the two data management centers. The commenters noted that one data management center would be able to support both the Developed Capacity States and Developing Capacity States through systematic planning.

Discussion: The Department agrees that establishing two data management centers would generate unnecessary redundancies, be an inefficient use of resources, make it difficult for States to learn from each other, and create confusion over the individual scopes of the centers and which States would be served by which of the two data management centers. Therefore, we have not incorporated the two-center structure into the final priority and requirements.

Changes: None.

Comments: One commenter was supportive of establishing two data management centers and suggested that one center focus on the technical capacity of States to collect, access, and appropriately share high-quality, timely data and the other center focus on the human capacity to more effectively analyze, access, and apply data in efforts to improve policy, programs, placement, and instructional practice.

Discussion: The Department believes that building a State's technical capacity and human capacity to integrate IDEA data into State longitudinal data systems are both necessary components to achieving the outcomes of this priority. However, we believe that the TA on these components needs to be provided in a coordinated fashion that allows data governance principles to guide the data integration work. We have concluded that separating the TA provided on these components between two centers would result in a disjointed and fragmented approach to data integration and a less efficient and effective manner to achieving the outcomes of this priority. Therefore, we have not incorporated the two-center structure into the final priority and requirements.

Changes: None.

Comments: Another commenter was supportive of establishing two data management centers and argued that the Department should provide examples of the types of TA that each of the data management centers would provide in order to delineate the distinct roles and responsibilities of each center and help States identify their needs and capacity in this area.

Discussion: The Department appreciates the comment; however, we have concluded that establishing two data management centers to meet the needs of States in integrating, reporting, analyzing, and using high-quality IDEA Part B data would result in overlapping scopes, redundancy of TA products and services, and an inability for States to learn from their colleagues in the areas of data management and integration. The Department believes that one data management center will be an efficient and effective approach to meeting the needs of Developing Capacity States and Developed Capacity States.

Changes: None.

Comments: Some commenters noted that States cannot easily be categorized into Developed or Developing Capacity States. They argued that data management and integration activities exist on a dynamic and ever-changing continuum and that States may have some of their IDEA data linked or integrated into the State longitudinal data system while other IDEA data are not linked or integrated. Additionally, they argued States may move back and forth between these two groups as situations and support for data management and integration work within States changes over time.

Discussion: The Department agrees that data management and integration activities exist on a continuum; however, we believe it is important to focus intensive, sustained TA on Developing Capacity States. We recognize that a State's status as a Developing Capacity State may change, and that the intensive, sustained TA will shift along with a State's status, including whether that status is based on a portion of a State's data linkages. We continue to believe that the Data Management Center should prioritize those States that present as Developing Capacity States.

Changes: None.

Including IDEA Part C Early Intervention and Part B Preschool Special Education Data

Comments: A number of commenters supported including IDEA Part C early intervention and Part B preschool special education data in the scope of the Data Management Center. These commenters noted that States are currently using these data to enhance their ability to answer critical questions that help evaluate and improve early childhood programs and services. Additionally, they discussed the value of linking data across sources both vertically (birth to 21 years and beyond) as well as horizontally (across programs such as IDEA, Head Start, pre-kindergarten (pre-k), child care, child welfare, health, Title I, etc.) to provide powerful information about the value of these programs as they work to improve outcomes for children and families.

Discussion: The Department agrees that the Data Management Center should support building State capacity to integrate IDEA Part B data, including the Part B preschool special education data, as required under sections 616 and 618 of IDEA, within their longitudinal data systems. All references to IDEA Part B data throughout the priority are inclusive of the Part B preschool special education data.

Additionally, the Department agrees with the value of linking IDEA Part C early intervention data vertically and horizontally to data and data systems used to support other early childhood and school age programs (*e.g.,* IDEA, Head Start, pre-k, child care, child welfare, health, Title I). Such linkages must appropriately address the applicable privacy and confidentiality requirements under IDEA Part C, Head Start, and the Family Educational Rights and Privacy Act (FERPA).

The Department currently funds the Center for IDEA Early Childhood Data Systems (CFDA number 84.373Z). That center focuses on early childhood data issues, including the unique privacy and confidentiality requirements applicable to IDEA Part C, which are not the focus of this center. By contrast, the preschool special education data are subject to the same requirements as the school-aged special education data under both IDEA Part B and FERPA.

Therefore, the Department believes that including the IDEA Part C early intervention data in this priority would create unnecessary overlap in the scope of the two centers and potential duplication of TA products and services, specifically as it relates to issues of privacy and confidentiality.

Changes: None.

Expanding the Types and Roles of Stakeholders

Comments: A few commenters recommended specifying the following stakeholders in outcome (b): Parents, advocates, policymakers, school personnel, local and State school boards, researchers, charter school authorizers, and Indian Tribes and Tribal organizations.

Discussion: The Department agrees that broad stakeholder involvement is very important to the success of a center. We are revising the priority to include examples of potential stakeholders for States to consider when developing products to report their special education data.

Changes: We have revised outcome (b) to include the following examples of stakeholders: Policymakers, school personnel, local and State school boards, local educational agency (LEA) administrators, researchers, charter school authorizers, parents and advocates, and Indian Tribes and Tribal organizations.

Comments: A few commenters requested that we require the Data Management Center to establish an advisory group comprised primarily of State data managers who can help determine needs and focus priorities of the Data Management Center.

Discussion: The Department appreciates the comment; however, we do not believe an advisory board is necessary and anticipate that the Data Management Center will engage established data groups, made up, for example, of State data managers, to determine the needs and focus priorities of the Data Management Center. Further, this center will be required to support a user group of States that are using an open source electronic tool for reporting IDEA Part B data required under sections 616 and 618 of IDEA, as noted in paragraph (g) of the TA requirements. We anticipate that this user group will provide additional feedback and direction on the functionality of the center's open source electronic tool.

Changes: None.

TA Needs of States

Comments: Some commenters argued that we should require the Data Management Center to offer differing levels of expertise and services based on the various needs of the States.

Discussion: The Department agrees. The Data Management Center will provide three levels of TA associated with improving States' capacity to report high-quality IDEA Part B data required under sections 616 and 618 of IDEA through their State longitudinal data systems: (1) Intensive, sustained TA; (2) targeted, specialized TA; and (3) universal, general TA. Because this requirement is already incorporated into requirement (b)(5)(iii)(C), no changes are necessary.

Changes: None.

Comments: Some commenters requested that we clarify how the TA needs of States are identified and the center will meet the needs of charter schools that are public schools within an LEA and charter schools that operate as their own LEA.

Discussion: Applicants under this priority will be required to describe how they will identify the TA needs of States. This priority does not require a specific approach to identifying the State TA needs. However, the Department agrees that charter schools should be identified as a stakeholder group when the center is identifying outputs (*e.g.,* reports, Application Programming Interface, new innovations) of an open source electronic tool.

Changes: We have revised TA requirement (e) pertaining to targeted and general TA products and services to include charter schools as an example of stakeholders States should consider when identifying outputs generated by the Data Management Center's open source electronic tool.

Comments: A few commenters requested that we incorporate additional requirements into the ''Significance'' section. Generally, these commenters suggested that applicants present information about best practice strategies on data integration that result in reduced administrative burdens for multiple users and increase the potential relevant IDEA Part B and longitudinal data for use outside of IDEA oversight.

Discussion: The Department appreciates the comment; however, we believe these requirements are outside the scope of this Data Management Center, though the center will support States in their efforts to implement data integration strategies to meet the needs of their stakeholder groups, which we have further identified as a way to better address the data use needs of schools.

Changes: As discussed above, we have revised outcome (b) to include the following examples of stakeholders: Policymakers, school personnel, local and State school boards, LEA administrators, researchers, charter school authorizers, parents and advocates, and Indian Tribes and Tribal organizations.

Comments: One commenter requested that we clarify that the TA provided by the center will meet the needs of any

applying entity regardless of size, including Indian Tribes and Tribal organizations.

Discussion: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements, which apply to all of the entities that receive an IDEA Part B grant (*i.e.,* the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, each of the outlying areas and the freely associated States, and the Bureau of Indian Education). While the Data Management Center would not directly provide intensive, targeted, and universal TA to entities other than those that receive IDEA Part B grants, it would support those grantees' reporting of IDEA Part B data to different stakeholder groups including LEAs, charter schools, and Indian Tribes and Tribal organizations.

Changes: None.

Comments: One commenter requested that the references to Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), in outcome (e) be revised to ''all titles'' of ESEA.

Discussion: The Department appreciates the concern but did not intend the list of examples provided in outcome (e) to be exhaustive. The Data Management Center will support States in their efforts to identify the Federal programs to analyze.

Changes: None.

Comments: A commenter requested that we revise requirement (1) under ''Quality of project services'' to *prioritize* the treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, rather than ensure their equal access and treatment.

Discussion: The Department appreciates the comment. Requirement (1) under ''Quality of project services'' mirrors the language in the related selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210). Under this requirement, applicants must demonstrate how the proposed project will ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. We believe that the proposed requirement adequately addresses our interest in ensuring that project services are designed to ensure equal access to traditionally underrepresented groups.

Changes: None.

Intended Outcomes of Integrated State Longitudinal Data Systems

Comments: A commenter requested the Department clarify that the end result of an integrated State longitudinal data system should be to inform State and district decision-making in regard to targeting needed resources to protect civil rights and to improving the outcomes of students with disabilities.

Discussion: The Department agrees that States should use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs in order to improve IDEA programs and the outcomes of children with disabilities. We believe outcome (e) addresses the requested clarification. Outcome (e) states, ''The Data Management Center must be designed to achieve, at a minimum . . . [i]ncreased capacity of States to use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs (*e.g.,* IDEA, Title I of the ESEA) in order to improve IDEA programs and the outcomes of children with disabilities.''

Changes: None.

Comments: A commenter requested that the Department add language that States must work to ensure they utilize charter school and traditional public school data to protect civil rights and improve the outcomes of students with disabilities.

Discussion: The Department appreciates the comment; however, we believe specifying how States utilize data in their analyses is beyond the scope of this priority. The Data Management Center will support States in their efforts to integrate their IDEA Part B data required under sections 616 and 618 of IDEA within their longitudinal data systems and use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs.

Changes: None.

Data Collection Under IDEA

Comments: A commenter recommended that State IDEA data collections capture the following data elements:

- Whether the student has a speech or language disorder;
- If the student is receiving IDEA services, the disability category and whether it is the primary or secondary impairment;
- If the student is receiving services under section 504, the disability category and whether it is the primary or secondary impairment;
- Whether the student is receiving hearing or speech and language services; and
- If the student has hearing loss, whether it is in one or both ears; the degree of hearing loss in each ear; and the type of hearing instruments used in the classroom setting.

Discussion: The Department appreciates the comment; however, this priority does not address the data collection and reporting requirements for States under IDEA. The ED*Facts* information collection package (OMB control number 1850–0925), which would more appropriately address these issues, was published in the **Federal Register** on April 8, 2019 (84 FR 13913). It addressed the IDEA Section 618 Part B data collection requirements and was open for public comment from April 8, 2019, to May 8, 2019.

Changes: None.

Final Priority:

IDEA Data Management Center.

The purpose of this priority is to fund a cooperative agreement to establish and operate an IDEA Data Management Center (Data Management Center). The Data Management Center will respond to State needs as States integrate their IDEA Part B data required to meet the data collection requirements in section 616 and section 618 of IDEA, including information collected through the IDEA State Supplemental Survey, into their longitudinal data systems. This will improve the capacity of States to collect, report, analyze, and use high-quality IDEA Part B data to establish and meet high expectations for each child with a disability. The Data Management Center will help States address challenges with data management procedures and data systems architecture and better meet current and future IDEA Part B data collection and reporting requirements. The Data Management Center's work will comply with the privacy and confidentiality protections in the Family Educational Rights and Privacy Act (FERPA) and IDEA. The Data Management Center will not provide the Department with access to child-level data and will further ensure that such data is de-identified, as defined in 34 CFR 99.31(b)(1).

The Data Management Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to integrate IDEA Part B data required under sections 616 and 618 of IDEA within their longitudinal data systems;

(b) Increased use of IDEA Part B data within States by developing products to allow States to report their special education data to various stakeholders (*e.g.,* policymakers, school personnel, local and State school boards, LEA administrators, researchers, charter school authorizers, parents and advocates, Indian Tribes and Tribal organizations) through their longitudinal data systems;

(c) Increased number of States that use data governance and data management procedures to increase their capacity to meet the IDEA Part B reporting requirements under sections 616 and 618 of IDEA;

(d) Increased capacity of States to utilize their State longitudinal data systems to collect, report, analyze, and use high-quality IDEA Part B data (including data required under sections 616 and 618 of IDEA); and

(e) Increased capacity of States to use their State longitudinal data systems to analyze high-quality data on the participation and outcomes of children with disabilities across various Federal programs (*e.g.,* IDEA, Title I of the ESEA) in order to improve IDEA programs and the outcomes of children with disabilities.

In addition, the Data Management Center must provide a range of targeted and general TA products and services for improving States' capacity to report high-quality IDEA Part B data required under sections 616 and 618 of IDEA through their State longitudinal data systems. Such TA should include, at a minimum—

(a) In partnership with the Department, supporting, as needed, the implementation of an existing open source electronic tool to assist States in building ED*Facts* data files and reports that can be submitted to the Department and made available to the public. The tool must utilize Common Education Data Standards (CEDS) and meet all States' needs associated with reporting the IDEA Part B data required under sections 616 and 618 of IDEA;

(b) Developing and implementing a plan to maintain the appropriate functionality of the open source electronic tool described in paragraph (a) as changes are made to data collections, reporting requirements, file specifications, and CEDS (such as links within the system to include TA products developed by other Office of Special Education Programs (OSEP)/Department-funded centers or contractors);

(c) Conducting TA on data governance to facilitate the use of the open source electronic tool and providing training to State staff to implement the open source electronic tool;

(d) Revising CEDS ''Connections'' [1] to calculate metrics needed to report the IDEA Part B data required under sections 616 and 618 of IDEA;

(e) Identifying other outputs (*e.g.,* reports, Application Programming Interface, new innovations) of an open source electronic tool that can support reporting by States of IDEA Part B data to different stakeholder groups (*e.g.,* LEAs, charter schools, legislative branch, parents);

(f) Supporting the inclusion of other OSEP/Department-funded TA centers' products within the open source electronic tool or building connections that allow the SEAs to pull IDEA Part B data efficiently into the other TA products;

(g) Supporting a user group of States that are using an open source electronic tool for reporting IDEA Part B data required under sections 616 and 618 of IDEA; and

(h) Developing products and presentations that include tools and solutions to challenges in data management procedures and data system architecture for reporting the IDEA Part B data required under sections 616 and 618 of IDEA.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Requirements:

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with State data management procedures, data systems architecture, and building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the difficulties that States have encountered in the collection and submission of valid and reliable IDEA Part B data;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to IDEA Part B data collections and ED*Facts* file specifications for the IDEA Part B data collections; and

(iii) Present information about the current level of implementation of integrating IDEA Part B data within State longitudinal data systems and the reporting of high-quality IDEA Part B data to the Department and the public.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients for TA and information;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

[1] A Connection is a way of showing which CEDS data elements might be necessary for answering a data question. For users who have aligned their data systems to CEDS, States will be able to utilize these Connections via the Connect tool to see which data elements, in their own systems, would be needed to answer any data question.

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[2] To meet this requirement, the applicant must describe—

(i) The current research on data collection strategies, data management procedures, and data systems architecture; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on States' data management processes and data systems architecture;

(ii) Its proposed approach to universal, general TA,[3] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels;

(C) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of Developing Capacity States; [5] and

(D) The process by which the proposed project will collaborate with other OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,[6] which must identify—

(A) The intended recipients, which must be Developing Capacity States, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to address States' challenges associated with integrating IDEA Part B data within State longitudinal data systems and to report high-quality IDEA Part B data to the Department and the public, which should, at a minimum, include providing on-site consultants to SEAs to—

(*1*) Model and document data management and data system integration policies, procedures, processes, and activities within the State;

(*2*) Support the State's use of an open source electronic tool and provide technical solutions to meet State-specific data needs;

(*3*) Develop a sustainability plan for the State to maintain the data management and data system integration work in the future; and

(*4*) Support the State's cybersecurity plan in collaboration, to the extent appropriate, with the Department's Student Privacy Policy Office and its Privacy Technical Assistance Center;

(C) Its proposed approach to measure the readiness of the SEAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local district levels;

(D) Its proposed plan to prioritize Developing Capacity States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part B data, as well as State data management procedures and data systems architecture for building ED*Facts* data files and reports for timely reporting of the IDEA Part B data to the Department and the public; and

(G) The process by which the proposed project will collaborate and coordinate with other OSEP-funded centers and other Department-funded TA investments, such as the Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, to develop and implement a coordinated TA plan; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

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[2] For purposes of these requirements, ''evidence-based practices'' means practices that, at a minimum, demonstrate a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Developed Capacity States'' are defined as States that can demonstrate that their data systems include linkages between special education data and other early childhood and K–12 data. Projects funded under this focus area will focus on helping such States utilize those existing linkages to report, analyze, and use IDEA Part B data.

''Developing Capacity States'' are defined as States that have a data system that does not include linkages between special education data and other early childhood and K–12 data. Projects funded under this focus area will focus on helping such States develop those linkages to allow for more accurate and efficient reporting, analysis, and use of IDEA Part B data.

[6] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[7] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the State Performance Plan/Annual Performance Report (SPP/APR) and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and how funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (A) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (B) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget to provide intensive, sustained TA to at least 25 States.

This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority and these requirements, we invite applications through a notice in the **Federal Register**.

[7] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the final priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that the costs associated with this final priority and requirements will be minimal, while the benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action will be limited to paperwork burden related to preparing an application. The benefits of implementing the program—including improved data integration and improved data quality—will outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

Regulatory Alternatives Considered

The Department believes that the priority and requirements are needed to administer the program effectively.

Paperwork Reduction Act of 1995

The final priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the final priority and requirements do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this final regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this final regulatory action will affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs

imposed on an applicant by the final priority and requirements will be limited to paperwork burden related to preparing an application and that the benefits of this final priority and these final requirements will outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the final priority and requirements will impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity will evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity will most likely apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the final priority and requirements will not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the final action. That is, the length of the applications those entities would submit in the absence of the final regulatory action and the time needed to prepare an application will likely be the same.

This final regulatory action will not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

Commissioner, Rehabilitation Services Administration, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–14073 Filed 7–8–20; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD36

Land Uses; Special Uses; Procedures for Operating Plans and Agreements for Powerline Facility Maintenance and Vegetation Management Within and Abutting the Linear Boundary of a Special Use Authorization for a Powerline Facility

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is amending its existing special use regulations to implement section 512 of the Federal Land Policy and Management Act (FLPMA), as added by section 211 of division O, Consolidated Appropriations Act, 2018 (hereinafter ''section 512''). This section governs the development and approval of operating plans and agreements for maintenance and vegetation management of electric transmission and distribution line facilities (powerline facilities) on National Forest System (NFS) lands inside the linear boundary of special use authorizations for powerline facilities and on abutting NFS lands to remove or prune hazard trees.

DATES: This rule is effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Reggie Woodruff, Energy Program Manager, Lands and Realty Management, (202) 205–1196 or *reginal.woodruff@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Need for the Final Rule

The final rule is being promulgated pursuant to section 512 (43 U.S.C. 1772), which is an amendment to Title V of FLPMA (43 U.S.C. 1761–1772). Section 501(a)(5) of FLPMA (43 U.S.C. 1761(a)(5)) authorizes the Forest Service to issue or reissue right-of-way authorizations for powerline facilities on NFS lands. Section 501(b)(1) of FLPMA (43 U.S.C. 1761(b)(1)) provides that prior to issuing or reissuing a special use authorization for a right-of-way, the Forest Service must require that the applicant submit any plans, contracts, or other information related to the proposed or existing use of the right-of-way that the Agency deems necessary to determine, in accordance with FLPMA, whether to issue or reissue the authorization and the terms and conditions that should be included in the authorization.

Section 503(c) of FLPMA (43 U.S.C. 1763(c)) provides that right-of-way authorizations must be issued or reissued pursuant to Title V of FLPMA and its implementing regulations and must also be subject to such terms and conditions as the Forest Service may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Section 505 of FLPMA (43 U.S.C. 1765) gives the Forest Service broad discretion to establish terms and conditions in right-of-way authorizations, including terms and conditions that will effectuate the purposes of FLPMA and its implementing regulations and minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment (43 U.S.C. 1765(a)(i)–(ii)). In addition, section 505(b) (43 U.S.C. 1765(b)) requires the Forest Service to include terms and conditions in right-of-way authorizations that the Agency deems necessary to protect federal property and economic interests; efficiently manage the lands which are subject or adjacent to the right-of-way; protect lives and property; protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; require location of the right-of-way along a route that will cause

least damage to the environment, taking into consideration feasibility and other relevant factors; and otherwise protect the public interest in the lands traversed by or adjacent to the right-of-way.

Consistent with this statutory authority, the Forest Service regulates the occupancy and use of NFS lands for powerline facilities through issuance of a special use authorization under 36 CFR part 251, subpart B. The Forest Service must include in special use authorizations terms and conditions the Agency deems necessary to effectuate the purposes of FLPMA and its implementing regulations (36 CFR 251.56(a)(1)(i)(A)); minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment (36 CFR 251.56(a)(1)(i)(B)); protect federal property and economic interests (36 CFR 251.56(a)(1)(ii)(A)); efficiently manage the lands subject and adjacent to the authorized use (36 CFR 251.56(a)(1)(ii)(B)); protect lives and property (36 CFR 251.56(a)(1)(ii)(D)); protect the interests of individuals living in the general area of the authorized use who rely on resources of the area (36 CFR 251.56(a)(1)(ii)(E)); and otherwise protect the public interest (36 CFR 251.56(a)(1)(ii)(G)).

Based on these statutory and regulatory requirements, the Forest Service issues special use authorizations for powerline facilities that require the holder, in consultation with the Forest Service, to prepare an operating plan that includes provisions governing powerline facility maintenance and vegetation management on NFS lands within and abutting the right-of-way (43 U.S.C. 1761(b)(1); 36 CFR 251.56(a)(1)). Special use authorizations for powerline facilities on NFS lands also require Forest Service approval of the operating plan before it is implemented.

In 2018, Congress amended FLPMA to add section 512, which establishes requirements for the development and approval of operating plans and agreements for powerline facility maintenance and vegetation management on NFS lands within the linear boundary of a special use authorization for a powerline facility and on abutting NFS lands to remove or prune hazard trees. These requirements build on the Forest Service's preexisting authority in section 501(b)(1) of FLPMA (43 U.S.C. 1761(b)(1)) to require holders of powerline facility authorizations to have an operating plan. This final rule implements section 512.

Section 512 of FLPMA repeatedly uses the phrase, ''on abutting lands, including hazard trees,'' in referring to vegetation management outside the linear boundary of a special use authorization for a powerline facility that is covered by the operating plan or agreement for that authorization. Taking section 512 as a whole, the phrase, ''on abutting lands, including hazard trees,'' is best interpreted as referring to hazard trees on abutting lands. The definition for ''hazard tree'' in section 512 contains specific parameters for determining the location of hazard trees outside the linear boundary of a special use authorization for a powerline (*i.e.,* if the trees failed, they would be likely to cause substantial damage or disruption to a transmission or distribution facility or come within 10 feet of an electric power line). To that extent, the definition for ''hazard tree'' prescribes the scope of vegetation management on NFS lands abutting the linear boundary of an authorization for a powerline facility. Accordingly, to clarify the scope of vegetation management on abutting NFS lands under section 512 of FLPMA, the preamble and the text of the final rule refer to vegetation management ''on abutting lands to remove or prune hazard trees as defined in the final rule.''

The Department anticipates that implementation of the final rule will promote the reliability of the United States' electrical grid and will reduce the threat of damage to powerline facilities, natural resources, and nearby communities by streamlining approval for routine and emergency vegetation management on NFS lands within the linear boundary of a special use authorization for a powerline facility and on abutting NFS lands to remove or prune hazard trees as defined in the final rule.

Summary of Public Comments

On September 25, 2019, the Forest Service published a proposed rule in the **Federal Register** (84 FR 50698) with a 60-day comment period, ending November 25, 2019, to implement section 512. The Forest Service received 17 written comments, consisting of letters and web-based submittals. All commenters generally supported the proposed rule. Commenters were primarily electric utilities and generally expressed the need for additional details and clarity on how operating plans and agreements for a powerline facility would be reviewed and approved by the Agency.

The intent of this final rule is to incorporate the provisions of section 512 into the Forest Service's special use regulations, rather than to provide specific direction on how to implement those provisions, such as specifying timeframes and steps for Forest Service review and approval of operating plans and agreements for a powerline facility or categories of actions covered by operating plans and agreements for a powerline facility that are categorically excluded from documentation in an environmental assessment (EA) or environmental impact statement (EIS). In coordination with the U.S. Department of the Interior's Bureau of Land Management (BLM), which is also subject to section 512, the Forest Service will publish proposed directives for public comment that would provide specific direction on how to implement section 512 consistent with BLM's implementation of the statute.

Comments and Responses

Comment: Multiple commenters recommended that the Agency specifically identify categorical exclusions from documentation in an EA or EIS (CEs) that could be used for vegetation management of powerline facilities, maintenance of powerline facilities, and other types of activities conducted on NFS lands within the linear boundary of a special use authorization for a powerline facility and on abutting NFS lands to remove or prune hazard trees as defined in the final rule. Additionally, multiple commenters noted the need for clarity on the applicability of consultation requirements under the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) for those activities and how the Agency would meet those requirements with the 120-day period for review and approval of proposed operating plans and agreements for powerline facilities.

Response: The Agency has confirmed that it has CEs to support expedited approval of routine maintenance that involves minimal ground disturbance and routine vegetation management that involves limited areas on NFS lands within the linear boundary of a special use authorization for an existing powerline facility and on abutting NFS lands to remove or prune hazard trees as defined in the final rule. Discussions with the U.S. Department of the Interior and the Advisory Council on Historic Preservation have confirmed that Forest Service approval of routine maintenance and vegetaton management on NFS lands within the linear boundary of an authorization for an existing powerline facility, and on abutting NFS lands to remove or prune hazard trees as defined in the final rule, requires consultation under the ESA and NHPA. Additional evaluation and discussions are ongoing about review and approval of powerline facility activities to determine the content of additional applicable CEs,

whether to propose legislation or amendments to Forest Service NEPA regulations, and to determine the applicability of programmatic agreements to satisfy consultation under the ESA and NHPA. Those discussions will inform the Agency's forthcoming proposed directives implementing this final rule.

Comment: Multiple commenters expressed concern that the proposed rule did not address coordination between the Forest Service and BLM to develop a common process for approving operating plans and agreements for powerline facilities and vegetation management, maintenance, and inspections conducted under those operating plans and agreements.

Response: Consistent with section 512(c)(4)(A)(iv) of FLPMA, paragraph (h)(6)(i) of the final rule states that the procedures developed jointly with BLM will provide that a proposed operating plan or agreement must be approved, to the maximum extent practicable, within 120 days from the date the proposed operating plan or agreement was received by the authorized officer, with the understanding that such factors as the number of proposed operating plans and agreements under review by an authorized officer and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days from the date of receipt. Based on coordination with BLM as required by section 512(c)(4)(A)(iii) of FLPMA, paragraph (h)(6)(i) of the final rule also states that, to the maximum extent practicable, a proposed modification to an approved operating plan or agreement must be approved within 120 days from the date the proposed modification was received by the authorized officer.

The Department has determined that it would be more appropriate to enumerate other aspects of the process for approving operating plans and agreements for powerline facilities and vegetation management, maintenance, and inspections conducted under those operating plans and agreements in Forest Service directives, rather than in this final rule. The Forest Service will be publishing for public comment the proposed directives implementing this final rule. In addition, consistent with section 512(c)(4)(A) of FLPMA and paragraph (h)(6) of the final rule, the Forest Service is working with BLM to develop joint procedures for reviewing and approving proposed operating plans and agreements, which the Agency anticipates including in the proposed directives implementing this final rule.

The Department has determined that it would be more appropriate for operating plans and agreements to be in effect concurrently with their associated powerline authorization. Therefore, rather than providing for submission of a new proposed operating plan or agreement upon expiration of an existing operating plan or agreement before expiration of the corresponding powerline authorization, paragraph (h)(7) of the final rule provides that every 5 years from the approval date of an operating plan or agreement, the owner or operator must review and, as necessary, update the operating plan or agreement to ensure consistency with changed conditions and submit it to the authorized officer for review and approval. Like the proposed rule, paragraph (h)(7) of the final rule also provides that upon expiration of a special use authorization for a powerline facility, the owner or operator must prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and submit it to the authorized officer for review and approval.

Comment: Multiple commenters asked how the Agency would determine which existing operating plans are consistent with the requirements in section 512 of FLPMA and who would make that determination.

Response: Forest Service authorized officers have delegated authority to manage NFS lands under their jurisdiction in accordance with applicable statues, regulations, and Forest Service directives, including the authority to determine whether existing operating plans are consistent with section 512, as implemented by § 251.56(h) of this final rule. The Department agrees that the proposed rule did not specifically address the authorized officer's authority to make this determination. Accordingly, the Department has revised paragraph (h)(3) of the final rule to provide that the authorized officer, in consultation with the owner or operator of a powerline facility, will determine whether an existing operating plan for a powerline facility is consistent with § 251.56(h) and will notify the owner or operator of that determination, and that within 18 months of the date of notification that an existing operating plan is inconsistent with 36 CFR 251.56(h), the owner or operator must modify the existing operating plan to be consistent with 36 CFR 251.56(h) and submit it to the authorized officer for review and approval. The Department has further revised paragraph (h)(3) of the final rule to provide, pursuant to the authority in 43 U.S.C. 1761(b)(1), that if an owner or operator does not have an operating plan, within 3 years from the effective date of the final rule, the owner or operator must submit to the authorized officer a proposed operating plan consistent with 36 CFR 251.56(h) for review and approval.

Comment: Multiple commenters recommended that the Agency specify which reliability standards could be used by electric utilities to develop operating plans and agreements for a powerline facility.

Response: The Department has determined that it would be more appropriate to specify applicable reliability standards for powerline facility operating plans and agreements in forthcoming proposed Forest Service directives, which will be published for public comment.

Comment: Multiple commenters expressed concern about a lack of clarity regarding the difference between liability standards for powerline facility operating plans and liability standards for powerline facility operating agreements. One commenter stated that it was unfair to have a lower liability standard for one segment of the electric utility industry. Other commenters stated that strict liability should not apply to vegetation management for powerline facilities to give utilities a greater incentive to complete the work.

Response: The Department believes that the proposed and final rules clearly iterate the difference between liability standards for powerline facility operating plans and liability standards for powerline facility operating agreements. Consistent with section 512(g)(1), paragraph (h)(9)(i) of the final rule provides for both powerline facility operating plans and powerline facility operating agreements that strict liability in tort may not be imposed on an owner or operator of a powerline facility for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement. These conditions on strict liability in tort do not apply to any other type of special use besides powerline facilities.

In addition, consistent with section 512(g)(2), paragraph (h)(9)(ii) of the final rule provides that for 10 years from the date of enactment of section 512 on March 23, 2018, strict liability in tort for injury or damages resulting from activities conducted by an owner or operator under an approved powerline facility operating agreement may not exceed $500,000 per incident. This limitation on strict liability in tort

applies only to powerline facility operating agreements. It does not apply to powerline facility operating plans or to operating plans for any other types of special uses.

Section 504(h)(2) of FLPMA (43 U.S.C. 1764(h)(2)), which is codified in the Forest Service's regulations at 36 CFR 251.56(d)(2), provides that any regulation imposing strict liability in tort must include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented.

Other than the requirement for a cap on strict liability in tort in section 504(h)(2), the conditions on strict liability in tort in section 512(g)(1) for operating plans and agreements, and the limitation in section 512(g)(2) on strict liability in tort for agreements, Title V of FLPMA imposes no restrictions on strict liabilty in tort under a special use authorization for a powerline facility, including for vegetation management on NFS lands within the linear boundary of the authorization and on abutting NFS lands to remove or prune hazard trees as defined in the final rule.

Comment: Multiple commenters requested that additional terms be defined and that the term ''non-emergency vegetation management'' be removed to reduce confusion in describing ''routine vegetation management.''

Response: The Department agrees that it would be helpful to add definitions to the final rule, consistent with Agency and utility industry practice and based on comments received on the proposed rule, for the following key terms of art in the context of powerline facility maintenance and vegetation management: ''emergency maintenance,'' ''non-routine maintenance,'' and ''routine maintenance''; ''emergency vegetation management'' and ''non-emergency (routine) vegetation management''; ''minimum vegetation clearance distance''; ''maximum operating sag''; and ''powerline facility.''

For simplicity, the Department has changed the term ''electric transmission or distribution facility'' to ''powerline facility,'' which is defined as ''one or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment for communications uses that solely support operation and maintenance of the electric distribution or transmission lines and is not leased to other parties for communications uses that serve other purposes.'' If an owner or operator leases space or communications equipment to other parties for purposes other than operation and maintenance of a powerline facility, a separate communications use authorization is required per 36 CFR 261.10(a) and Forest Service Handbook 2709.11, Chapter 90.

The Department has retained the term ''non-emergency vegetation management'' to clarify that it includes all vegetation management that is not encompassed by the term ''emergency vegetation management.'' However, because the utility industry typically uses the term ''routine vegetation management,'' the Department has added the word ''routine'' after the phrase ''non-emergency'' to this term and uses the term ''routine vegetation management'' elsewhere in the rule to refer to ''non-emergency vegetation management.''

In addition, the Department has clarified that the definition of ''hazard tree'' includes brush, shrubs, and other plants besides trees, since these other types of vegetation may also pose a risk to a powerline facility. The Department has also revised the definition for ''linear right-of-way'' to explain that the linear boundary of a right-of-way is delineated by its legal description. The revised definition clarifies what is meant by vegetation management on NFS lands inside the linear boundary of a special use authorization for a powerline and on abutting NFS lands to remove or prune hazard trees, for purposes of section 512 of FLPMA.

Comment: Multiple commenters expressed concern that the proposed regulation would require owners and operators to get additional written approval for powerline facility maintenance and vegetation management covered by an approved operating plan or agreement.

Response: To clarify written approval requirements, paragraph (h)(5)(vi) of the final rule requires operating plans and agreements to address the types of activities that the owner or operator will be allowed to conduct upon approval of the operating plan or agreement by the authorized officer without additional prior written approval under existing Forest Service regulations at 36 CFR 251.61, including routine vegetation management and routine maintenance, and those activities that will require additional prior written approval from the authorized officer under 36 CFR 251.61, including but not limited to non-routine maintenance and construction of roads and trails in support of a powerline facility.

In addition, consistent with section 512(f)(3) of FLPMA, paragraph (h)(5)(viii) in the final rule provides that routine vegetation management must have prior written approval from the authorized officer, unless all 3 of the following conditions are met: (1) The owner or operator has submitted a request for approval to the authorized officer in accordance with the specified timeframe in the approved operating plan or agreement; (2) the proposed vegetation management is in accordance with the approved operating plan or agreement; and (3) the authorized officer has failed to respond to the request in accordance with the specified timeframe in the approved operating plan or agreement. Further, while paragraph (h)(5)(viii) of the final rule provides that emergency vegetation management does not require prior written approval from the authorized officer, the owner or operator must notify the authorized officer in writing of the location and quantity of the emergency vegetation management within 24 hours of completion.

Comment: Multiple commenters expressed concern that the proposed regulation did not specify who would establish the applicable minimum clearance distance between vegetation and powerline facilities. These commenters stated that the applicable minimum vegetation clearance distance (MVCD) should be considered and that it should be up to the utilities to determine the applicable MVCD.

Response: The definition for ''hazard tree'' in section 512 and 36 CFR 251.51 of the final rule states that a hazard tree must be designated by a certified or licensed arborist or forester under the supervision of the Forest Service or the owner or operator. Section 512(c)(2) provides that owners and operators subject to mandatory reliability standards established by the Electric Reliability Organization (ERO) may use those standards as part of their operating plan or agreement. The Energy Policy Act of 2005 created the ERO, an independent, self-regulating entity that enforces mandatory electric reliability rules on all users, owners, and operators of the nation's electric transmission system. The North American Electric Reliability Corporation (NERC) is the ERO that develops and enforces electric generation and transmission reliability standards for North America.

NERC reliability standards generally establish the reliability requirements for planning and operating the North American electric generation and transmission system. The current NERC reliability standard, FAC–003–4, requires electric utilities to conduct

vegetation management to avoid encroachment of vegetation into the minimum vegetation clearance distance (MVCD). For example, vegetation outside the linear boundary of a special use authorization for a powerline facility may fall, sway, or grow into the MVCD and therefore may have to be removed under NERC reliability standard FAC–003–4 as part of vegetation management conducted under that authorization. Thus, the MVCD helps determine the location of hazard trees for purposes of section 512 of FLPMA and vegetation management under an operating plan or agreement for a powerline facility.

The applicable MVCD under NERC reliability standard FAC–003–4 is determined based on the voltage and height of a powerline facility and ranges from 1 to 18 feet. The MVCD gives utilities a uniform, objective standard for determining whether vegetation poses an imminent threat to their powerlines and therefore constitutes a hazard that is likely to cause substantial damage to the powerlines or disrupt powerline service. Incorporating MVCD, an industry-wide standard, into operating plans and agreements and powerline authorizations will provide consistency in administration of authorizations for powerline facilities on NFS lands.

Accordingly, in the definition for ''hazard tree,'' the Department has added a reference to the MVCD to clarify that the applicable MVCD may exceed the 10-foot parameter specified in section 512. In addition, the Department has added a definition to the final rule, consistent with Agency and utility industry practice and based on comments received on the proposed rule, for ''minimum vegetation clearance distance'' and a definition for ''maximum operating sag,'' a term included in the definition for ''minimum vegetation clearance distance.'' The applicable MVCD will be specified in the special use authorization for a powerline facility and associated approved operating plan or agreement. Moreover, consistent with NERC reliability standard FAC–003–4, the Department has added language to the definition of a hazard tree to clarify that it may include vegetation in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into a powerline facility before the next routine vegetation management cycle.

These definitions make clear, consistent with section 512, that vegetation management conducted on NFS lands inside the linear boundary of a special use authorization for a powerline facility and on abutting NFS lands to prune or remove hazard trees, as provided for in these definitions, is covered by the operating plan or agreement for the powerline facility authorization and is therefore subject to the liability standards in that authorization.

Regulatory Certifications

Executive Order 12866

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this final rule is not significant.

Executive Order 13771

The final rule has been reviewed in accordance with E.O. 13771 on reducing regulation and controlling regulatory costs and has been designated as an ''other action'' for purposes of the E.O.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

This final rule will establish procedures for the development and approval of operating plans and agreements for vegetation management and powerline facility maintenance on NFS lands within the linear boundary of a right-of-way for a powerline facility and on abutting NFS lands to remove or prune hazard trees as defined in the final rule. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

The Department has considered this final rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism,* and has determined that the final rule conforms with the Federalism principles set out in the E.O.; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of Federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

The Department has determined that national tribal consultation is not necessary for this final rule. This final rule, which would implement statutory requirements governing operating plans and agreements for special use authorizations for powerline facilities on NFS lands, is programmatic and will not have any direct effects on tribes. Tribal consultation will occur as appropriate in connection with specific applications for powerline facility rights-of-way on NFS lands.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Department has determined that the final rule will not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

The Department has reviewed this final rule under E.O. 13211, *Actions*

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Civil Justice Reform

The Department has reviewed this final rule under E.O. 12988, *Civil Justice Reform.* Upon adoption of this final rule, (1) all state and local laws and regulations that conflict with the final rule or that would impede its full implementation will be preempted; (2) no retroactive effect will be given to the final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on state, local, and tribal governments and the private sector. This final rule will not compel the expenditure of $100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National Forests, Rights-of-way, and Water resources.

Therefore, for the reasons set out in the preamble, the Department is amending part 251, subpart B, of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. Revise the authority citation for subpart B to read as follows:

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

■ 2. Amend § 251.51 by

■ a. Adding in alphabetical order the definitions of ''emergency maintenance,'' ''emergency vegetation management,'' and ''hazard tree,'';

■ b. Revising the definition of ''linear right-of-way,''; and

■ c. Adding in alphabetical order the definitions of ''maximum operating sage,'' ''minimum vegetation clearance distance,'' ''non-emergeny (routine) vegetation management,'' ''non-routine maintenance,'' ''operating plan or agreement for a poweline facility,'' ''owner or operator,'' ''powerline facility,'' and ''routine maintenance''.

The additions and revision read as follows:

§ 251.51 Definitions.

* * * * *

Hazard tree—for purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter ''vegetation'' (whether located on National Forest System lands inside or outside the linear boundary of the special use authorization for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist or forester under the supervision of the Forest Service or the owner or operator to be:

(1) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(2) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

* * * * *

Linear right-of-way—an authorized right-of-way for a linear facility, such as a road, trail, pipeline, electric transmission line, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.

Maintenance. (1) *Emergency maintenance*—immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

(2) *Non-routine maintenance*—realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.

(3) *Routine maintenance*—repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (*e.g.,* insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

* * * * *

Maximum operating sag—The theoretical position of a powerline facility conductor (wire) when operating at 100 degrees Celsius, which must be accounted for when determining minimum vegetation clearance distance.

Minimum vegetation clearance distance—a calculated minimum distance stated in feet or meters measured from a powerline facility conductor (wire) at maximum operating sag to vegetation on National Forest System lands within the linear boundary of a special use authorization for a powerline facility and on abutting National Forest System lands to remove or prune hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

* * * * *

Operating plan or agreement for a powerline facility (hereinafter ''operating plan or agreement'')—a plan or an agreement prepared by the owner or operator of a powerline facility, approved by the authorized officer, and incorporated by reference into the corresponding special use authorization that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the powerline facility on National Forest System lands within the linear boundary of the authorization for the powerline facility and on abutting National Forest System lands to remove or prune hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

* * * * *

Owner or operator—for purposes of a powerline facility, the owner or operator of the powerline facility or a contractor or other agent engaged by the owner or operator of the powerline facility.

* * * * *

Powerline facility—one or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric

energy, overhead ground wires, and communications equipment for communications uses that solely support operation and maintenance of the electric distribution or transmission lines and is not leased to other parties for communications uses that serve other purposes.

* * * * *

Vegetation management. (1) *Emergency vegetation management*—unplanned pruning or removal of vegetation on National Forest System lands within the linear boundary of a special use authorization for a powerline facility and unplanned pruning or removal of hazard trees on abutting National Forest System lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.

(2) *Non-emergency (routine) vegetation management*—planned actions as described in an operating plan or agreement periodically taken to remove vegetation, in whole or in part, on National Forest System lands within the linear boundary of a special use authorization for a powerline facility and on abutting National Forest System lands to remove or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

■ 3. Amend § 251.56 by adding paragraph (h), to read as follows:

§ 251.56 Terms and conditions.

* * * * *

(h) *Operating plans and agreements.* An operating plan or agreement consistent with this paragraph (h) is required for new and reauthorized powerline facilities on National Forest System lands.

(1) *Use of operating plans.* Operating plans, rather than agreements, are required for powerline facilities that are subject to the mandatory reliability standards established by the Electric Reliability Organization and that sold more than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018.

(2) *Use of operating agreements.* Powerline facilities that are not subject to the mandatory reliability standards established by the Electric Reliability Organization or that sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018, may be subject to an agreement, instead of an operating plan. Powerline facilities that are not subject to an agreement must be subject to an operating plan.

(3) *Existing operating plans and lack of an operating plan.* The authorized officer shall determine, in consultation with the owner or operator of a powerline facility, whether the existing operating plan for that powerline facility is consistent with this paragraph (h) and shall notify the owner or operator of that determination. Within 18 months of the date of notification that the existing operating plan is inconsistent with this paragraph (h), the owner or operator shall modify the existing operating plan to be consistent with this paragraph (h) and shall submit it to the authorized officer for review and approval. Existing operating plans that are consistent with this paragraph (h) do not have to be submitted for reapproval by the authorized officer. If an owner or operator does not have an operating plan, within 3 years from August 10, 2020, the owner or operator shall submit to the authorized officer a proposed operating plan consistent with this paragraph (h) for review and approval.

(4) *Development of proposed operating plans and agreements.* Owners and operators may develop a proposed operating plan or agreement on their own or in consultation with the authorized officer.

(5) *Content of operating plans and agreements.* At a minimum, operating plans and agreements shall:

(i) Identify the powerline facility covered by the operating plan or agreement (hereinafter ''covered line'');

(ii) Consider preexisting operating plans and agreements for the covered line;

(iii) Address coordination between the owner or operator and the Forest Service and specify their points of contact;

(iv) Describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with all applicable law, including fire safety requirements and reliability standards established by the Electric Reliability Organization (owners and operators subject to mandatory reliability standards established by the Electric Reliability Organization or superseding standards may use those standards as part of their operating plan); the applicable land management plan; environmental compliance; resource protection; fire control; routine, non-routine, and emergency maintenance of the covered line; and road and trail construction, reconstruction, and maintenance in support of the covered line;

(v) Identify best management practices for vegetation management; the applicable minimum vegetation clearance distance; procedures for designating, marking, and removing or pruning hazard trees and other vegetation; and road and trail standards and best management practices;

(vi) Address the types of activities that shall be allowed by the owner or operator upon approval of the operating plan or agreement by the authorized officer without additional prior written approval as a new, changed, or additional use or area under 36 CFR 251.61, including routine vegetation management and routine maintenance, and those activities that shall require additional prior written approval from the authorized officer as a new, changed, or additional use or area under 36 CFR 251.61, including but not limited to non-routine maintenance and construction of roads and trails in support of the covered line;

(vii) Specify timeframes for:

(A) The owner or operator to notify the authorized officer of routine, non-routine, and emergency maintenance of the covered line and routine and emergency vegetation management for the covered line;

(B) The owner or operator to request approval from the authorized officer of non-routine maintenance of and routine vegetation management for the covered line; and

(C) The authorized officer to respond to a request by the owner or operator for approval of non-routine maintenance of and routine vegetation management for the covered line;

(viii) Include the following procedures with regard to whether authorized officer approval is required for vegetation management:

(A) *Routine vegetation management.* Routine vegetation management must have prior written approval from the authorized officer, unless all 3 of the following conditions are met:

(*1*) The owner or operator has submitted a request for approval to the authorized officer in accordance with the specified timeframe in the approved operating plan or agreement;

(*2*) The proposed vegetation management is in accordance with the approved operating plan or agreement; and

(*3*) The authorized officer has failed to respond to the request in accordance with the specified timeframe in the approved operating plan or agreement.

(B) *Emergency vegetation management.* Emergency vegetation management does not require prior written approval from the authorized officer. The owner or operator shall notify the authorized officer in writing of the location and quantity of the emergency vegetation management within 24 hours of completion;

(ix) Include the following procedures for modification of an approved operating plan or agreement:

(A) The authorized officer shall give the owner or operator of the covered line prior notice of any changed conditions that warrant a modification of the approved operating plan or agreement;

(B) The authorized officer shall give the owner or operator an opportunity to submit a proposed modification of the approved operating plan or agreement, consistent with the procedures described in paragraph (h)(6) of this section, to address the changed conditions;

(C) The authorized officer shall consider the proposed modification consistent with the procedures described in paragraph (h)(6) of this section; and

(D) The owner or operator may continue to implement the approved operating plan or agreement to the extent it does not directly and adversely affect the conditions prompting the modification; and

(x) For agreements only, reflect the relative financial resources of the owner or operator of the covered line compared to other owners or operators of a powerline facility.

(6) *Review and approval of proposed operating plans and agreements.* Proposed operating plans and agreements shall be submitted to the authorized officer for review and approval in writing before they are implemented. Proposed operating plans and agreements shall be reviewed and approved in accordance with procedures developed jointly by the Forest Service and the United States Department of the Interior, Bureau of Land Management, which shall be consistent with applicable law. These procedures shall:

(i) Provide that a proposed operating plan or agreement or proposed modification to an approved operating plan or agreement shall be approved, to the maximum extent practicable, within 120 days from the date the proposed operating plan or agreement or proposed modification was received by the authorized officer, with the understanding that such factors as the number of proposed operating plans and agreements under review by an authorized officer and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days from the date of receipt; and

(ii) Specify a timeframe for submission of applicable Agency comments on a proposed operating plan or agreement.

(7) *Review and expiration of approved operating plans and agreements.* Every 5 years from the approval date of an operating plan or agreement, the owner or operator shall review and, as necessary, update the operating plan or agreement to ensure consistentency with changed conditions and shall submit it to the authorized officer for review and approval in accordance with the procedures described in paragraph (h)(6) of this section. Upon expiration of a special use authorization for a powerline facility the owner or operator must prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and submit it to the authorized officer for review and approval in accordance with the procedures described in paragraph (h)(6) of this section.

(8) *Reporting of requests and responses to requests for routine vegetation management.* The Forest Service shall annually report on its website requests for approval of routine vegetation management pursuant to paragraph (h)(5)(viii)(A) of this section and responses to those requests.

(9) *Strict Liability.* (i) Notwithstanding paragraph (d)(2) of this section, strict liability in tort may not be imposed on an owner or operator for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement.

(ii) Notwithstanding paragraph (d)(2) of this section, for 10 years from March 23, 2018, strict liability in tort for injury or damages resulting from activities conducted by an owner or operator under an approved agreement may not exceed $500,000 per incident.

(10) *Forest Service directives.* To enhance the reliability of the electric grid and to reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within or on, powerline facility rights-of-way and by hazard trees on abutting National Forest System lands, the Forest Service shall issue and periodically update directives in its directive system (36 CFR 200.4) to ensure that provisions are appropriately developed and implemented for powerline facility vegetation management, powerline facility inspection, and operation and maintenance of powerline facility rights-of-way. The directives shall:

(i) Be developed in consultation with owners;

(ii) Be compatible with mandatory reliability standards established by the Electric Reliability Organization;

(iii) Consider all applicable law, including fire safety and electrical system reliability requirements, such as reliability standards established by the Electric Reliability Organization;

(iv) Consider the 2016 Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way Among the Edison Electric Institute, Utility Arborist Association, the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the U.S. Environmental Protection Agency, and any successor memorandum of understanding;

(v) Seek to minimize the need for case-by-case approvals for routine vegetation management (including hazard tree removal), powerline facility inspection, and operation and maintenance of powerline facilities; and

(vi) Provide for prompt and timely review of requests to conduct routine vegetation management.

James E. Hubbard,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2020–13999 Filed 7–9–20; 8:45 am]

BILLING CODE 3411–15–P

POSTAL SERVICE

39 CFR Part 501

Elimination of Customized Postage Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to eliminate the Customized Postage products offering.

DATES: Effective August 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christy Noel, 202–268–3484.

SUPPLEMENTARY INFORMATION: Effective August 1, 2020, the Postal Service™ is amending title 39 of the Code of Federal Regulations to eliminate the Customized Postage products offering. The Postal Service asked the Postal Regulatory Commission (PRC) to eliminate the Customized Postage products offering and on June 16, 2020, the PRC approved

the removal of Customized Postage in Order Number 5550.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Authorization to Manufacture and Distribute Postage Evidencing Systems.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

§ 501.21 [Removed]

■ 2. Remove § 501.21.

Joshua J. Hofer,

Attorney, Federal Compliance.

[FR Doc. 2020–13566 Filed 7–9–20; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0812; FRL–10011–07–Region 9]

Air Quality State Implementation Plan Approval; Nevada; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the remaining portion of a state implementation plan (SIP) revision submitted by the State of Nevada. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS). In this action, the EPA has determined that Nevada will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

DATES: This rule will be effective on August 10, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2014–0812. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), EPA Region IX, (415) 947–4151, or by email at *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Summary of the Proposed Action

On June 22, 2010, the EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.[1] Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or a shorter period as the EPA may prescribe. These SIPs, which the EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. Section 110(a) of the CAA imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the revisions proposed in SIP submissions may also vary depending upon what provisions are already contained in the state's approved SIP. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On June 3, 2013, the Nevada Department of Environmental Protection (NDEP) submitted a SIP revision addressing the requirements of section 110(a)(2) of the CAA with respect to the 2010 SO_2 NAAQS (''2013 Nevada SIP revision''). On November 3, 2015, the EPA partially approved and partially disapproved portions of the 2013 Nevada SIP revision for the 2010 SO_2 NAAQS.[2] However, in that rulemaking, the EPA did not take action on the section 110(a)(2)(D)(i)(I), interstate transport portion of the 2013 Nevada SIP revision.[3] On March 31, 2020, the EPA proposed to approve the portion of Nevada's infrastructure submittal for the 2010 SO_2 NAAQS pertaining to section 110(a)(2)(D)(i)(I) of the CAA.[4]

In our proposed rulemaking, the EPA described Nevada's analysis and provided supplemental information to support the conclusion of the 2013 Nevada SIP Revision that Nevada meets the CAA section 110(a)(2)(D)(i)(I) prohibition against significant contribution to nonattainment in another state and interference with maintenance in another state for the 2010 SO_2 NAAQS. The NDEP considered monitoring data, emissions data, predominant wind direction in Nevada, as well as nonattainment and maintenance areas for the 1971 SO_2 NAAQS and potential nonattainment areas for the 2010 SO_2 NAAQS in contiguous and noncontiguous states, and the distance between Nevada and these areas.[5]

[1] 75 FR 35520 (June 22, 2010).

[2] The EPA's final rule (80 FR 67652) addressed most elements of three separate SIP submittals for the 2008 ozone NAAQS, the 2010 nitrogen dioxide (NO_2) NAAQS, and the 2010 SO_2 NAAQS.

[3] In addition to section 110(a)(2)(D)(i)(I) provisions for SO_2, the EPA did not act on the section 110(a)(2)(D)(i)(I) provisions of Nevada's SIP submittal for the 2008 ozone NAAQS. The EPA approved the section 110(a)(2)(D)(i)(I) portion of Nevada's submittal for the 2008 ozone NAAQS in a subsequent rulemaking on February 3, 2017 (82 FR 9164).

[4] 85 FR 17810.

[5] Because the EPA had not designated nonattainment areas for the 2010 SO_2 NAAQS prior

Continued

While the EPA relied on many of the same factors as the 2013 Nevada SIP revision, we collected more recent monitoring and emissions data. In addition, the EPA focused on a 50 kilometer (km) wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source. We identified no violating monitors near the Nevada border, and the only violating monitors in neighboring states are well outside the range within which we might expect them to be significantly impacted by interstate transport of SO_2 from Nevada. Furthermore, we identified no SO_2 sources within 50 km of the Nevada border that are likely to be contributing to a violation of the standard in another state, and we concluded that it is unlikely that sources farther from the border are leading to violations. Therefore, the EPA proposed that Nevada was not significantly contributing to nonattainment of the 2010 SO_2 NAAQS in another state.

The EPA's evaluation of the State's analysis of whether emissions sources within Nevada interfere with maintenance in other states also considered state-wide and individual facility emissions trends as well as SO_2 emissions control rules from the three air quality agencies in Nevada: The NDEP, the Clark County Department of Air Quality (now part of the Clark County Department of Environment and Sustainability), and the Washoe County Air Quality Management Division. In proposing to conclude that the 2013 Nevada SIP revision demonstrates that SO_2 emissions in the State will not interfere with maintenance of the 2010 SO_2 NAAQS in any other state, we cited the downward trend in SO_2 emissions in Nevada and neighboring states; the SIP-approved State and local measures within Nevada that limit existing and new facility emissions; and the low ambient concentrations of SO_2 in Nevada and neighboring states.

II. Public Comments and EPA Responses

The public comment period for the proposed rule opened on March 31, 2020, the date of its publication in the **Federal Register**, and closed on April 30, 2020. The EPA received no comments on the proposed action during the public comment period.

III. Final Action

Under CAA section 110(k)(3) and based on the evaluation and rationale presented in the proposed rule, the EPA is approving the 2013 Nevada SIP revision as meeting CAA section 110(a)(2)(D)(i)(I). The State has demonstrated that Nevada's SIP has adequate provisions prohibiting any source or other type of emissions activity in the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

to submittal of the 2013 Nevada SIP revision, Nevada addressed potential nonattainment areas for the 2010 SO_2 NAAQS. The EPA has subsequently completed designations for Nevada and most other contiguous and noncontiguous states in separate rulemaking actions (78 FR 47191, August 5, 2013; 81 FR 45039, July 12, 2016; 81 FR 89870, December 13, 2016; 83 FR 1098, January 18, 2018). The EPA designated the state of Nevada as Attainment/Unclassifiable for the 2010 SO_2 standard (83 FR 1098, January 9, 2018).

List of Subjects in 40 CFR Part 52

Air pollution control, Approval and promulgation of implementation plans, Environmental protection, Incorporation by reference, and Sulfur oxides.

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

Dated: June 17, 2020.

John Busterud,

Regional Administrator, Region IX.

For the reasons stated in the preamble, EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart DD Nevada

■ 2. Amend § 52.1472 by revising paragraph (j) to read as follows:

§ 52.1472 Approval status.

* * * * *

(j) 2010 1-hour sulfur dioxide NAAQS: The SIPs submitted on June 3, 2013, are disapproved for CAA elements 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP.

[FR Doc. 2020–13561 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0688; FRL–10010–35–Region 8]

Approval and Promulgation of Air Quality State Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules; R307–101–3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Utah Divison of Administrative Rules, specifically R307–101–3 submitted by the State of Utah on August 19, 2019, and R307–405–02 and R307–410–03 submitted by the State of Utah on December 16, 2019. The submittal for R307–101–3 requests a State Implementation Plan (SIP) revision to change the date incorporated by reference from the Code of Federal Regulations (CFR) to July 1, 2016 to July 1, 2017. Amendments to R307–405–02 and R307–410–03 update the part of the CFR incorporated by reference in the rules to the July 1, 2018 version. This action is being taken under the Clean Air Act (CAA or Act).

DATES: This rule is effective on August 10, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0688. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6103, *singh.amrita@epa.gov.*

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

I. Background

On March 13, 2020 (85 FR 14606), the EPA proposed approval of the Revisions to the Utah Divison of Administrative Rules, specifically, R307–101–3, R307–405–02, and R307–410–03. The EPA received revisions to R307–101–3, General Requirements; Version of Code of Federal Regulations Incorporated by Reference from the State of Utah on August 19, 2019. These revisions allow R307 rules that reference section R307–101–3 to update the incorporation date with only one rule amendment.

The EPA received revisions to (1) R307–405–02. Permits: Major Sources in Attainment or Unclassified Areas (PSD) Applicability; and (2) R307–410–03 Permits. Emissions Impact Analysis on December 16, 2019. The revisions submitted for both R307–405–02 and R307–405–02 update the version of the CFR that is incorporated by reference throughout the Utah Air Quality rules. The rule change for R307–405–02 updates the version of 40 CFR 52.21 from the July 11, 2011 version to the July 1, 2018 version. Lastly, the amendment to rule R307–410–03 updates the version of 40 CFR part 51, appendix W, incorporated by reference from the July 1, 2005 version to the July 1, 2018 version.

II. Response to Comments

The comment period for our March 13, 2020 (85 FR 14606), proposed rule was open for 30 days. The EPA did not receive any comments.

III. Final Action

The EPA is approving the SIP revision to R307–101–3, General Requirements; Version of the Code of Federal Regulations Incorporated by Reference submitted on August 19, 2019. Additionally, EPA is also approving revisions to (1) R307–405–02 Permits: Major Sources in Attainment or Unclassified Areas (PSD) Applicability; and (2) R307–410–03 Permits. Emission Impact Analysis which were both submitted on December 16, 2019.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference the Utah Air Quality rules promulgated in R307–101–3, R307–405–02, and R307–410–03 as discussed in section III. of the preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Orders Review

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

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

those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: May 29, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

Accordingly, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart TT—Utah

■ 2. In § 52.2320, the table in paragraph (c) is amended by revising the entries for ''R307–101–3'', ''R307–405–02'', and ''R307–410–03'' to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*	*
R307–101–3 ...	Version of Code of Federal Regulations Incorporated by Reference.	5/23/2018	[Insert **Federal Register** citation], 7/10/2020.	
*	*	*	*	*
R307–405–02	Applicability	11/25/2019	[Insert **Federal Register** citation], 7/10/2020.	
*	*	*	*	*
R307–410–03	Use of Dispersion Models	11/25/2019	[Insert **Federal Register** citation], 7/10/2020.	
*	*	*	*	*

* * * * *

[FR Doc. 2020–12061 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0156; FRL–10010–78–Region 4]

Air Plan Approval; Air Plan Approval; KY: Jefferson County Performance Tests

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), Division of Air Quality, through a letter dated September 5, 2019. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County Regulations regarding performance tests.

DATES: This rule is effective August 10, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2020–0156. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via *www.regulations.gov,* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to the Jefferson County portion of the Kentucky SIP that were provided to EPA through Kentucky's Division of Air Quality via a letter dated September 5, 2019.[1] [2] EPA is approving this SIP revision which makes changes to the District's Regulation 1.04, *Performance Testing.* The September 5, 2019, SIP revision first makes minor changes to Regulation 1.04 that do not alter the meaning of the regulation such as clarifying changes to its notification requirements under the SIP. In addition, other changes strengthen the SIP by adding a specific reporting requirement to communicate results from any required performance testing. The SIP revision updates the current SIP-approved version of Regulation 1.04 (Version 6) to Version 7.

See EPA's April 28, 2020 (85 FR 23498), notice of proposed rulemaking (NPRM) for further detail on these changes and EPA's rationale for approving them. EPA did not receive public comments on the April 28, 2020, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County's Regulation 1.04, *Performance Tests,* Version 7, state effective June 19, 2019, which makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Action

EPA is approving changes to the Jefferson County portion of the Kentucky SIP included in a September 5, 2019, submittal. Specifically, EPA is approving the District's Regulation 1.04 version 7 into the SIP. The September 5, 2019, SIP revision makes minor and ministerial changes for consistent language throughout the regulation and includes a new requirement for submitting reports on the conducted performances tests. EPA believes these changes are consistent with the Clean Air Act (CAA or Act), and this rule adoption will not impact the national ambient air quality standards or interfere with any other applicable requirement of the Act.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

[1] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' *See* The History of Air Pollution Control in Louisville, *available at https://louisvilleky.gov/government/air-pollution-control-district/history-air-pollution-control-louisville.* However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[2] EPA notes that the Agency received several submittals revising the Jefferson County portion of the Kentucky SIP transmitted with the same September 5, 2019, cover letter. EPA will be considering action for these other SIP revisions in separate rulemakings.

[3] *See* 62 FR 27968 (May 22, 1997).

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 15, 2020.

Mary Walker,

Regional Administrator, Region 4.

Accordingly, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

■ 2. Section 52.920(c) is amended in Table 2 under ''Reg 1—General Provisions'' by revising the entry for ''1.04'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	**Federal Register** notice	District effective date	Explanation
Reg 1—General Provisions					
*	*	*	*	*	*
1.04	Performance Tests	7/10/2020	[Insert citation of publication].	6/19/2019	
*	*	*	*	*	*

* * * * *

[FR Doc. 2020–13734 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2019–0557; FRL–10011–17–Region 5]

Air Plan Approval; Wisconsin; Redesignation of the Inland Sheboygan, WI Area to Attainment of the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Inland Sheboygan County, Wisconsin area is attaining the 2008 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and is approving a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under

the Clean Air Act (CAA). WDNR submitted this request on October 9, 2019. EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2030 in the Inland Sheboygan area. EPA finds adequate and is approving Wisconsin's 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Inland Sheboygan. Finally, EPA is approving the Wisconsin SIP submission as meeting the applicable base year inventory requirement, emission statement requirements, VOC Reasonably Available Control Technology (RACT) requirements, motor vehicle inspection and maintenance (I/M) program requirements, and NO_X RACT requirements.

DATES: This final rule is effective on July 10, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2019–0557. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

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

I. What is being addressed in this document?

This rule approves the October 9, 2019 submission from Wisconsin requesting redesignation of the Inland Sheboygan area to attainment for the 2008 ozone standard. The background for this action is discussed in detail in EPA's proposal, dated April 27, 2020 (85 FR 23274). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. (*See* 40 CFR 50.15 and appendix P to 40 CFR part 50.) Under the CAA, EPA may redesignate nonattainment areas to attainment if complete, quality-assured data are available to determine that the area has attained the standard and meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule provides a detailed discussion of how Wisconsin has met these CAA requirements, and EPA's rationale for approving the redesignation request and related SIP submissions.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2017–2019 show that the area has attained the 2008 ozone standard, and EPA has determined that the attainment is due to permanent and enforceable measures. Preliminary data for 2020 show that the area continues to attain the standard. In the maintenance plan submitted for the area, Wisconsin has demonstrated that the ozone standard will be maintained in the area through 2030. Wisconsin has adopted 2020 and 2030 VOC and NO_X MVEBs for the area that are supported by Wisconsin's maintenance demonstration. With these approvals of Wisconsin's SIP submissions, EPA finds that the applicable requirements of the SIP are fully approved.

II. What comments did we receive on the proposed rule?

Public comments on the April 27, 2020 proposed rule were due by May 27, 2020. During the comment period EPA received three comments in support of our action, as well as one adverse comment. EPA received an additional supportive comment from Wisconsin Manufacturers & Commerce; however, this comment was submitted on May 29, 2020, after the comment period had ended. Because EPA is obligated to respond only to comments that are both adverse and timely, the supportive comment submitted after the close of the comment period is not relevant to this action. A summary of the adverse comment and EPA's response is provided below.

Comment: Sheboygan Ozone Reduction Alliance (SORA), a citizen group focused on reducing air pollution and advocating for public health, provided three reasons for opposing this action.

First, SORA contends that the Inland Sheboygan area was created retroactively in 2019 without adequate scientific basis. The commenter writes that the boundary of the Inland Sheboygan area for the 2008 ozone NAAQS was based on the boundary for the Sheboygan County nonattainment area for the 2015 ozone NAAQS.[1] The commenter contends that the boundary for the Sheboygan County nonattainment area for the 2015 ozone NAAQS was created without adequate basis, that the nonattainment area for the 2015 ozone NAAQS excludes several major point sources, and that EPA must resolve litigation regarding designations for the 2015 ozone NAAQS before EPA can make a determination of attainment for areas created as a result of, or based on, designations for the 2015 ozone NAAQS.

Second, SORA contends that the Sheboygan Haven monitor may not be properly sited to capture maximum ozone concentrations. The commenter contends that neither WDNR nor EPA have demonstrated that the Sheboygan Haven monitor is capable of capturing maximum ozone concentrations in the nonattainment area, and that such a capability was never scrutinized because the Sheboygan Haven monitor was originally sited as a secondary monitor for the original full-county nonattainment area. The commenter states that on six days during the 1991 Lake Michigan Ozone Study (LMOS), a monitor 8.6 miles inland from the shoreline recorded ozone values greater than or equal to the values recorded at the shoreline monitor. Similarly, from 1999 to 2003, a monitor 5.3 miles from the shoreline also recorded numerous ozone values greater than or equal to the values recorded at the shoreline monitor. The commenter acknowledges that ozone chemistry may have changed over the last three decades but contends that the burden of proof should rest on EPA and WDNR to demonstrate that values recorded at the Sheboygan Haven

[1] We note that the commenter also cited the revised boundary for the revoked 1997 ozone NAAQS, but that standard is not at issue in this redesignation.

monitor are representative of maximum ozone concentrations in the Inland Sheboygan area.

Third, SORA contends that emissions from the Inland Sheboygan area contribute to the nonattainment of downwind areas. The commenter states that a redesignation to attainment would reduce permitting requirements, which could exacerbate the effects of emissions from the Inland Sheboygan area on downwind nonattainment areas. The commenter believes that the existence of two separate nonattainment areas in Sheboygan County makes it more difficult to effectively manage air quality issues.

Response: EPA thanks SORA for its comments. As discussed below, EPA finds that approval of Wisconsin's request to redesignate the Inland Sheboygan area is consistent with the requirements of CAA section 107(d)(3)(E).

First, EPA disagrees that the Inland Sheboygan area was created retroactively without adequate scientific basis. On July 15, 2019, EPA revised the 2008 ozone NAAQS designation for the original full-county Sheboygan nonattainment area, by splitting the original area into two distinct nonattainment areas that together cover the identical geographic area of the original nonattainment area (84 FR 33699). In determining whether to take this action under CAA section 107(d)(3)(D), EPA considered the same factors Congress directed EPA to consider under CAA section 107(d)(3)(A), including ''air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.'' In a 22-page Technical Support Document (TSD) contained in the docket for that rulemaking, EPA provided the technical basis for its revision, which was based on an analysis of factors including air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.

In defining the boundaries of the Inland Sheboygan area and Shoreline Sheboygan area for the 2008 ozone NAAQS, EPA considered existing jurisdictional boundaries, which can provide easily identifiable and recognized boundaries for purposes of implementing the NAAQS. After considering all relevant factors, EPA chose to adopt a boundary for the two separate areas for the 2008 ozone NAAQS that aligned with the jurisdictional boundary established by the partial-county Sheboygan County area for the 2015 ozone NAAQS. However, the July 15, 2019 action was based on EPA's technical analysis specific to the 2008 ozone NAAQS, as provided in the TSD. During the public comment period on that rulemaking, EPA received no adverse comments, and EPA's final action was not challenged in court.

We therefore disagree that the current litigation in the D.C. Circuit regarding the 2015 ozone designations (*Clean Wisconsin et al.* v. *U.S. Environmental Protection Agency et al.,* Case No. 18–1203 (D.C. Cir.)) has any bearing on this redesignation. One of the claims at issue in the litigation is whether EPA's partial-county designation of the Sheboygan area under the 2015 ozone NAAQS was supported by law. But even if the court were to grant challenges to the designation for the 2015 ozone NAAQS, that finding would not impact the existing boundaries of the Inland Sheboygan nonattainment area for the 2008 ozone NAAQS. The claims raised regarding EPA's technical analysis associated with designations for the 2015 standard are irrelevant to this redesignation action, which is focused on whether the Inland Sheboygan area has met the statutory criteria of CAA section 107(d)(3)(E).

Second, EPA disagrees that it may not rely on quality-assured, certified air quality monitoring data from the Sheboygan Haven monitor to determine whether the Inland Sheboygan area is attaining. The Sheboygan Haven monitor began operation in 2014, has been in continuous operation since, and in the many opportunities for public comment regarding this monitor, nobody has raised any concerns about the monitor site.

Each year the state submits to EPA an Air Monitoring Network Plan, which is subject to public comment (see 40 CFR 58.10 [2]), and in none of five plan reviews conducted since the monitor was sited did any member of the public raise concerns regarding the representativeness or location of the Sheboygan Haven monitor. In 2019 SORA commented on Wisconsin's most recent Air Monitoring Network Plan, but only raised concerns regarding the proposed discontinuation of the Sheboygan Kohler Andrae monitor along the Lake Michigan shoreline. Their comment did not indicate any concerns about the Sheboygan Haven monitor.

EPA also stated in its proposal to split Sheboygan County into two nonattainment areas for the 2008 ozone NAAQS that only one air quality monitor would be in each of the two new nonattainment areas (84 FR 4422, 4424 and 4425 [3]), and received no comments. In that action, EPA also relied on the Sheboygan Haven monitor to propose a clean data determination for the Inland Sheboygan area, based on the monitor's attaining 2015–2017 design value, which we later finalized based on the area's 2016–2018 attaining design value. EPA received no comments on its proposed determination that the area was attaining based on air quality monitoring data from the Sheboygan Haven monitor. We therefore do not agree that it is unreasonable for EPA to rely on data from the Sheboygan Haven monitor as representative of air quality in the Inland Sheboygan area.

We also do not agree that the Sheboygan Haven monitor's original siting as a secondary monitor in the full-county 2008 ozone NAAQS area is dispositive of whether it can be relied upon now as the Inland Sheboygan area's sole monitor. As provided in the 2015 Air Monitoring Network Plan, the Sheboygan Haven site's objective was population exposure, and its area of representativeness was ''exposure on a neighborhood scale for ozone.'' The representativeness ''neighborhood scale'' is defined in appendix D to 40 CFR part 58 as representative of ''conditions throughout some reasonably homogenous urban sub-region'' and the definition further provides that ''a site located in the neighborhood scale may also experience peak concentration levels within a metropolitan area.''

We do not agree that the two nonextant Sheboygan County monitors raised by the commenter indicate that the Sheboygan Haven monitor is an unreliable indicator of ozone concentrations in the Inland Sheboygan area. The first, from the 1991 LMOS study, was located 8.6 miles inland from the shoreline; the second, which operated from 1999 to 2003, was located 5.3 miles from the shoreline. During the time that these monitors were active, they observed ozone concentrations that would have been exceedances of the 2008 ozone NAAQS. On several days these monitors recorded ozone values greater than or equal to the values recorded at the shoreline monitor. However, we do not think these isolated, outdated readings at monitors

[2] ''The annual monitoring network plan must be made available for public inspection and comment for at least 30 days prior to submission to the EPA and the submitted plan shall include and address, as appropriate, any received comments.''

[3] 84 FR at 4424 and 4425 (''The Sheboygan Haven monitor with site ID 55–117–009 is the only FRM ozone monitor within the proposed separate Inland Sheboygan area.'').

that are no longer operational are more representative or should overrule the Sheboygan Haven monitor, which is part of the state's approved Air Monitoring Network. Ozone values in Sheboygan County have decreased significantly over the past three decades. EPA's April 27, 2020 proposed rule includes a discussion of the permanent and enforceable regulatory control measures, including reductions from vehicle emissions standards and stationary source NO_X trading programs implemented since 2000, which caused the improvement in air quality. Given those major changes in emissions, and without a technical basis to do so, we do not think it is reasonable to assume that ozone chemistry in this region necessarily behaves in the same way it may have in the 1990s and early 2000s. Nor do we think it advisable to rely on inferences from old data over newer monitored air quality data.

Importantly, EPA notes that the commenter does not allege that any part of the area is not currently meeting the 2008 ozone NAAQS. Consistent with the requirements of CAA section 107(d)(3)(E), EPA finds that the Inland Sheboygan area is attaining the 2008 ozone NAAQS.

Third, although the commenter did not specify, we assume the ''reduced permitting requirements'' cited by SORA that would result from the area's redesignation is the change from the nonattainment new source review (NNSR) program to the prevention of significant deterioration (PSD) program for new or modified major stationary sources. An area's designation status dictates which of these programs apply (NNSR for nonattainment areas and PSD for attainment areas), and nothing in the CAA allows EPA to continue to impose NNSR in an area where all five statutory criteria for redesignation of that area to attainment have been met. Nor does the CAA suggest that a potential impact from the change in an area's permitting regime after that area is redesignated, on other in-state, downwind nonattainment areas is a valid basis for disapproving that area's request for redesignation. Finally, we note that while EPA's technical analysis for the 2015 ozone NAAQS did indicate some contribution from the Inland Sheboygan area to the Door County, WI area, the Manitowoc County, WI area, as well as the Sheboygan County, WI area (which covers the identical geographic area as the Shoreline Sheboygan area for the 2008 ozone NAAQS), that analysis was performed for a more stringent standard, and with respect to the 2008 ozone NAAQS, all three of those areas have attaining design values for the 2017–2019 period.

Finally, as stated in our April 27, 2020 proposed rule, EPA did not reopen our final July 15, 2019 action to split the original Sheboygan nonattainment area into two distinct nonattainment areas, so comments to that effect are beyond the scope of this action. In this action, EPA is only evaluating the State's redesignation request under the criteria at CAA section 107(d)(3)(E).

III. What action is EPA taking?

EPA is determining that the Inland Sheboygan nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2017–2019. EPA is approving Wisconsin's 2011 base year emissions inventory, emission statement certification SIP, VOC RACT SIP, I/M certification SIP, and NO_X RACT certification SIP, and is determining that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Inland Sheboygan area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also approving, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Inland Sheboygan area in attainment of the 2008 ozone NAAQS through 2030. EPA finds adequate and is approving the newly-established 2020 and 2030 MVEBs for the Inland Sheboygan area.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for these actions to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1) and section 553(d)(3).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of NNSR permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive PSD permitting requirements.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. On balance, EPA finds affected parties would benefit from the immediate ability to comply with PSD requirements, instead of delaying by 30 days the transition from NNSR to PSD.

For these reasons, EPA finds good cause under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 15, 2020.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends Title 40 CFR parts 52 and 81 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2585 is amended by adding paragraph (ll) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(ll) *Redesignation.* Approval—On October 9, 2019, Wisconsin submitted a request to redesignate the Inland Sheboygan County area to attainment of the 2008 8-hour ozone standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. The ozone maintenance plan also establishes 2020 and 2030 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2020 MVEBs for the Inland Sheboygan County area are 0.65 tons per hot summer day for VOC and 1.16 tons per hot summer day for NO_X. The 2030 MVEBs for the Inland Sheboygan County area are 0.34 tons per hot summer day for VOC and 0.54 tons per hot summer day for NO_X.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. In Section 81.350, amend the table ''Wisconsin—2008 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Inland Sheboygan County, WI'' to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*	*	*	*
Inland Sheboygan County, WI [25]	7/10/2020	Attainment.		
Sheboygan County (part):				
Exclusive and west of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/County Road RR, Termaat Road.				
* * * *	*	*	*	*

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.
[5] Attainment date is extended to July 20, 2019 for both Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI, nonattainment areas.

* * * * *

[FR Doc. 2020–13468 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2020–0097; EPA–R05–OAR–2020–0199; EPA–R05–OAR–2020–0200; FRL–10011–90–Region 5]

Air Plan Approval; Wisconsin; Redesignation of the Shoreline Sheboygan, WI Area to Attainment of the 2008 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Shoreline Sheboygan County, Wisconsin area is attaining the 2008 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and is approving a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2032 in the Shoreline Sheboygan area. EPA finds adequate and is approving Wisconsin's 2025 and 2032 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Shoreline Sheboygan area. EPA is also approving Wisconsin's VOC reasonably available control technology (RACT) SIP revisions. Finally, EPA is approving the Wisconsin SIP as meeting the applicable base year inventory requirement, emission statement requirements, VOC RACT requirements, motor vehicle inspection and maintenance (I/M) program requirements, and NO_X RACT requirements.

DATES: This final rule is effective on July 10, 2020.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA–R05–OAR–2020–0097, Docket ID No. EPA–R05–OAR–2020–0199, and Docket ID No. EPA–R05–OAR–2020–0200. All documents in the dockets are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Eric Svingen, Environmental Engineer, at (312) 353–4489 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov.*

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

I. What is being addressed in this document?

This rule approves the February 11, 2020 and April 1, 2020 submissions from Wisconsin requesting redesignation of the Shoreline Sheboygan area to attainment for the 2008 ozone standard. The background for this action is discussed in detail in EPA's proposal, dated May 13, 2020 (85 FR 28550). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration (*i.e.,* the design value) is equal to or less than 0.075 parts per million (ppm), when truncated after the thousandth decimal place, at all ozone monitoring sites in the area. (*See* 40 CFR 50.15 and appendix P to 40 CFR part 50.) The level of the 2008 ozone NAAQS is often expressed as 75 parts per billion (ppb). Under the CAA, EPA may redesignate nonattainment areas to attainment if complete, quality-assured data show that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule

provides a detailed discussion of how Wisconsin has met these CAA requirements and EPA's rationale for approving the redesignation request and related SIP submissions.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2017–2019 show that the area has attained the 2008 ozone standard, and EPA has determined that the attainment is due to permanent and enforceable measures. In the maintenance plan submitted for the area, Wisconsin has demonstrated that compliance with the ozone standard will be maintained in the area through 2032. As also discussed in the proposed rule, Wisconsin has adopted 2025 and 2032 VOC and NO_X MVEBs for the area that are supported by Wisconsin's maintenance demonstration. Finally, EPA is approving the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals, which include Administrative Order AM–20–02 for Kieffer & Co. Inc. and Administrative Order AM–20–03 for Kohler Power Systems. With these approvals of Wisconsin's SIP submissions, EPA finds that all SIP requirements applicable to redesignation are fully approved.

Per the CAA, upon the effective date of this redesignation, nonattainment area requirements cease to apply to this area. More specifically, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the Reasonably Available Control Measures (RACM) requirement of section 172(c)(1) of the CAA, the Reasonable Further Progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA), are no longer applicable to the area and cease to apply. See 40 CFR 51.1118.

II. What comments did we receive on the proposed rule?

Public comments on the May 13, 2020 proposed rule were due by June 12, 2020. During the comment period EPA received three comments in support of our action, one comment that was not relevant to our action, as well as two adverse comments. EPA thanks the commenters for their comments. Summaries of the adverse comments and EPA's responses are provided below.

Comment 1: A member of the public shared concerns regarding the health effects of ozone. The commenter lists health problems and asks whether these problems are occurring in Sheboygan County, and whether any occurrence of these problems could be related to ozone. The commenter states a belief that ozone standards will continue to decrease, and notes that the American Lung Association has supported a standard of 60 ppb. The commenter states that the design value for the Shoreline Sheboygan area is 75 ppb, which ''can't get any closer'' to the level of the 2008 ozone NAAQS at 75 ppb. The commenter references the 2015 ozone NAAQS which is set at a level of 70 ppb, alleges that ''implementation has been postponed by lawsuits and EPA is dragging its feet,'' and raises concerns that redesignation of the Shoreline Sheboygan area for the 2008 ozone NAAQS would diminish efforts to attain the 2015 ozone NAAQS. The commenter states that Sheboygan County needs to do a comprehensive health study, which would motivate stakeholders to collaborate in achieving greater reductions in ozone levels. Lastly, the commenter congratulates the Sheboygan County business community for ''not adding to most of the bad ozone that comes from out of state,'' but shares concerns that not enough attention is being paid to health issues.

Response 1: The issues raised by this commenter are largely beyond the scope of this action, in which EPA is evaluating the State's request to redesignate the area for the 2008 ozone NAAQS under the criteria at CAA section 107(d)(3)(E).

The requirement for EPA to periodically review the NAAQS, and to update those standards as necessary, is provided under sections 108 and 109 of the CAA. As part of the NAAQS review process, EPA conducts an analysis of available science, including key science judgements that inform the development of risk and exposure assessments. Resulting from this process, EPA has promulgated progressively more protective standards for ground-level ozone. On March 27, 2008, EPA revised the 8-hour ozone NAAQS by strengthening the level of the primary and secondary standards to 75 ppb (73 FR 16435), and on October 26, 2015, EPA further revised the 8-hour ozone NAAQS by strengthening the level of the primary and secondary standards to 70 ppb (80 FR 65292). In this action EPA is not reevaluating our March 27, 2008 and October 26, 2015 actions under CAA sections 108 and 109, in which we reviewed available science and revised the ozone standards to levels determined by the Administrator to be protective of public health.

Likewise, the commenter's concerns regarding implementation and attainment of the 2015 ozone NAAQS are not relevant to this redesignation for the 2008 ozone NAAQS. EPA also disagrees with the commenter's assertion that implementation of the 2015 ozone NAAQS ''has been postponed by lawsuits and EPA is dragging its feet.'' On December 6, 2018, EPA published implementation requirements for the 2015 ozone NAAQS, including requirements for attainment demonstrations and programs such as nonattainment new source review (NNSR) (83 FR 62998). EPA is continuing to implement the 2015 ozone NAAQS according to the requirements set forth in that rulemaking, including in the Sheboygan County nonattainment area for the 2015 ozone NAAQS, which covers the identical geographic area as the Shoreline Sheboygan area for the 2008 ozone NAAQS. Requirements appropriate for nonattainment areas, such as NNSR, will continue to apply in the area because the area will retain its nonattainment designation for the 2015 ozone NAAQS.

The commenter's inquiry about whether health problems they've experienced are related to ozone pollution is also beyond the scope of this action, which focuses only on whether the Shoreline Sheboygan area has met the requirements for redesignation under CAA section 107(d)(3)(E).

Finally, EPA reiterates that according to 40 CFR part 50, the 2008 ozone NAAQS is attained when the design value in an area is equal to or less than 75 ppb. Although the commenter asserts that the Shoreline Sheboygan area's design value of 75 ppb ''can't get any closer'' to the standard, such a design value nevertheless meets the requirements for redesignation under section 107(d)(3)(E)(i) of the CAA.

Comment 2: Sheboygan Ozone Reduction Alliance (SORA), a citizen group focused on reducing air pollution and advocating for public health, provided two reasons for opposing this action.

First, SORA contends that WDNR has failed to demonstrate that reductions in emissions were responsible for reductions in Sheboygan County ozone concentrations. The commenter notes that WDNR chose 2011 and 2017 as the years to be used for nonattainment year and attainment year emissions inventories, and the commenter quantifies that between 2011 and 2017, NO_X emissions in the area decreased by 48% and VOC emissions in the area decreased by 15%. For the years 2008 through 2019, the commenter presents a table of design values for the area, as

well as the number of days each year that the daily maximum 8-hour average in the area was above the level of the 2015 ozone NAAQS. The commenter contends that between 2011 and 2017, ozone concentrations did not decrease proportionally with emissions reductions. Further, the commenter presents a table of the design values for the ten 3-year periods occuring between 2008 through 2019, and notes that none of the design values for the five 3-year periods occuring between 2011 and 2017 show attainment of the 2008 ozone NAAQS. The commenter writes that ''although the 2017–2019 design value appears to meet the 2008 NAAQS, two of the years used for that design value, 2018 and 2019, are outside of the scope of the emission inventory years provided in the request,'' and contends that because WDNR did not provide inventories for 2018 or 2019, it is not possible to determine that the 2017–2019 design value was a result of permanent and enforceable reductions. The commenter also notes that WDNR's submission included the statement ''Sheboygan County sources have little to no ability to influence ozone concentrations at monitors in the county,'' and contends that WNDR therefore does not demonstrate that the improvement in air quality is based on permanent and enforceable emissions reductions. The commenter suggests that WDNR consider expanding the nonattainment area, in order to manage the regional emissions contributing to violations of the ozone standards in Sheboygan County and along Lake Michigan.

Second, SORA contends that ozone season meteorology deviated significantly from historical averages in 2019 and was likely the primary contributor to reduced ozone concentrations during the 2019 ozone season. Specifically, the commenter contends that ''the 2019 ozone season had important meteorological trends that deviated from historical averages for wind direction and temperature.'' The commenter notes that high ozone concentrations at the Kohler Andrae monitor are ''almost always'' associated with southerly winds originating from the south-southwest to southeast, and contends that the average wind direction in 2019 differed from the average wind direction in 2009 through 2017. According to the commenter, an increased frequency of winds from the north and northeast accounts for a drop in average wind direction, and this caused fewer days in 2019 with winds favorable to ozone formation. Further, the commenter notes that warm temperatures are associated with high ozone formation at the Kohler Andrae monitor, and contends that average summer temperature in 2019 was below the 2008–2018 average. The commenter suggests that lower average temperatures indicate fewer days with temperatures conducive to increased ozone formation, and notes that WDNR's submittal shows a correlation between temperature and ozone concentrations. To illustrate these points, the commenter includes four charts displaying data for wind direction and temperature. The commenter concludes these points by contending that unusual meteorology is ''likely the significant contributor to reduced ozone concentrations'' at the Kohler Andrae monitor, without which the design value would have been higher. Lastly, the commenter states that ozone problems will not be solved through redesignation, suggests that regional solutions are required, and hopes that coordinated cooperation between stakeholders will lead to improved air quality.

Response 2: As discussed below, EPA finds that approval of Wisconsin's request to redesignate the Shoreline Sheboygan area is consistent with the requirements of CAA section 107(d)(3)(E).

First, EPA does not agree that attainment of the 2008 ozone NAAQS in Sheboygan County was not due to permanent and enforceable reductions in emissions, per CAA section 107(d)(3)(E)(iii).[1] As stated in EPA's long-standing guidance on redesignations (*see* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992), we interpret this provision to mean that ''[a]ttainment resulting from temporary reductions in emission rates (*e.g.,* reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.'' Calcagni Memo at 4. EPA's guidance instructs that the showing under CAA section 107(d)(3)(E)(iii) ''should estimate the percent reduction . . . achieved from Federal measures . . . as well as control measures that have been adopted and implemented by the State,'' and that overall, we must be able to ''reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.'' *Id.* This cataloguing of permanent and enforceable state and Federal measures, along with the estimated reductions in precursor emissions that cause ozone pollution which are attributable to each measure over the relevant time period, has long been EPA's methodology to demonstrate compliance with CAA section 107(d)(3)(E)(iii) and has been upheld in court. *See Sierra Club* v. *EPA,* 774 F.3d 383, 393–95 (7th Cir. 2014). As noted by the court in *Sierra Club,* ''the CAA does not require EPA to prove causation to an absolute certainty. Rather in accord with its own internal guidance . . . EPA had to 'reasonably attribute' the drops in ozone to permanent and enforceable measures. Only if EPA's path cannot 'be reasonably discerned,' or if EPA relied on factors 'that Congress did not intend it to consider' or 'fail[ed] to consider an important aspect of the problem,' will we conclude that EPA acted arbitrarily or capriciously.'' *Id.* at 396.

EPA applied the same methodology in reviewing Wisconsin's request as it did for the areas at issue in the *Sierra Club* case, and as it has for the many redesignated areas across the country over the last three decades. In our proposal, we discussed at length the various state and Federal promulgated measures and the estimated precursor emission reductions impacts attributable to each of those measures. 85 FR at 28555–58. The commenter does not dispute the permanence or enforceability of any of the measures listed by EPA, nor do they refute that the measures obtained the estimated reductions cited by EPA. The commenter's sole focus was on WDNR's comparison of emission inventories for 2011 (a nonattainment year) and 2017 (an attainment year) for sources within the Shoreline Sheboygan area. To the extent that the commenter is suggesting that the fact that ozone concentrations did not decline proportionally to the emissions reductions implemented in the Sheboygan County area means that those reductions had no impact on the area's attainment, we disagree. Ozone concentrations do not typically decline

[1] The commenter states that they do not support EPA's proposal to redesignate the Sheboygan County area because WDNR has failed to demonstrate that CAA section 107(d)(3)(E)(iii) is met. However, as that statutory provision clearly states, the Administrator may not promulgate a redesignation of a nonattainment area unless ''the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.'' On its face, the statute permits EPA to not only consider Wisconsin's submittal and demonstration, but also any other information the Agency has regarding emission reductions in the area.

proportionally with emissions reductions to both precursors, because ozone formation chemistry, which involves photochemical reactions of precursor species, is a complex nonlinear process. Therefore, reductions of both NO_X and VOC precursor emissions are not likely to result in a *proportional* reduction in ozone. However, selectively reducing the key anthropogenic precursor emissions that are driving ozone formation, generally results in reduced ozone. As noted by the commenter, meteorology and emissions of ozone precursors from outside the nonattainment area both impact ozone concentrations in the Sheboygan County area and can cause some variability from year to year. But the influence of these factors does not negate the fact that the permanent and enforceable precursor emission reductions from stationary and mobile sources in Wisconsin and upwind states that contribute ozone to the Sheboygan County area—all of which we pointed to in our proposal—have in the aggregate caused the area to come into attainment of the 2008 ozone NAAQS.

We also find no fault with Wisconsin's use of 2017 emissions within the nonattainment area (*i.e.,* the attainment inventory) for purposes of illustrating the reduction in emissions in the area over time (from 2011 to 2017). We do not agree with the commenter that ''it is not possible to determine that the 2017–2019 design value was the result of emission reductions'' because Wisconsin did not provide emission inventories for 2018 and 2019. The State's selection of one year of emissions during a design value period indicating nonattainment and one year of emissions during a design value period indicating attainment showed quite simply that emissions had decreased substantially within the area during that time period.

We do not agree with the commenter that it is appropriate or necessary to expand the boundaries of the Shoreline Sheboygan area in order to manage regional ozone pollution impacts along the shoreline of Lake Michigan. Expanding nonattainment areas and imposing the requirements that accompany a nonattainment area designation are not the only tools to achieve emission reductions under the CAA; CAA section 110(a)(2)(D)(i)(I), also known as the good neighbor provision, requires states to eliminate emissions that significantly contribute to nonattainment or interfere with maintenance in another state. We acknowledge that the Shoreline Sheboygan area's ozone concentrations are impacted by emissions from upwind states. WDNR's analysis includes source apportionment modeling showing that, for anthropogenic emissions within modeled source regions, upwind sources in Illinois contribute the largest share of emissions. Under the authority of the good neighbor provision, EPA has required emission reductions from Illinois and other upwind states to address contribution to the Shoreline Sheboygan area in regional interstate transport rulemakings such as the Cross-State Air Pollution Rule (CSAPR) and the CSAPR Update. The CSAPR Update, which took effect in 2017 (*i.e.* the beginning of the 3-year period during which the Shoreline Sheboygan area began monitoring attainment) was estimated to result in a 20% reduction in ozone season NO_X emissions from electric generating units in the eastern United States. In addition, Wisconsin's submittal shows that between 2011 and 2017, NO_X emissions from the multistate Chicago nonattainment area for the 2008 ozone NAAQS decreased by 33%, and VOC emissions from the Chicago area decreased by 18%. Much of this reduction is likely attributable to the fact that the Chicago area is itself a nonattainment area, subject to the same or similar control requirements as the Shoreline Sheboygan area, which would further limit any efficacy of expanding the Shoreline Sheboygan area.

Second, EPA disagrees that unusual ozone season meteorology is the ''likely significant contributor'' to the Sheboygan Shoreline area's attainment of the 2008 ozone NAAQS. Similarly, EPA disagrees with the commenter's assertion that meteorology in 2019, specifically, significantly ''deviated from historical averages for wind direction and temperature.'' Meteorology's impact on ozone formation and the variability that that can cause in ozone concentrations from year to year is expressly accounted for in EPA's form of the NAAQS. Attainment of the 2008 ozone NAAQS, like the 1997 ozone NAAQS before it, is measured by averaging the annual fourth-highest daily maximum 8-hour average concentrations over a 3-year period. In our rulemaking promulgating the 1997 ozone NAAQS, EPA noted the ''lack of year-to-year stability'' inherent to the prior 1979 ozone NAAQS, and determined that a form including a 3-year average would ''provide some insulation from the impacts of extreme meteorological events that are conducive to ozone formation.'' (62 FR 38856, July 18, 1997). Similarly, when EPA revised the NAAQS in 2008, we recognized ''that it is important to have a form that is stable and insulated from the impacts of extreme meteorological events that are conducive to ozone formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due of meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that EPA moved to a concentration-based form in 1997.'' (73 FR 16435, March 27, 2008). We therefore observe that as a general matter, some year-to-year variation in meteorology is expected, and that EPA designed the form of the 2008 ozone NAAQS to accommodate that variability.

We do not think that lower temperatures in 2019 was the cause of the Shoreline Sheboygan area's attainment. The commenter's own analysis shows that the average summer temperature across the years 2008 through 2018 was 61.9 degrees Fahrenheit, and the 2019 summer temperature was 60.6 degrees Fahrenheit. Rather than indicating that 2019 was an outlier year in terms of temperature, the commenter's data shows that 2019 was a very typical year in terms of summer temperatures. According to the commenter's analysis, the average summer temperature in 2019 was only the third lowest out of 11 years. Further, EPA is determining that the Shoreline Sheboygan area is attaining the 2008 ozone NAAQS based on data from the 2017–2019 period; as shown in the commenter's analysis, 2017 and 2018 were among the five warmest out of 11 years. As discussed above, EPA designed the form of the 2008 ozone NAAQS to accommodate year-to-year variation in meteorology, including variability between relatively cooler years and relatively warmer years.

In terms of wind direction, we acknowledge that southerly winds can play a role on high ozone days in the Sheboygan Shoreline area. But it is important to keep in mind that high ozone cannot form in the absence of precursor emissions. The commenter contends that in 2019, the average hourly wind direction at the Kohler Andrae site was 173 degrees, compared to the average hourly wind direction of 190 degrees for six other years including 2009, 2010, 2012, 2013, 2016, and 2017. Annual average hourly wind direction is not a meaningful parameter to consider when analyzing high ozone episodes, particularly at the Kohler Andrae site which is impacted by highly variable wind direction and lake breezes, because it does not narrow in on wind

direction during the specific time periods that are contemporaneous with high ozone. Further, wind direction alone is not a meaningful parameter to consider in analyzing high ozone since it excludes other important factors such as emissions, wind speed, atmospheric boundary layer height, temperature inversion, etc. WDNR's February 11, 2020 submittal (available in the docket for this rulemaking) includes a statistical study, known as a Classification and Regression Tree (CART) analysis, conducted by the Lake Michigan Air Directors Consortium (LADCO) on ozone data from the Shoreline Sheboygan area. LADCO's CART analysis groups high ozone day data (*i.e.,* over 50 ppb) based on meteorological similarity, and shows that for every group, ozone levels at the Kohler Andrae monitor have decreased over the 14-year period from 2005–2018. Although highest ozone concentrations typically occurred on days which experienced southerly winds and high temperatures, those days also experienced the steepest declines in ozone concentrations over the 14-year period. LADCO's CART analysis shows that when the influence of meteorological variability is largely removed, whether it is favorable or unfavorable meteorology, ozone concentrations declined regardless, indicating that the downward trend in ozone levels is attributable to reductions in precursor emissions. Given the results of the LADCO analysis combined with the reasons outlined above pertaining to 2019 meteorology as well as the form of the NAAQS, EPA disagrees with the commenter's contention that unusual meteorology is the primary cause of attaining ozone concentrations at the Kohler Andrae monitor. Rather, EPA concludes that attainment is due to permanent and enforceable reductions in precursor emissions from within the Shoreline Sheboygan area and from upwind areas elsewhere in Wisconsin and in other states during the relevant time period.

Lastly, EPA acknowledges the commenter's assertions that ozone problems will not be solved through redesignations, that regional solutions are required, and that coordinated cooperation between stakeholders may lead to improved air quality. The Sheboygan County area for the 2015 ozone NAAQS will retain its nonattainment designation, and EPA will continue to address ozone problems along Lake Michigan through implementation of the 2015 ozone NAAQS. EPA also continues to implement programs addressing regional and interstate transport of NO_X, such as CSAPR. Finally, EPA encourages the commenter to remain engaged with stakeholders in the effort to protect human health and the environment.

III. What action is EPA taking?

EPA is determining that the Shoreline Sheboygan nonattainment area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for 2017–2019. EPA is approving Wisconsin's 2011 base year emissions inventory, emission statement certification SIP, VOC RACT SIP, I/M certification SIP, and NO_X RACT certification SIP, and is determining that the area meets the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Shoreline Sheboygan area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also approving, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Shoreline Sheboygan area in attainment of the 2008 ozone NAAQS through 2032. EPA finds adequate and is approving the newly-established 2025 and 2032 MVEBs for the Shoreline Sheboygan area. Finally, EPA is approving the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for these actions to become effective immediately upon publication. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1) and section 553(d)(3).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule permanently relieves the state of the requirement to submit certain planning SIPs, such as an attainment demonstration and associated RACM, RFP plans, contingency measures, and other planning elements related to attainment.

Section 553(d)(3) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . as otherwise provided by the agency for good cause.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Gavrilovic,* 551 F.2d at 1105. EPA has determined that there is good cause for making this final rule effective immediately because this rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This rule approves into the SIP the VOC RACT SIP revisions included in Wisconsin's February 11, 2020 and April 1, 2020 submittals, which include Administrative Order AM–20–02 for Kieffer & Co. Inc. and Administrative Order AM–20–03 for Kohler Power Systems. These Administrative Orders were signed on February 4, 2020 and February 28, 2020, respectively, and have been effective and enforceable since the dates of signature. The two affected sources, therefore, do not require time to adjust. On balance, EPA finds affected parties would benefit from the immediate suspension of the requirement to submit certain planning SIPs, instead of delaying by 30 days the suspension of this requirement.

For these reasons, EPA finds good cause under both 5 U.S.C. 553(d)(1) and U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Administrative Orders described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue

to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 1, 2020.

Cheryl Newton,

Deputy Regional Administrator, Region 5.

Title 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(139) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(139) On April 1, 2020, the Wisconsin Department of Natural Resources submitted requests to incorporate Administrative Order AM–20–02 for Kieffer & Co. Inc. and Administrative Order AM–20–03 for Kohler Power Systems into the Wisconsin State Implementation Plan (SIP). These orders establish, through permanent and enforceable emission limits and other requirements, Reasonably Available Control Technology (RACT) equivalency demonstrations for the facilities located in Sheboygan County, Wisconsin.

(i) Incorporation by reference.

(A) Administrative Order AM–20–02, issued by the Wisconsin Department of Natural Resources on February 4, 2020, to the Kieffer & Co. Inc. facility located in Sheboygan, Wisconsin.

(B) Administrative Order AM–20–03, issued by the Wisconsin Department of Natural Resources on February 28, 2020, to the Kohler Power Systems facility located in Mosel, Sheboygan County, Wisconsin.

* * * * *

■ 3. Section 52.2585 is amended by adding paragraph (mm) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(mm) *Redesignation.* Approval—On February 11, 2020, Wisconsin submitted a request to redesignate the Shoreline Sheboygan County area to attainment of the 2008 8-hour ozone standard. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. The ozone maintenance plan also establishes 2025 and 2032 Motor Vehicle Emission Budgets (MVEBs) for the area. The 2025 MVEBs for the Inland Sheboygan County area are 0.50 tons per hot summer day for VOC and 1.00 tons per hot summer day for NO_X. The 2032 MVEBs for the Inland Sheboygan County area are 0.36 tons per hot summer day for VOC and 0.77 tons per hot summer day for NO_X.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. In § 81.350, the table entitled ''Wisconsin—2008 8-Hour Ozone NAAQS [Primary and Secondary]'' is amended by revising the entry for ''Shoreline Sheboygan County, WI'' to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—2008 8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * * *	*		*	
Shoreline Sheboygan County, WI [2 5]	7/10/2020	Attainment.		
Sheboygan County (part):				
Inclusive and east of the following roadways going from the northern county boundary to the southern county boundary: Highway 43, Wilson Lima Road, Minderhaud Road, County Road KK/Town Line Road, N 10th Street, County Road A S/ Center Avenue, Gibbons Road, Hoftiezer Road, Highway 32, Palmer Road/Smies Road/Palmer Road, Amsterdam Road/ County Road RR, Termaat Road.				
* * * *	*		*	

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.
[5] Attainment date is extended to July 20, 2019 for both Inland Sheboygan County, WI, and Shoreline Sheboygan County, WI, nonattainment areas.

* * * * *

[FR Doc. 2020–14691 Filed 7–9–20; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0074; FRL–10006–88–OAR]

RIN 2060–AT86

National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) Residual Risk and Technology Review

Correction

63.14 [Corrected]

In rule document 2020–05900, appearing on pages 40740 through 40791 in the issue of Tuesday, July 7, 2020, make the following corrections.

■ 1. On page 40760, in the second column, amendatory instruction 2 d. for § 63.14 should read as follows:

''■ d. By redesignating paragraphs (h)(102) through (113) as paragraphs (h)(104) through (115), respectively;''.

§ 63.14 Incorporations by reference. [Corrected]

■ 2. On the same page, in the same column, the section heading for 63.14 should read as set forth above.

[FR Doc. C1–2020–05900 Filed 7–9–20; 8:45 am]
BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0098; FRL–10007–73]

Tetraethyl Orthosilicate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of tetraethyl orthosilicate when used as an inert ingredient (binder) in pesticides applied to growing crops and raw agricultural commodities after harvest and pesticides applied to animals. Exponent on behalf of LNouvel, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of tetraethyl orthosilicate when used in accordance with the terms of this exemption.

DATES: This regulation is effective July 10, 2020. Objections and requests for hearings must be received on or before September 8, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID)

number EPA–HQ–OPP–2019–0098, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0098 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 8, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0098, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of May 13, 2019 (84 FR 20843) (FRL–9991–91), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11247) by Exponent on behalf of LNouvel, Inc. 4657 Courtyard Trail, Plano, TX 75024. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of tetraethyl orthosilicate (CAS Reg. No. 78–10–4) when used as an inert ingredient (binder) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and applied to animals with a limitation of 5% by weight in pesticide formulations. That document referenced a summary of the petition prepared by Exponent on behalf of LNouvel Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has decreased the limitation from 5% to 2% by weight in pesticide formulations due to risk concerns from aggregate exposure to tetraethyl orthosilicate at the requested 5% limitation. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document ''Tetraethyl Orthosilicate; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations'' in docket ID number EPA–HQ–OPP–2019–0098.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA

defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''. EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by tetraethyl orthosilicate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies unit can be found at *http://www.regulations.gov* in the document Tetraethyl Orthosilicate; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations at page 8 in docket ID number EPA–HQ–OPP–2019–0098.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

Based on the effects in the combined repeated dose and reproductive and developmental screening study, the POD for chronic effects is the NOAEL of 10 mg/kg/day (based on kidney effects in male rats at a LOAEL of 50 mg/kg/day). The standard uncertainty factors are applied to account for interspecies (10X) and intraspecies (10X) variations. The FQPA safety factor for the protection of infants and children is reduced to 1X. This results in a level of concern (LOC) for the margin of exposure (MOE) of 100. The chronic population adjusted dose (cPAD) is 0.1 mg/kg/day and this value is used for all exposure scenarios. A default value of 100% absorption was used for the dermal and inhalation exposure scenario absorption factor.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tetraethyl orthosilicate, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from tetraethyl orthosilicate in food as follows:

In conducting the chronic dietary exposure assessment, EPA used food consumption information from the U.S. Department of Agriculture's (USDA's) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, no residue data were submitted for tetraethyl orthosilicate. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled ''Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts,'' (D361707, S. Piper, 2/25/09) and can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2008–0738 and can be found at *http://www.regulations.gov* in the document Tetraethyl Orthosilicate; Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as an Inert Ingredient in Pesticide Formulations at page 14 in docket ID number EPA–HQ–OPP–2019–0098

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support

this request for an exemption from the requirement of a tolerance for tetraethyl orthosilicate, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for the chronic dietary risk assessments for parent compound. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Tetraethyl orthosilicate may be used as an inert ingredient in products that are registered for specific uses that may result in residential exposure. A screening level residential exposure and risk assessment was completed for products containing tetraethyl orthosilicate as an inert ingredient. The Agency selected representative scenarios, based on end-use product application methods and labeled application rates. The Agency conducted an assessment to represent worst-case residential exposure by assessing tetraethyl orthosilicate in pesticide formulations (outdoor scenarios) and tetraethyl orthosilicate in disinfectant-type uses (indoor scenarios). The Agency assessed the disinfectant-type products containing tetraethyl orthosilicate using exposure scenarios used by OPP's Antimicrobials Division to represent worst-case indoor residential handler exposure. Further details of the residential exposure and risk analysis can be found at *http://www.regulations.gov* in the memorandum entitled: ''JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,'' (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA–HQ–OPP–2008–0710.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found tetraethyl orthosilicate to share a common mechanism of toxicity with any other substances, and tetraethyl orthosilicate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that tetraethyl orthosilicate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The Agency has concluded that there is reliable data to determine the infants and children will be safe if the FQPA SF of 10X is reduced to 1X for the assessment of all exposure scenarios. The toxicity database for tetraethyl orthosilicate contains subchronic, developmental, reproduction and mutagenicity studies. There is no indication of immunotoxicity or neurotoxicity in the available studies; therefore, there is no need to require an immunotoxicity or neurotoxicity study. No fetal susceptibility is observed in developmental toxicity studies in the rat and rabbit or the 2-generation reproduction toxicity study. Neither maternal, offspring nor reproduction toxicity is observed in any of the studies.

3. *Conclusion.* Based on the adequacy of the toxicity database, the conservative nature of the exposure assessment and the lack of concern for prenatal and postnatal sensitivity, the Agency has concluded that there is reliable data to determine that infants and children will be safe if the FQPA SF of 10X is reduced to 1X for all exposure scenarios.

E. Aggregate Risks and Determination of Safety

Taking into consideration all available information on tetraethyl orthosilicate with an additional limit of 2% is pesticide formulations, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to tetraethyl orthosilicate under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 and 180.930 for residues of tetraethyl orthosilicate when used as an inert ingredient in pesticide formulations applied as a binder and not to exceed 2% of the formulation is safe under FFDCA section 408.

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

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tetraethyl orthosilicate from food and water will utilize 28.2% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in this unit, regarding residential use patterns, chronic residential exposure to residues of tetraethyl orthosilicate is not expected.

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

Tetraethyl orthosilicate is currently used as an inert ingredient in pesticide products that are registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to tetraethyl orthosilicate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 145 for both adult males and females and 125 for children. Because EPA's level of concern for tetraethyl orthosilicate is a MOE of 100 or below, these MOEs are not of concern.

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

Tetraethyl orthosilicate is currently used as an inert ingredient in pesticide products that are registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to tetraethyl orthosilicate.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 595 for adult males and females and 163 for children. Because EPA's level of concern for tetraethyl orthosilicate is a MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of structural alerts in the Derek expert-based knowledge analysis regarding carcinogenicity, tetraethyl orthosilicate is not expected to pose a cancer risk to humans.

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

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (capillary gas chromotography using electron capture detection) is available to enforce the tolerance exemption expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. Revisions to Petitioned-for Tolerances

The petition requested exemptions with a limitation of 50,000 ppm of tetraethyl orthosilicate in pesticide formulations. This is equivalent to 5% of the formulation. At that level, EPA's assessment indicated risks of concern from aggregate exposures to tetraethyl orthosilicate. EPA proposed a 2% limitation to the petitioner, to which the petitioner agreed. At that level, EPA's assessment indicates that risks are below the Agency's level of concern.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 180.930 for tetraethyl orthosilicate (CAS Reg. No. 78–10–4) when used as an inert ingredient (binder) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and applied to animals with a limitation of 2% by weight in the pesticide formulation.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 2, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.910 amend Table 1 by adding alphabetically under ''Inert ingredients'' the term ''Tetraethyl orthosilicate (CAS Reg. No. 78–10–4)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* *	*
Tetraethyl orthosilicate (CAS Reg. No. 78–10–4).	Not to exceed 2% by weight of pesticide formulations.	Binder.
* *	* *	*

■ 3. In § 180.930, amend the table by adding alphabetically under ''Inert Ingredients'' the term ''Tetraethyl orthosilicate (CAS Reg. No. 78–10–4)'' to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	* *	*
Tetraethyl orthosilicate (CAS Reg. No. 78–10–4).	Not to exceed 2% by weight of pesticide formulations.	Binder.
* *	* *	*

[FR Doc. 2020–13012 Filed 7–9–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 15–32, RM–11572; FCC 20–62; FRS 16797]

Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809–817/854–862 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission grants in part and denies in part a petition for reconsideration seeking modification and clarification of certain technical rules adopted in a 2018 Report and Order for coordinating interstitial channels in the 809–817/854–862 MHz band (800 MHz Mid-Band). In particular, the document allows some applicants for interstitial applications to streamline their applications, clarifies standards for calculating interference contours that define the distances that must be maintained between interstitial and incumbent stations and refines certain technical elements of the interstitial channel rules.

DATES: Effective August 10, 2020.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0838.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 20–62, adopted on May 11, 2020 and released on May 12, 2020. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The complete text of the order also is available on the Commission's website at *http://www.fcc.gov.*

Synopsis

1. On October 22, 2018 (83 FR 61072 (Nov. 27, 2018)), the Commission released a Report and Order which created 318 new ''interstitial'' channels in the 800 MHz Mid-Band to alleviate increased demand for spectrum capacity from public safety and other Private Land Mobile Radio (PLMR) users. Following adoption of the Report and Order, the Land Mobile Communications Council (LMCC) filed a petition for reconsideration on December 27, 2018 seeking modification and clarification of some of the technical rules for coordinating interstitial channel applications.

2. In its petition, LMCC asks the Commission to clarify or reconsider four aspects of the contour overlap analysis required by the PLMR Report and Order. First, LMCC asks the Commission to clarify in its rules that applicants need not perform contour overlap analysis if the spacing between stations meets or exceeds co-channel distance separation criteria specified in the rules. Second, LMCC asks the Commission to permit interstitial applicants to use the proposed station's coverage contour rather than its interference contour to predict the area in which the station is likely to cause interference. Although the Commission rejected this proposal in the Report and Order, LMCC asks the Commission to revisit that determination. Third, LMCC urges the Commission to reconsider its decision in the Report and Order not to allow interstitial applicants to calculate contour values based on a matrix chart that LMCC proposes to maintain and update on its website. Finally, LMCC asks the Commission to modify a footnote in a short-spacing separation table added to the Commission's rules by the Report and Order.

3. In its Order on Reconsideration, the Commission modifies its rules to specify that applications for interstitial channels do not need to conduct a contour analysis if the distances in the Commission's co-channel spacing rules are met or exceeded. It also updates its rules to include a revised matrix that uses contour values based on interference and not coverage to predict interference. The Commission once again rejects LMCC's request to allow applicants to use a matrix posted on the LMCC website rather than one codified in the Commission's rules. Further, the Commission clarifies that applicants for interstitial channels should assume that incumbent stations are operating at the maximum permitted effective radiated power associated with the station's licensed antenna height when calculating the potential of the new station to cause interference to the incumbent. Finally, the Commission corrects a few clerical errors and omissions in its rules.

Procedural Matters

A. Final Regulatory Flexibility Analysis

4. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' A Final Regulatory Flexibility Certification on the economic impact of the rule changes adopted in the order is set forth in Appendix A of the Order on Reconsideration.

B. Paperwork Reduction Act of 1995 Analysis

5. The Order on Reconsideration contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Order on Reconsideration to the Chief Counsel for Advocacy of the Small Business Administration.

C. Congressional Review Act

6. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concerns'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notices of Proposed Rulemaking (NPRMs) released in these proceedings. The Commission sought written public comment on the proposals in the NPRMs, including comment on the IRFAs. No comments were filed addressing the IRFAs. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the PLMR Report and Order released in October 2018, which is subject to review in the Order on Reconsideration.

9. In the Order on Reconsideration, the Commission clarified that Mid-Band applicants need not conduct contour analyses if their spacing to co- or adjacent- channel stations exceeds the minimum co-channel spacing criteria in the Commission's rules. It also corrected duplicate channel listings in the rules, supplied channels that were inadvertently omitted and deleted channels that should not have been included. In so doing the Commission reduced burdens for potential applicants who otherwise would have to perform unneeded contour analyses and could have been required to amend their applications had they relied on inaccurate information in the rules.

10. The Commission determined that the impact on the entities affected by the rule change will be not significant. The effect is to allow those entities, including small entities, greater understanding of the essentials of filing an application for Mid-Band channels and avoidance of unnecessary effort associated with provision of contour analyses. The reduction in paperwork, application processing time, and regulatory delays will be beneficial to small businesses as well as to all affected entities.

11. The Commission therefore certifies that the requirements of the Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Order on Reconsideration and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

Ordering Clauses

12. Accordingly, *it is ordered,* pursuant to the authority contained in sections 4(i), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), 405, § 1.429 of the Commission's rules, 47 CFR 1.429, and 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) that the Petition for Reconsideration filed December 27, 2018, by the Land Mobile Communications Council *is granted* to the extent discussed herein and in all other respects *is denied*.

13. *It is further ordered,* pursuant to § 1.103 of the Commission's rules, 47 CFR 1.103, that the amendments to the Commission's rules as set forth hereof *are adopted*, effective 30 days after date of publication in the **Federal Register**.

14. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

■ 2. Amend § 90.617 by revising Table 1A in paragraph (a)(2), Table 1B in paragraph (a)(3), Table 2A in paragraph (b)(1), and Table 2B in paragraph (b)(2) to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(a) * * *

(2) * * *

TABLE 1A—PUBLIC SAFETY POOL 806–813.5/851–858.5 MHZ BAND CHANNELS FOR COUNTIES IN SOUTHEASTERN U.S.

[138 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
261a	261a–313a–324a–335a–353a
262	262–314–325–336–354
262a	262a–314a–325a–336a–354a
265	265–285–315–333–351
265a	265a–285a–315a–333a–351a
266	266–286–316–334–352
266a	266a–286a–316a–334a–352a
269	269–289–311–322–357
269a	269a–289a–311a–322a–357a
270	270–290–312–323–355
270a	270a–290a–312a–323a–355a
271	271–328–348–358–368
271a	271a–328a–348a–358a–368a
279	279–299–317–339–359
279a	279a–299a–317a–339a–359a
280	280–300–318–340–360
280a	280a–300a–318a–340a–360a
309	309–319–329–349–369
309a	309a–319a–329a–349a–369a
310	310–320–330–350–370
310a	310a–320a–330a–350a
321	321–331–341–361–372
321a	321a–331a–341a–361a
Single Channels.	326, 327, 332, 337, 338, 342, 343, 344, 345, 356, 326a, 327a, 332a, 337a, 338a, 342a, 343a, 344a, 345a, 356a

(3) * * *

TABLE 1B—PUBLIC SAFETY POOL 806–813.5/851–858.5 MHZ BAND CHANNELS FOR ATLANTA, GA

[138 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
261a	261a–313a–324a–335a–353a
262	262–314–325–336–354
262a	262a–314a–325a–336a–354a
269	269–289–311–322–357
269a	269a–289a–311a–322a–357a
270	270–290–312–323–355
270a	270a–290a–312a–323a–355a
279	279–299–319–339–359
279a	279a–299a–319a–339a–359a
280	280–300–320–340–360
280a	280a–300a–320a–340a–360a
285	285–315–333–351–379
285a	285a–315a–333a–351a–379a
286	286–316–334–352–380
286a	286a–316a–334a–352a–380a
309	309–329–349–369–389
309a	309a–329a–349a–369a–389a
310	310–330–350–370–390
310a	310a–330a–350a–370a
321	321–331–341–361–381
321a	321a–331a–341a–361a–381a
328	328–348–358–368–388
328a	328a–348a–358a–368a–388a
Single Channels.	317, 318, 326, 327, 332, 337, 338, 356, 371, 372
	317a, 318a, 326a, 327a, 332a, 337a, 338a, 356a, 371a

(b) * * *

(1) * * *

TABLE 2A—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–813.5/851–858.5 MHZ BAND FOR CHANNELS IN SOUTHEASTERN U.S.

[137 Channels]

	Channel Nos.
Single Channels.	263, 264, 267, 268, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 346, 347, 362, 363, 364, 365, 366, 367, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410

TABLE 2A—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–813.5/851–858.5 MHZ BAND FOR CHANNELS IN SOUTHEASTERN U.S.—Continued

[137 Channels]

	Channel Nos.
	263a, 264a, 267a, 268a, 272a, 273a, 274a, 275a, 276a, 277a, 278a, 281a, 282a, 283a, 284a, 287a, 288a, 291a, 292a, 293a, 294a, 295a, 296a, 297a, 298a, 301a, 302a, 303a, 304a, 305a, 306a, 307a, 308a, 346a, 347a, 362a, 363a, 364a, 365a, 366a, 367a, 379a, 380a, 381a, 382a, 383a, 384a, 385a, 386a, 387a, 388a, 389a, 390a, 391a, 392a, 393a, 394a, 399a, 400a, 401a, 402a, 403a, 404a, 405a, 406a, 407a, 408a, 409a

(2) * * *

TABLE 2B—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–813.5/851–858.5 MHZ BAND FOR CHANNELS IN ATLANTA, GA

[137 Channels]

	Channel Nos.
Single Channels.	263, 264, 265, 266, 267, 268, 271, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 342, 343, 344, 345, 346, 347, 362, 363, 364, 365, 366, 367, 382, 383, 384, 385, 386, 387, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 409, 410
	263a, 264a, 265a, 266a, 267a, 268a, 271a, 272a, 273a, 274a, 275a, 276a, 277a, 278a, 281a, 282a, 283a, 284a, 287a, 288a, 291a, 292a, 293a, 294a, 295a, 296a, 297a, 298a, 301a, 302a, 303a, 304a, 305a, 306a, 307a, 308a, 342a, 343a, 344a, 345a, 346a, 347a, 362a, 363a, 364a, 365a, 366a, 367a, 382a, 383a, 384a, 385a, 386a, 387a, 391a, 392a, 393a, 394a, 399a, 400a, 401a, 402a, 403a, 404a, 405a, 406a, 407a, 409a

* * * * *

■ 3. Amend § 90.619 by revising paragraph (a)(5) introductory text and paragraph (a)(5)(ii) to read as follows:

§ 90.619 Operations within the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(5) Channels in the Sharing Zone are available for licensing as indicated in Table A3 to this paragraph (a)(5).

TABLE A3—ELIGIBILITY REQUIREMENTS FOR CHANNELS IN SHARING ZONE

Channels	Eligibility requirements
1–230	Report and Order in Gen. Docket No. 87–112.
231–315a	Public Safety Pool.
316–550	General Category.
551–830	Special Mobilized Radio for 800 MHz High Density Cellular.

* * * * *

(ii) Channels 231–315a are available to applicants eligible in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels.

* * * * *

■ 4. Amend § 90.621 by revising paragraphs (b) introductory text, (d) introductory text, and (d)(1) through (3) to read as follows.

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be assigned co-channel frequencies solely on the basis of distance between fixed stations. In addition, contour overlap as detailed in paragraph (d) of this section will be the basis for geographic separation between fixed stations operating on adjacent-channel frequencies in the 809–817 MHz/854–862 MHz sub-band, except where such fixed stations meet the distance separation criteria set out in this paragraph (b).

* * * * *

(d) Geographic separation between fixed stations operating on adjacent channels in the 809–817/854–862 MHz Mid-Band segment must be based on lack of contour overlap as detailed in paragraphs (d)(1) through (4), unless the co-channel distance separation criteria in paragraph (b) of this section are met.

(1) *Forward contour analysis.* An applicant seeking to license a fixed station on a channel in the 809–817 MHz/854–862 MHz band segment will only be granted if the applicant's proposed interference contour creates

no overlap with the 40 dBu F(50,50) contour of an incumbent operating a fixed station on an upper- or lower-adjacent channel. The applicant's interference contour is determined using the dBu level listed in the appropriate table in paragraph (d)(3) of this section. For this analysis the applicant shall plot the interference contour of its proposed fixed station at its proposed ERP but assume that any adjacent-channel incumbent licensee is operating at the maximum permitted ERP for the licensed antenna height.

(2) *Reciprocal contour analysis.* In addition to the contour analysis described in paragraph (d)(1) of this section, any applicant seeking to license a fixed station on a channel in the 809–817 MHz/854–862 MHz band segment must also pass a reciprocal contour analysis. Under the reciprocal analysis, the interference contour, F(50,10) of an incumbent operating a fixed station on an upper- or lower-adjacent channel must create no contour overlap with the proposed 40 dBu F(50,50) contour of the applicant's fixed station. The incumbent's interference contour is determined using the dBu level listed in the appropriate table in paragraph (d)(3) of this section. For this analysis the applicant shall plot the coverage contour of its fixed station, F(50,50), at its proposed ERP and antenna height above average terrain but plot the interference contour, F(50,10), of any adjacent-channel incumbent licensee at its maximum permitted ERP for the licensed antenna height.

(3) *Contour matrix.* Interference contour levels for the contour analysis described in paragraphs (d)(1) and (2) of this section are determined using Table 4 or Table 5 to this paragraph (d)(3). Table 4 is used to determine the interference contour F(50,10) level of a fixed station operating on a 12.5 kilohertz bandwidth channel while Table 5 is used to determine the interference contour F(50,10) level of a fixed station operating on a 25 kilohertz bandwidth channel. The dBu level of the interference contour is determined by cross-referencing the modulation type of the station operating on the 25 kilohertz bandwidth channel with the modulation type of the station operating on the 12.5 kilohertz bandwidth channel.

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Table 4 to Paragraph (d)(3) – Interference Contour Level for Fixed Station Operating on 12.5 kilohertz Bandwidth Channel

Interference Contour (12.5 kilohertz into 25 kilohertz channel)		12.5 kilohertz Bandwidth Technology of 12.5 kilohertz Bandwidth Channel				
		Transmitter Emission				
25 kilohertz Technology on 25 kilohertz Bandwidth Channel		11K3F3E or less	8K10F1E 8K10F1D 8K70D1W 9K80D7W	7K60FXE 7K60FXD 7K60F7E 7K60F7D 7K60F7W 8K30F1E 8K30F1D	4K00F1E 4K00F1D	11K0F7E 11K0F7D 11K0F7W
		Transmitter	Transmitter	Transmitter	Transmitter	Transmitter
Transmitter Emission		Interference Contour [dBu F (50,10)]				
16K0F3E or 20K0F3E	Receiver	28	25	28	NA	23
10K0F1E or 10K0F1D	Receiver	40	36	40	NA	28
12K5F9W	Receiver	40	36	40	NA	32
16K0F1E or 16K0F1D	Receiver	70	65	65	NA	NA
18K3D7W or 17K7D7D	Receiver	28	25	28	NA	20
12.5 kilohertz Bandwidth Technology on 25 kilohertz Bandwidth Channel						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
11K3F3E or less	Receiver	65	65	65	NA	70
8K10F1E, 8K10F1D, 8K70D1W, 9K80D7W, 9K80D1E or 9K80D1D	Receiver	NA	75	75	NA	NA
7K60FXE, 7K60FXD, 7K60F7E, 7K60F7D, 7K60F7W, 8K30F1E or 8K30F1D	Receiver	NA	75	75	NA	NA
4K00F1E or 4K00F1D	Receiver	NA	NA	NA	NA	NA
11K0F7E, 11K0F7D or 11K0F7W	Receiver	60	55	60	NA	NA

Section 90.221 Technology on 25 kilohertz Bandwidth Channels						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
22K0D7E, 22K0D7D, 22K0D7W, 22K0DXW or 22K0G1W	Receiver	28	25	28	45	20
21K0D1E, 21K0D1D or 21K0D1W	Receiver	28	25	28	NA	20
21K7D7E, 21K7D7D or 21K0D1W	Receiver	28	25	28	NA	20

Table 5 to Paragraph (d)(3) – Interference Contour Level for Fixed Station Operating on 25 kilohertz Bandwidth Channel

Interference Contour (25 kilohertz into 12.5 kilohertz channel)		12.5 kilohertz Bandwidth Technology of 12.5 kilohertz Bandwidth Channel				
		Transmitter Emission				
25 kilohertz Technology on 25 kilohertz Bandwidth Channel		11K3F3E or less	8K10F1E 8K10F1D 8K70D1W 9K80D7W	7K60FXE 7K60FXD 7K60F7E 7K60F7D 7K60F7W 8K30F1E 8K30F1D	4K00F1E 4K00F1D	11K0F7E 11K0F7D 11K0F7W
		Receiver	Receiver	Receiver	Receiver	Receiver
Transmitter Emission		Interference Contour [dBu F (50, 10)]				
16K0F3E or 20K0F3E	Transmitter	40	50	45	NA	36
10K0F1E or 10K0F1D	Transmitter	50	50	50	NA	50
12K5F9W	Transmitter	40	50	45	NA	36
16K0F1E or 16K0F1D	Transmitter	36	40	40	NA	36
18K3D7W or 17K7D7D	Transmitter	25	45	32	NA	23

12.5 kilohertz Bandwidth Technology on 25 kilohertz Bandwidth Channel						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
11K3F3E or less	Transmitter	65	NA	75	NA	60
8K10F1E, 8K10F1D, 8K70D1W, 9K80D7W, 9K80D1E or 9K80D1D	Transmitter	65	75	70	NA	55
7K60FXE, 7K60FXD, 7K60F7E, 7K60F7D, 7K60F7W, 8K30F1E or 8K30F1D	Transmitter	65	75	75	NA	60
4K00F1E or 4K00F1D	Transmitter	NA	NA	NA	NA	NA
11K0F7E, 11K0F7D or 11K0F7W	Transmitter	70	NA	NA	NA	NA
Section 90.221 Technology on 25 kilohertz Bandwidth Channels						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
22K0D7E,22K0D7D, 22K0D7W, 22K0DXW or 22K0G1W	Transmitter	25	28	25	32	23
21K0D1E, 21K0D1D or 21K0D1W	Transmitter	25	28	25	NA	23
21K7D7E, 21K7D7D or 21K0D1W	Transmitter	23	25	23	NA	20

* * * * *

[FR Doc. 2020–12007 Filed 7–9–20; 8:45 am]

BILLING CODE 6712–01–C

SURFACE TRANSPORTATION BOARD

49 CFR Chapter X

[Docket No. EP 764]

Policy Statement on Factors Considered in Assessing Civil Monetary Penalties on Small Entities

AGENCY: Surface Transportation Board.

ACTION: Statement of Board policy.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing this policy statement to provide the public with information on factors the Board expects to consider in determining the appropriate level of civil monetary penalties on small entities in individual cases.

DATES: This policy statement is effective on July 22, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In this Policy Statement, the Board provides information regarding the factors it expects to consider when evaluating the possible reduction, and in appropriate circumstances the waiver, of civil monetary penalties for violations of a statutory or regulatory requirement by a small entity. Although this Policy Statement does not limit the Board's discretion to consider different factors in any particular enforcement action, it is appropriate to provide the public with general guidance regarding the agency's expected approach.

Background

Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847, as amended, requires each agency that regulates the activities of small entities [1] to establish a ''policy or program . . . to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.'' [2] Section 223 also provides that ''[u]nder appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities.''

The Interstate Commerce Act, as amended, provides for a variety of potential civil monetary penalties. In general, a rail carrier that ''knowingly violat[es] this part [49 U.S.C. 10101–11908] or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than $5,000 for each violation.'' 49 U.S.C. 11901(a).[3] Similarly, ''[a] person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title [dealing with licensing rail line constructions, mergers, and abandonments], or of a requirement or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than $5,000.'' 49 U.S.C. 11901(c). There are also civil monetary penalties for violations relating to, among other things, recordkeeping, reporting, and inspections. *See* 49 U.S.C. 11901(e).[4]

Potential Factors for the Reduction or Waiver of Civil Monetary Penalties

Generally, Congress has given the Board discretion to impose civil monetary penalties ''not more than'' a certain amount. *See* 49 U.S.C. 11901(a), (c), (d). In determining an appropriate amount in such cases, the Board will keep in mind that its main objective is not punishment for its own sake but rather to see that the laws it administers are followed. With compliance as its ultimate goal, the Board expects to look to the following non-exhaustive list of factors when considering whether to reduce or waive a penalty for a small entity:

- *Self-Reporting:* Whether the small entity reported its own violation to the Board voluntarily, not under threat of imminent disclosure, and in a timely manner.[5]
- *Compliance History:* Whether the small entity otherwise has a record of fully complying with statutory and regulatory requirements, as well as Board orders.
- *Safeguards:* Whether the small entity, at the time of the violation, had in place a reasonable mechanism, given the entity's size and resources, to prevent, identify, and correct violations, and, if possible, to mitigate the effects of any violations that do occur.
- *Candor:* Whether the small entity forthrightly acknowledged the facts and the existence of a violation.
- *Cooperation:* Whether the small entity cooperated during any agency investigation into the violation, such as by freely providing documents and access to relevant personnel.
- *Good Faith:* Whether the small entity had a good-faith reason for noncompliance (for those violations that need not be committed ''knowingly''), such as reasonable reliance on faulty advice.
- *Impact of Violation:* Whether the violation resulted in, or was likely to result in, little or no actual impact on others, including shippers, carriers, and the general public.
- *Lack of Benefit to Violator:* Whether there was an absence of any significant benefit to the small entity from the violation.
- *Deterrence:* Whether, in light of the small entity's size and resources, a reduced or waived penalty would be sufficient to deter future violations by both the small entity at issue and similarly situated small entities.
- *Impact of Penalty:* Whether the small entity has demonstrated that paying a full penalty would substantially interfere with its ability to operate or otherwise have an adverse effect on third parties not responsible for the violation, such as shippers.
- *Extenuating Circumstances:* Any other circumstance not covered above that may justify a reduction or waiver of a penalty.

The Board expects to take into consideration the factors discussed above, together with all of the evidence and argument before it, in assessing civil monetary penalties on small entities in future cases. The Board notes, however, that because there is significant diversity among the small entities subject to the Board's jurisdiction, a flexible case-by-case approach to penalty waivers and reductions is most appropriate.[6] Parties in individual matters are also free to raise additional factors they believe the Board should consider or to argue that one of the above-listed factors should not be considered (or should be modified).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c)(6).

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: July 1, 2020.

[1] Section 221 of SBREFA defines the term ''small entity'' as having the same meaning as in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, which, in turn, allows an agency to establish an alternative definition appropriate to the agency's activities, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for notice and comment, 5 U.S.C. 601(3). The Board pursued this route, defining ''small entities'' for purposes of implementing the RFA as including only those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016). The RFA's small business size standards (based on number of employees or average annual receipts) continue to apply to other non-rail entities under the Board's jurisdiction.

[2] The Board recently became aware that the agency did not establish a formal policy or program in 1997, as required by SBREFA, regarding civil penalty enforcement for small entities. Accordingly, the Board is issuing this policy statement now.

[3] Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, 701, 129 Stat. 584, 599–601, the Board adjusts its civil penalties for inflation annually. *See, e.g., Civil Monetary Penalties—2020 Adjustment,* EP 716 (Sub-No. 5) (STB served Jan. 8, 2020).

[4] The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.

[5] Pursuant to Executive Order 13,892, *Promoting the Rule of Law Through Transparency & Fairness in Civil Administrative Enforcement & Adjudication,* 84 FR 55,239 (Oct. 15, 2019), the Board also expects to consider this factor when determining whether to reduce or waive penalties for larger entities.

[6] For example, some small entities are small stand-alone switching carriers, whereas others are part of larger corporate holding companies with more resources.

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

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2020–14661 Filed 7–9–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 200622–0166]

RIN 0648–BJ40

Fisheries of the Exclusive Economic Zone off Alaska; Adjust the North Pacific Observer Program Fee

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to adjust the North Pacific Observer Program (Observer Program) fee. This action is intended to increase funds available to support observer and electronic monitoring systems deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting desired monitoring objectives. This action is intended to promote the goals and objectives of the Individual Fishing Quota (IFQ) Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable law.

DATES: Effective August 10, 2020.

ADDRESSES: Electronic copies of the Environmental Assessment/Regulatory Impact Review (referred to as the ''Analysis'') prepared for this final rule are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907–586–7228 or *alicia.m.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. Sections 5(a) and 5(b) of the Halibut Act (16 U.S.C. 773c(a), (b)) provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. Section 5(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Throughout this preamble the term halibut is used for Pacific halibut.

Background

NMFS issues regulations to adjust the Observer Program fee percentage. This action is intended to increase funds available to support observer and electronic monitoring systems (EM) deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting monitoring objectives. Additional detail describing the Observer Program, the landings subject to the observer fee, and the need for this action were included in the Analysis prepared for this action and preamble to the proposed rule for this action and are not repeated here. The following sections provide a brief summary of this information.

Observer Program

Regulations at 50 CFR part 679, subpart E, implementing the Observer Program, require the deployment of NMFS-certified observers or EM. Fishery managers use information collected by observers or EM to monitor fishing quotas, manage catch and bycatch, and document fishery interactions with protected resources, such as marine mammals and seabirds. The current Observer Program was implemented in 2012 (77 FR 70061, November 21, 2012) and modified in 2017, to integrate EM into the partial coverage category (82 FR 36991, August 8, 2017).

The Observer Program includes two observer coverage categories—the partial coverage category and the full coverage category (defined in regulation at § 679.51). All groundfish and halibut vessels and fish processors subject to observer coverage are included in one of these two categories. Throughout this rule, the term ''processor'' refers to shoreside processors, stationary floating processors, and catcher/processors.

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the Council, in consultation with NMFS, to prepare a fishery research plan that includes stationing observers to collect data necessary for the conservation, management, and scientific understanding of the fisheries under the Council's jurisdiction, including the halibut fishery. Section 313(d) of the Magnuson-Stevens Act authorized creation of the North Pacific Fishery Observer Fund within the U.S. Treasury. NMFS uses its authority under section 313 of the Magnuson-Steven Act to fund the deployment of observers and EM on vessels and processors in the partial coverage category. Section 313 of the Magnuson-Stevens Act authorizes NMFS to assess a fee up to 2 percent of the unprocessed ex-vessel value of the fisheries under the jurisdiction of the Council, including the halibut fishery.

Each year, NMFS prepares an annual report and consults with the Council to develop an Annual Deployment Plan (ADP). The annual report evaluates the performance of observer deployment in the prior year and informs the development of the ADP for the following year. The ADP describes how observers and EM will be deployed in the partial coverage category for the upcoming calendar year. Deployment requirements for observers and EM in the full coverage category are established in regulations 50 CFR part 679. Observer and EM selection rates for a given year are dependent on the available budget generated from the observer fee and supplemental funds. Additional information about the Observer Program is available in the preamble to the proposed rule for this action and in Section 3 of the Analysis.

Landings Subject to the Fee

Regulations at § 679.55(c) describe which landings are subject to the observer fee assessment. The observer

fee is assessed on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category.

The intent of the Council and NMFS is for vessel owners to split the fee liability 50–50 with the processor or registered buyer. While the intent is that vessels and processors are each responsible for paying their portion of the ex-vessel value fee, the owner of a processor is responsible for collecting the fee, including the vessel's portion of the fee, at the time of landing and for remitting the full fee amount to NMFS.

Annually, NMFS publishes in the **Federal Register**, a notice of the standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the Observer Program (84 FR 68409, December 16, 2019). Each year the notice provides information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee assessed against landings of groundfish and halibut. NMFS sends invoices to processors and registered buyers subject to the fee by January 15 of each year for the previous year's fee liabilities. Fees are due to NMFS on or before February 15.

Need for This Action

The annual process of establishing observer coverage and EM selection rates in the partial coverage category using the Observer Program Annual Report and Draft ADP is a well-designed and flexible process. This annual process produces a statistically reliable sampling plan for the collection of scientifically robust data at any level of observer coverage and allows for annual consideration of policy-driven monitoring objectives identified through the Council process (Section 3.3 of the Analysis). Due to higher than expected observer deployment costs since 2013, and to the diminishing availability of supplemental Federal funding and declining fee revenues, additional funding is necessary to deploy observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In October 2019, the Council unanimously recommended to increase the observer fee to 1.65 percent. Additional information about funding and coverage rates afforded since 2013 is included in Section 3.4 of the Analysis.

Final Rule

This action will increase the observer fee specified at § 679.55(f) to 1.65 percent of the ex-vessel value of landings subject to the fee beginning on January 1, 2021. A 1.65 percent fee will increase fee revenues (as compared to a 1.25 percent fee) to support observer and EM deployment at rates more likely to meet the Council's and NMFS' monitoring objectives. Observer and EM data are an integral component of management for all fisheries in the partial coverage category. Data collected by observers is fundamental to fisheries management off Alaska, and the Observer Program is critical to collecting important information for NMFS, the Council, and stakeholders.

This action balances concerns about the impacts of increased costs with the need to increase revenue in order to meet monitoring objectives. This action does not modify other aspects of the fee collection process, the responsibility to pay the fee, the ADP process, or other aspects of the Observer Program regulations and management.

Comments and Responses

NMFS received three comment letters during the comment period for the proposed rule (85 FR 13618, March 9, 2020). Two of these comment letters were outside the scope of this action and are not addressed in this final rule. One comment letter from an individual fishery participant included three distinct comments which are summarized and responded to below.

Comment 1: There is no reason to increase the observer fee.

Response: This action is necessary to support the Council's objective of increasing fee revenues and improving the ability of NMFS and the Council to support observer and EM deployment rates that are more likely to meet monitoring objectives of the Observer Program. Each year NMFS, in consultation with the Council, establishes observer and EM deployments rates in the ADP. Due to diminishing availability of supplemental Federal funding and declining fee revenues, additional funding is necessary to decrease risk and increase the probability of deploying observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In October 2019, the Council unanimously recommended to increase the observer fee to 1.65 percent to support observer and EM deployment at rates that are more likely to meet Observer Program monitoring objectives. Fishery dependent data collected through the Observer Program is fundamental to fisheries management off Alaska and is important for NMFS, the Council, and stakeholders. Additional information about the Council's rationale for this action is included in the preamble to the proposed rule and Section 2.4.1 of the Analysis for this action.

Comment 2: NMFS should work within the available budget.

Response: Each year, NMFS establishes observer and EM deployment rates based on the available budget that is generated from the observer fee revenue and supplemental Federal funds. Under current regulations, the observer fee cannot be adjusted annually without notice and comment rulemaking. This action would not change the annual deployment process and NMFS would continue to annually decide the rate of observer coverage and EM coverage that are possible given the budget generated by fee revenues. The amount of coverage allocated to both deployments would continue to be determined annually in the ADP based on an analysis of the costs, budget, and fishing effort in the partial coverage category.

Since 2014, NMFS has set the annual partial coverage budget based on expected fee revenues, unused funds from the previous year's budget, and supplemental Federal funding. NMFS uses the estimated budget and anticipated fishing effort to evaluate the expected budget for the upcoming year. This process in the ADP enables NMFS to reduce the risk of going over the budget. If at some point during the fishing year, NMFS evaluates spending and determines that the realized costs of observer and EM deployment could exceed the available budget, NMFS may either provide additional supplemental funding or reduce the observer or EM deployment rates to reduce expenditures. Realized expenditures and deployment rates for observers and EM are evaluated each year in the Annual Report. This annual process enables the agency to incorporate information from previous years and adjust the deployment methods. This final rule establishes the fee percentage that will directly influence the available budget in future years.

Comment 3: Cameras are the answer and more cameras should be deployed on boats instead of observers to reduce costs. Cameras work well, the costs were paid years ago and the labor to review the video must cost less.

Response: NMFS, in collaboration with Industry and the Council's Fishery Monitoring Advisory and Electronic Monitoring Committees, continues to

work on developing and implementing EM to improve available monitoring tools and improve cost efficiencies within the partial coverage category. In 2018 NMFS developed regulations to allow fixed gear vessels in partial coverage category to request placement in the EM selection pool for the calendar year rather than carrying an observer. The data collected from this coverage are used to obtain catch and discard information from these vessels. Additional information about ongoing work to develop EM and improve cost efficiency is available on the Council's website at: *https://www.npfmc.org/observer-program/.*

Until 2020, EM deployment in the partial coverage category has been funded through a combination of Federal funding and grants to industry partners. Starting in 2020, funds from the observer fee will be used to fund EM deployment. The average annual cost per day for EM deployment in the partial coverage category since 2015 has thus far been similar to average annual cost per day for deploying observers in the partial coverage category, though this may change as more information becomes available about the annual EM equipment replacement costs. The costs to deploy EM in lieu of an observer are generally thought to be lower over time for a mature and stable monitoring program. Annual EM deployment costs are variable and depend on a number of factors, including equipment costs (for new installations and replacements), maintenance, video review, and data storage. Section 3.4 of the Analysis (see **ADDRESSES**) includes additional detail on EM deployment costs.

Changes From Proposed to Final Rule

There were no changes from the proposed to final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is consistent with the FMP for Groundfish of the GOA and the FMP for Groundfish of the BSAI Management Area, other provisions of the Magnuson-Stevens Fishery and Conservation Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action and is included below. NMFS published a proposed rule on March 9, 2020 (85 FR 13618). An initial regulatory flexibility analysis (IRFA) was prepared and included in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on April 8, 2020. NMFS received three letters of comment on the proposed rule. Two of these comment letters were outside the scope of this action and are not addressed in this final rule and no comments were received on the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Small Entity Compliance Guide

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, information included in the small entity compliance guide for the Observer Program was prepared. Copies of this final rule and the small entity compliance guide, are available on the Alaska Region's website at: *https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program.*

Final Regulatory Flexibility Analysis (FRFA)

This FRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). This FRFA describes the economic impact this action will have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

Number and Description of Small Entities Regulated by This Final Action

This action directly regulates the owners (permit holders) of fish processors required to pay the observer fee. A shoreside processor or stationary floating processor primarily involved in seafood processing 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 employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide. Reliable information is not available on ownership affiliations between individual processing operations or employment for the fish processors directly regulated by this final rule. Therefore, NMFS assumes that all of the processors directly regulated by this action could be small. Section 5.7 of the Analysis identifies 50 shorebased processors and 14 floating processors that received partial coverage deliveries subject to the observer fee in 2018 (the most recent year of available ownership and permit data).

This action also directly regulates the owners (permit holders) of catcher/processors required to pay the observer fee, and directly affects the owners (permit holders) of catcher vessels that harvest fish subject to the observer fee. Under the RFA, businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts (revenues) not in excess of $11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation—*i.e.,* finfish or shellfish (81 FR 4469; January 26, 2016). If a vessel has a known affiliation with other vessels—through a business ownership or through a cooperative—the vessel's gross receipts are measured against the small entity threshold based on the total gross revenues of all affiliated vessels. Because public information on business ownership is incomplete, this analysis only considers affiliation in the form of membership in a fishing cooperative. Gross revenues for catcher vessels that participated in fishing cooperatives under the Central Gulf of Alaska Rockfish Program, the Bering Sea American Fisheries Act pollock fishery, or the Crab Rationalization Program were combined for purposes of identifying small entities directly affected by this final rule.

In 2018, 997 vessels participated in fisheries in the partial coverage category. Section 4.5.3.2 of the Analysis notes that the number of catcher/processors eligible for partial coverage when fishing off Alaska is currently estimated to be between 6 and 10. Of the total of 997 vessels in partial coverage in 2018, 982 are classified as small entities (4 were catcher/processors and the rest were catcher vessels). Of those 982 vessels, 827 vessels fished hook-and-line gear, 87 fished pot gear, 30 fished trawl gear, and 22 fished jig gear.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered three alternatives to this action. Alternative 1, the no action Alternative,

would maintain the current level of the fee at 1.25 percent of the ex-vessel value of the fish landings subject to the fee. Alternative 2 included fee options up to 2 percent, that would be applied equally across all fisheries included in the program (*i.e.,* gear types). Alternative 3 included fee options up to 2 percent that would be implemented differentially across the fisheries included in the program (*i.e.,* gear types). This action increases the observer fee to 1.65 percent of ex-vessel value for all landings subject to the observer fee. Some of the fee levels considered under Alternatives 2 and 3 would have implemented a fee percentage lower than this action for some or all directed regulated or directly affected small entities. However, the Council recommendation to increase the observer fee is necessary to increase fee revenues to deploy observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In addition, the Council recommended and NMFS agrees that a single observer fee percentage applied equally to the ex-vessel value of all of the landed catch subject to the observer fee continues to be fair and equitable.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain recordkeeping, reporting, or other compliance requirements.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements, Observers.

Dated: June 22, 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 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.55, revise paragraph (f) to read as follows:

§ 679.55 Observer fees.

* * * * *

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent through December 31, 2020. Beginning January 1, 2021, the observer fee percentage is 1.65 percent.

* * * * *

[FR Doc. 2020–13775 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200702–0176]

RIN 0648–BJ49

Fisheries of the Exclusive Economic Zone Off Alaska; Reclassifying Sculpin Species in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 121 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP) and Amendment 110 to the FMP for Groundfish of the Gulf of Alaska (GOA) (GOA FMP), collectively referred to as Amendments 121/110. This final rule prohibits directed fishing for sculpins by federally permitted groundfish fishermen and specifies a sculpin retention limit in the GOA and BSAI groundfish fisheries. This action is necessary to properly classify sculpins in the BSAI and GOA FMPs. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendments 121/110, the BSAI and GOA FMPs, and other applicable laws.

DATES: Effective August 10, 2020.

ADDRESSES: Electronic copies of the Environmental Assessment and the Regulatory Impact Review (collectively referred to as the ''Analysis'') prepared for this final rule may be obtained from *www.regulations.gov.*

Electronic copies of the Initial Regulatory Flexibility Analyses for the BSAI and GOA Groundfish Harvest Specifications for 2020–2021 may be obtained from *www.regulations.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted via mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Glenn Merrill; in person at NMFS Alaska Region, 709 West 9th Street, Room 401, Juneau, AK; via internet on *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and GOA under the BSAI and GOA FMPs (the FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the BSAI and GOA FMPs appear at 50 CFR parts 600 and 679.

This final rule implements Amendments 121/110 to the BSAI and GOA FMPs, respectively. The Council submitted Amendments 121/110 for review by the Secretary of Commerce (Secretary), and a Notice of Availability (NOA) of Amendments 121/110 was published in the **Federal Register** on March 23, 2020, with comments invited through May 22, 2020 (85 FR 16310). The proposed rule to implement Amendments 121/110 was published in the **Federal Register** on April 23, 2020 with comments invited through May 26, 2020 (85 FR 22703). NMFS received three comment letters from three members of the public. The comments are summarized and responded to under the heading ''Comments and Responses'' below.

A detailed review of the provisions and rationale for this action is provided in the preamble to the proposed rule (85 FR 22703; April 23, 2020) and is briefly summarized in this final rule.

Background

In October 2019, the Council voted to recommend Amendments 121/110 to reclassify sculpins as non-target ecosystem component (EC) species, not in need of conservation and management. Sculpins are currently classified as target species in the FMPs, though as discussed below, sculpins are currently only caught incidental to other target fisheries. To implement Amendments 121/110, NMFS proposes regulations to prohibit directed fishing for sculpins by federally permitted groundfish fishermen and to specify a

sculpin retention limit in the GOA and BSAI groundfish fisheries. The following sections of this preamble provide (1) groundfish stock classification in the FMPs and a brief history of this final action; (2) the National Standards (NS) guidance for determining which species require conservation and management; (3) a description of Amendments 121/110; (4) the regulatory changes made by this final rule; and (5) the comments received and NMFS responses to those comments.

Stock Classification in FMPs and a Brief History of This Final Action

Among other requirements, FMPs must comply with the Magnuson-Stevens Act NS (16 U.S.C. 1851). NMFS has implemented regulations to provide guidance on the interpretation and application of these NS. Relevant to this final rule, the NS guidelines at 50 CFR 600.305(d)(11), (12) and (13) define three classifications for stocks in an FMP: (1) Target stocks in need of conservation and management that fishers seek to catch; (2) non-target stocks in need of conservation and management that are caught incidentally during the pursuit of target stocks; and (3) EC species that do not require conservation and management, but may be listed in an FMP in order to achieve ecosystem management objectives.

Sculpins are currently classified as target species in the groundfish FMPs and directed fishing for sculpins is allowed. However, sculpins are not a target species for any groundfish fishery in the BSAI or GOA. Sculpins are only caught incidental to other target groundfish species. Sculpins are incidentally caught primarily in the BSAI by vessels using trawl gear directed fishing for yellowfin sole, rock sole, and Atka mackerel, as well as by vessels directed fishing for Pacific cod with hook-and-line, pot, and trawl gear (Table 3–4 and Table 3–5 of the Analysis). Sculpins are caught primarily in the GOA by vessels in the Pacific cod and shallow-water flatfish directed fisheries, and IFQ halibut fisheries (Table 3–6 of the Analysis).

For both the BSAI and GOA, sculpins are managed as a Tier 5 species, which is the least preferred method of specifying an overfishing limit when limited biological reference points are available. Only Tier 6 species, for which no biological reference points are available, are below Tier 5 in terms of limited information available. Nonetheless, specification of OFL for Tier 5 species reflects the best estimate possible for sculpins with the available data. As described in Section 3.2.3 of the Analysis, model estimates of sculpin abundance in the BSAI and GOA have been fairly stable over the years with no conservation concerns apparent.

Stock assessments provide the scientific basis for determining whether a stock is experiencing overfishing (*i.e.,* when a stock's recent harvest rate exceeds sustainable levels) or overfished (*i.e.,* already depleted), and for calculating a sustainable harvest rate and forecasting catches that correspond to that rate. For stocks in Tiers 4–6, no determination can be made of overfished status or approaching an overfished condition as information is insufficient to estimate the Maximum Sustainable Yield (MSY) stock level. Therefore, it is not possible to determine whether the sculpin complex is overfished or whether it is approaching an overfished condition because it is managed under Tier 5. However, in the absence of directed fishing, they are very unlikely to be overfished. Sculpins, in general, are not retained. As noted in Section 3.2.2 of the Analysis, sculpin catch has been substantially below ABC and OFL, and has been a small proportion of the biomass each year.

Determining Which Species Require Conservation and Management

Section 302(h)(1) of the Magnuson-Stevens Act requires a council to prepare an FMP for each fishery under its authority that is in need of conservation and management. ''Conservation and management'' is defined in section 3(5) of the Magnuson-Stevens Act. The NS guidelines at § 600.305(c) (revised on October 18, 2016; 81 FR 718585) provide direction for determining which stocks will require conservation and management and provide direction to regional councils and NMFS for how to consider these factors in making this determination. Specifically, the guidelines direct regional councils and NMFS to consider a non-exhaustive list of ten factors when deciding whether stocks require conservation and management.

Section 2.2.1 in the Analysis considers each of the 10 factors' relevance to sculpins. One of the factors a Council must consider when determining whether a stock requires conservation and management is whether maintaining it as a target species will improve or maintain the condition of the stock. The analysis shows that while sculpins are currently classified as a target species in the FMPs, there has been no directed fishing for sculpins since they were included in the FMPs. Sculpins are not important to commercial, recreational, or subsistence users, nor are they important to the National or regional economy. There are no developing fisheries for sculpins in the EEZ off Alaska nor in waters of the State of Alaska. Because there is no directed fishing and incidental fishing-related mortality is low, there is very little probability that sculpins will become overfished. Sculpins are very unlikely to be in need of rebuilding, and are not targeted as a major food product in Alaska. There are no conservation concerns for sculpins since they are not targeted, are rarely retained, and future uses of sculpins remain available. Therefore, maintaining sculpins as a target species in the BSAI and GOA FMPs is not likely to change stock condition.

Amendments 121/110

In October of 2019, the Council recommended, and NMFS now implements, Amendments 121/110 to reclassify sculpins as EC category species in the FMPs. Based on a review of the best available scientific information, and after considering NS guidelines, the Council and NMFS determined that sculpins are not in need of conservation and management, and that classifying sculpins in the EC category is an appropriate action. While the Council determined that sculpins are not in need of conservation and management as defined by the Magnuson-Stevens Act and the NS guidelines, the Council and NMFS determined that there are benefits to retaining sculpins as an EC species complex in the FMPs because they are a component of the ecosystem as benthic predators.

Amendments 121/110 will establish the sculpins EC species complex in the groundfish FMPs to clarify that they are non-target species and not in need of conservation and management. Recordkeeping and reporting requirements will be maintained to monitor the effects of incidental catch of sculpins in the groundfish fisheries. Amendments 121/110 will allow NMFS to prohibit directed fishing for sculpins and limit the retention and commercial sale of sculpins. Commercial sale of retained sculpins will be allowed, subject to MRAs, only if the retained catch is processed into fishmeal, in accordance with current Federal regulations at § 679.20(i)(5). The limitation on processing and sale of EC species as anything other than fishmeal is status quo for all species moved to the EC; however, the Council is considering changing this limitation for squid and may also consider it for sculpin species

to allow them to be processed and sold in other product forms, and that would be addressed with a subsequent action. By virtue of being classified as EC species, catch specifications for sculpins (*i.e.,* OFLs, ABCs, and TACs) will no longer be required.

Though the Council determined, and NMFS concurs, that sculpins are not in need of conservation and management, sculpin population status and bycatch should be monitored to continually assess vulnerability of sculpins to the groundfish fisheries. Therefore, this final rule retains recordkeeping and reporting requirements for sculpin bycatch. This final rule prohibits directed fishing for sculpins to meet the intent of Amendments 121/110 that sculpins are not a target species complex. Because the definition of directed fishing at § 679.2 is based on a MRA, this final rule specifies a retention limit for sculpins so that NMFS could implement the prohibition on directed fishing to meet the intent of Amendments 121/110.

Final Rule

In addition to classifying sculpins as an EC species in the FMPs under Amendments 121/110, the Council recommended and NMFS issues regulations to limit and monitor the incidental catch of sculpins. This final rule will—

- Prohibit directed fishing for sculpins in the BSAI and GOA groundfish fisheries;
- Maintain recordkeeping and reporting of sculpins in the BSAI and GOA groundfish fisheries, but modify the regulations for clarity; and
- Specify a sculpins retention limit, or MRA, of 20 percent in the BSAI and GOA Federal groundfish fisheries.

To prohibit directed fishing, this final rule revises §§ 679.20(i) and 679.22(i) to prohibit directed fishing for sculpins at all times in the BSAI and GOA groundfish fisheries.

To clarify definitions, this final rule adds a definition for sculpins at § 679.2 and adds an instruction to § 679.5 to use the sculpin species code in Table 2c to 50 CFR part 679 (Table 2c) to record and report sculpin catch. These revisions will maintain NMFS' ability to monitor the catch, retention, and discard of sculpins.

Section 679.20 provides the general limitations for the BSAI and GOA groundfish fisheries. Because a TAC will no longer be specified for sculpins, this final rule will remove sculpins from § 679.20(b)(2), which specifies the amount of the TAC that is reserved for inseason management flexibility.

The MRA is the proportion or percentage of retained catch of a species closed for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species). This final rule will move sculpins out of the basis species category and into the incidental catch species category consistent with the prohibition on directed fishing for sculpins under this final rule.

In developing this final rule, the Council and NMFS considered a range of sculpins MRA percentages: 2 Percent, 10 percent, and 20 percent. Sculpins, in general, are not retained, and fishery observer data indicate that the retention rate has been below 10 percent in the BSAI and below 20 percent in the GOA. As noted in Section 3.2.2 of the Analysis, sculpin catch has been substantially below ABC and OFL, and has been a small proportion of the biomass each year. Because there are no conservation concerns for sculpins and retention of sculpins has been low, a lower MRA will not further discourage targeting, but may result in increased regulatory discards of sculpins. Therefore, the Council recommended and NMFS specifies a MRA for sculpins of 20 percent in both the BSAI and GOA groundfish fisheries.

Comments and Responses

NMFS received three unique comments from three members of the public on the proposed rule, with only two comments being relevant to this action. Therefore, only those two comments are addressed here.

Comment 1: NMFS should prohibit commercial fishing and only permit subsistence fishing.

Response: This comment is outside of the scope of this action. This final rule addresses the management of sculpins and is not intended to broadly manage commercial or subsistence fisheries. NMFS manages commercial, recreational and subsistence fisheries consistent with the provisions of the Magnuson-Stevens Act and other applicable law.

Comment 2: This regulation is necessary for the proper and prompt performance of the functions of NMFS. It should be implemented right away, especially if this action will be located in wetlands.

Response: NMFS acknowledges the comment and is implementing this final rule in a timely manner. This action only pertains to fisheries in the marine environment and has no applicability to wetlands.

Changes From the Proposed Rule

No changes were made from the proposed rule.

Classification

Pursuant to section 304(b) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendments 121/110, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS implements Amendments 121/110 and the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

Final Regulatory Flexibility Analysis (FRFA)

This section contains the FRFA for this final rule. Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the

rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a 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 including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of the rule are contained in the preamble to this final rule and the preamble to the proposed rule (85 FR 22703, April 23, 2020), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the Proposed Rule

NMFS published the proposed rule on April 23, 2020. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on May 26, 2020, for the proposed rule and on May 22, 2020, for the notice of availability for the amendments. NMFS received three unique comments from three members of the public on the proposed rule and Amendments 121/110. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA.

Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates any vessel operator harvesting sculpins in the federally managed groundfish fisheries in the BSAI and GOA. The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide (50 CFR 200.2). The most recent estimates of the number of fishing vessels participating in the BSAI and GOA groundfish fisheries that are small entities are provided in Table 2 in the IRFAs for the BSAI and GOA Harvest Specifications for 2020–2021 (see **ADDRESSES**). In 2018, there were 182 catcher vessels and 3 catcher/processors in the BSAI, and 756 catcher vessels and 3 catcher/processors in the GOA. These estimates likely overstate the number of small entities in the groundfish fisheries off Alaska because some of these vessels are affiliated through common ownership or membership in a cooperative and the affiliated vessels together would exceed the $11.0 million annual gross receipts threshold for small entities.

For operators of vessels currently participating in these fisheries, the economic impacts of this final rule are primarily beneficial or neutral. Removing sculpins from the BSAI target species category will remove the sculpins TAC from inclusion in the 2 million metric ton optimum yield (OY) cap in the BSAI. The amount of the OY cap that has been reserved for sculpins will be available to increase the TAC limit or limits for other BSAI target species. This effect will benefit participants in the BSAI fisheries that experience TAC increases relative to what the TACs would have been without this final rule. Some of the entities that experience benefits from increased TACs in the future may be small entities. The effects on target species TACs will be neutral for the GOA fisheries, as the OY has not constrained TACs in the GOA to date. Therefore, removing the sculpins TAC in the GOA will not allow for an increase in the TAC for another target species.

The only potential adverse economic impact that has been identified for this final rule is that vessel owners or operators who may wish to conduct directed fishing for sculpins in the future, and who may wish to retain more sculpins than they would be allowed to retain under the 20 percent MRA, will not be able to do so. This potential adverse impact will not affect any current participants relative to opportunities available to them because there has been no directed fishing for sculpins. Therefore, no current participants will lose an economic opportunity that is available to them today or has been available to them.

Recordkeeping, Reporting, and Other Compliance Requirements

Under this final rule, requirements for recording and reporting the catch and discard of sculpins in logbooks or on catch or production reports will be maintained as they are in existing regulations. The final rule will make only minor modifications to clarify the recordkeeping and reporting requirements in § 679.5, Table 2a to 50 CFR part 679, and Table 2c to 50 CFR part 679. Therefore, moving sculpins from the target species category to the EC category will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this final rule and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered two alternatives. Among the two alternatives, Alternative 2 Option 3 (the preferred alternative) provides the most economic benefits to current participants in the BSAI and GOA groundfish fisheries. The primary economic benefit of this final rule is to reduce the potential constraints imposed by the OFLs, ABCs, and TACs for sculpins on BSAI and GOA groundfish fisheries. Among the three options considered for the sculpins MRA (2 percent, 10 percent, and 20 percent), the 20 percent MRA that was selected minimizes the economic impact on any fishing vessel that is a small entity because it provides the greatest opportunity to retain sculpins as incidental catch in other groundfish fisheries.

Alternative 1 is the no action alternative and would have continued to classify sculpins as target species in the groundfish FMPs. OFLs, ABCs, and TACs would have continued to be set for sculpins as a species group in both the BSAI and GOA. Relative to Alternative 2, Alternative 1 could be considered less beneficial to small entities because all catch specifications would need to be maintained, and current constraints on the BSAI and GOA groundfish fisheries would continue. However, Alternative 2 (this final rule) also could be considered more restrictive to small entities than Alternative 1 if the prohibition on directed fishing for sculpins under the final rule limits future participants' ability to conduct directed fishing for sculpins more so than would occur under the status quo. Alternative 1 would have allowed NMFS to determine annually whether to open a directed fishery for sculpins.

Alternative 2 classifies sculpins in the BSAI and GOA in the EC category and implements a regulation prohibiting directed fishing for sculpins that can only be revised through subsequent rulemaking. However, the Council recommended and NMFS concurs that the benefits of the final rule to current fishery participants, including small entities, outweigh the potential future adverse impacts of the prohibition

against directed fishing for sculpins. In addition, this provision can be re-evaluated by the Council and NMFS in the future if fishery participants want to develop directed fisheries for sculpins.

Collection-of-Information Requirements

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control Numbers 0648–0213 and 0648–0515. This final rule will make minor revisions to the information collection requirements to clarify the location of the species code for sculpins in the tables to 50 CFR part 679 to note that sculpins should be reported as non-target EC species rather than target species. The requirements for recording and reporting the catch and discard of sculpins in logbooks or on catch or production reports will not change. These minor revisions do not change the public reporting burden or costs.

Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), or to OIRA by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments: Or by using the search function.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.reginfo.gov/public/do/PRASearch#.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 6, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Public Law 108–447; Public Law 111–281.

■ 2. In § 679.2, add a definition for ''Sculpins'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Sculpins (see Table 2c to this part and § 679.20(i)).

* * * * *

■ 3. In § 679.5, revise paragraphs (a)(3) introductory text, (c)(3)(vi)(F), and (c)(4)(vi)(E) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(3) *Fish to be recorded and reported.* The operator or manager must record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator or manager may record and report the following information (see paragraphs (a)(3)(i) through (iv) of this section) for non-groundfish (see Table 2d to this part):

* * * * *

(c) * * *

(3) * * *

(vi) * * *

(F) *Species codes.* The operator must record and report required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator may record and report information for non-groundfish (see Table 2d to this part).

* * * * *

(4) * * *

(vi) * * *

(E) *Species codes.* The operator must record and report required information for all groundfish (see Table 2a to this part), prohibited species (see Table 2b to this part), forage fish (see Table 2c to this part), grenadiers (see Table 2c to this part), squids (see Table 2c to this part), and sculpins (see Table 2c to this part). The operator may record and report information for non-groundfish (see Table 2d to this part).

* * * * *

■ 4. In § 679.20, revise paragraphs (b)(2) introductory text, (i) heading, and (i)(3) through (5) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(2) *GOA.* Initial reserves are established for pollock, Pacific cod, flatfish, octopuses, and sharks, which are equal to 20 percent of the TACs for these species or species groups.

* * * * *

(i) *Forage fish, grenadiers, squids, and sculpins.* * * *

(3) *Closure to directed fishing.* Directed fishing for forage fish, grenadiers, squids, and sculpins is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish, grenadiers, squids, and sculpins is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish, grenadiers, squids, or sculpins not exceeding the maximum retainable amount may be processed into fishmeal for sale, barter, or trade.

* * * * *

■ 5. In § 679.22, revise paragraph (i) to read as follows:

§ 679.22 Closures.

* * * * *

(i) *Forage fish, grenadiers, squids, and sculpins closures.* See § 679.20(i)(3).

■ 6. Revise Table 2a to part 679 to read as follows:

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH

Species description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER:	

TABLE 2a TO PART 679—SPECIES CODES: FMP GROUNDFISH—Continued

Species description	Code
Alaska plaice	133
Arrowtooth	121
Bering	116
Kamchatka	117
Starry	129
Octopuses	870
Pacific cod	110
Pollock	270
ROCKFISH:	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all *Sebastolobus* species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (blackcod)	710
SHARKS:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES:	
Alaska (*Bathyraja parmifera*)	703
Aleutian (*B. aleutica*)	704
Whiteblotched (*B. maculate*)	705
Big (*Raja binoculata*)	702
Longnose (*R. rhina*)	701
Other (if Alaska, Aleutian, whiteblotched, big, or longnose skate—use specific species code)	700
SOLE:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Turbot, Greenland	134

■ 7. Revise Table 2c to part 679 to read as follows:

TABLE 2c TO PART 679—SPECIES CODES: FMP FORAGE FISH SPECIES (ALL SPECIES OF THE FOLLOWING FAMILIES), GRENADIER SPECIES, SQUIDS, AND SCULPINS

Species identification	Code
FORAGE FISH:	
Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
Capelin smelt (family *Osmeridae*)	516
Deep-sea smelts (family *Bathylagidae*)	773
Eulachon smelt (family *Osmeridae*)	511
Gunnels (family *Pholidae*)	207
Krill (order *Euphausiacea*)	800
Lanternfishes (family *Myctophidae*)	772
Pacific Sand fish (family *Trichodontidae*)	206
Pacific Sand lance (family *Ammodytidae*)	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family *Stichaeidae*)	208
Surf smelt (family *Osmeridae*)	515
GRENADIERS:	
Giant Grenadiers (*Albatrossia pectoralis*)	214
Other Grenadiers	213
SQUID:	
Squids	875
SCULPINS:	
Sculpins	160

■ 8. Revise Table 10 to part 679 to read as follows:

BILLING CODE 3510–22–P

Table 10 to Part 679—Gulf of Alaska Retainable Percentages.

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j)[6])																	
Code	Species	Pollock	Pacific cod	DW Flat [2]	Rex sole	Flathead sole	SW Flat [3]	Arrow-tooth	Sablefish	Aggregated rockfish[7]	SR/RE ERA [1]	DSR SEO (C/Ps only) [5]	Atka mackerel	Aggregated forage fish[9]	Skates [10]	Other species [6]	Grenadiers [12]	Squids	Sculpins
110	Pacific cod	20	n/a[9]	20	20	20	20	35	1	5	[1]	10	20	2	5	20	8	20	20
121	Arrowtooth	5	5	20	20	20	20	n/a	1	5	0	0	20	2	5	20	8	20	20
122	Flathead sole	20	20	20	20	n/a	20	35	7	15	7	1	20	2	5	20	8	20	20
125	Rex sole	20	20	20	n/a	20	20	35	7	15	7	1	20	2	5	20	8	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
152/151	Shortraker/rougheye [1]	20	20	20	20	20	20	35	7	15	n/a	1	20	2	5	20	8	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	[1]	10	n/a	2	5	20	8	20	20
270	Pollock	n/a	20	20	20	20	20	35	1	5	[1]	10	20	2	5	20	8	20	20
710	Sablefish	20	20	20	20	20	20	35	n/a	15	7	1	20	2	5	20	8	20	20
Flatfish, deep-water[2]		20	20	n/a	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
Flatfish, shallow-water[3]		20	20	20	20	20	n/a	35	1	5	[1]	10	20	2	5	20	8	20	20
Rockfish, other [4]		20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
172	Dusky rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20	20
Rockfish, DSR-SEO [5]		20	20	20	20	20	20	35	7	15	7	n/a	20	2	5	20	8	20	20
Skates[10]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	n/a	20	8	20	20
Other species [6]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	5	n/a	8	20	20
Aggregated amount of non-groundfish species[11]		20	20	20	20	20	20	35	1	5	[1]	10	20	2	5	20	8	20	20

Notes to Table 10 to Part 679

1	Shortraker/rougheye rockfish				
		SR/RE	*Sebastes* borealis (shortraker) (152)		
			S. aleutianus (rougheye) (151)		
		SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).		
	Where an MRA is not indicated, use the MRA for SR/RE included under Aggregated Rockfish				
2	Deep-water flatfish	Dover sole (124), Greenland turbot (134), Kamchatka flounder (117), and deep-sea sole			
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole (122), rex sole (125), or arrowtooth flounder (121)			
4	Other rockfish	Western Regulatory Area	means other rockfish and demersal shelf rockfish		
		Central Regulatory Area			
		West Yakutat District			
		Southeast Outside District	means other rockfish		
		Other rockfish			
		S. aurora (aurora) (185)	*S. variegates* (harlequin)(176)	*S. brevispinis* (silvergrey)(157)	
		S. melanostomus (blackgill)(177)	*S. wilsoni* (pygmy)(179)	*S. diploproa* (splitnose)(182)	
		S. paucispinis (bocaccio)(137)	*S. babcocki* (redbanded)(153)	*S. saxicola* (stripetail)(183)	
		S. goodei (chilipepper)(178)	*S. proriger* (redstripe)(158)	*S. miniatus* (vermilion)(184)	
		S. crameri (darkblotch)(159)	*S. zacentrus* (sharpchin)(166)	*S. reedi* (yellowmouth)(175)	
		S. elongatus (greenstriped)(135)	*S. jordani* (shortbelly)(181)		
		S. entomelas (widow)(156)	*S. flavidus* (yellowtail)(155)		
	In the Eastern Regulatory Area only, Other rockfish also includes *S. polyspinis* (northern)(136)				
5	Demersal shelf rockfish (DSR)	*S. pinniger* (canary)(146)	*S. maliger* (quillback)(147)	*S. ruberrimus* (yelloweye)(145)	
		S. nebulosus (china)(149)	*S. helvomaculatus* (rosethorn)(150)		
		S. caurinus (copper)(138)	*S. nigrocinctus* (tiger)(148)		
		DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO). Catcher vessels in the SEO have full retention of DSR (see § 679.20(j)).			
6	Other species	Octopuses (870)	Sharks (689)		
7	Aggregated rockfish	Aggregated rockfish (see § 679.2) means any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish), *Sebastes melanops* (black rockfish), and *Sebastes mystinus* (blue rockfish), except in:			
		Southeast Outside District	where DSR is a separate species group for those species marked with an MRA		
		Eastern Regulatory Area	where SR/RE is a separate species group for those species marked with an MRA		
8	n/a	Not applicable			

Notes to Table 10 to Part 679

9	Aggregated forage fish (all species of the following taxa)	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*)	209
		Capelin smelt (family *Osmeridae*)	516
		Deep-sea smelts (family *Bathylagidae*)	773
		Eulachon smelt (family *Osmeridae*)	511
		Gunnels (family *Pholidae*)	207
		Krill (order *Euphausiacea*)	800
		Lanternfishes (family *Myctophidae*)	772
		Pacific Sand fish (family *Trichodontidae*)	206
		Pacific Sand lance (family *Ammodytidae*)	774
		Pricklebacks, war-bonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*)	208
		Surf smelt (family *Osmeridae*)	515
10	Skates Species and Groups	Alaska (*Bathyraja. Parmifera*)	703
		Aleutian (*B. aleutica*)	704
		Whiteblotched (*Raja binoculata*)	705
		Big Skates (*Raja binoculata*)	702
		Longnose Skates (*R. rhina*)	701
		Other Skates (*Rathyraja* and *Raja spp.*)	700
11	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	
12	Grenadiers	Giant grenadiers (*Albatrossia pectoralis*)	214
		Other grenadiers (all grenadiers that are not Giant grenadiers)	213

BILLING CODE 3510–22–C

■ 9. Revise Table 11 to part 679 to read as follows:

BILLING CODE 3510–22–P

Table 11 to Part 679—BSAI Retainable Percentages.

BASIS SPECIES		INCIDENTAL CATCH SPECIES																		
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-tooth	Kam-chatka	Yellow fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sable-fish[1]	Short-raker/ rougheye	Aggregated rockfish[6]	Squids [7]	Aggregated forage fish[7]	Other species[4]	Grenadiers [7]	Sculpins [7]
110	Pacific cod	20	na[5]	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8	20
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3	8	20
117	Kamchatka	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3	8	20
122	Flathead sole	20	20	20	35	35	35	35	35	35	na	35	15	7	15	20	2	20	8	20
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20	8	20
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20	8	20
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20	8	20
134	Greenland turbot	20	20	20	20	35	35	20	20	20	20	na	15	7	15	20	2	20	8	20
136	Northern	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8	20
141	Pacific Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8	20
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20	8	20
193	Atka mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8	20
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8	20
710	Sablefish [1]	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20	8	20
Other flatfish[2]		20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20	8	20
Other rockfish[3]		20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8	20
Other species[4]		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na	8	20
Aggregated amount non-groundfish species[8]		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8	20

[1] **Sablefish**: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).
[2] **Other flatfish** includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder and Kamchatka flounder.
[3] **Other rockfish** includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.
[4] The **Other species** includes sharks, skates, and octopuses.
[5] **na** = not applicable
[6] **Aggregated rockfish** includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish.
[7] **Forage fish, grenadiers, squids, and sculpins** are all defined at Table 2c to this part.
[8] All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

[FR Doc. 2020–14856 Filed 7–9–20; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 85, No. 133
Friday, July 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AO05

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing proposed regulations to establish a new Des Moines, IA, locality pay area and to include Imperial County, CA, in the Los Angeles-Long Beach, CA, locality pay area as an area of application. The proposed changes in locality pay area definitions would be applicable on the first day of the first applicable pay period beginning on or after January 1, 2021, subject to issuance of final regulations. Locality pay rates for the new Des Moines, IA, locality pay area would be set by the President after the new locality pay area would be established by regulation.

DATES: We must receive comments on or before August 10, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe by email at *pay-leave-policy@opm.gov* or by telephone at (202) 606–2838.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas are based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent considers the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the administration of the locality pay program, including the geographic boundaries of locality pay areas. (The Federal Salary Council's recommendations are posted on the OPM website at*https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Federal-Salary-Council.*) The establishment or modification of pay area boundaries conforms to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

This proposal provides notice and requests comments on proposed regulations to implement the Pay Agent's plan to establish a new Des Moines, IA, locality pay area and to include Imperial County, CA, in the Los Angeles-Long Beach, CA, locality pay area as an area of application. (Annual Pay Agent reports on locality pay are posted on the OPM website at*https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Pay-Agent-Reports.*) As further discussed below, those changes were tentatively approved, pending appropriate rulemaking, in the December 19, 2019, report of the President's Pay Agent.

Establishing a New Des Moines, IA, Locality Pay Area

Locality pay is set by comparing GS and non-Federal pay rates for the same levels of work in each locality pay area. Non-Federal salary survey data used to set locality pay rates are collected by the Bureau of Labor Statistics (BLS). BLS uses a method that permits Occupational Employment Statistics (OES) data to be used for locality pay. OES data are available for metropolitan statistical areas (MSAs) and combined statistical areas (CSAs) throughout the Country and permit evaluation of salary levels in many more locations than could be covered under the prior National Compensation Survey alone.

The Federal Salary Council has been monitoring comparisons of GS and non-Federal pay in the ''Rest of U.S.'' MSAs and CSAs with 2,500 or more GS employees. Based on its review, the Federal Salary Council has recommended new locality pay areas be established for MSAs and CSAs with pay gaps averaging more than 10 percentage points above that for the ''Rest of U.S.'' locality pay area over an extended period, has identified the Des Moines-Ames-West Des Moines, IA CSA as such a metropolitan area, and has recommended that the Pay Agent establish that CSA as a new locality pay area. The President's Pay Agent has agreed to issue proposed regulations that would make that change by modifying 5 CFR 531.603(b) accordingly. Locality pay rates for the new locality pay area would be set by the President at a later date after it would be established by regulation.

Criteria for Areas of Application

Locality pay areas consist of (1) the MSA or CSA comprising the basic locality pay area and, where criteria recommended by the Federal Salary Council and approved by the Pay Agent are met, (2) areas of application. Areas of application are locations that are adjacent to the basic locality pay area and meet approved criteria for inclusion in the locality pay area. Those criteria are explained below.

The Pay Agent's current criteria for evaluating locations adjacent to a basic locality pay area for possible inclusion in the locality pay area as areas of application are as follows: For adjacent CSAs and adjacent multi-county MSAs the criteria are 1,500 or more GS

employees and an employment interchange rate of at least 7.5 percent. For adjacent single counties, the criteria are 400 or more GS employees and an employment interchange rate of at least 7.5 percent. The employment interchange rate is defined as the sum of the percentage of employed residents of the area under consideration who work in the basic locality pay area and the percentage of the employment in the area under consideration that is accounted for by workers who reside in the basic locality pay area. (The employment interchange rate is calculated by including all workers in assessed locations, not just Federal employees.) No locations adjacent to the Des Moines-Ames-West Des Moines, IA CSA meet these criteria.

The Pay Agent also has criteria for evaluating Federal facilities that cross county lines into a separate locality pay area. To be included in an adjacent locality pay area, the whole facility must have at least 500 GS employees, with the majority of those employees in the higher-paying locality pay area, or that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying locality pay area.

Imperial County, CA

In the Federal Salary Council meetings on April 10, 2018, and November 13, 2018, the Council heard testimony regarding Imperial County, CA, currently considered a ''Rest of U.S.'' location that is adjacent to both the Los Angeles-Long Beach, CA, and San Diego-Carlsbad, CA, basic locality pay areas and has approximately 1,860 GS employees receiving a ''Rest of U.S.'' locality pay adjustment. Imperial County is unusual in that it is adjacent to two current locality pay areas and also shares a long border with Mexico.

The applicable criteria for Imperial County are those applied for locations evaluated as single counties. To meet those criteria, Imperial County would need 400 or more GS employees and an employment interchange rate of 7.5 percent or more with the Los Angeles or San Diego basic locality pay areas. With approximately 1,860 GS employees, Imperial County meets the GS employment criterion, but it does not meet the requisite employment interchange rate for either the Los Angeles basic locality pay area (4.67 percent) or the San Diego basic locality pay area (3.03 percent). However, while both of those employment interchange rates are below 7.5 percent, the sum of the two employment interchange rates is 7.70 percent. We agree with the Council that the situation with respect to Imperial County is comparable to a single-county location that would otherwise qualify as an area of application by virtue of being adjacent to only one basic locality pay area with an employment interchange rate of 7.5 percent or more. We also agree that, when a location is to be established as an area of application and is adjacent to two locality pay areas, the location should be included in the locality pay area with which it has the higher employment interchange rate. Accordingly, we propose that Imperial County, CA, be established as an area of application to the Los Angeles locality pay area.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which 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). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any 1 year. This rule has been not designated as a ''significant regulatory action,'' under Executive Order 12866, and it is not ''economically significant'' as measured by the $100 million threshold. Establishing a new locality pay area could have the long-term effect of increasing pay for Federal employees in affected locations if the President establishes higher locality pay percentages for the new locality pay area, and establishing Imperial County, CA, as an area of application will increase applicable locality pay rates for that county. In addition, studies suggest that increasing wages can raise the wages of other workers when employers need to compete for personnel. However, when locality pay percentages are adjusted, the practice has been to allocate a percent of the total GS payroll for locality pay raises and to have the overall cost for such pay raises be the same, regardless of the number of locality pay areas. Also, the increase in pay rates resulting from the addition of Imperial County, CA, to the Los Angeles locality pay area would affect a relatively small number of Federal employees. Thus, the changes in locality pay areas under this final rule are not expected to result in economic effects reaching the $100 million threshold.

Reducing Regulation and Controlling Regulatory Costs

This proposed rule, if finalized as proposed, is expected to impose no more than de minimis costs and thus be neither an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities as this rule only applies to Federal agencies and employees.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not 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.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM proposes to amend 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a), E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Albany-Schenectady, NY-MA—consisting of the Albany-Schenectady, NY CSA and also including Berkshire County, MA;

(3) Albuquerque-Santa Fe-Las Vegas, NM—consisting of the Albuquerque-Santa Fe-Las Vegas, NM CSA and also including McKinley County, NM;

(4) Atlanta—Athens-Clarke County—Sandy Springs, GA-AL—consisting of the Atlanta—Athens-Clarke County—Sandy Springs, GA CSA and also including Chambers County, AL;

(5) Austin-Round Rock, TX—consisting of the Austin-Round Rock, TX MSA;

(6) Birmingham-Hoover-Talladega, AL—consisting of the Birmingham-Hoover-Talladega, AL CSA and also including Calhoun County, AL;

(7) Boston-Worcester-Providence, MA-RI-NH-ME—consisting of the Boston-Worcester-Providence, MA-RI-NH-CT CSA, except for Windham County, CT, and also including Androscoggin County, ME, Cumberland County, ME, Sagadahoc County, ME, and York County, ME;

(8) Buffalo-Cheektowaga, NY—consisting of the Buffalo-Cheektowaga, NY CSA;

(9) Burlington-South Burlington, VT—consisting of the Burlington-South Burlington, VT MSA;

(10) Charlotte-Concord, NC-SC—consisting of the Charlotte-Concord, NC-SC CSA;

(11) Chicago-Naperville, IL-IN-WI—consisting of the Chicago-Naperville, IL-IN-WI CSA;

(12) Cincinnati-Wilmington-Maysville, OH-KY-IN—consisting of the Cincinnati-Wilmington-Maysville, OH-KY-IN CSA and also including Franklin County, IN;

(13) Cleveland-Akron-Canton, OH—consisting of the Cleveland-Akron-Canton, OH CSA and also including Harrison County, OH;

(14) Colorado Springs, CO—consisting of the Colorado Springs, CO MSA and also including Fremont County, CO, and Pueblo County, CO;

(15) Columbus-Marion-Zanesville, OH—consisting of the Columbus-Marion-Zanesville, OH CSA;

(16) Corpus Christi-Kingsville-Alice, TX—consisting of the Corpus Christi-Kingsville-Alice, TX CSA;

(17) Dallas-Fort Worth, TX-OK—consisting of the Dallas-Fort Worth, TX-OK CSA and also including Delta County, TX;

(18) Davenport-Moline, IA-IL—consisting of the Davenport-Moline, IA-IL CSA;

(19) Dayton-Springfield-Sidney, OH—consisting of the Dayton-Springfield-Sidney, OH CSA and also including Preble County, OH;

(20) Denver-Aurora, CO—consisting of the Denver-Aurora, CO CSA and also including Larimer County, CO;

(21) Des Moines-Ames-West Des Moines, IA—consisting of the Des Moines-Ames-West Des Moines, IA CSA;

(22) Detroit-Warren-Ann Arbor, MI—consisting of the Detroit-Warren-Ann Arbor, MI CSA;

(23) Harrisburg-Lebanon, PA—consisting of the Harrisburg-York-Lebanon, PA CSA, except for Adams County, PA, and York County, PA, and also including Lancaster County, PA;

(24) Hartford-West Hartford, CT-MA—consisting of the Hartford-West Hartford, CT CSA and also including Windham County, CT, Franklin County, MA, Hampden County, MA, and Hampshire County, MA;

(25) Hawaii—consisting of the State of Hawaii;

(26) Houston-The Woodlands, TX—consisting of the Houston-The Woodlands, TX CSA and also including San Jacinto County, TX;

(27) Huntsville-Decatur-Albertville, AL—consisting of the Huntsville-Decatur-Albertville, AL CSA;

(28) Indianapolis-Carmel-Muncie, IN—consisting of the Indianapolis-Carmel-Muncie, IN CSA and also including Grant County, IN;

(29) Kansas City-Overland Park-Kansas City, MO-KS—consisting of the Kansas City-Overland Park-Kansas City, MO-KS CSA and also including Jackson County, KS, Jefferson County, KS, Osage County, KS, Shawnee County, KS, and Wabaunsee County, KS;

(30) Laredo, TX—consisting of the Laredo, TX MSA;

(31) Las Vegas-Henderson, NV-AZ—consisting of the Las Vegas-Henderson, NV-AZ CSA;

(32) Los Angeles-Long Beach, CA—consisting of the Los Angeles-Long Beach, CA CSA and also including Imperial County, CA, Kern County, CA, San Luis Obispo County, CA, and Santa Barbara County, CA;

(33) Miami-Fort Lauderdale-Port St. Lucie, FL—consisting of the Miami-Fort Lauderdale-Port St. Lucie, FL CSA and also including Monroe County, FL;

(34) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(35) Minneapolis-St. Paul, MN-WI—consisting of the Minneapolis-St. Paul, MN-WI CSA;

(36) New York-Newark, NY-NJ-CT-PA—consisting of the New York-Newark, NY-NJ-CT-PA CSA and also including all of Joint Base McGuire-Dix-Lakehurst;

(37) Omaha-Council Bluffs-Fremont, NE-IA—consisting of the Omaha-Council Bluffs-Fremont, NE-IA CSA;

(38) Palm Bay-Melbourne-Titusville, FL—consisting of the Palm Bay-Melbourne-Titusville, FL MSA;

(39) Philadelphia-Reading-Camden, PA-NJ-DE-MD—consisting of the Philadelphia-Reading-Camden, PA-NJ-DE-MD CSA, except for Joint Base McGuire-Dix-Lakehurst;

(40) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(41) Pittsburgh-New Castle-Weirton, PA-OH-WV—consisting of the Pittsburgh-New Castle-Weirton, PA-OH-WV CSA;

(42) Portland-Vancouver-Salem, OR-WA—consisting of the Portland-Vancouver-Salem, OR-WA CSA;

(43) Raleigh-Durham-Chapel Hill, NC—consisting of the Raleigh-Durham-Chapel Hill, NC CSA and also including Cumberland County, NC, Hoke County, NC, Robeson County, NC, Scotland County, NC, and Wayne County, NC;

(44) Richmond, VA—consisting of the Richmond, VA MSA and also including Cumberland County, VA, King and Queen County, VA, and Louisa County, VA;

(45) Sacramento-Roseville, CA-NV—consisting of the Sacramento-Roseville, CA CSA and also including Carson City, NV, and Douglas County, NV;

(46) San Antonio-New Braunfels-Pearsall, TX—consisting of the San Antonio-New Braunfels-Pearsall, TX CSA;

(47) San Diego-Carlsbad, CA—consisting of the San Diego-Carlsbad, CA MSA;

(48) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA and also including Monterey County, CA;

(49) Seattle-Tacoma, WA—consisting of the Seattle-Tacoma, WA CSA and also including Whatcom County, WA;

(50) St. Louis-St. Charles-Farmington, MO-IL—consisting of the St. Louis-St. Charles-Farmington, MO-IL CSA;

(51) Tucson-Nogales, AZ—consisting of the Tucson-Nogales, AZ CSA and also including Cochise County, AZ;

(52) Virginia Beach-Norfolk, VA-NC—consisting of the Virginia Beach-Norfolk, VA-NC CSA;

(53) Washington-Baltimore-Arlington, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA CSA and also including Kent County, MD, Adams County, PA, York County, PA, King George County, VA, and Morgan County, WV; and

(54) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

[FR Doc. 2020–14255 Filed 7–9–20; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM–35–21; NRC–2020–0037]

Patient Release Criteria for Radioactive Iodine

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal by petitioner.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the withdrawal, without prejudice to a future filing, of a petition for rulemaking (PRM–35–21), dated November 15, 2019, filed by Peter Crane on behalf of Sensible Controls on Administrations of Radioactive Iodine. The petitioner requested that the NRC revise its regulations regarding the criteria for patient release after the administration of radioactive iodine. By letter dated May 22, 2020, the petitioner withdrew the petition.

DATES: The docket for PRM–35–21, is closed on July 10, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0037 when contacting the NRC about the availability of information regarding this petition. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0037. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

- *Attention:* The *Public Document Room (PDR),* where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *PDR.Resource@nrc.gov* or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pamela Noto, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6795, email: *Pamela.Noto@nrc.gov.*

SUPPLEMENTARY INFORMATION: On November 15, 2019, the NRC received a petition for rulemaking from Peter Crane, on behalf of Sensible Controls on Administrations of Radioactive Iodine, requesting revision to the criteria in § 35.75 of title 10 of the *Code of Federal Regulations* related to patient release after the administration of radioactive iodine. The NRC docketed the petition on January 24, 2020 (Docket No. PRM–35–21). On May 22, 2020, the petitioner submitted a request to withdraw his petition (ADAMS Accession No. *ML20143A159*) given the COVID–19 public health emergency. The NRC acknowledges withdrawal of the petition and is closing Docket No. PRM–35–21; NRC–2020–0037.

Dated: July 1, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–14599 Filed 7–9–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, and 347

RIN 3064–AF54

Branch Application Procedures

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its application requirements for the establishment and relocation of branches and offices so that such applications would no longer require statements regarding the compliance of such proposals with the National Historic Preservation Act of 1966 (NHPA) and the National Environmental Policy Act of 1969 (NEPA). In connection with an ongoing and comprehensive review of the FDIC's existing regulations and guidance to identify rules or guidance that may be outdated, duplicative, or inconsistent, and after a careful analysis of applicable law, staff has concluded that continued consideration of the NHPA and the NEPA in the review of applications for the establishment of a branch and applications for the relocation of a branch or main office is not required under law and, therefore, consideration of these statutes during the processing of these applications is an unnecessary regulatory requirement for insured state nonmember banks and insured branches of foreign banks. Accordingly, the FDIC proposes to amend its regulations to remove NHPA and NEPA requirements embedded in its branch application procedures, and to rescind its statements of policy regarding the NHPA and the NEPA, consistent with branch application procedures for national banks and insured state member banks supervised by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System. These statements of policy respectively provide guidance regarding the FDIC's consideration of the NHPA and the NEPA in the context of the FDIC's review of applications for deposit insurance for *de novo* institutions, the establishment of branches, and relocation domestic branches or main offices.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: You may submit comments, identified by RIN 3064–AF54, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments in the portal.
- *Agency Website: https://www.fdic.gov/regulations/laws/federal/index.html.* Follow the instructions for submitting comments on the website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF54 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All submissions for this rulemaking must include the agency name and RIN 3064–AF54. Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/index.html,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Navid Choudhury, Counsel, Consumer Compliance Unit, Legal Division, (202) 898–6526, *nchoudhury@fdic.gov;* Patricia A. Colohan, Associate Director, Risk Management Examination Branch; (202) 898–7283, *pcolohan@fdic.gov.*

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the NHPA and the NEPA as discrete but related laws to limit the impact of Federal Government initiatives on historic properties and the environment, respectively. Both statutes apply broadly across the Federal Government but to a limited universe of Federal Government actions. Congress sought to incorporate historic preservation and environmental considerations into the Federal Government's work and also to augment and support state and local laws that address historic preservation and environmental policy. The FDIC historically has interpreted the NHPA and NEPA as having limited application to deposit insurance and branch applications.

Section 106 of the NHPA requires Federal agencies to take into account the effects of their ''undertakings'' on historic properties.[1] Likewise, section 102(2)(C) of the NEPA requires that Federal agencies include, in every recommendation or report on major Federal actions significantly affecting the quality of the human environment, a detailed statement that addresses the environmental impact of the proposal.[2] For several years, the FDIC has interpreted the scope of the NHPA and the NEPA as limited to the potential impact on historic properties and the environment with respect to applications for deposit insurance for *de novo* institutions and applications by state non-member banks to establish a domestic branch and to relocate a domestic branch or main office (Covered Applications).

The FDIC has implemented its responsibilities under the NHPA and the NEPA with respect to Covered Applications by regulation and via three statements of policy. In relevant part, the FDIC's regulations generally require applicants to furnish statements regarding compliance with NEPA and NHPA in connection with main office relocation applications by state nonmember banks,[3] domestic and foreign branch establishment and relocation applications by state nonmember banks,[4] and insured branch relocation applications by foreign banks.[5] The three statements of policy are: The *Statement of Policy Regarding the National Historic Preservation Act of 1966;*[6] the *Statement of Policy Regarding the National Environmental Policy Act of 1969;*[7] and the *Statement of Policy on Applications for Deposit Insurance.*[8]

Review of Regulations and Guidance

In an ongoing effort to streamline FDIC regulations and other supervisory materials issued to the public, and to ensure that such materials are timely, relevant, and effective, the FDIC initiated a comprehensive review of its statements of policy and related matters to identify those that could be rescinded. Additionally, as part of its 2017 decennial report to Congress required by the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA),[9] the FDIC committed to review all published guidance in order to identify any guidance that should be revised or rescinded because such issuance is out-of-date or otherwise no longer relevant. In accordance with the EGRPRA, the FDIC regularly reviews its regulations to identify outdated or otherwise unnecessary regulatory requirements.

As noted above, the NHPA and NEPA are parallel but discrete statutes. Courts determining whether these laws apply to a particular Federal agency action have applied similar principles to both statutes. Section 106 of the NHPA applies only to a Federal ''undertaking,'' which, for the type of work the FDIC does, means an activity ''requiring a federal permit, license or approval.'' [10] Section 102(2)(C) of the NEPA applies only to a ''major Federal action,'' which includes actions with environmental effects that may be major and which are potentially subject to Federal control and responsibility. In reviewing the case law on what constitutes an ''undertaking'' under NHPA or a ''major Federal action'' under the NEPA, the FDIC does not believe that approval of a Covered Application constitutes a Federal undertaking under section 106 or section 402 of the NHPA or a major Federal action under section 102(2)(C) of the NEPA.

Section 18(d) of the Federal Deposit Insurance Act requires the FDIC's consent in connection with: An insured state nonmember bank's establishment of a domestic or foreign branch, an insured state nonmember bank's relocation of its main office or a domestic branch, and a foreign bank's relocation of an insured branch.[11] Section 3(o) defines a domestic branch as any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are

[1] 54 U.S.C. 306108. Section 402 (54 U.S.C. 307101) of the NHPA requires that federal undertakings outside of the United States take into account adverse effects on sites inscribed on the World Heritage List or on the foreign nation's equivalent of the National Register for the purpose of avoiding or mitigating adverse effects. Congress added this provision to the NHPA in 1980 to govern federal undertakings outside the United States.

[2] 42 U.S.C. 4332(C).

[3] 12 CFR 303.40 and 303.42(b)(4) and (5).

[4] 12 CFR 303.40, 303.42(b)(4) and (5), and 303.182.

[5] 12 CFR 303.184.

[6] 71 FR 42399 (July 26, 2006).

[7] 63 FR 63475 (Nov. 13, 1998).

[8] 63 FR 44756 (Nov. 20, 1998); amended 67 FR 79278 (Dec. 27, 2002). The FDIC expects to update this Statement of Policy at a later date.

[9] 12 U.S.C. 3311.

[10] Undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including: (1) Those carried out by or on behalf of the Federal agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. 54 U.S.C. 300320.

[11] 12 U.S.C. 1828(d)(1) & (2).

received or checks paid or money lent.[12] These functions (receiving deposits, paying checks, and lending money) characterize a ''domestic branch'' and are generally referred to as the ''core banking functions.'' Section 3(o) likewise defines a ''foreign branch'' as any office or place of business located outside the United States at which ''banking operations are conducted,'' [13] and an insured branch of a foreign bank is defined as a branch of a foreign bank at which insured deposits are received.[14] Section 18(d) therefore generally prohibits a state nonmember bank from engaging in specified activities at a location other than an FDIC-approved main office, domestic branch, or foreign branch, and prohibits a foreign bank from receiving insured deposits at a location other than an approved insured branch. Section 18(d) does not confer upon the FDIC the statutory authority to oversee the construction or acquisition of bank premises, but it governs the circumstances under which the FDIC may authorize a state nonmember bank or an insured branch of a foreign bank to engage in specified banking functions from bank premises. The FDIC's approval of an application under section 18(d), as well as its consideration of NHPA and NEPA in connection with deposit insurance applications, only authorizes certain banking activities to occur at a particular geographic location—nothing more. Therefore, the FDIC's approval of a Covered Application does not authorize any building construction or demolition—or any other activity that could affect historic properties or the environment.

The FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. The Federal Reserve Board's and the OCC's regulatory requirements with respect to branch applications do not incorporate review of the NHPA and the NEPA requirements.[15] After carefully reviewing the FDIC's procedures for Covered Applications, the FDIC has concluded that consideration of the NHPA and NEPA is not required by law and is an unnecessary regulatory requirement for insured state nonmember banks.

Proposed Rule; Rescission of Policy Statements

For the reasons discussed above, the FDIC proposes to make the following amendments to its regulations.

Establishment and Relocation of Domestic Branches and Main Offices of State Nonmember Banks

Part 303 subpart C of the FDIC's regulations sets forth the filing requirements applicable to a state nonmember bank that seeks the FDIC's consent to establish a domestic branch, relocate a domestic branch, or relocate its main office. For each such application, § 303.42 requires applicants to furnish a statement on the impact of the proposal on the human environment for the purposes of complying with the NEPA,[16] and to furnish a statement regarding the eligibility of the proposed site for inclusion in the National Register of Historic Places for purposes of complying with the NHPA.[17] The proposed rule would eliminate these filing requirements concerning the NEPA and the NHPA.

Establishment and Relocation of Foreign Branches of State Nonmember Banks

Section 303.182 of the FDIC's regulations sets forth the filing requirements applicable to a state nonmember bank that seeks the FDIC's consent to establish or relocate a foreign branch. For such an application, § 303.182 requires applicants to furnish a statement regarding whether the proposed branch would be located on a site on the World Heritage List or on the foreign county's equivalent of the National Register of Historic Places for purposes of complying with the NHPA.[18] The proposed rule would eliminate this filing requirement. In addition, § 347.117 of the FDIC's regulations grants general consent to eligible state nonmember banks to establish or relocate a foreign branch,[19] but § 347.119 withholds such general consent if, among other things, the proposed foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places.[20] The proposed rule would eliminate this consideration as a basis for withholding general consent for the establishment or relocation of a foreign branch of an eligible state nonmember bank.

Relocation of an Insured Branch of a Foreign Bank

Section 303.184 of the FDIC's regulations sets forth the filing requirements applicable to a foreign bank that seeks the FDIC's consent to move an insured branch from one location to another. For such an application, § 303.184 requires applicants to furnish a statement on the impact of the proposal on the human environment for the purposes of complying with the NEPA,[21] and to furnish a statement regarding the eligibility of the proposed site for inclusion in the National Register of Historic Places for purposes of complying with the NHPA.[22] The proposed rule would eliminate these filing requirements concerning the NEPA and the NHPA. In addition, § 303.184(d) sets forth the approval criteria for a foreign bank's application to relocate an insured branch.[23] These criteria include, among other things, compliance with NEPA and NHPA.[24] The proposed rule would eliminate compliance with the NEPA and the NHPA as approval criteria for a foreign bank's relocation of an insured branch.

Other Amendments

Section 303.2 defines terms used throughout the FDIC's regulations. These defined terms include ''NEPA'' [25] and ''NHPA.'' [26] Because the amendments to the FDIC's regulations proposed above would remove each additional instance where these terms appear in the FDIC's regulations, the proposed rule would remove ''NEPA'' and ''NHPA'' as defined terms from § 303.2.

Statements of Policy

As mentioned above, the FDIC has implemented its responsibilities under the NHPA and the NEPA via statements of policy as well. The *Statement of Policy Regarding the National Historic Preservation Act of 1966* provides general guidance regarding the FDIC's compliance with the NHPA and supplements procedures detailed in FDIC regulations and regulations implementing the NHPA. Similarly, the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC* addresses the FDIC's compliance with the NEPA with respect to applications, notices and requests submitted to the

[12] 12 U.S.C. 1813(o).

[13] *Id.*

[14] 12 U.S.C. 1813(s); *see also* 12 U.S.C. 3101(b)(6).

[15] 84 FR 51711 (Sept. 30, 2019).

[16] 12 CFR 303.42(b)(4).

[17] 12 CFR 303.42(b)(5).

[18] 12 CFR 303.182(a) and (b)(2)(i).

[19] 12 CFR 347.117.

[20] 12 CFR 347.119(b).

[21] 12 CFR 303.184(a)(2)(iii).

[22] 12 CFR 303.184(a)(2)(iv).

[23] 12 CFR 303.184(d).

[24] 12 CFR 303.184(d)(1)(iv).

[25] 12 CFR 303.2(w).

[26] 12 CFR 303.2(x).

FDIC in accordance with governing regulations at 12 CFR 303. As a result of the amendments to the FDIC's regulation regarding branch applications with respect to compliance with the NHPA and the NEPA, the FDIC proposes to rescind these two Statements of Policy for the reasons discussed above.

The proposed amendments to 12 CFR parts 303 and 347 together with the proposed rescission of the two Statements of Policy regarding the NHPA and the NEPA, would eliminate requirements that are unnecessary for insured state nonmember banks and insured branches of foreign banks, as well as improve the efficiency of the Covered Application review process. Additionally, these actions would place the FDIC in alignment with the other Federal banking agencies and remove a competitive disadvantage insured state nonmember banks and insured branches of foreign banks now face relative to insured state member banks and national banks. Furthermore, insured state nonmember banks and insured branches of foreign banks would remain subject to any applicable state and local historic preservation and environmental laws.

Expected Effects

According to the most recent data, the FDIC supervises 3,344 depository institutions. The proposed rule could specifically affect 3,302 state nonmember depository institutions supervised by the FDIC and 10 insured branches of foreign banks.[27] As previously discussed, the proposed rule would (1) remove ''NEPA'' and ''NHPA'' as defined terms in 12 CFR 303.2(w) and (x); (2) amend the branch application filing procedures for state nonmember banks set forth in 12 CFR 303.42 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (b)(4) and (5); (3) amend the foreign branch application notice procedures for state nonmember banks set forth in 12 CFR 303.182 by removing the requirements to provide a statement in accordance with NHPA set forth in paragraphs (a) and (b)(2)(i), and by removing NHPA compliance as a basis for withholding general consent to establish or relocate a foreign branch under 12 CFR 347.119(b); (4) amend the filing procedures for moving an insured branch of a foreign bank set forth in 12 CFR 303.184 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (a)(2)(iii) and (iv) and (d)(1)(iv); (5) rescind the *Statement of Policy Regarding the National Historic Preservation Act of 1966;* and (6) rescind the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC.* In so doing, the proposed rule would amend the required contents for applications for establishment of a branch and applications for relocation of a branch or main office. Between 2015 and 2018, the FDIC received 549 applications from 400 unique insured State nonmember banks per year to establish a branch, 177 applications from 152 unique insured State nonmember banks per year to relocate a branch or main office, and 1 application from insured branches of foreign banks per year to relocate a branch or main office, on average.[28] For purposes of this analysis, the FDIC is estimating that the number of unique respondents affected by the proposed rule would be consistent with this recent experience. Therefore, the FDIC estimates that the proposed rule would affect 400 insured State nonmember banks applying to establish a domestic branch, 152 insured State nonmember institutions applying to relocate a branch or main office, and 1 insured branch of a foreign bank applying to relocate a branch or main office, per year, on average.

The proposed rule would likely reduce the costs associated with filing branch applications for affected entities by making the process more efficient. Although the proposed rule is expected to reduce costs associated with Covered Applications for applicants dealing with historic properties or environmental issues, the FDIC does not believe the proposed rule will reduce the average hours per response for Covered Applications. Additionally, as previously discussed, the FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. Therefore, the proposed rule is expected to remove a competitive disadvantage that insured state nonmember banks and insured branches of foreign banks now face relative to state member banks and national banks.

The FDIC believes that the associated reductions in costs and application information content are unlikely to generate significant effects on the U.S. economy. The estimated cost reductions are likely to be small because the number of entities affected is also estimated to be small. Further, as previously discussed, while covered applications of insured state nonmember banks and insured branches of foreign banks would no longer be subject to NHPA or NEPA review under federal law, they would remain subject to any applicable state and local historic preservation and environmental laws. Accordingly, outcomes for individual properties that are the subject of covered applications may differ in some states from what they would have been in the absence of the rule.

As previously discussed, after reviewing the case law on what constitutes an ''undertaking'' under NHPA or a ''major Federal action'' under the NEPA, the FDIC does not believe that approval of a Covered Application constitutes a federal undertaking under section 106 of the NHPA or a major federal action under section 102(2)(C) of the NEPA. Therefore, concurrent with the amendment of 12 CFR parts 303 and 347, the FDIC is planning on rescinding the Statements of Policy entitled *Statement of Policy Regarding the National Historic Preservation Act of 1966,* and *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC.* The FDIC believes that the concurrent action to rescind these Statements of Policy will help simplify the application process by removing unnecessary information for applicants, thereby making it more efficient.

Alternatives Considered

The FDIC considered alternatives to the proposed rule but believes that the proposed amendments represent the most appropriate option for affected entities. As discussed previously, after carefully reviewing the FDIC's procedures for Covered Applications, the FDIC has concluded that consideration of the NHPA and the NEPA is not required by law and is an unnecessary regulatory requirement of branch application review process. The FDIC considered the alternative of retaining the current regulations, but did not choose to do so because the regulations are unnecessary, require entities to incur unnecessary costs associated with submitting branch applications, and perpetuate a competitive disadvantage for insured state nonmember banks and insured branches of foreign banks relative to insured state member banks and national banks. Additionally, the FDIC considered retaining the Statements of Policy entitled, *Statement of Policy Regarding the National Historic Preservation Act of 1966,* the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC,* but did not choose to do so because upon reevaluation of

[27] FDIC Call Report data, December 31, 2019.

[28] ViSION, FDIC Application Data.

the applicability of what constitutes an ''undertaking'' under NHPA or a ''major Federal action'' under the NEPA, and deletion of requirements related to the NHPA and the NEPA in 12 CFR parts 303 and 347, these Statements of Policy would be unnecessary. Therefore, the FDIC is proposing to amend 12 CFR parts 303 and 347 by deleting the requirements related to the NHPA and the NEPA and to concurrently rescind the related Statements of Policy.

Request for Comments

The FDIC invites comment on all aspects of the proposal.

Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[29] However, an initial regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification, including a statement providing a factual basis for the certification, in the **Federal Register**, together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[30] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

According to the most recent data, the FDIC supervises 3,344 insured depository institutions, of which 2,581 are considered small banking organizations for the purposes of RFA.[31] As previously discussed, the proposed rule would (1) remove ''NEPA'' and ''NHPA'' as defined terms in 12 CFR 303.2(w) and (x); (2) amend the branch application filing procedures for state nonmember banks set forth in 12 CFR 303.42 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (b)(4) and (5); (3) amend the foreign branch application notice procedures for state nonmember banks set forth in 12 CFR 303.182 by removing the requirements to provide a statement in accordance with NHPA set forth in paragraphs (a) and (b)(2)(i), and by removing NHPA compliance as a basis for withholding general consent to establish or relocate a foreign branch under 12 CFR 347.119(b); (4) amend the filing procedures for moving an insured branch of a foreign bank set forth in 12 CFR 303.184 by deleting the requirements related to the NHPA and the NEPA set forth in paragraphs (a)(2)(iii) and (iv) and (d)(1)(iv); (5) rescind the *Statement of Policy Regarding the National Historic Preservation Act of 1966;* and (6) rescind the *Statement of Policy on National Environmental Policy Act Procedures Relating to Filings Made with the FDIC.* In so doing, the proposed rule would amend the required contents for applications for establishment of a branch and applications for relocation of a branch or main office. The proposed rule could affect the 2,547 small state nonmember depository institutions supervised by the FDIC. No insured branches of foreign banks are considered small banking organizations for the purposes of RFA.[32]

Between 2015 and 2018, the FDIC received applications from 195 unique small insured State nonmember banks per year to establish a branch and applications from 68 unique small insured State nonmember banks per year to relocate a branch or main office, on average.[33] For purposes of this analysis, the FDIC is estimating that the number of unique respondents affected by the proposed rule will be consistent with this recent experience. Therefore, the FDIC estimates that the proposed rule will affect approximately 195 small insured State nonmember banks applying to establish a domestic branch and approximately 68 small insured State nonmember institutions applying to relocate a branch or main office, per year. In total, these 263 affected entities represent no more than an estimated 10.2 percent of small FDIC-supervised institutions.

The proposed rule is likely to reduce the costs associated with filing Covered Applications for small entities, making the process more efficient. Although the proposed rule is expected to reduce costs associated with Covered Applications for small applicants dealing with historic properties or environmental issues, the FDIC does not believe the proposed rule will reduce the average hours per response for Covered Applications. Additionally, as previously discussed, the FDIC is currently the only Federal banking agency that requires consideration of the NHPA and NEPA in connection with branch applications. Therefore, the proposed rule is expected to remove a competitive disadvantage that small insured state nonmember banks and insured branches of foreign banks currently face relative to state member banks and national banks.

Based on the information above, and pursuant to section 605(b) of the RFA, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this proposed rule have any significant effects that the FDIC has not identified on small entities?

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[34] the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The proposed rule affects the FDIC's current information collection titled ''Application for a Bank to Establish a Branch or Move its Main Office'' (OMB Control No. 3064–0070). In particular, the proposed rule removes the requirements related to NHPA and NEPA therefore reducing the PRA burden. However, the amount of hourly burden previously indicated in connection with the PRA information collection does not distinguish between the time to comply with the NHPA and

[29] 5 U.S.C. 601, *et seq.*

[30] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[31] FDIC Call Report data for the period ending December 31, 2019.

[32] FFIEC Reports of Condition and Income (Call Report), for the period ending December 31, 2019.

[33] ViSION, FDIC Application Data.

[34] 44 U.S.C. 3501–3521.

NEPA and the other non-NHPA/NEPA notification requirements. For this reason, the FDIC is assuming that any allotted time dedicated to NHPA and NEPA is minimal and will result in a zero net change in the current estimated average hourly burden for the information collection. Therefore, no submission will be made to OMB for review. The FDIC, does, however, invite comments on its PRA determination.

C. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[35] 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 principles 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 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.[36] The proposed rule would reduce burden and would not impose any reporting, disclosure, or other new requirements on insured depository institutions. Nevertheless, the FDIC invites comments that further will inform its consideration of RCDRIA.

D. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [37] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the proposed rule in a simple and straightforward manner and invite comment on the use of plain language. For example:

- Has the FDIC organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rules be more clearly stated?
- Do the regulations contain technical 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 would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the FDIC incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 347

Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend 12 CFR parts 303 and 347 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 478, 1463, 1467a, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831i, 1831e, 1831o, 1831p–1, 1831w, 1831z, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

§ 303.2 [Amended]

■ 2. In § 303.2, remove paragraphs (w) and (x); and redesignate paragraphs (y) through (g)(g) as paragraphs (w) through (ee), respectively.

§ 303.42 [Amended]

■ 3. In § 303.42, remove paragraphs (b)(4) and (5), and redesignate paragraphs (b)(6) through (8) as paragraphs (b)(4) through (6), respectively.

■ 4. Amend § 303.182 by revising paragraphs (a) and (b)(2)(i) to read as follows:

§ 303.182 Establishing, moving or closing a foreign branch of an insured state nonmember bank.

(a) Notice procedures for general consent. Notice in the form of a letter from an eligible depository institution establishing or relocating a foreign branch pursuant to § 347.117(a) of this chapter must be provided to the appropriate FDIC office no later than 30 days after taking such action. The notice must include the location of the foreign branch, including a street address. The FDIC will provide written acknowledgment of receipt of the notice.

(b) * * *

(2) * * *

(i) The exact location of the proposed foreign branch, including the street address.

* * * * *

■ 5. Amend § 303.184 by:

■ a. Removing paragraphs (a)(2)(iii) and (iv);

■ b. Redesignating paragraphs (a)(2)(v) and (vi) as paragraphs (a)(iii) and (iv), respectively; and

■ c. Revising paragraph (d)(1)(iv).

The revision reads as follows:

§ 303.184 Moving an insured branch of a foreign bank.

* * * * *

(d) * * *

(1) * * *

(iv) Compliance with the CRA and any applicable related regulations, including 12 CFR part 345, has been considered and favorably resolved;

* * * * *

PART 347—INTERNATIONAL BANKING

■ 6. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub. L. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

§ 347.119 [Amended]

■ 7. Amend § 347.119 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 25, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

[FR Doc. 2020–14052 Filed 7–9–20; 8:45 am]

BILLING CODE 6714–01–P

[35] 12 U.S.C. 4802(a).

[36] *Id.* at 4802(b).

[37] 12 U.S.C. 4809.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0021]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): Extension of Sunset Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for ''qualified mortgages'' (QMs) obtain certain protections from liability. One category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, government-sponsored enterprises, or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The GSEs are currently under Federal conservatorship. The Bureau of Consumer Financial Protection (Bureau) established this category of QMs (Temporary GSE QM loans) as a temporary measure that is set to expire no later than January 10, 2021 (the sunset date) or when the GSEs exit conservatorship. Another category of QMs is the General QM loan category. In a separate proposal released simultaneously with this proposal, the Bureau proposes amendments to the General QM loan definition. In this notice of proposed rulemaking, the Bureau proposes to amend Regulation Z to replace the sunset date of the Temporary GSE QM loan definition with a provision that extends the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition. The Bureau is not proposing to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship. The Bureau is proposing to extend the Temporary GSE QM loan definition to ensure that responsible, affordable mortgage credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before the amendments to the General QM loan definition take effect.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0021 or RIN 3170–AA98, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-ATRQM-SunsetDate@cfpb.gov.* Include Docket No. CFPB–2020–0021 or RIN 3170–AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—QM Extension of Sunset Date, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Benjamin Cady, Counsel; or David Friend or Priscilla Walton-Fein, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule or Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the Rule's requirements for QMs obtain certain protections from liability. The Rule defines several categories of QMs.

One QM category defined in the Rule is the General QM loan category. General QM loans must comply with the Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. For General QM loans, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent. Creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in appendix Q of Regulation Z.

A second, temporary category of QM loans defined in the Rule consists of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by Fannie Mae or Freddie Mac while under the conservatorship of the FHFA. This proposal refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. Unlike for General QM loans, the Rule does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the consumer's DTI ratio exceeds 43 percent, so long as the loan is eligible to be purchased or guaranteed by either of the GSEs. In addition, for Temporary GSE QM loans, the Rule does not require creditors to use appendix Q to determine the consumer's income, debt, or DTI ratio.

Under the Rule, the Temporary GSE QM loan definition expires with respect to each GSE when that GSEs exits conservatorship or on January 10, 2021, whichever comes first. The GSEs are currently in conservatorship. Despite the Bureau's expectations when the Rule was published in 2013, Temporary GSE QM loan originations continue to represent a large and persistent share of the residential mortgage loan market, and a significant number of Temporary GSE QM loans would not qualify as General QM loans under the current regulations after the Temporary GSE QM loan definition expires. These loans would not qualify as General QM loans

either because the consumer's DTI ratio is above 43 percent or because the creditor's method of documenting and verifying income or debt is incompatible with appendix Q. Although alternative loan options, including some other types of QM loans, would still be available to many consumers who could not qualify for General QM loans, the Bureau anticipates that many loans that are currently Temporary GSE QM loans would cost materially more for consumers and many would not be made at all.

In a separate proposal issued simultaneously with this proposal, the Bureau is proposing, among other things, to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. The Bureau expects that such amendments would allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires, thereby helping to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau tentatively concludes that having the Temporary GSE QM loan definition expire when a final rule amending the General QM loan definition becomes effective will ensure that responsible, affordable mortgage credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before the amendments to the General QM loan definition take effect.

In light of these and other considerations, the Bureau proposes to extend the Temporary GSE QM loan definition to the effective date of a final rule issued by the Bureau amending the General QM loan definition. The Bureau does not intend for this effective date to be prior to April 1, 2021. Thus, the Bureau does not intend for the Temporary GSE QM loan definition to expire prior to April 1, 2021. The Bureau is not proposing to amend the provision stating that the Temporary GSE QM loan category would expire if the GSEs exit conservatorship.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.[1] The amendments were intended ''to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.'' [2] As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.[3]

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, debt-to-income ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than equity in the dwelling or real property that secures repayment of the loan.[4] A creditor, however, may not be certain whether its ability-to-repay determination is reasonable in a particular case, and it risks liability if a court or an agency, including the Bureau, later concludes that the ability-to-repay determination was not reasonable.

TILA addresses this uncertainty by defining a category of loans—called QMs—for which a creditor ''may presume that the loan has met'' the ATR requirements.[5] The statute generally defines a QM to mean any residential mortgage loan for which:

- There is no negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.[6]

B. The Ability-to-Repay/Qualified Mortgage Rule

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).[7] The January 2013 Final Rule became effective on January 10, 2014, and the Bureau amended it several times through 2016.[8] This proposal refers to the January 2013 Final Rule and later amendments to it collectively as the Ability-to-Repay/Qualified Mortgage Rule, the ATR/QM Rule, or the Rule. The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.[9] Under the Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is ''higher priced.'' [10]

1. General QM Loans

One category of QM loans defined by the Rule consists of ''General QM loans.'' A loan is a General QM loan if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [11]

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[1] Public Law 111–203, 1411–12, 1414, 124 Stat. 1376 (2010); 15 U.S.C. 1639c.

[2] 15 U.S.C. 1639b(a)(2).

[3] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.*, 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

[4] 15 U.S.C. 1639c(a)(3).

[5] 15 U.S.C. 1639c(b)(1).

[6] 15 U.S.C. 1639c(b)(2)(A).

[7] 78 FR 6408 (Jan. 30, 2013).

[8] *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016).

[9] 12 CFR 1026.43(c), (e).

[10] The Rule generally defines a ''higher priced'' covered transaction to mean a first-lien mortgage with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points; or a subordinate-lien transaction with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by 3.5 or more percentage points. 12 CFR 1026.43(b)(4). A creditor that makes a QM loan that is not ''higher priced'' is entitled to a conclusive presumption that it has complied with the Rule—*i.e.*, the creditor receives a safe harbor. 12 CFR 1026.43(e)(1)(i). A creditor that makes a QM loan that is ''higher priced'' is entitled to a rebuttable presumption that it has complied with the Rule. 12 CFR 1026.43(e)(1)(ii).

[11] 12 CFR 1026.43(e)(2)(i)–(iii).

- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [12]
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q; [13] and
- The consumer's DTI ratio is no more than 43 percent (DTI limit), determined in accordance with appendix Q.[14]

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. The standards in appendix Q were adapted from guidelines maintained by the Federal Housing Administration (FHA), of the U.S. Department of Housing and Urban Development (HUD) when the January 2013 Final Rule was issued.[15] Appendix Q addresses how to determine a consumer's employment-related income (*e.g.,* income from wages, commissions, and retirement plans); non-employment related income (*e.g.,* income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.[16]

2. Temporary GSE QM Loans

A second, temporary category of QM loans defined by the Rule, Temporary GSE QM loans, consists of mortgages that (1) comply with the Rule's prohibitions on certain loan features, its underwriting requirements, and its limitations on points and fees; [17] and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.[18] Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the applicable GSE's DTI requirements and other underwriting criteria. In addition, income and debt for such loans, and DTI ratios, generally are verified and calculated using GSE standards, rather than appendix Q. The Temporary GSE QM loan category—also known as the GSE Patch—is scheduled to expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.[19]

C. The Bureau's Assessment of the Ability-to-Repay/Qualified Mortgage Rule

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.[20] The Bureau noted in the January 2013 Final Rule that its section 1022(d) assessment of the ATR/QM Rule would provide an opportunity to analyze the Temporary GSE QM loan definition and confirm, prior to its expiration, whether it would be appropriate to allow it to expire.[21] The Bureau published its report as a result of its assessment on January 11, 2019 (Assessment Report).[22]

D. Effects of the COVID–19 Pandemic on Mortgage Markets

The COVID–19 pandemic has had a significant effect on the U.S. economy. Economic activity has contracted, many businesses have partially or completely closed, and millions of workers have become unemployed. The pandemic has also affected mortgage markets. Among other things, it has resulted in a contraction of mortgage credit availability for many consumers, including those that would be dependent on the non-QM market for financing. The pandemic's impact on both the secondary market for new originations and on the servicing of existing mortgages has contributed to this contraction. These effects, and other effects of the pandemic, are discussed in greater detail in the separate proposal the Bureau is releasing simultaneously with this proposal.[23]

III. The Rulemaking Process

The Bureau has solicited and received substantial public and stakeholder input on issues related to the substance of this proposed rule. In addition to the Bureau's discussions with and communications from industry stakeholders, consumer advocates, other Federal agencies,[24] and members of Congress, the Bureau issued requests for information (RFIs) in 2017 and 2018 and in July 2019 issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The input from these RFIs and from the ANPR is briefly summarized below.

A. The Requests for Information

In June 2017, the Bureau published a request for information in connection with the Assessment Report (Assessment RFI).[25] In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.[26] The comments addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit; perceived problems with, and potential changes and alternatives to, appendix Q; and how the Bureau should address the expiration of the Temporary GSE QM loan definition. The comments expressed a range of ideas for addressing the expiration of the Temporary GSE QM loan definition, from making the definition permanent, to applying the definition to other mortgage products, to extending it for various periods of time, or some combination of those suggestions. Other comments stated that the Temporary GSE QM loan definition should be eliminated or permitted to expire.

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial

[12] 12 CFR 1026.43(e)(2)(iv).

[13] 12 CFR 1026.43(e)(v).

[14] 12 CFR 1026.43(e)(2)(vi).

[15] 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

[16] 12 CFR 1026, appendix Q.

[17] 12 CFR 1026.43(e)(2)(i)–(iii).

[18] 12 CFR 1026.43(e)(4).

[19] 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by HUD (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B)–(E). This temporary category of QM loans no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.,* 24 CFR 203.19 (HUD rule). Other categories of QM loans provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before April 1, 2016).

[20] 12 U.S.C. 5512(d).

[21] 78 FR 6408, 6533–34 (Jan. 30, 2013).

[22] Bureau of Consumer Fin. Prot., *Ability-to-Repay and Qualified Mortgage Rule Assessment Report* (Jan. 2019), 2019) (Assessment Report), *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.*

[23] *See* Bureau of Consumer Fin. Prot., ''Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z): General QM Loan Definition,'' part II.D.

[24] The Bureau has consulted with agencies including the FHFA, the Board of Governors of the Federal Reserve System (Board), FHA, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Trade Commission, the National Credit Union Administration, and the Department of the Treasury.

[25] 82 FR 25246 (June 1, 2017).

[26] *See* Assessment Report, *supra* note 22, at appendix B (summarizing comments received in response to the Assessment RFI).

education activities.[27] As part of the call for evidence, the Bureau published requests for information relating to, among other things, the Bureau's rulemaking process,[28] the Bureau's adopted regulations and new rulemaking authorities,[29] and the Bureau's inherited regulations and inherited rulemaking authorities.[30] In response to the call for evidence, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. The comments addressed a variety of topics, including the General QM loan definition, appendix Q, and the Temporary GSE QM loan definition. The comments also raised concerns about, among other things, the risks of allowing the Temporary GSE QM loan definition to expire without any changes to the General QM loan definition or appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI, discussed above.

B. The Advance Notice of Proposed Rulemaking

On July 25, 2019, the Bureau issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition, including whether and how the Bureau should revise the DTI limit in the General QM loan definition; whether the Bureau should supplement or replace the DTI limit with another method for directly measuring a consumer's personal finances; whether the Bureau should revise appendix Q or replace it with other standards for calculating and verifying a consumer's debt and income; and whether, instead of a DTI limit, the Bureau should adopt standards that do not directly measure a consumer's personal finances.[31] The Bureau requested comment on how much time industry would need to change its practices in response to any changes the Bureau makes to the General QM loan definition.[32] The Bureau received 85 comments on the ANPR from businesses in the mortgage industry (including creditors), consumer advocacy groups, elected officials, individuals, and research centers.

IV. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term ''consumer financial protection function'' to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [33] Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[34]

Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[35] A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [36] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[37] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

Section 129C(b)(3)(B)(i) of TILA authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[38] In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.[39] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[40] TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

V. Why the Bureau Is Issuing This Proposal

The Bureau proposes to revise the ATR/QM Rule to provide that the Temporary GSE QM loan definition would expire on the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first.[41] The Bureau is proposing those

[27] *See* Bureau of Consumer Fin. Prot., *Call for Evidence, https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence* (last updated June 12, 2020).

[28] 83 FR 10437 (Mar. 9, 2018).

[29] 83 FR 12286 (Mar. 21, 2018).

[30] 83 FR 12881 (Mar. 26, 2018).

[31] 84 FR 37155, 37155, 37160–62 (July 31, 2019).

[32] *Id.* at 37162. The Bureau stated that if the answer to this question depends on how the Bureau revises the definition, the Bureau requested answers based on alternative possible definitions.

[33] 12 U.S.C. 5581(a)(1)(A).

[34] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining ''enumerated consumer laws'' to include TILA).

[35] 15 U.S.C. 1604(a).

[36] 15 U.S.C. 1601(a).

[37] 15 U.S.C. 1639b(a)(2).

[38] 15 U.S.C. 1639c(b)(3)(B)(i).

[39] 15 U.S.C. 1639c(b)(3)(A).

[40] 12 U.S.C. 5512(b)(1).

[41] The Bureau is also proposing to make confirming changes to the commentary. The Bureau

Continued

amendments to the General QM loan definition in a separate proposal issued simultaneously with this proposal. In that notice of proposed rulemaking, the Bureau is proposing to remove the General QM loan definition's 43 percent DTI limit and replace it with a price-based threshold.

Under that proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds the average prime offer rate (APOR) for a comparable transaction by less than two percentage points as of the date the interest rate is set.[42] The proposal would retain the existing product-feature and underwriting requirements and limits on points and fees. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider the consumer's income or assets, debt, and DTI ratio or residual income and verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. The proposal would remove appendix Q, but would include clarifications of the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support, to help prevent compliance uncertainty that could otherwise result from the removal of appendix Q. The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions). Although the Bureau is proposing to remove the 43 percent DTI limit and adopt a price-based approach for the General QM loan definition, the Bureau is also requesting comment on two alternative approaches: (1) Retaining the DTI limit and increasing it to a specific threshold between 45 percent and 48 percent or (2) using a hybrid approach involving both pricing and a DTI limit, such as applying a DTI limit to loans that are above specified rate spreads. Under these alternative approaches, creditors would not be required to count or verify the DTI ratio using appendix Q.

The Bureau expects that the proposed amendments would, among other things, allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires. The Bureau tentatively determines that the proposed extension would ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments to the General QM loan definition take effect. In the Bureau's preliminary view, it is likely that many consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the amended General QM loan definition, as separately proposed by the Bureau—would not be able to obtain loans at all if the Temporary GSE QM loan definition expires and final amendments to the General QM loan definition have not gone into effect. Further, for loans absorbed by FHA and the private market in the absence of the Temporary GSE QM loan definition, there is significant risk that some consumers would pay more for these loans, although any pricing effects would depend on the characteristics of the particular loans that would be originated as FHA loans or in the private market. To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM loan definition take effect, the Bureau proposes to revise the ATR/QM Rule to provide that the Temporary GSE QM loan definition would expire on the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first.

A. Why the Bureau Created the Temporary GSE QM Loan Definition

In the January 2013 Final Rule, the Bureau explained why it created the Temporary GSE QM loan category. The Bureau observed that it did not believe that a 43 percent DTI ratio ''represents the outer boundary of responsible lending'' and acknowledged that historically, and even after the financial crisis, over 20 percent of mortgages exceeded that threshold.[43] The Bureau believed, however, that, as DTI ratios increase, ''the general ability-to-repay procedures, rather than the qualified mortgage framework, is better suited for consideration of all relevant factors that go to a consumer's ability to repay a mortgage loan'' and that ''[o]ver the long term . . . there will be a robust and sizable market for prudent loans beyond the 43 percent threshold even without the benefit of the presumption of compliance that applies to qualified mortgages.'' [44]

At the same time, the Bureau noted that the mortgage market was especially fragile following the financial crisis, and GSE-eligible loans and federally insured or guaranteed loans made up a significant majority of the market.[45] The Bureau believed that it was appropriate to consider for a period of time that GSE-eligible loans were originated with an appropriate assessment of the consumer's ability to repay and therefore warranted being treated as QMs.[46] The Bureau believed in 2013 that this temporary category of QM loans would, in the near term, help to ensure access to responsible, affordable credit for consumers with DTI ratios above 43 percent, as well as facilitate compliance by creditors by promoting the use of widely recognized, federally related underwriting standards.[47]

The January 2013 Final Rule established a sunset date for the Temporary GSE QM loan definition of January 10, 2021 (seven years after that rule's effective date), or when the GSEs exit conservatorship, whichever comes first.[48] The Bureau stated that it believed a seven-year period between the Rule's effective date and the Temporary GSE QM loan definition's sunset date would ''provide an adequate period for economic, market, and regulatory conditions to stabilize'' and ''a reasonable transition period to the general qualified mortgage definition.'' [49] The Bureau believed that the Temporary GSE QM loan definition would benefit consumers by preserving access to credit while the mortgage industry adjusted to the ATR/QM Rule.[50] The Bureau also explained that it structured the Temporary GSE QM loan definition to cover loans eligible to be purchased or guaranteed by either of the GSEs—regardless of whether the loans are actually purchased or guaranteed—to leave room for non-GSE private investors to return to the market

is not proposing changes to the language in § 1026.43(e)(4)(ii)(A)(1) providing that the Temporary GSE QM loan definition will expire when the GSEs cease to operate under conservatorship of the FHFA.

[42] That proposal would also provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions.

[43] 78 FR 6408, 6527 (Jan. 30, 2013).

[44] *Id.* at 6527–28.

[45] *Id.* at 6533–34.

[46] *Id.* at 6534.

[47] *Id.* at 6533.

[48] *See* 12 CFR 1026.43(e)(4)(ii)(A)(*1*) and (e)(4)(iii)(B).

[49] 78 FR 6408, 6534 (Jan. 30, 2013).

[50] *Id.* at 6536.

and secure the same legal protections as the GSEs.[51] The Bureau believed that, as the market recovered, the GSEs and the Federal agencies would be able to reduce their market presence, the percentage of Temporary GSE QM loans would decrease, and the market would shift toward General QM loans and non-QM loans above a 43 percent DTI ratio.[52] The Bureau's view was that a shift towards non-QM loans could be supported by the non-GSE private market—*i.e.,* by institutions holding such loans in portfolio, selling them in whole, or securitizing them in a rejuvenated private-label securities (PLS) market. The Bureau noted that, pursuant to its statutory obligations under the Dodd-Frank Act, it would assess the impact of the ATR/QM Rule five years after the Rule's effective date, and the assessment would provide an opportunity to analyze the Temporary GSE QM loan definition.[53]

B. The Current State of the Mortgage Market

The mortgage market has evolved differently than the Bureau predicted when it issued the January 2013 Final Rule. As explained below, and contrary to the Bureau's expectations, the market has not shifted away from Temporary GSE QM originations and the private market [54] remains small. As noted in the Assessment Report, Temporary GSE QM originations continue to represent ''a large and persistent'' share of originations in the conforming segment of the mortgage market, and a robust and sizable market to support non-QM lending has not emerged.[55]

The GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the Assessment found a small increase in that share since the Rule's effective date, reaching 71 percent in 2017.[56] The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.[57]

The continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time it issued the January 2013 Final Rule.[58] The Assessment Report discussed several possible reasons for the continued prevalence of Temporary GSE QM loan originations. The Assessment Report first highlighted commenters' concerns with the perceived lack of clarity in appendix Q and found that such concerns ''may have contributed to investors'—and at least derivatively, creditors'—preference'' for Temporary GSE QM loans instead of originating loans under the General QM loan definition.[59] In addition, the Bureau has not revised appendix Q since 2013, while other standards for calculating and verifying debt and income have been updated more frequently.[60] ANPR commenters also expressed concern with appendix Q and stated that the Temporary GSE QM loan definition has benefited creditors and consumers by enabling creditors to originate QMs without having to use appendix Q.

The Assessment Report noted that a second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate demand for mortgages above the General QM loan definition's DTI limit of 43 percent as the DTI ratio distribution in the market shifted upward.[61] According to the Assessment Report, in the years since the ATR/QM Rule took effect, house prices have increased and consumers hold more mortgage and other debt (including student loan debt), all of which have caused the DTI ratio distribution to shift upward.[62] The Assessment Report noted that the share of GSE home purchase loans with DTI ratios above 43 percent has increased since the ATR/QM Rule took effect in 2014.[63] The available data suggest that such high-DTI lending has declined in the non-GSE market relative to the GSE market.[64] The non-GSE market has constricted even with respect to highly qualified consumers; those with higher incomes and higher credit scores are representing a greater share of denials.[65]

The Assessment Report found that a third possible reason for the persistence of Temporary GSE QM loans is the structure of the secondary market.[66] If creditors adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.[67] In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.[68] There were less than $20 billion in new origination PLS issuances in 2017, compared with $1 trillion in 2005,[69] and only 21 percent of new origination PLS issuances in 2017 were non-QM issuances.[70] To the extent that private securitizations have occurred since the ATR/QM Rule took effect in 2014, the majority of new origination PLS issuances have consisted of prime jumbo loans made to consumers with strong credit characteristics, and these securities have a low share of non-QM loans.[71] The Assessment Report notes that the Temporary GSE QM loan definition may itself be inhibiting the growth of the non-QM market.[72] However, the Assessment Report also notes that it is possible that this market might not exist even with a narrower Temporary GSE QM loan definition, if consumers were unwilling to pay the premium charged to cover the potential litigation risk associated with non-QMs, which do not have presumption of compliance with the ATR/QM Rule, or if creditors were unwilling or lack the funding to make the loans.[73]

The Bureau expects that each of these features of the mortgage market that concentrate lending within the Temporary GSE QM loan definition will largely persist through the current January 10, 2021 sunset date.

C. Potential Market Impact of the Temporary GSE QM Loan Definition's Expiration

The Bureau anticipates that there are two main types of conventional loans that would be affected by the expiration of the Temporary GSE QM loan definition: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. These loans are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This

[51] *Id.* at 6534.

[52] *Id.*

[53] *Id.*

[54] Consistent with the Assessment Report, references to the private market herein include loans securitized by PLS and loans financed by portfolio lending by commercial banks, credit unions, savings banks, savings associations, mortgage banks, life insurance companies, finance companies, their affiliate institutions, and other private purchasers. *See* Assessment Report, *supra* note 22, at 74.

[55] *Id.* at 198.

[56] *Id.* at 191.

[57] *Id.* at 192.

[58] *Id.* at 13, 190, 238.

[59] *Id.* at 193.

[60] *Id.* at 193–94.

[61] *Id.* at 194.

[62] *Id.*

[63] *Id.* at 194–95.

[64] *Id.* at 119–20.

[65] *Id.* at 153.

[66] *Id.* at 196.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.* at 197.

[71] *Id.* at 196.

[72] *Id.* at 205.

[73] *Id.*

proposal refers to these loans as potentially displaced loans.

High-DTI GSE Loans. The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.[74] In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This proposal refers to these loans as High-DTI GSE loans. Based on data from the National Mortgage Database (NMDB), the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.[75] Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.[76] Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.[77] Thus, the Bureau estimated that, as a result of the General QM loan definition's 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.[78] This estimate does not include Temporary GSE QM loans that were eligible for purchase by either of the GSEs but were not sold to the GSEs.

Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible. In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE underwriting guides would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.[79] These loans would also likely be affected when the Temporary GSE QM loan definition expires. The Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.[80] As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates that most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q verification requirements became effective in 2014.[81] Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.[82] Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (*e.g.,* self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans.

Additional Effects on Loans Not Displaced. While the most significant market effects under the baseline are displaced loans, loans that continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, all loans with DTI ratios at or below 43 percent that are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q's ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.[83]

In response to the ANPR, the Bureau received additional estimates regarding the number of potentially displaced loans. Two comments cited data from a private provider of mortgage market data indicating that 16 percent of mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. One of those comments also stated that a mortgage banker with $4.5 billion in mortgage loan volume estimated that 25 percent of their mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. This comment also stated that a credit union with $68 million in mortgage loan volume estimated 17 percent of their mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. A comment from a creditor with a mortgage loan volume of $630 million stated that 20 percent of the commenter's mortgages originated in 2018 were considered QMs solely due to the Temporary GSE QM loan definition. These estimates are generally in line with the Bureau's estimates.

Focusing on High-DTI GSE loans, the Bureau expects that these loans will continue to comprise a significant proportion of mortgage originations through January 10, 2021, when the Temporary GSE QM loan definition is currently scheduled to expire.[84] The ANPR identified several ways that the market for loans that would have been High-DTI GSE loans may respond to the expiration of the Temporary GSE QM loan definition.[85] In doing so, the

[74] 84 FR 37155, 37158–59 (July 31, 2019).

[75] *Id.*

[76] *Id.* at 37159.

[77] *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

[78] *Id.*

[79] *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

[80] For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment, underwriting for self-employed borrowers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 22, at 200.

[81] *Id.* at 107 (''For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.'').

[82] *Id.* at 118 (''The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High-DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points.'').

[83] *See* part V.B. for additional discussion of concerns raised about appendix Q.

[84] 84 FR 37155, 37159 (July 31, 2019).

[85] *Id.*

Bureau made assumptions about the future behavior of certain mortgage market participants: (1) That there is no change to the GSEs' current policy that does not allow purchase of non-QM loans; and (2) that creditors' preference for making Temporary GSE QM loans, and investors' preference for purchasing such loans, is driven in part by the safe harbor provided to such loans and that these preferences would continue at least for some creditors and investors.[86]

Given these assumptions, the Bureau expects that many consumers who would have obtained High-DTI GSE loans would instead obtain FHA-insured loans because FHA currently insures loans with DTI ratios up to 57 percent.[87] The number of loans that move to FHA would depend on FHA's willingness and ability to insure such loans, on whether FHA continues to treat all loans that it insures as QMs under its own QM rule, and on how many High-DTI GSE loans exceed FHA's loan-amount limit.[88] For example, the Bureau estimates that, in 2018, 11 percent of High-DTI GSE loans exceeded FHA's loan-amount limit.[89] The Bureau considers this an outer limit on the share of High-DTI GSE loans that could move to FHA.[90] The Bureau expects that loans that are originated as FHA loans instead of under the Temporary GSE QM loan definition would generally cost materially more for many consumers.[91] The Bureau expects that some consumers offered FHA loans may choose not to take out a mortgage because of these higher costs.

It is also possible that some consumers who would have sought High-DTI GSE loans would be able to obtain loans in the private market.[92] The ANPR noted that the number of loans absorbed by the private market would likely depend, in part, on whether actors in the private market are willing to assume the legal and credit risk associated with funding High-DTI GSE loans as non-QM loans or small-creditor portfolio QM loans[93] and, if so, whether actors in the private market would offer more competitive pricing or terms.[94] For example, the Bureau estimates that 55 percent of High-DTI GSE loans in 2018 had credit scores at or above 680 and loan-to-value (LTV) ratios at or below 80 percent—credit characteristics traditionally considered attractive to actors in the private market.[95] The ANPR also noted that there are certain built-in costs to FHA loans—namely, mortgage insurance premiums—which could be a basis for competition, and that depository institutions in recent years have shied away from originating and servicing FHA loans due to the obligations and risks associated with such loans.[96]

However, the Assessment Report found that a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted. Therefore, there is limited capacity in the non-QM market to provide access to credit after the expiration of the Temporary GSE QM loan definition.[97] As described above, the non-QM market has been further reduced by the recent economic disruptions associated with the COVID–19 pandemic, with most mortgage credit now available in the QM lending space. The Bureau acknowledges that the slow development of the non-QM market, and the recent economic disruptions that may significantly hinder its development in the near term, may further reduce access to credit outside the QM space.

Finally, the ANPR noted that some consumers who would have sought High-DTI GSE loans may adapt to changing options and make different choices, such as adjusting their borrowing to result in a lower DTI ratio.[98] However, some consumers who would have sought High-DTI GSE loans may not obtain loans at all.[99]

D. Why the Bureau Is Proposing To Extend the Temporary GSE QM Loan Definition

The Bureau anticipates that if the Temporary GSE QM loan definition expires as scheduled and there are no changes to the General QM loan definition prior to expiration, many High-DTI GSE loans and loans without appendix Q-required documentation that are otherwise GSE-eligible would not be made and many would cost consumers materially more.[100] In a separate proposal issued simultaneously with this proposal, the Bureau is proposing to remove the General QM loan definition's DTI limit and replace it with a limit based on the loan's pricing. Under the proposal, a loan would meet the General QM loan definition only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set.[101] The proposal would also provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. The Bureau expects that the proposed amendments would, among other things, allow some portion of loans that currently could receive QM status under the Temporary GSE QM loan definition to receive QM status under the General QM loan definition if they are made after the Temporary GSE QM loan definition expires.

The Bureau is concerned about the likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM loan definition take effect. While the Bureau can estimate the outer limit of the share of High-DTI GSE loans that could be originated by the FHA, the Bureau cannot estimate with precision the extent to which loans would be absorbed by the FHA, or the characteristics of the particular loans that might be so absorbed.[102] Similarly,

[86] *Id.*

[87] *Id.* In fiscal year 2019, approximately 57 percent of FHA-insured purchase mortgages had a DTI ratio above 43 percent. U.S. Dep't of Hous. & Urban Dev., *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2019,* at 33 (Nov. 14, 2018), *https://www.hud.gov/sites/dfiles/Housing/documents/2019FHAAnnualReportMMIFund.pdf.*

[88] 84 FR 37155, 37159 (July 31, 2019).

[89] *Id.* In 2018, FHA's county-level maximum loan limits ranged from $271,050 to $721,050. *See* U.S. Dep't of Hous. & Urban Dev., *FHA Mortgage Limits, https://entp.hud.gov/idapp/html/hicostlook.cfm* (last visited June 12, 2020).

[90] 84 FR 37155, 37159 (July 31, 2019).

[91] Interest rates and insurance premiums on FHA loans generally feature less risk-based pricing than conventional loans, charging more similar rates and premiums to all consumers. As a result, they are likely to cost more than conventional loans for consumers with stronger credit scores and larger down payments. Consistent with this pricing differential, consumers with higher credit scores and larger down payments chose FHA loans relatively rarely in 2018 HMDA data on mortgage originations. *See* Bureau of Consumer Fin. Prot., *Introducing New and Revised Data Points in HMDA* (Aug. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.*

[92] 84 FR 37155, 37159 (July 31, 2019).

[93] *See* 12 CFR 1026.43(e)(5) (extending QM status to certain portfolio loans originated by certain small creditors). In addition, section 101 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, sec. 101, 132 Stat. 1296, 1297 (2018), amended TILA to add a safe harbor for small-creditor portfolio loans. *See* 15 U.S.C. 1639c(b)(2)(F).

[94] 84 FR 37155, 37159 (July 31, 2019).

[95] *Id.*

[96] *Id.*

[97] Assessment Report, *supra* note 22 at 198.

[98] 84 FR 37155, 37159 (July 31, 2019).

[99] *Id.*

[100] *See supra* part V.C.

[101] The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

[102] Assuming they are still originated, potentially displaced loans made with high LTVs or to consumers with low credit scores are the least likely to be absorbed by the private market, and thus most likely to be absorbed by the FHA. The exact characteristics of loans likely to be absorbed by the FHA would depend on the relative pricing

Continued

while the Bureau also anticipates that the private market may absorb additional loans that would have been High-DTI GSE loans, the Bureau is uncertain as to the private market's capacity to absorb these loans in the short term—as a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted, and as the non-QM market has been further reduced by the current economic disruptions associated with the COVID–19 pandemic. And, as noted, the Bureau lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the General QM loan definition due to appendix Q-related issues and are not High-DTI GSE loans. Despite these uncertainties, it is likely that many consumers who would have obtained loans under the Temporary GSE QM loan definition—and who would be able to obtain loans under the amended General QM loan definition, as separately proposed by the Bureau—would not be able to obtain loans at all if the Temporary GSE QM loan definition expires and final amendments to the General QM loan definition have not gone into effect.[103] Further, for loans absorbed by the FHA and the private market in the absence of the Temporary GSE QM loan definition, there is significant risk that some consumers would pay more for these loans, although any pricing effects would depend on the characteristics of the particular loans that would be originated as FHA loans or in the private market.[104]

To prevent these likely effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before final amendments to the General QM loan definition take effect, the Bureau proposes to extend the Temporary GSE QM loan definition until the effective date of a final rule issued by the Bureau amending the General QM loan definition, or when the GSEs exit conservatorship, whichever comes first. The Bureau proposes this extension to ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before these amendments take effect.[105]

The Bureau stated in the January 2013 Final Rule that, for a limited period of time and while the GSEs are under conservatorship of the FHFA, it believed that GSE-eligible loans are originated with appropriate consideration of ability to repay.[106] As discussed in the ANPR and below, the Bureau is concerned about presuming indefinitely that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer's ability to repay. However, the Bureau expects that, under current conditions, it may be appropriate nevertheless to extend that presumption for a short period until the effective date of Bureau amendments to the General QM loan definition, in light of concerns about effects on the availability and cost of credit if the Temporary GSE QM loan definition expires before a rule revising the General QM loan definition takes effect.

Under the current rule the Temporary GSE QM loan definition would expire upon the date the GSEs exit conservatorship, even if that occurs prior to January 10, 2021. The Bureau is not proposing any amendments to this provision. If either of the GSEs ceases to operate under FHFA conservatorship prior to the finalization of the Bureau's proposed amendments to the General QM loan definition, the Temporary GSE QM loan definition at § 1026.43(e)(4)(ii)(A) would no longer be available. The Bureau assumes that the conservatorship will remain in place until the conclusion of the rulemaking concerning the General QM loan definition; in the event final amendments to that definition are not in effect at the time the conservatorship of one or both of the GSEs is terminated, the Bureau will evaluate at that point what, if any, steps to take in response to such a termination of conservatorship. Comments on § 1026.43(e)(4)(ii)(A) are outside the scope of this rulemaking and will not be considered.

The Bureau's actions in proposing to extend the Temporary GSE QM loan definition and, separately, to amend the General QM loan definition are informed by the publication in January 2019 of the Assessment Report, which it prepared as required by section 1022(d) of the Dodd-Frank Act. The Assessment Report provides information to allow the Bureau to analyze the impact and status of the ATR/QM Rule.

The Bureau does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021, particularly given that, as its separate proposal states, the Bureau proposes a six-month interval between **Federal Register** publication of a final rule and the rule's effective date.

VI. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(e) Qualified Mortgages

43(e)(4) Qualified Mortgage Defined—Special Rules

43(e)(4)(iii) Sunset of Special Rules

43(e)(4)(iii)(B)

Section 1026.43(e)(4)(iii)(B) provides that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before January 10, 2021.[107] The Bureau proposes to revise § 1026.43(e)(4)(iii)(B) to state that the definition is available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2). Revised § 1026.43(e)(4)(iii)(B) would also state that the Bureau will amend § 1026.43(e)(4)(iii)(B) as of that effective date to reflect the new status.[108]

Comment 43(e)(4)–3 clarifies the relationship between § 1026.43(e)(4)(iii)(B) and (ii)(A). The comment explains that the Temporary GSE QM loan definition applies only to loans consummated on or before January 10, 2021, regardless of whether

and underwriting requirements of FHA and private market alternatives.

[103] *See supra* part V.C, noting that some consumers who would have sought High-DTI GSE loans may make different choices, such as by adjusting their borrowing to result in a lower DTI ratio.

[104] The Assessment Report noted that, while there did not appear to be a marked change in the relative price of non-QM High-DTI loans immediately following the implementation of the ATR/QM Rule, other research has found a 25 basis point premium for non-QM High-DTI loans in more recent years. Assessment Report, *supra* note 22, at 121–22.

[105] The Bureau expects to finalize a rule amending the General QM loan definition, at which point the Temporary GSE QM loan definition would expire under this proposed rule. However, the Bureau notes that in the unlikely event that such a rule is not finalized and the current General QM loan definition remains in place, the Bureau would revisit the Temporary GSE QM loan definition and take appropriate action. As noted above, the Bureau does not intend to maintain indefinitely a presumption that loans eligible for purchase or guarantee by either of the GSEs have been originated with appropriate consideration of the consumer's ability to repay.

[106] 78 FR 6408, 6534 (Jan. 30, 2013).

[107] Section 1026.43(e)(4)(iii)(B) also applies to the other temporary QM loan definitions in § 1026.43(e)(4). However, as noted above in part II, these other temporary QM loan definitions have expired because the relevant Federal agencies have issued their own QM rules. *See, e.g.,* 24 CFR 203.19 (HUD rule).

[108] The Bureau is not proposing changes to § 1026.43(e)(4)(ii)(A), which provides that the Temporary GSE QM loan definition is available only for covered transactions consummated on or before the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the FHFA pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*

Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the FHFA. The comment also explains that, accordingly, the Temporary GSE QM loan definition is available only for covered transactions consummated on or before the earlier of either (i) the date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the FHFA or (ii) January 10, 2021. The Bureau proposes to change each of the two references to January 10, 2021 in this comment to conform with the proposed change to § 1026.43(e)(4)(iii)(B). The Bureau also proposes to revise this comment to note that the Bureau will also amend this comment as of the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2) to reflect the new status.

The Bureau considers that, compared with the alternatives, the proposal better ensures the availability of responsible, affordable mortgage credit to consumers and better addresses the risk of disruption as the market transitions away from the Temporary GSE QM loan definition. The Bureau seeks comment on whether a different sunset date for the Temporary GSE QM loan definition would better ensure the availability of responsible, affordable mortgage credit to consumers and better address the risk of disruption as the market transitions away from the Temporary GSE QM loan definition.[109]

One alternative to the proposal would be to remove § 1026.43(e)(4)(iii)(B), as well as the language in § 1026.43(e)(4)(ii)(A)(1) referring to conservatorship, from Regulation Z.[110] This would make the Temporary GSE QM loan definition permanent. The Bureau is not proposing this alternative because it is concerned about presuming indefinitely that loans eligible to be purchased or guaranteed by either of the GSEs—whether or not the GSEs are under conservatorship—have been originated with appropriate consideration of consumers' ability to repay.[111] In addition, the Bureau is concerned that making the Temporary GSE QM loan definition permanent could stifle innovation and the development of competitive private-sector approaches to underwriting. The Bureau is also concerned that, as long as the Temporary GSE QM loan definition continues in effect, the non-GSE private market is less likely to rebound and that the existence of the Temporary GSE QM loan definition may be contributing to the continuing limited non-GSE private market. For these reasons, making the Temporary GSE QM loan definition permanent appears to be inconsistent with the purposes of TILA's ATR provision and with the Bureau's mandate.

A second alternative would be to remove § 1026.43(e)(4)(iii)(B) from Regulation Z without removing the language in § 1026.43(e)(4)(ii)(A)(1) referring to conservatorship. This would keep the Temporary GSE QM loan definition in place until the end of conservatorship. The Bureau is not proposing this alternative because the Bureau expects that it will be able to issue final amendments to the General QM loan definition, and that those amendments would take effect, prior to the termination of conservatorship. Due to its concerns described in the paragraph above about negative effects of the Temporary GSE QM loan definition, the Bureau does not want to maintain the Temporary GSE QM loan definition any longer than necessary to amend the General QM loan definition and to ensure a smooth and orderly transition from the Temporary GSE QM loan definition to the revised General QM loan definition.

A third alternative to the proposal would be to extend the sunset date in § 1026.43(e)(4)(iii)(B) to a date certain. The Bureau is not proposing to extend the sunset date to a date certain because it is concerned that proposing too short an extension may not provide the Bureau with adequate time to consider, propose, and promulgate amendments to the General QM loan definition and creditors with enough time to bring their operations into compliance with any amendments adopted by the Bureau. At the same time, the Bureau is concerned that proposing too long an extension would have the same type of negative effects as the Bureau describes in the paragraph above regarding making the Temporary GSE QM loan definition permanent, without any offsetting benefits because a longer extension is not needed to provide the Bureau with adequate time to consider, propose, and promulgate amendments to the General QM loan definition.

As with the January 2013 Final Rule, the Bureau issues this proposal pursuant to its authority under TILA sections 129C(b)(3)(B)(i) and 105(a) and Dodd-Frank Act section 1022(b)(1). For the reasons described above in part V.D, the Bureau tentatively determines that the proposed extension of the Temporary GSE QM loan definition's sunset date is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C, as well as necessary and appropriate to effectuate the purposes of TILA section 129C—including the purpose of assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive. For these same reasons, this proposed extension is necessary to effectuate the purposes of TILA, which include, among other things, the above-described purpose of TILA section 129C.

The Bureau requests comment on the proposed revisions to § 1026.43(e)(4)(iii)(B) and comment 43(e)(4)–3 as well as its rationale for the proposed revisions.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

As discussed above, this proposal would delay the scheduled expiration of the Temporary GSE QM loan definition from January 10, 2021 to the effective date of a final rule issued by the Bureau amending the General QM loan definition. In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required

[109] The Bureau notes that the proposed extension to the Temporary GSE QM loan definition's sunset date does not apply to the temporary points-and-fees cure provision in § 1026.43(e)(3)(iii), which is also set to expire on January 10, 2021. Unlike the Temporary GSE QM loan definition, the Bureau does not expect allowing the temporary points-and-fees cure provision to expire on this date would disrupt the availability of responsible, affordable mortgage credit to consumers. *See* Assessment Report, *supra* note 22, at 12 (noting that applications for which the points-and-fees limit will be exceeded are sufficiently rare that creditors handle them on a case-by-case basis; that, specifically, lenders typically waive certain fees, with or without a compensating increase in the interest rate, to avoid exceeding the cap; and that creditors rarely deny an application to avoid exceeding the QM points-and-fees cap). Further, unlike the Temporary GSE QM loan definition, the Bureau is not currently planning any amendments to the points-and-fees provisions, so there is no need for the Bureau to extend the temporary provision while the Bureau implements such amendments. Comments on the expiration date for the temporary points-and-fees cure provision at § 1026.43(e)(3)(iii) are outside the scope of this rulemaking.

[110] Under this alternative, § 1026.43(e)(4)(ii)(A) would be revised to read: ''To be purchased or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.''

[111] For example, the Bureau's Assessment Report noted that one GSE loosened its underwriting standards in ways that proved unsustainable during the time since the January 2013 Final Rule was issued. Assessment Report, *supra* note 22, at 194–95.

by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with appropriate Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.

1. Data and evidence

The discussion in this impact analyses relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA [112] and NMDB [113] data, as well as data obtained from industry, other regulatory agencies, and other publicly available sources. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the proposed rule, including the extent to which DTI ratios are probative of a consumer's ability to repay, the effect of rebuttable presumption status relative to safe-harbor status on access to credit, and the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, and performance of mortgage loans originated in recent years. However, they do not provide information on creditor costs. As a result, analyses of any impacts of the proposal on creditor costs, particularly realized costs of complying with underwriting criteria or potential costs from legal liability are based on more qualitative information. Similarly, estimates of any changes in burden on consumers resulting from increased or decreased documentation requirements are based on qualitative information.

The Bureau seeks comment on its analysis, and additional information or data which could inform quantitative estimates of the number of borrowers whose documentation cannot satisfy appendix Q, or the costs to borrowers or covered persons of complying with appendix Q documentation requirements. The Bureau also seeks comment or additional information which could inform quantitative estimates of the availability, underwriting, and pricing of non-QM alternatives to loans made under the Temporary GSE QM loan definition.

2. Description of the Baseline

The Bureau considers the benefits, costs, and impacts of the proposal against the baseline in which the Bureau takes no action and the Temporary GSE QM loan definition expires on January 10, 2021 or when the GSEs exit conservatorship, whichever occurs first. Under the proposal, the Temporary GSE QM loan definition would expire when the GSEs exit conservatorship or on the effective date of a final rule issued by the Bureau amending the General QM loan definition, whichever occurs first. As a result, the proposal's direct market impacts would occur only if the GSEs remain in conservatorship beyond January 10, 2021. The impact analyses assume the GSEs will remain in conservatorship for the relevant period of time.

Under the baseline, when the Temporary GSE QM loan definition expires, conventional loans could only receive QM status under the Bureau's rules by underwriting according to the General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, or the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act. The General QM loan definition, which would be the only type of QM available to larger creditors following the expiration of the Temporary GSE QM loan definition, requires that consumers' DTI ratio not exceed 43 percent and requires creditors to determine debt and income in accordance with the standards in appendix Q of Regulation Z.

As stated above in part V.C, the Bureau anticipates that, under the baseline in which the Temporary GSE QM loan definition expires, there are two main types of conventional loans that would be affected: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. Leaving the current fixed sunset date in place would affect these loans because they are currently originated as QM loans due to the Temporary GSE QM loan definition but would not be originated as General QM loans, and may not be originated at all, if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect. This section 1022 analysis refers to these loans as potentially displaced loans.

High-DTI GSE Loans. The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.[114] In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This proposal refers to these loans as High-DTI GSE loans. Based on NMDB data, the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.[115] Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.[116] Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.[117] Thus, the Bureau estimated that, as a result of the General QM loan definition's 43 percent DTI limit, approximately

[112] HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. *See* Bureau of Consumer Fin. Prot., *Mortgage Data (HMDA*), *https://www.consumerfinance.gov/data-research/hmda/.*

[113] The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a 5 percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data. *See* Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection,* at 55–56 (Sept. 2018), *https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf.* Differences in total market size estimates between NMDB data and Home Mortgage Disclosure Act (HMDA) data are attributable to differences in coverage and data construction methodology.

[114] 84 FR 37155, 37158–59 (July 31, 2019).

[115] *Id.*

[116] *Id.* at 37159.

[117] *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.[118] This estimate does not include Temporary GSE QM loans that were eligible for purchase by the GSEs but were not sold to the GSEs.

Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible. In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less when calculated using GSE underwriting guides would not fall within the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q.[119] These loans would also likely be affected when the provision expires. The Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to document and include certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams.[120] As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire before amendments to the General QM loan definition are in effect.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q documentation requirements became effective in 2014.[121] Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.[122] Based on this evidence, along with qualitative comparisons of GSE and appendix Q documentation requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (*e.g.,* self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans.

Additional Effects on Loans Not Displaced. While the most significant market effects under the baseline are displaced loans, loans which continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the sunset date, all loans with DTI ratios at or below 43 percent which are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q's ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.[123]

B. Potential Benefits and Costs to Covered Persons and Consumers

1. Benefits to Consumers

The primary benefit to consumers of the proposal is the continued availability of High-DTI GSE loans during the period of the extension. Given the large number of consumers who obtain such loans rather than available alternatives, including loans from the private non-GSE market and FHA loans, these GSE loans may be preferred due to their pricing, underwriting requirements, or other features.

Under the baseline, a sizeable share of potentially displaced High-DTI GSE loans may instead be originated as FHA loans. Thus, under the proposal, any price advantage of GSE loans over FHA loans would be a realized benefit to consumers. Based on the Bureau's analysis of 2018 HMDA data, FHA loans comparable to the loans received by High-DTI GSE borrowers, based on loan purpose, credit score, and combined LTV ratio, on average have $3,000 to $5,000 higher upfront total loan costs. APRs provide an alternative, annualized measure of costs over the life of a loan. FHA borrowers typically pay different APRs, which can be higher or lower than APRs for GSE loans depending on a borrower's credit score and LTV. Borrowers with credit scores at or above 720 pay an APR 30 to 60 basis points higher than borrowers of comparable GSE loans, leading to higher monthly payments over the life of the loan. However, FHA borrowers with credit scores below 680 and combined LTVs exceeding 85 pay an APR 20 to 40 basis points lower than borrowers of comparable GSE loans, leading to lower monthly payments over the life of the loan.[124] For a loan size of $250,000, these APR differences amount to $2,800 to $5,600 in additional total monthly payments over the first five years of mortgage payments for borrowers with credit scores above 720, and $1,900 to $3,800 in reduced total monthly payments over five years for borrowers with credit scores below 680 and LTVs exceeding 85.[125] Thus all FHA borrowers are likely to pay higher costs at origination, while some pay higher monthly mortgage payments and others pay lower monthly mortgage payments. Assuming for comparison that all 957,000 High-DTI GSE loans would be made as FHA loans in the absence of the proposal, the average of the upfront pricing estimates implies total savings for consumers of roughly $4 billion per year on upfront costs while the Temporary GSE QM loan definition

[118] *Id.*

[119] *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

[120] For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment, underwriting for self-employed borrowers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 22, at 200.

[121] Assessment Report, *supra* note 22, at 107 (''For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.'').

[122] *Id.* at 118 (''The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points . . . .'').

[123] *See* part V.B. for additional discussion of concerns raised about appendix Q.

[124] The Bureau expects consumers could continue to obtain FHA loans where such loans were cheaper or preferred for other reasons.

[125] Based on NMDB data, the Bureau estimates that the average loan amount among High-DTI GSE borrowers in 2018 was $250,000. While the time to repayment for mortgages varies with economic conditions, the Bureau estimates that half of mortgages are typically closed or paid off five to seven years into repayment. Payment comparisons based on typical 2018 HMDA APRs for GSE loans, five percent for borrowers with credit scores over 720, and six percent for borrowers with credit scores below 680 and LTVs exceeding 85.

remains in effect.[126] The total savings or costs over the life of the loan implied by APR differences would vary substantially across borrowers depending on credit scores, LTVs, and length of time holding the mortgage. While this comparison assumed all potentially displaced loans would be made as FHA loans, higher costs (either upfront or in monthly payments) are likely to prevent many borrowers from obtaining loans at all.

In the absence of the proposed amendment to the regulation, some of these potentially displaced consumers, particularly those with higher credit scores and the resources to make larger down payments, likely would be able to obtain credit in the non-GSE private market at a cost comparable or slightly higher than the costs for GSE loans, but below the cost of an FHA loan. As a result, the above cost comparisons between GSE and FHA loans provide an estimated upper bound on pricing benefits to consumers of the proposal. However, under the baseline, some potentially displaced consumers may not obtain loans, and thus would experience benefits of credit access under the proposal.[127] As discussed above, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of high-DTI home purchase loans that were not Temporary GSE QM loans.[128] The Bureau requests information or data that would inform quantitative estimates of the number of consumers who may not obtain loans, and the costs to such consumers.

The proposal would also benefit those consumers with incomes difficult to document using appendix Q to obtain General QM status, as the Temporary GSE QM loan definition continues to allow documentation of income and debt through GSE standards. The greater flexibility of GSE documentation standards likely reduces effort and costs for these consumers under the proposal, and in the most difficult cases in which borrowers' documentation cannot satisfy appendix Q, the proposal would allow consumers to receive Temporary GSE QM loans rather than potential FHA or non-QM alternatives. These consumers would likely benefit from cost savings under the proposal, similar to those for High-DTI consumers discussed above.

2. Benefits to Covered Persons

The proposal's primary benefit to covered persons, specifically mortgage creditors, is the continued profits from originating High-DTI conventional QM loans. Under the baseline, creditors would be unable to originate such loans under the Temporary GSE QM loan definition after January 10, 2021 and would instead have to originate loans with comparable DTI ratios as FHA, Small Creditor QM, or non-QM loans, or originate at lower DTI ratios as conventional General QM loans. Creditors' current preference for originating large numbers of High-DTI Temporary GSE QM loans likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans—including Temporary GSE QM loans—are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least 5 percent of the credit risk of the security, which adds significant cost. As a result, the proposal conveys benefits to mortgage creditors originating Temporary GSE QM loans on each of these dimensions.

In addition, for those lower-DTI GSE loans which could satisfy General QM requirements, creditors may realize cost savings from continuing to underwrite loans using only the more flexible GSE documentation standards as compared to the appendix Q underwriting standards required for General QM loans. For GSE consumers unable to provide documentation compatible with appendix Q, the proposal allows such loans to continue receiving QM status, providing comparable benefits to creditors as described for High-DTI GSE loans above.

Finally, those creditors whose business models rely most heavily on originating High-DTI GSE loans would likely see a competitive benefit from the continued ability to originate such loans as Temporary GSE QM loans. This is effectively a transfer in market share to these creditors from those who primarily originate FHA or private non-GSE loans, who likely would have gained market share after the expiration of the Temporary GSE QM loan definition.

3. Costs to Consumers

The extension of the Temporary GSE QM loan definition could delay the development of the non-QM market, particularly new mortgage products which may have become available if the Temporary GSE QM loan definition had been allowed to expire. To the extent that some consumers would prefer some of these products to GSE loans due to pricing, documentation flexibility, or other advantages, the delay of their development would be a cost to consumers of the proposal.

In addition, consumers who would have obtained non-QM loans under the baseline but instead obtain QM loans under the proposal forgo the benefit of retaining the ATR causes of action and defenses against foreclosure.

4. Costs to Covered Persons

The proposal's most sizable costs to covered persons are effectively transfers between lenders for the duration of the extension, reflecting temporarily reduced loan origination volume for lenders who primarily originate FHA or private non-GSE loans and temporarily increased origination volume for lenders who primarily originate GSE loans. Business models vary substantially within market segments, with portfolio lenders and lenders originating non-QM loans most likely to experience a delay in market share gains possible if the Temporary GSE QM loan definition had been allowed to expire, while GSE-focused bank and non-bank lenders are likely to maintain market share that might be lost sooner in the absence of the proposal.

5. Other Benefits and Costs

In delaying the Temporary GSE QM loan definition's expiration, the proposal would delay any effects of the expiration on the development of the secondary market for private (non-GSE) mortgage loan securities. When the Temporary GSE QM loan definition expires, those loans that do not fit within the General QM loan definition represent a potential new market for private securitizations. Thus, the proposal would reduce the scope of the potential non-QM market for the duration of the extension, likely lowering profits and revenues for participants in the private secondary market. This would effectively be a transfer from these private secondary market participants to participants in the agency secondary market.

[126] This approximation assumes $4,000 in savings from total loan costs for all 957,000 consumers. Actual expected savings would vary substantially based on loan and credit characteristics, consumer choices, and market conditions.

[127] In particular, the Assessment concluded that some borrowers with strong credit characteristics may no longer be able to obtain conventional QM loans, despite likely possessing the ability to repay such loans. Assessment Report at 150 (''Together, these findings suggest that the observed decrease in access to credit in this segment was likely driven by lenders' desire to avoid the risk of litigation by consumers asserting a violation of the ATR requirement or other risks associated with that requirement, rather than by rejections of borrowers who were unlikely to repay the loan.'').

[128] *See id.* at 10–11, 117, 131–47.

Potential Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The proposal's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with $10 billion or less in total assets is similar to the expected impact on larger creditors and on non-depository creditors. As discussed in part VII.B.4 (Costs to Covered Persons), depository creditors originating portfolio loans may experience a delay in potential market share gains that would occur in the absence of the proposal. In addition, those smaller creditors originating portfolio loans can originate High-DTI Small Creditor QM loans under the rule, and thus may rely less on the Temporary GSE QM loan definition for originating High-DTI loans. If the expiration of the Temporary GSE QM loan definition would confer a competitive advantage to these small creditors in their origination of High-DTI loans, the proposal would delay this outcome.

Conversely, those small creditors that primarily rely on the GSEs as a secondary market outlet because they do not have the capacity to hold numerous loans on portfolio or the infrastructure or scale to securitize loans may continue to benefit from the ability to make High-DTI GSE loans as Temporary GSE QM loans. In the absence of the proposal, these creditors would be limited to originating GSE loans as QMs only with DTI at or below 43 percent under the General QM loan definition. These creditors may also originate FHA, VA, or USDA loans or non-QM loans for private securitizations, likely at a higher cost relative to Temporary GSE QM loans.

Potential Impact on Rural Areas

The proposal's expected impact on rural areas is similar to the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that High-DTI conventional purchase mortgages are comparably likely to be reported as initially sold to the GSEs in rural areas (52.5 percent) as in non-rural areas (52.0 percent).[129]

[129] These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines. In addition, a higher share of High-DTI conventional purchase non-rural loans (33.3 percent) report being sold to other non-GSE purchasers compared to rural loans (22.3 percent).

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[130]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[131] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[132]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau does not expect the final rule to impose costs on small entities relative to the baseline. Under the baseline, the Temporary GSE QM loan definition expires, and therefore no creditor—including small entities—would be able to originate QM loans under that definition. Under the proposal, certain small entities that would otherwise not be able to originate QM loans under that definition would be able to originate such loans with QM status. Thus, the Bureau anticipates that the proposal would only reduce burden on small entities relative to the baseline.

Accordingly, the Director certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[133] Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under that OMB control number 3170–0015. The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170–0015 is the Bureau's OMB control number for Regulation Z.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau **Federal Register** Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Amend § 1026.43 by revising paragraph (e)(4)(iii)(B) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(e) * * *

(4) * * *

[130] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[131] 5 U.S.C. 603–605.

[132] 5 U.S.C. 609.

[133] 44 U.S.C. 3501 *et seq.*

(iii) * * *

(B) Unless otherwise expired under paragraph (e)(4)(iii)(A) of this section, the special rules in this paragraph (e)(4) are available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending paragraph (e)(2) of this section. The Bureau will also amend this paragraph as of that effective date to reflect the new status.

* * * * *

■ 3. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling,* revise *43(e)(4) Qualified mortgage defined—special rules* to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum standards for transactions secured by a dwelling.

* * * * *

43(e)(4) Qualified mortgage defined—special rules.

1. *Alternative definition.* Subject to the sunset provided under § 1026.43(e)(4)(iii), § 1026.43(e)(4) provides an alternative definition of qualified mortgage to the definition provided in § 1026.43(e)(2). To be a qualified mortgage under § 1026.43(e)(4), the transaction must satisfy the requirements under § 1026.43(e)(2)(i) through (iii), in addition to being one of the types of loans specified in § 1026.43(e)(4)(ii)(A) through (E).

2. *Termination of conservatorship.* Section 1026.43(e)(4)(ii)(A) requires that a covered transaction be eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617). The special rule under § 1026.43(e)(4)(ii)(A) does not apply if Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) has ceased operating under the conservatorship or receivership of the Federal Housing Finance Agency. For example, if either Fannie Mae or Freddie Mac (or succeeding limited-life regulatory entity) ceases to operate under the conservatorship or receivership of the Federal Housing Finance Agency, § 1026.43(e)(4)(ii)(A) would no longer apply to loans eligible for purchase or guarantee by that entity; however, the special rule would be available for a loan that is eligible for purchase or guarantee by the other entity still operating under conservatorship or receivership.

3. *Timing.* Under § 1026.43(e)(4)(iii), the definition of qualified mortgage under § 1026.43(e)(4) applies only to loans consummated on or before the effective date of a final rule issued by the Bureau amending § 1026.43(e)(2), regardless of whether Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) continues to operate under the conservatorship or receivership of the Federal Housing Finance Agency. Accordingly, § 1026.43(e)(4) is available only for covered transactions consummated on or before the earlier of either:

i. The date Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), respectively, cease to operate under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); or

ii. The effective date of a final rule issued by the Bureau amending § 1026.43(e)(2), as provided by § 1026.43(e)(4)(iii)(B). The Bureau will also amend this commentary as of that effective date to reflect the new status.

4. *Eligible for purchase, guarantee, or insurance except with regard to matters wholly unrelated to ability to repay.* To satisfy § 1026.43(e)(4)(ii), a loan need not be actually purchased or guaranteed by Fannie Mae or Freddie Mac or insured or guaranteed by one of the Agencies (the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS)). Rather, § 1026.43(e)(4)(ii) requires only that the creditor determine that the loan is eligible (*i.e.,* meets the criteria) for such purchase, guarantee, or insurance at consummation. For example, for purposes of § 1026.43(e)(4), a creditor is not required to sell a loan to Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either) for that loan to be a qualified mortgage; however, the loan must be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (or any limited-life regulatory entity succeeding the charter of either), including satisfying any requirements regarding consideration and verification of a consumer's income or assets, credit history, debt-to-income ratio or residual income, and other credit risk factors, but not any requirements regarding matters wholly unrelated to ability to repay. To determine eligibility for purchase, guarantee or insurance, a creditor may rely on a valid underwriting recommendation provided by a GSE automated underwriting system (AUS) or an AUS that relies on an Agency underwriting tool; compliance with the standards in the GSE or Agency written guide in effect at the time; a written agreement between the creditor or a direct sponsor or aggregator of the creditor and a GSE or Agency that permits variation from the standards of the written guides and/or variation from the AUSs, in effect at the time of consummation; or an individual loan waiver granted by the GSE or Agency to the creditor. For creditors relying on the variances of a sponsor or aggregator, a loan that is transferred directly to or through the sponsor or aggregator at or after consummation complies with § 1026.43(e)(4). In using any of the four methods listed above, the creditor need not satisfy standards that are wholly unrelated to assessing a consumer's ability to repay that the creditor is required to perform. Matters wholly unrelated to ability to repay are those matters that are wholly unrelated to credit risk or the underwriting of the loan. Such matters include requirements related to the status of the creditor rather than the loan, requirements related to selling, securitizing, or delivering the loan, and any requirement that the creditor must perform after the consummated loan is sold, guaranteed, or endorsed for insurance such as document custody, quality control, or servicing.

Accordingly, a covered transaction is eligible for purchase or guarantee by Fannie Mae or Freddie Mac, for example, if:

i. The loan conforms to the relevant standards set forth in the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single-Family Seller/Servicer Guide in effect at the time, or to standards set forth in a written agreement between the creditor or a sponsor or aggregator of the creditor and Fannie Mae or Freddie Mac in effect at that time that permits variation from the standards of those guides;

ii. The loan has been granted an individual waiver by a GSE, which will allow purchase or guarantee in spite of variations from the applicable standards; or

iii. The creditor inputs accurate information into the Fannie Mae or Freddie Mac AUS or another AUS pursuant to a written agreement between the creditor and Fannie Mae or Freddie Mac that permits variation from the GSE AUS; the loan receives one of the recommendations specified below in paragraphs A or B from the corresponding GSE AUS or an equivalent recommendation pursuant to another AUS as authorized in the written agreement; and the creditor satisfies any requirements and conditions specified by the relevant AUS that are not wholly unrelated to ability to repay, the non-satisfaction of which would invalidate that recommendation:

A. An ''Approve/Eligible'' recommendation from Desktop Underwriter (DU); or

B. A risk class of ''Accept'' and purchase eligibility of ''Freddie Mac Eligible'' from Loan Prospector (LP).

5. *Repurchase and indemnification demands.* A repurchase or indemnification demand by Fannie Mae, Freddie Mac, HUD, VA, USDA, or RHS is not dispositive of qualified mortgage status. Qualified mortgage status under § 1026.43(e)(4) depends on whether a loan is eligible to be purchased, guaranteed, or insured at the time of consummation, provided that other requirements under § 1026.43(e)(4) are satisfied. Some repurchase or indemnification demands are not related to eligibility criteria at consummation. *See* comment 43(e)(4)–4. Further, even where a repurchase or indemnification demand relates to whether the loan satisfied relevant eligibility requirements as of the time of consummation, the mere fact that a demand has been made, or even resolved, between a creditor and GSE or agency is not dispositive for purposes of § 1026.43(e)(4). However, evidence of whether a particular loan satisfied the § 1026.43(e)(4) eligibility criteria

at consummation may be brought to light in the course of dealing over a particular demand, depending on the facts and circumstances. Accordingly, each loan should be evaluated by the creditor based on the facts and circumstances relating to the eligibility of that loan at the time of consummation. For example:

i. Assume eligibility to purchase a loan was based in part on the consumer's employment income of $50,000 per year. The creditor uses the income figure in obtaining an approve/eligible recommendation from DU. A quality control review, however, later determines that the documentation provided and verified by the creditor to comply with Fannie Mae requirements did not support the reported income of $50,000 per year. As a result, Fannie Mae demands that the creditor repurchase the loan. Assume that the quality control review is accurate, and that DU would not have issued an approve/eligible recommendation if it had been provided the accurate income figure. The DU determination at the time of consummation was invalid because it was based on inaccurate information provided by the creditor; therefore, the loan was never a qualified mortgage under § 1026.43(e)(4).

ii. Assume that a creditor delivered a loan, which the creditor determined was a qualified mortgage at the time of consummation under § 1026.43(e)(4), to Fannie Mae for inclusion in a particular To-Be-Announced Mortgage Backed Security (MBS) pool of loans. The data submitted by the creditor at the time of loan delivery indicated that the various loan terms met the product type, weighted-average coupon, weighted-average maturity, and other MBS pooling criteria, and MBS issuance disclosures to investors reflected this loan data. However, after delivery and MBS issuance, a quality control review determines that the loan violates the pooling criteria. The loan still meets eligibility requirements for Fannie Mae products and loan terms. Fannie Mae, however, requires the creditor to repurchase the loan due to the violation of MBS pooling requirements. Assume that the quality control review determination is accurate. Because the loan still meets Fannie Mae's eligibility requirements, it remains a qualified mortgage based on these facts and circumstances.

* * * * *

Dated: June 22, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–13741 Filed 7–9–20; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AF03

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is seeking comment on a proposed amendment to the margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (the ''CFTC Margin Rule''). As adopted in January 2016, the CFTC Margin Rule, which mandates the collection and posting of variation margin and initial margin (''IM''), was to take effect under a phased compliance schedule extending from September 1, 2016, to September 1, 2020. On April 9, 2020, the Commission published in the **Federal Register** a final rule extending the September 1, 2020 compliance date by one year to September 1, 2021, for a portion of what was to be the final phase consisting of entities with smaller average daily aggregate notional amounts of swaps and certain other financial products (the ''Smaller Portfolio Group'') to reduce the potential market disruption that could result from a large number of entities coming into the scope of compliance on September 1, 2020 (''April 2020 Final Rule''). Subsequently, on May 28, 2020, to mitigate the operational challenges faced by certain entities subject to the CFTC Margin Rule as a result of the coronavirus disease 2019 (''COVID–19'') pandemic, the Commission adopted an interim final rule (the ''IFR'') extending the September 1, 2020 compliance date for certain entities by one year (''IFR Extension Group'') to September 1, 2021. This rulemaking proposal (''Proposal'') would further delay the compliance date for the Smaller Portfolio Group from September 1, 2021, to September 1, 2022, to avoid market disruption due to a large number of entities being required to comply by September 1, 2021, under the revised compliance schedule.

DATES: Comments must be received on or before September 8, 2020.

ADDRESSES: You may submit comments, identified by RIN 3038–AF03, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, 202–418–6056, *jsterling@cftc.gov*; Thomas J. Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov*; Warren Gorlick, Associate Director, 202–418–5195, *wgorlick@cftc.gov*; or Carmen Moncada-Terry, Special Counsel, 202–418–5795, *cmoncada-terry@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

[1] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

I. Background

Section 4s(e) of the Commodity Exchange Act (''CEA'') [2] requires the Commission to adopt rules establishing minimum initial and variation margin requirements for all swaps [3] that are (i) entered into by an SD or MSP for which there is no prudential regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[5] To offset the greater risk to the SD [6] or MSP [7] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held by the SD or MSP.[8]

The Basel Committee on Banking Supervision and the Board of the International Organization of Securities Commissions (''BCBS/IOSCO'') established an international framework for margin requirements for uncleared derivatives in September 2013 (the ''BCBS/IOSCO Framework'').[9] After the establishment of the BCBS/IOSCO Framework, on January 6, 2016, the CFTC, consistent with section 4s(e), promulgated rules requiring CSEs to collect and post initial and variation margin for uncleared swaps,[10] adopting the implementation schedule set forth in the BCBS/IOSCO Framework, including the revised implementation schedule adopted on March 18, 2015.[11]

In July 2019, BCBS/IOSCO further revised the framework to extend the implementation schedule to September 1, 2021.[12] Consistent with this revision to the international framework, the Commission promulgated the April 2020 Final Rule, which amended the compliance schedule for the IM requirements under the CFTC Margin Rule by splitting the last phase of compliance into two compliance phases beginning on September 1, 2020, and September 1, 2021, respectively.[13]

The World Health Organization declared the COVID–19 outbreak a global pandemic on March 11, 2020.[14] On March 13, 2020, President Donald J. Trump declared a national emergency due to the COVID–19 pandemic.[15] The disease has impacted individuals across the world and severely disrupted domestic and international business, and adversely impacted the global economy.

In response to significant concerns regarding the COVID–19 outbreak, BCBS/IOSCO decided to amend its margin policy framework to further extend the implementation schedule for the margin requirements for non-centrally cleared derivatives by one year.[16] BCBS/IOSCO, in a joint statement, stated that the extension would provide additional operational capacity for firms to respond to the immediate impact of COVID–19 and at the same time facilitate firms' diligent efforts to comply with the requirements by the revised deadlines.[17]

After taking into consideration the revised BCBS/IOSCO implementation schedule, in May 2020, the Commission amended the IM compliance schedule for the IFR Extension Group, which otherwise would have been required to comply with the IM requirements beginning on September 1, 2020, to extend the compliance date to September 1, 2021.[18] The Commission accomplished this change by means of an interim final rule in order to address the immediate impact of the COVID–19 pandemic on the IFR Extension Group in an expedited and timely manner; however, the Commission did not extend the compliance date for the Smaller Portfolio Group, which is still September 1, 2021, the same day as the revised IFR Extension Group compliance date.

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[2] 7 U.S.C. 6s(e) (capital and margin requirements).

[3] CEA section 1a(47), 7 U.S.C. 1a(47) (swap definition); Commission regulation 1.3, 17 CFR 1.3 (further definition of a swap). A swap includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] CEA section 1a(39), 7 U.S.C. 1a(39) (defining the term ''prudential regulator'' to include the Board of Governors of the Federal Reserve System; the Office of the Comptroller of the Currency; the Federal Deposit Insurance Corporation; the Farm Credit Administration; and the Federal Housing Finance Agency). The definition of prudential regulator further specifies the entities for which these agencies act as prudential regulators. The prudential regulators published final margin requirements in November 2015. *See generally* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule''). The Prudential Margin Rule is similar to the CFTC Margin Rule, including with respect to the CFTC's phasing-in of margin requirements, as discussed below.

[5] CEA section 4s(e)(2)(B)(ii), 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined the term uncleared swap to mean a swap that is not cleared by a registered derivatives clearing organization or by a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[6] CEA section 1a(49), 7 U.S.C. 1a(49) (swap dealer definition); Commission regulation 1.3 (further definition of swap dealer).

[7] CEA section 1a(32), 7 U.S.C. 1a(32) (major swap participant definition); Commission regulation 1.3 (further definition of major swap participant).

[8] CEA section 4s(e)(3)(A), 7 U.S.C. 6s(e)(3)(A).

[9] *See generally* BCBS and IOSCO, Margin requirements for non-centrally cleared derivatives (Sept. 2013), *https://www.bis.org/publ/bcbs261.pdf.*

[10] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150 through 23.159 and 23.161. In May 2016, the Commission amended the CFTC Margin Rule to add Commission regulation 23.160, 17 CFR 23.160, providing rules on its cross-border application. *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 FR 34818 (May 31, 2016).

[11] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (March 2015), *https://www.bis.org/bcbs/publ/d317.pdf.*

[12] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (July 2019), *https://www.bis.org/bcbs/publ/d475.pdf* (''2019 BCBS/IOSCO Margin Framework'').

[13] *See generally* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19878 (April 9, 2020).

[14] WHO Director-General's opening remarks at the media briefing on COVID–19 (March 11, 2020), *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19-11-march-2020.*

[15] Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (March 13, 2020), *https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.*

[16] *See generally* BCBS/IOSCO, Margin requirements for non-centrally cleared derivatives (April 2020), *https://www.bis.org/bcbs/publ/d499.htm* (''2020 BCBS/IOSCO Margin Framework'') and Press Release, April 3, 2020,*https://www.bis.org/press/p200403a.htm* (''April 2020 BCBS/IOSCO Press Release'').

[17] Basel Committee and IOSCO announce deferral of final implementation phases of the margin requirements for non-centrally cleared derivatives (April 3, 2020), *https://www.bis.org/press/p200403a.htm.*

[18] *See* CFTC Unanimously Approves an Interim Final Rule and a Proposed Rule at May 28 Open Meeting (May 28, 2020) (announcing unanimous approval by the Commission of an interim final rule extending the September 1, 2020 compliance date for the IM requirements to September 1, 2021). Recently, a Global Markets Advisory Committee (''GMAC'') subcommittee encouraged the adoption of the BCBS/IOSCO recommendation to extend the implementation schedule given the circumstances brought about by the COVID–19 pandemic. *See* Recommendations to Improve Scoping and Implementation of Initial Margin Requirements for Non-Cleared Swaps, Report to the CFTC's Global Markets Advisory Committee by the Subcommittee on Margin Requirements for Non-Cleared Swaps, at 3 (April 2020), *https://www.cftc.gov/media/3886/GMAC_051920MarginSubcommitteeReport/download.* The GMAC adopted the subcommittee's report and recommended to the Commission that it consider adopting the report's recommendations. The GMAC subcommittee was not tasked to respond to the COVID–19 pandemic. Rather, its establishment pre-dates the pandemic's impact, and its directive was to address the ongoing challenges involving the implementation of the CFTC margin requirements during the last stages of the compliance schedule. *See* CFTC Commissioner Stump Announces New GMAC Subcommittee on Margin Requirements for Non-Cleared Swaps (Oct. 28, 2019), *https://www.cftc.gov/PressRoom/PressReleases/8064-19.*

II. Proposed Changes to the CFTC Margin Rule

Covered swap entities are required to post and collect IM with counterparties that are SDs, MSPs, or financial end users with material swap exposure (''MSE'') [19] (''covered counterparties'') in accordance with a compliance schedule set forth in Commission regulation 23.161.[20] After the amendments described above, the compliance schedule comprises five compliance dates, from September 1, 2016 to September 1, 2021, staggered such that CSEs and covered counterparties, starting with the largest average daily aggregate notional amounts (''AANA'') of uncleared swaps and certain other financial products, and then successively lesser AANA, are required to come into compliance with the IM requirements in a series of five phases.

The fourth compliance date, September 1, 2019, brought within the scope of compliance CSEs and covered counterparties each exceeding $750 billion in AANA. The fifth and last compliance date (''phase 5'') was originally scheduled to occur on September 1, 2020 and as described in Section I above, was split into two phases with the compliance date for the Smaller Portfolio Group extended to September 1, 2021. Following the adoption of the IFR, the IFR Extension Group compliance date was also extended to September 1, 2021 and as a result, the IFR Extension Group and Smaller Portfolio Group are currently required to begin IM compliance on the same day.

The IFR Extension Group and the Smaller Portfolio Group, together, comprise CSEs and their covered counterparties that are not yet subject to the IM requirements, including financial end user counterparties with an MSE exceeding $8 billion in AANA. The onset of the compliance phase starting on September 1, 2021, would result in a very large reduction in the AANA threshold for financial end user counterparties. Specifically, entities in the fourth phase were subject to a $750 billion AANA threshold, and beginning on September 1, 2021, entities would come within the scope of IM compliance if their AANA exceeds $8 billion.

According to the CFTC's Office of the Chief Economist (''OCE''), compared with the first through fourth phase of compliance, which brought approximately 40 entities into scope, the two groups now subject to the September 1, 2021 compliance date would bring into scope approximately 700 entities, along with 7,000 swap trading relationships.[21] This means that approximately 700 entities may have to amend or enter into up to 7,000 new sets of credit support or other IM agreements in order to continue to engage in swap transactions.

The Commission adopted the April 2020 Final Rule postponing the compliance date for the Smaller Portfolio Group in order to address concerns that the large number of counterparties preparing to meet the September 1, 2020 deadline would seek to engage the same limited number of entities that provide IM required services, involving, among other things, the preparation of IM-related documentation, the approval and implementation of risk-based models for IM calculation, and in some cases the establishment of custodial arrangements. In the preamble to the April 2020 Final Rule, the Commission stated that compliance delays could lead to disruption in the markets; for example, some counterparties could, for a time, be restricted from entering into uncleared swaps and therefore might be unable to use swaps to hedge their financial risk.

Because the IFR postponed the compliance date for the IFR Extension Group to the same date as the Smaller Portfolio Group in response to the COVID–19 pandemic, both groups face again effectively the same issues that the April 2020 Final Rule intended to address, including the limited number of entities that provide IM required services. In recognition of this concern, the most recent BCBS/IOSCO margin framework revision recommended extending the September 1, 2021 deadline for smaller entities to September 1, 2022.[22] The Commission's proposed amendment, which is consistent with both the revised BCBS/IOSCO framework and the Commission's rationale for adopting the April 2020 Final Rule, would further delay the compliance date for the Smaller Portfolio Group entities to alleviate the potential market disruptions described above. The proposed amendment also would be consistent with similar actions by the prudential regulators and the Commission's international counterparts.[23] By helping to achieve regulatory harmonization with respect to uncleared swaps margin, the Proposal may help to reduce regulatory arbitrage.

In proposing the change in the Smaller Portfolio Group compliance date in the April 2020 Final Rule, the Commission also considered the relatively small amount of swap activity of the financial end users that would be subject to the one year extension. The OCE estimated in 2018 the average AANA per entity subject to the original September 1, 2020 compliance date to be $54 billion, compared to an average $12.71 trillion AANA for each entity in the earlier phases 1, 2, and 3 and $1 trillion in phase 4. OCE has also estimated that the total AANA for the Smaller Portfolio Group that would be subject to the one year extension is approximately four percent of the total AANA across all the phases.[24] Given the relatively small amount of swap activity of the financial end users in the Smaller Portfolio Group, the Commission

[19] Commission regulation 23.151 provides that MSE for an entity means that the entity and its margin affiliates have an average daily aggregate notional amount of uncleared swaps, uncleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July or August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. A company is a ''margin affiliate'' of another company if: (i) Either company consolidates the other on a financial statement prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (ii) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (iii) for a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied. 17 CFR 23.151.

[20] 17 CFR 23.161.

[21] Richard Haynes, Madison Lau, & Bruce Tuckman, *Initial Margin Phase 5,* at 4–7 (Oct. 24, 2018), *https://www.cftc.gov/sites/default/files/About/Economic%20Analysis/Initial%20Margin%20Phase%205%20v5_ada.pdf* (''OCE Initial Margin Phase 5 Study''). The OCE Study defines ''a 'relationship' as an entity and a swap dealer, where the entity is an aggregation of related affiliates.''

[22] *See* 2020 BCBS/IOSCO Margin Framework.

[23] The prudential regulators recently issued an interim final rule to, among other things, revise their margin compliance schedule consistent with the revised BCBS/IOSCO implementation schedule. *See* Agencies finalize amendments to swap margin rule (June 25, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200625b.htm* (''Prudential Regulators' June 2020 IFR''). In addition, the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA), collectively known as the European Supervisory Authorities (ESAs), issued joint draft Regulatory Technical Standards (RTS) proposing, among other amendments, changes to the European Union margin rules to effectively implement the 2020 BCBS/IOSCO Margin Framework implementation schedule revisions. *See* Final Report, EMIR RTS on Various Amendments to the Bilateral Margin Requirements in View of the International Framework (May 4, 2020), *https://www.esma.europa.eu/sites/default/files/library/esas_2020_09__-__final_report_-_bilateral_margin_amendments.pdf.* The ESAs submitted the draft RTS for endorsement by the European Commission.

[24] The methodology for calculating AANA is described in the OCE Initial Margin Phase 5 Study at 3.

believes the proposed compliance date extension would have a muted impact on the systemic risk mitigating effects of the IM requirements during the extension period.

The muted impact on systemic risk reflects the relatively small size of portfolios of entities in the Smaller Portfolio Group compared to the larger swap portfolios of entities that are already required to exchange IM pursuant to the CFTC Margin Rule. In the Commission's view, although the impact of Smaller Portfolio Group swap activity on systemic risk is likely to be muted during the one year delay, the time limited risk for the additional year should not be interpreted as dismissive of the longer term regulatory implications of this swap activity. The exchange of IM by entities with relatively small portfolios supports the health and stability of the overall financial system.

Accordingly, the Commission is committed to implementing the full CFTC Margin Rule as directed by Congress.

Hence, the Commission proposes to further amend Commission regulation 23.161(a), which sets forth the schedule for compliance with the CFTC Margin Rule, to delay the compliance date for the Smaller Portfolio Group by another year.

Request for comment: The Commission requests comment regarding the proposed amendments to Commission regulation 23.161. The Commission specifically requests comment on the following questions:

- The CFTC Margin Rule, including the original compliance schedule, was adopted in January 2016 and many, although not all, firms in the Smaller Portfolio Group will have expected for some time that they are likely to fall within that group. Given the amount of time some of these firms have known of the need to establish IM-related arrangements, is it necessary to provide another one year delay to September 1, 2022 for these firms? Might a decision to delay the compliance date by one year for the Smaller Portfolio Group result in unnecessary expense if firms have already undertaken preparatory work, which might need to be redone the following year? Are there other approaches the Commission could take to bring about earlier compliance with the IM requirements? For example, should the Commission include in the rule text a stated expectation that Smaller Portfolio Group entities proceed expeditiously to establish and implement IM arrangements prior to September 1, 2022?

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[25] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. This Proposal contains no requirements subject to the PRA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[26] This Proposal only affects SDs and MSPs that are subject to the CFTC Margin Rule and their covered counterparties, all of which are required to be eligible contract participants (''ECPs'').[27] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[28] Therefore, the Commission believes that this Proposal will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Proposal will not have a significant economic impact on a substantial number of small entities. The Commission invites comment on the impact of this Proposal on small entities.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations. Further, the Commission reflected upon the extraterritorial reach of this Proposal and notes where this reach may be especially relevant.

This Proposal would delay the compliance schedule for the CFTC Margin Rule for CSEs and covered counterparties in the Smaller Portfolio Group, including financial end user counterparties exceeding the MSE threshold of $8 billion in AANA. These entities would come into scope in a final sixth phase, beginning September 1, 2022.

As discussed above, the Commission believes that with the adoption of the IFR and the resulting reapplication of the same compliance deadline for both the Smaller Portfolio Group and the IFR Extension Group, the resulting large number of counterparties that would be required to comply with the IM requirements for the first time on September 1, 2021, could cause certain market disruptions. Some CSEs and covered counterparties may be strained given the demand for resources and services to meet the September 2021 deadline and operationalize the exchange of IM, involving, among other things, counterparty onboarding, approval and implementation of risk-based models for the calculation of IM, and documentation associated with the exchange of IM.

The baseline against which the benefits and costs associated with this Proposal are compared is the uncleared swaps markets as they exist today, including the impact of the current compliance schedule and the implementation of the September 1, 2021 deadline. With this as the baseline for this Proposal, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Proposal will extend the compliance schedule for the IM requirements for the Smaller Portfolio Group to September 1, 2022. The extension may benefit some entities in the Smaller Portfolio Group by allowing them to trade uncleared swaps more easily and cheaply over this period. It also may benefit entities in the IFR Extension Group by making it easier for them to obtain the resources needed to comply with IM requirements. The Proposal is specifically intended to alleviate the potential market disruption resulting from the large number of

[25] 44 U.S.C. 3501 *et seq.*

[26] 5 U.S.C. 601 *et seq.*

[27] Each counterparty to an uncleared swap must be an ECP, as the term is defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18) and Commission regulation 1.3, 17 CFR 1.3. *See* 7 U.S.C. 2(e).

[28] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

counterparties that would come into scope under the current compliance schedule and the strain on the uncleared swaps markets resulting from the increased demand for limited resources and services to set up operations to comply with the IM requirements, including counterparty onboarding, adoption and implementation of risk-based models to calculate IM, and documentation associated with the exchange of IM. In contrast with the CFTC's existing requirements mandating that the entities in the Smaller Portfolio Group comply with initial margin requirements at the same time as entities in the IFR Extension Group, the Proposal reduces the potential for bottlenecks by creating a one year separation in the applicable compliance dates for the two categories of entities.

The Proposal would provide a 12-month delay for smaller counterparties that comprise the Smaller Portfolio Group to September 1, 2022, whose swap trading may not pose the same level of risk, to prepare for their compliance with the IM requirements. The Proposal therefore would promote the smooth and orderly transition into IM compliance for both the IFR Extension Group and the Smaller Portfolio Group.

The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO 2020 Margin Framework, and the Prudential Regulators' June 2020 IFR amending the IM compliance schedule. The Proposal therefore promotes harmonization with international and domestic margin regulatory requirements thereby reducing the potential for regulatory arbitrage.

2. Costs

The Proposal would extend the time frame for compliance with the IM requirements for the smallest, in terms of notional amount, CSEs and covered counterparties, including SDs and MSPs and financial end users that exceed an MSE of $8 billion, by an additional 12 months. Swaps entered into during this period with the smallest CSEs have the potential to be treated as legacy swaps and thus would not be subject to the IM requirements. In the event that IM would have been collected on any of these swaps,[29] by delaying the compliance date one year, these positions would increase the level of counterparty credit risk to the financial system. While potentially meaningful, this risk is a relatively lesser concern because these legacy swap portfolios would be entered into with counterparties that engage in lower levels of notional trading.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Proposal pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

This Proposal would protect market participants and the public against the potential disruption that may be caused by the large number of counterparties that would come into scope of the IM requirements at the end of the current compliance schedule.

Under the proposed compliance schedule, fewer counterparties would come into scope by September 1, 2021 and many small counterparties would be able to defer compliance until the last compliance date on September 1, 2022. As such, the demand for resources and services to achieve operational readiness would be reduced, mitigating the potential strain on the uncleared swaps markets.

Inasmuch as this Proposal delays the implementation of IM for the smallest CSEs, there may not be as much IM posted to protect the financial system as would otherwise be the case.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Proposal would be expected to make the uncleared swaps markets more efficient by facilitating counterparties' transition into compliance with the IM requirements, thus avoiding inefficiencies in the documentation and implementation process. Counterparties would have additional time to document their swap relationships and set up adequate processes to operationalize the exchange of IM. As such, the Proposal would promote more even competition among counterparties in the uncleared swaps markets, as it would remove the potential incentive of CSEs to prioritize arrangements with larger counterparties to the detriment of smaller counterparties and would help maintain the current state of market efficiency.

By preventing the market disruption that would result from the large number of counterparties that would come into scope at the end of the current compliance schedule, the Proposal promotes the financial integrity of the markets, reducing the probability of disruption resulting from the heightened demand for limited financial infrastructure resources. On the other hand, for a one year period, there would be less IM posted overall, making uncleared swaps markets more susceptible to financial contagion where the default of one counterparty could lead to subsequent defaults of other counterparties potentially harming market integrity.

(c) Price Discovery

This Proposal may enhance or negatively impact price discovery. Without the Proposal, counterparties, in particular smaller counterparties, may be discouraged from trading uncleared swaps because they may not be able to secure resources and services in a timely manner to operationalize the exchange of IM, or may forgo such trading absent relief from the requirement to post regulatory IM. The reduction in uncleared swaps trading may reduce liquidity and harm price discovery. Conversely, by further delaying implementation of the IM requirements for the Smaller Portfolio Group, during the delay period, the pricing of the swaps entered into by those counterparties may be adjusted to incorporate additional risks that would otherwise have been covered by IM. These additional adjustments, which may vary from swap dealer to swap dealer, could result in pricing differentiations between swaps entered into by some Smaller Portfolio Group entities and comparable swaps entered into by entities already subject to the margin requirements. As result, the ability of entities in the Smaller Portfolio Group to compare prices may be reduced, harming effective market price discovery by these entities.

(d) Sound Risk Management

As discussed above, by delaying the compliance date for the Smaller Portfolio Group, swaps entered into during this period would not be subject to the IM requirements, potentially increasing the level of counterparty credit risk to the financial system. At the same time, this Proposal would stave off the potential market disruption that could result from the large number of counterparties that would come into the scope of the IM requirements at the end of the current compliance schedule. The delayed compliance schedule would alleviate the potential disruption in establishing the financial infrastructure for the exchange of IM between in-scope entities and would give counterparties time to prepare for IM compliance and to establish

[29] While all entities that are covered by the Commission's margin requirements are required to exchange variation margin, the Commission notes that some entities may not be required to post and collect IM, as certain thresholds must be met before the posting and collection of IM are required.

operational processes tailored to their uncleared swaps and associated risks.

(e) Other Public Interest Considerations

The Proposal promotes harmonization with international and domestic margin regulatory requirements, reducing the potential for regulatory arbitrage. The Proposal would amend the CFTC Margin Rule consistent with the revised BCBS/IOSCO margin framework, and the Prudential Regulators' June 2020 IFR amending the IM compliance schedule.

4. Request for Comments on Cost-Benefit Considerations

The Commission invites public comment on its cost-benefit considerations, including the section 15(a) factors described above. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposed amendments with their comment letters. In particular, the Commission seeks specific comment on the following:

(a) Has the Commission accurately identified all the benefits of this Proposal? Are there other benefits to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such benefits.

(b) Has the Commission accurately identified all the costs of this Proposal? Are there additional costs to the Commission, market participants, and/or the public that may result from the adoption of this Proposal that the Commission should consider? Please provide specific examples and explanations of any such costs. For example, is there a potential for increased counterparty credit risk in trades or contagion involving firms that will get the benefit of the proposed margin deadline extension, *i.e.,* with respect to trades for those entities during the period between September 2021 and September 2022? Is it possible to identify reliably the amount of any such increase in potential risk? Should the margin amounts that these firms are required to post by contract, rather than by CFTC regulations, be considered as a risk mitigant during that period?

(c) Does this Proposal impact the section 15(a) factors in any way that is not described above? Please provide specific examples and explanations of any such impact.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the Act.[30]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether this Proposal implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether this Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that this Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting this Proposal.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.161, republish paragraph (a) introductory text and revise paragraph (a)(7) to read as follows:

§ 23.161 Compliance dates.

(a) Covered swap entities shall comply with the minimum margin requirements for uncleared swaps on or before the following dates for uncleared swaps entered into on or after the following dates:

* * * * *

(7) September 1, 2022 for the requirements in § 23.152 for initial margin for any other covered swap entity for uncleared swaps entered into with any other counterparty.

* * * * *

Issued in Washington, DC, on June 26, 2020, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Rostin Behnam

Today's notice of proposed rulemaking (''NPRM'') is necessitated as a result of global policy and domestic regulatory considerations to address the impact of the COVID–19 pandemic on potential market disruption that could result from a large number of entities simultaneously coming into compliance with the initial margin (or ''IM'') requirements of the CFTC Margin Rule.[1] In our attempts to remain consistent with revisions to the BCBS/IOSCO international framework's implementation schedule, we have now created an additional compliance phase, moving from five to six, and postponing full compliance by one year to September 1, 2021.[2] This seems reasonable, save for the fact that our last action to provide relief for those who would have to come into compliance in September of this year has resulted in a reuniting of phases five and six, reintroducing the same set of concerns regarding potential market disruptions we sought to avoid. Accordingly, we are here today with a new NPRM to further postpone the compliance date for the final phase, phase six, to September 1, 2022.

I will support the NPRM today because it is, at this time, being presented as the swiftest means to establish a realistic compliance deadline for which we will hold

[30] 7 U.S.C. 19(b).

[1] *See* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 85 FR 19878 (Apr. 9, 2020).

[2] 85 FR 19878; Interim Final Rule: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, __ FR _____ (_____, 2020), voting draft available at *https://www.cftc.gov/PressRoom/PressReleases/8168-20.*

covered entities accountable. The circumstances of the COVID–19 pandemic are significant cause for concern, and I believe the Commission has responded with workable, targeted solutions aimed at ensuring our policies remain intact when the rigor of our regulations prove too burdensome to balance with competing overarching financial stability concerns.

However, as I have maintained throughout this process, delaying IM requirements as a means to provide temporary, targeted relief to address increased market volatility seems counterintuitive.[3] Moreover, as we continue to prolong compliance, we inevitably invite further requests for deferral of an indefinite nature. As the ten year anniversary of the Dodd-Frank Act[4] approaches, we cannot presume that the risks this core-reform seeks to address have morphed into anything of lesser concern, and I will not support any further relief absent truly compelling facts and lockstep agreement with the prudential regulators responsible for establishing margin requirements for swap dealers and major swap participants within their respective jurisdictions.

Appendix 3—Concurring Statement of Commissioner Dan M. Berkovitz

I concur with issuing for public comment the proposal to extend the swap initial margin compliance date to September 1, 2022 for certain financial entities that have smaller swap portfolios (''Proposal'').

This is the second extension for these entities. The original compliance date was September 1, 2020. The reasons for this proposed extension are essentially the same as the first extension. The first extension was meant to avoid congestion in negotiating and implementing thousands of initial margin arrangements for the approximately 700 entities that would otherwise have needed to enter into initial margin arrangements by September 1, 2020. The extension split the compliance timeline for the smaller swap portfolio entities from the timeline for the entities with larger portfolios. The larger portfolio entities were still expected to comply by September 1, 2020, but the compliance date for the smaller entities was extended to September 1, 2021. However, more recently, in light of the disruptions caused by the Covid-19 pandemic, the compliance date for the larger swap portfolio entities was extended to September 1, 2021, thus again establishing the same compliance date for both the larger and smaller swap portfolio groups.

Although the Proposal is based on essentially the same rationale as the first extension for the smaller entities, I am not presupposing that the full extension is necessary. The smaller swap portfolio entities and their swap dealers will have had nearly six years to prepare for the deadline as of September 1, 2021. These entities, as well as the larger portfolio entities for which September 1, 2021 is the deadline, will have had plenty of time to spread the negotiation and implementation process out over those many years. It is my understanding that many of the larger swap portfolio entities were already well on the way to completing the necessary documentation when the Covid-19 pandemic struck. The Proposal includes several questions as to whether the further extension in the Proposal could increase costs by possibly stopping and restarting negotiations again. In determining whether an extension will be finalized in regulation, the Commission will benefit from input from the public through the notice and comment process provided for in the Administrative Procedure Act.

For these reasons, I concur in the issuance of the Proposal and look forward to comments from the public.

[FR Doc. 2020–14254 Filed 7–9–20; 8:45 am]

BILLING CODE 6351–01–P

[3] Rostin Behnam, Commissioner, Statement of Commissioner Rostin Behnam Regarding Interim Final Rule with Request for Comment on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (May 28, 2020),*https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement052820.*

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0395]

RIN 1625–AA00

Safety Zone; Ohio River, Newburgh, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. This action is necessary to provide for the safety of life on these navigable waters near Newburgh, IN, during a fireworks display on September 5, 2020. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 10, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0395 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, or email MST3 Jackson U.S. Coast Guard, telephone 502–779–5347, email *secohv-wwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On June 23, 2020, Historic Newburgh, Inc. notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. through 10 p.m. on September 5, 2020. The fireworks are to be launched from the shore near the city of Newburgh, IN, with a fallout radius occurring over the Ohio River. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Sector Ohio Valley (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone between mile marker (MM) 777.3 to MM 778.3.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the one-mile segment of the Ohio River 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 is proposing to establish a safety zone from 9:30 p.m. through 10 p.m. on September 5, 2020. The safety zone will cover all navigable waters, extending the entire width of the river, from mile marker (MM) 777.3 to MM 778.3. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the temporary safety zone. This safety zone restricts transit on a one-mile segment of the Ohio River for thirty minutes on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 a safety zone lasting thirty minutes that would prohibit entry within a one mile segment of the Ohio River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

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 *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email 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 *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0395 to read as follows:

§ 165.T08–0395 Safety Zone; Ohio River, Newburgh, IN.

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Ohio River between MM 777.3 to MM 778.3 in Newburgh, IN.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, entry into the safety zone, described in paragraph (a) of this section, is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

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

(c) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners and the Local Notice to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

(d) *Enforcement Period.* This section will be enforced from 9:30 p.m. to 10 p.m. on September 5, 2020.

Dated: July 1, 2020.

A.M. Beach,

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

[FR Doc. 2020–14761 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AQ95

Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations regarding character of discharge determinations. VA proposes to modify the regulatory framework for discharges considered ''dishonorable'' for VA benefit eligibility purposes, such as discharges due to ''willful and persistent misconduct,'' ''an offense involving moral turpitude,'' and ''homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.'' VA also proposes to extend a ''compelling circumstances'' exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors.

DATES: Comments must be received on or before September 8, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ95—Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Olumayowa Famakinwa, Policy Analyst, Regulations Staff (210), Compensation Service (21C), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Existing Character of Discharge Determination Process

Eligibility for most VA benefits requires that a former service member be a ''veteran.'' ''Veteran'' status is bestowed to former service members ''who served in the active military, naval, or air service, and who [were] discharged or released therefrom under conditions other than dishonorable.'' 38 U.S.C. 101(2). Assuming the active service requirement is met, VA relies primarily on a former service member's character of service designated by the Armed Forces to determine whether a former service member was separated from service ''under conditions other than dishonorable.'' *See* 38 U.S.C. 101(2), (18); *see also* 38 CFR 3.1(a), (d). The Armed Forces characterize discharge or release from service into one of five categories: Honorable, under honorable conditions (general), other than honorable (OTH), bad conduct (adjudicated by a general court or special court-martial), or dishonorable (or dismissal in the case of commissioned officers). The Armed Forces also has three categories of uncharacterized administrative separations: entry-level separation, void enlistment, or dropped from the rolls.

Section 3.12 of title 38, Code of Federal Regulations (CFR), provides the criteria used by VA adjudicators to determine character of discharge for purposes of benefit eligibility for former service members. First, regardless of the Armed Forces' characterization of service, there are six statutory bars to benefits noted in 38 U.S.C. 5303(a) and reiterated in paragraph (c) of 38 CFR 3.12. The statutory bars pertain to former service members discharged or released (1) as a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful orders of competent military authorities; (2) by reason of the sentence of a general court-martial; (3) by resignation of an officer for the good of

the service; (4) as a deserter; (5) as an alien during a period of hostilities, where it is affirmatively shown that the former service member requested his or her release; and (6) under OTH conditions as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days.

In addition, there are five regulatory bars to benefits provided in paragraph (d) of 38 CFR 3.12, pertaining to former service members who were discharged or released based on (1) acceptance of an undesirable discharge to escape trial by general court-martial; (2) mutiny or spying; (3) an offense involving moral turpitude, to include generally conviction of a felony; (4) willful and persistent misconduct; and (5) homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.

To determine eligibility for benefits, VA must evaluate the character of service for each period of active duty service. *See* 38 CFR 3.12(a). If the Armed Forces characterized the former service member's service as either ''honorable,'' ''under honorable conditions (general),'' or as an uncharacterized administrative separation categorized as ''an entry-level separation,'' VA considers a former service member to have met the character of discharge requirement, without further review of his or her service record, unless the discharge documents show a separation reason that is listed as a bar to benefits under 38 U.S.C. 5303(a) and 38 CFR 3.12(c). 38 CFR 3.12(a) and (k)(1).

If the Armed Forces characterized the former service member's service as dishonorable, the former service member would generally be deemed ineligible for any VA benefits based on that period of service, unless the insanity exception applied. *See* 38 CFR 3.12(b). The insanity exception applies to situations where the former service member was found to be insane at the time of the offense leading to his or her court-martial, discharge or resignation. *See* 38 CFR 3.354(b).

Generally, a discharge under dishonorable conditions will not bar a former service member from receiving VA benefits if that service member has another period of service which ended under honorable conditions for which the statutory bars would not apply—as VA benefits would be predicated on that honorable period of service. *See* 38 CFR 3.12(a); *see also* 38 U.S.C. 101(18); VAOPGCPREC 61–1991. In the case of commissioned or warrant officers who are discharged from an enlistment for the sole purposes of accepting a commission, VA considers the entire period of service (*i.e.,* from enlistment through commission period) as one continuous period of service with entitlement of VA benefits determined by the character of final termination of such period of active service. *See* 38 CFR 3.13.

If the character of service is denoted by the Armed Forces as under ''other than honorable'' conditions, as ''bad conduct,'' or as an ''uncharacterized'' separation (categorized as either ''void enlistment'' or ''dropped from the rolls''), then VA must administratively assess eligibility for VA benefits and services and make a VA character of discharge determination on whether or not the period of military service is ''under conditions other than dishonorable'' for VA benefits purposes. *See* 38 U.S.C. 101(2); *see also* 38 CFR 3.12(a) and (k)(2) and (3). This VA character of discharge determination does not change the Armed Forces' characterization of service and has no effect on the former service member's military discharge status. Rather, VA's determination is for VA benefits and services eligibility purposes only.

During VA's administrative review of the service member's character of discharge, VA examines the facts and circumstances that surround the Armed Forces' characterization of service and assesses the statutory and regulatory bars to VA benefits. VA will request all available records, including service treatment and personnel records from the relevant military service department. VA will also send advance notice to the former service member, with an applicable response time limit for him or her to submit any evidence, contention, or argument surrounding facts and circumstances that led to the Armed Forces' characterization of military service. When necessary, VA will resolve any reasonable doubt in favor of the former service member, including when the service department provides limited records to VA as to the nature of the discharge and no statutory or regulatory bar exists.

A. Statutory Bars to Benefits

A former service member must be denied benefits, regardless of the Armed Forces' characterization of service, if the reason for separation from the period of service that benefits would be predicated upon falls within one of the six statutory bars. *See* 38 U.S.C. 5303(a). In situations where a former service member did not receive a discharge or release at the completion of an originally intended period of service because that individual agreed to an extension, VA looks to the satisfactory completion of that initial period to assess character of discharge for that period, even if the extension results in a dishonorable discharge. *See* 38 U.S.C. 101(18); *see also* 38 CFR 3.13(c). However, a statutory bar to benefits would apply as to a period of service to any former service member who was discharged or released under one of the six conditions enumerated in 38 CFR 3.12(c).

The statutory bar involving prolonged unauthorized absence of 180 consecutive days or more is the only conditional statutory bar to benefits. VA may consider whether ''compelling circumstances'' mitigate such a prolonged unauthorized absence. *See* 38 U.S.C. 5303(a). If compelling circumstances mitigate the absence, then the statutory bar to benefits would not apply. Congress left the issue of what constitutes compelling circumstances to VA's discretion. The statute does not define or give examples of what would rise to a compelling circumstance. To assist its adjudicators in reviewing compelling circumstances, VA, through regulation, has provided circumstances to consider when contemplating compelling circumstances. *See* 38 CFR 3.12(c)(6)(i)–(iii).

First, VA adjudicators must review the length and quality of the service exclusive of time spent AWOL. *See* 38 CFR 3.12(c)(6)(i). Second, VA adjudicators must consider the reason for going AWOL, including family emergencies or obligations, similar types of obligations or duties owed to third parties, a person's age, cultural background, educational level, judgmental maturity, and how the situation appeared to the former service member (not how the VA adjudicator might have reacted). *See* 38 CFR 3.12(c)(6)(ii). Third, VA adjudicators must consider any hardships or suffering incurred during overseas service, or as a result of combat wounds of other service-incurred or aggravated disability. *Id.* Finally, VA adjudicators must consider a legal defense which would have precluded a conviction or valid charge under the Uniform Code of Military Justice (UCMJ) if the legal defense directly addresses the substantive issue of absence rather than procedures, technicalities or formalities. *See* 38 CFR 3.12(c)(6)(iii).

B. Regulatory Bars to Benefits

Independent of the statutory bars to benefits, VA must also consider whether a former service member's discharge was ''under conditions other than dishonorable.'' 38 U.S.C. 101(2); Public Law 78–346, 1503 (1944). Congress gave VA broad authority to consider

discharges based on certain conduct as dishonorable. *Camarena* v. *Brown,* 6 Vet. App. 565, 568 (1994), *aff'd* 60 F.3d 843 (1995); 90 Cong. Rec. at 3077 (Mar. 24, 1944) (Sen. Clark) (for certain conduct, ''the Veterans' Administration will have some discretion with respect to regarding the discharge from the service as dishonorable''). Over 70 years ago, VA used this authority to adopt regulatory bars to benefits that are now enumerated in 38 CFR 3.12(d). *See* VA Regulations and Procedures (R&PR) 1064(A) (1946). Those regulatory bars were noted above and are further discussed below.

II. VA's Proposed Regulatory Changes

In January 2016, VA received a petition for rulemaking from Swords to Plowshares (STP) requesting that VA amend 38 CFR 3.12(a) and (d) (pertaining to character of discharge), as well as 38 CFR 17.34 and 17.36 (pertaining to health care eligibility and enrollment). Swords to Plowshares, VA Rulemaking Petition to Amend Regulations Interpreting 38 U.S.C. 101 (2) (December 19, 2015), available at *https://www.swords-to-plowshares.org/wp-content/uploads/VA-Rulemaking-Petition-to-amend-regulations-interpreting-38-U.S.C.-10122.pdf.* STP argued that VA's character of discharge determination process lacked consistency and that the regulatory bars concerning moral turpitude, willful and persistent misconduct, and aggravating homosexual acts were outdated or vague.

VA is still considering appropriate changes for 38 CFR 17.34 and 17.36, particularly in light of the 2018 enactment of 38 U.S.C. 1720I. But VA has reviewed 38 CFR 3.12 and, particularly given that paragraph (d) has not been updated since 1980, VA is proposing changes. The goal of VA's review is to ensure an updated as well as consistent approach in defining which former service members have been discharged ''under conditions other than dishonorable.'' *See* 38 U.S.C. 101(2); *see also* 38 CFR 3.1(d). As a part of its review, VA has researched the evolution of its current character of discharge policies, current military manuals, and the legislative intent behind 38 U.S.C. 101(2). In updating its regulatory framework for bars to benefits, VA proposes the following regulatory changes.

A. Homosexual Acts Involving Aggravating Circumstances

Though current § 3.12(d)(5) bars benefits for former servicemembers discharged for homosexual acts involving aggravating circumstances or other factors affecting the performance of duty, VA believes that this bar should apply to all sexual acts involving aggravating circumstances or affecting the performance of duty, regardless of the former service member's sexual orientation. Thus, VA will replace the word ''homosexual'' with ''sexual'' throughout this provision (which will be relocated to § 3.12(d)(2)(iii)).

B. Moral Turpitude and Willful and Persistent Misconduct

VA's Office of General Counsel (OGC) issued an opinion that defines ''moral turpitude'' as ''a willful act committed without justification or legal excuse which gravely violates accepted moral standards and . . . would be expected to cause harm or loss to person or property.'' VAOPGC 6–87 (July 27, 1987). OGC stated that a moral turpitude offense may include conduct that does not result in prosecution or conviction. *Id.* To the extent there has been any confusion or inconsistency in applying the definition of moral turpitude, we propose to incorporate OGC's explanation into the text of 38 CFR 3.12(d). However, we will omit the phrase ''without justification or legal excuse'' because any determination on this matter will have to consider ''compelling circumstances'' as further discussed below.

As to willful and persistent misconduct, VA regulations already define ''willful misconduct'' as ''an act involving conscious wrongdoing or known prohibited action.'' 38 CFR 3.1(n). The act must involve deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences. 38 CFR 3.1(n)(1). A mere technical violation of police regulations or ordinances will not per se constitute willful misconduct. 38 CFR 3.1(n)(2).

''Persistent misconduct'' is not defined by statute or regulation; however, the plain meaning of the term contemplates misconduct that is ongoing over a period of time, or conduct that recurs on more than one occasion. Merriam-Webster's Collegiate Dictionary 865 (10th ed. 2000). VA already recognizes that an isolated offense does not qualify and that multiple offenses are not automatically deemed ''persistent.'' *See* M21–1 Adjudication Procedures Manual, Part III, Subpart v. *Chapter 1, Section B, Topic 3, Block d,* ''*Additional Information on Discharges for Willful and Persistent Misconduct, https://www.knowva.ebenefits.va.gov/.*

Nevetheless, to improve consistency in adjudications, VA proposes to provide a regulatory standard in determining ''persistent misconduct.'' VA would consider instances of minor misconduct occurring within two years of each other, an instance of minor misconduct occurring within two years of more serious misconduct, and instances of more serious misconduct occurring within five years of each other as ''persistent.'' The misconduct would not have to be of a similar nature, type, or offense to be considered ''persistent.'' (For example, disrespect toward a sentinel followed four days later by leaving the scene of a vehicle accident would be considered ''persistent'' misconduct.)

VA already makes a distinction in its regulation between minor and more serious offenses in § 3.12(d)(4), and accepts that mere technical violations of police regulations or ordinances are not, by themselves, willful misconduct, § 3.1(n)(2). But to bring consistency to the use of that term, ''minor misconduct'' would be defined as ''minor offense'' is in the Manual for Courts-Martial United States (MCM): ''[o]rdinarily . . . an offense for which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than 1 year if tried by general court-martial.'' MCM Part V, para.1.e (2019). Beyond that general rule, the MCM states that determining whether an offense is minor can depend on several factors (circumstances, age, etc.), but VA will account for those factors in § 3.12(e), as discussed below. Thus, it would be consistent with military law for VA to adopt a definition of minor misconduct based on the MCM's general definition of minor offense (which, notably, examines the maximum sentence imposable—not the sentence actually given). We believe that reliance on the MCM will bring consistency to determinations in this realm and that use of the MCM is appropriate considering that the offenses and misconduct considered would have occurred when the former service member was under the jurisdiction of the military.

The definition of ''persistent'' is derived from the statutes of limitations for punishment in the MCM and the UCMJ. For nonjudicial punishment, which is typically imposed for acts or omissions that are minor offenses, the statute of limitations is generally two years. *Id.* at Part V, para. 1.f(4); *see also* 10 U.S.C. 843(b)(3). For judicial punishments, the UCMJ generally provides a five year statute of limitations (though there is no limitation for murder, rape, sexual assault, AWOL or missing movement in time of war, or any other offense

punishable by death). *See* 10 U.S.C. 843(a)–(b). Just as the military will generally no longer prosecute a minor offense after two years or other more serious offenses after five years, VA will consider minor offenses occurring more than two years apart and other more serious offenses occurring more than five years apart as not meeting the persistence standard. That said, we note that some more serious offenses may also meet the standard of ''moral turpitude'' and therefore warrant a bar of benefits under that provision.

It is important to address how AWOL would relate to this definition of ''willful and persistent misconduct.'' Again, VA would consider the MCM, which provides maximum punishments of dishonorable discharge for certain types of AWOL (*e.g.,* absence from unit for more than 30 days, whether terminated by apprehension or not), and lesser punishment for other types of AWOL (*e.g.,* absent from guard or watch, even with intent to abandon, or absent with intent to avoid maneuvers or field exercises). *See* MCM Part IV, para. 10.d (Article 86.d). The following chart demonstrates how VA will consider AWOL for the purposes of determining willful and persistent misconduct:

Type of AWOL	Minor misconduct	Serious misconduct
Failing to go, going from appointed place of duty	X	
Absence from unit, organization, or other place of duty:		
For not more than 30 days	X	
For more than 30 days		X
For more than 30 days and terminated by apprehension		X
Absence from guard or watch	X	
Absence from guard or watch with intent to abandon	X	
Absence with intent to avoid maneuvers or field exercises	X	

This approach would provide VA with more consistent outcomes in applying the willful and persistent misconduct bar to cases involving AWOL.

C. Acceptance of an Undesirable Discharge to Escape Trial by General Court-Martial

VA proposes to replace the term ''undesirable discharge'' in current § 3.12(d)(1) with ''a discharge under other than honorable conditions or its equivalent'' to conform to the terminology that has been used since 1977. *See* Public Law 95–126 (1977). VA also proposes to replace the phrase ''to escape'' in current § 3.12(d)(1) with ''in lieu of'' to conform to the teminology that service departments currently use and to avoid ascribing motivation or stigma to a former service member's decision to accept a discharge rather than to proceed to trial by a general court-martial.

D. Compelling Circumstances

As noted above, the statutory bar involving prolonged unauthorized absence of 180 consecutive days or more is the only conditional statutory bar to benefits. If ''compelling circumstances'' mitigate the AWOL, then the statutory bar to benefits would not apply.

VA proposes to extend this ''compelling circumstances'' exception to three current regulatory bars to benefits: Sexual acts involving aggravating factors, willful and persistent misconduct, and offenses involving moral turpitude. Thus, VA will move the list of factors for consideration in a ''compelling circumstances'' analysis (currently located at § 3.12(c)(6)(i)–(iii)) to § 3.12(e). This list is not exhaustive, so VA adjudicators will have the necessary flexibility to deal with unique situations that may arise in reviewing character of discharge determinations—but many of these factors may not be pertinent in a given case, depending on the conduct at issue. (For example, it is difficult to imagine family obligations being used as a compelling circumstance excusing murder or aggravating sexual acts.) Compelling circumstances, as applied, will be decided on a case-by-case basis.

VA will continue to exclude application of the ''compelling circumstances'' exception to those discharged for mutiny or spying because of the seriousness of these offenses, which require forfeiture of all accrued or future gratuitous benefits per 38 U.S.C. 6104. Likewise, VA will not consider this exception for those who accept an OTH (or equivalent) discharge in lieu of trial by general court-martial. Armed Forces procedures ensure that the service member has full knowledge of the consequences of such a separation, including the ''[l]oss of veterans' benefits.'' *See* Army Regulation (AR) 635–200, Chapter 10–2.a(9); Air Force Instruction (AFI) 36–3208, Chapter 4, Figure 4.1, ¶ 3; MILPERSMAN 1910–106, 2.a, ¶ 4; MARCORSEPMAN 1900.16, ¶ 6419.3.d(3); and COMDTINST M1000.4, 1.A.5.d(1). Armed Forces procedures ensure that the service member is not coerced into accepting this type of separation and that the individual is offered an opportunity to consult legal counsel prior to agreeing to such a separation. *See, e.g.,* AR 635–200, Chapter 10–2; AFI 36–3208, Chapter 4.3.3; MILPERSMAN 1910–106, 2.a, ¶ 1–2. In addition, certain military branches provide medical examinations while processing these applications for discharge, to ensure that the service member is capable of providing informed consent to this type of separation. *See, e.g.,* AR 635–200, Chapter 10–6; AFI 36–3208, Chapter 4.7; MILPERSMAN 1910–106, 2.d; and COMDTINST M1000.4, 1.A.5.d(3). Moreover, accepting a discharge in lieu of trial by general court-martial does not always result in an OTH discharge; a former service member can receive a general discharge, an entry-level separation, or even an honorable discharge. *See, e.g.,* AR 635–200, Chapter 10–8; AFI 36–3208, Chapter 4.2; MILPERSMAN 1910–106, 3.a. In such cases, the regulatory bars to benefits would not even apply. 38 CFR 3.12(a), (k)(1). Finally, this regulatory bar applies only to former service members who could have been tried by a general court-martial, not a special court-martial; and since the sentence of a general court-martial is a statutory bar to benefits, we do not believe that accepting a discharge in lieu of such a trial should result in the possibility of a different outcome.

III. Proposed Regulatory Amendments

Pursuant to the above discussion, VA proposes the following amendments to § 3.12. VA would amend the title to ''Benefit eligibility based on character of discharge.'' This change would reflect the fact that VA does not have the authority to alter a characterization of service issued by the Armed Forces and that VA utilizes the designation to determine basic VA benefit eligibility.

VA would amend paragraph (a) by adding the descriptive header ''General rule'' and rewording the section to read in the affirmative.

VA would amend paragraph (b) to add the descriptive header ''Insanity exception,'' add a sentence cross-referencing 38 CFR 3.354's definition of insanity, and make non-substantive amendments for clarity.

VA would amend paragraph (c) to add the descriptive header ''Statutory bars to benefits.'' In paragraph (c)(1), VA will make a minor edit to make ''lawful order'' plural so that it accurately reflects the text of 38 U.S.C. 5303(a). In paragraph (c)(6), VA will add a reference to 38 U.S.C. 5303(a) in the first sentence. VA would also divide the language of current paragraph (c)(6) into two subparagraphs, with descriptive headers and other non-substantive changes. VA would move current (c)(6)(i)–(iii) regarding ''compelling circumstances'' to new paragraph (e).

VA would amend paragraph (d) to add the descriptive header ''Regulatory bars to benefits.'' In addition, VA would add a new format based on whether the ''compelling circumstances'' exception is or is not applicable. As noted above, the phrase ''Acceptance of an undesirable discharge to escape trial'' in current paragraph (d)(1) will be replaced with ''Acceptance of a discharge under other than honorable conditions or its equivalent in lieu of trial'' in new paragraph (d)(1)(i).

New paragraph (d)(2) would contain the updated and clarified regulatory bars for moral turpitude, willful and persistent misconduct, and sexual acts involving aggravating circumstances or other factors affecting performance of duty.

New paragraph (e) would provide guidance concerning the ''compelling circumstances'' exception. The circumstances listed in (e)(1) and (2) are expansions upon current paragraphs (c)(6)(i) and (ii), while the circumstances listed in (e)(3) will substantively replicate current paragraph (c)(6)(iii), with minor wording changes to reflect the fact that this language can now be applied to misconduct outside the AWOL context.

The remaining paragraphs of § 3.12 are provided descriptive headers and updated cross-references after the addition of new paragraph (e).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This proposed rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The anticipated costs of this regulatory action are directly and only attributed to VA's internal processing and budgetary appropriations. There are no small entities involved or impacted by this regulatory action. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This action contains provisions affecting a collection of information, at 38 CFR 3.151, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521). There are no new collections of information associated with this rule, but there will be an increase in the number of respondents associated with an already approved Office of Management and Budget (OMB) control number. The information requirement for 38 CFR 3.12 is currently approved by the Office of Management and Budget (OMB) and has been assigned control numbers 2900–0747 and 2900–0004. This rulemaking would increase the number of respondents from the existing information collection requirements associated with 38 CFR 3.12 by increasing the number of claims for benefits submitted under 38 CFR 3.151. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), while the actual OMB control number will remain in existence due to other information collections on the same OMB control number that are approved and active, it increases the number of respondents for the approved OMB control number, 2900–0747. This would result in an increase of 11,682 estimated annual burden hours and an annual cost of $121,590.15. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA will submit this information collection amendment to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.101, Burial Expenses Allowance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this

document on May 21, 2020, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.12 as follows:
■ a. Revise the section heading.
■ b. Revise paragraphs (a), (b), (c) introductory text, (c)(6), and paragraph (d).
■ c. Redesignate paragraphs (e) through (k) as paragraphs (f) through (l).
■ d. Revise redesignated paragraphs (f), (g), (h) introductory text, (i) introductory text, and (j).
■ e. Add new paragraph (e).
■ f. Add a paragraph heading at the beginning of newly redesignated paragraph (k).

The revisions and additions read as follows:

§ 3.12 Benefit eligibility based on character of discharge.

(a) *General rule.* If the former service member did not die in service, then pension, compensation, or dependency and indemnity compensation is payable for claims based on periods of service that were terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2)). A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge.

(b) *Insanity exception.* No bar to benefits under this section shall be applied if VA determines that the former service member was insane at the time he or she committed the offense(s) leading to the discharge or release under dishonorable conditions. (38 U.S.C. 5303(b)). Insanity is defined in § 3.354.

(c) *Statutory bars to benefits.* Benefits are not payable where the former service member was discharged or released under one of the following conditions:

(1) As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful orders of competent military authorities.

* * * * *

(6) By reason of a discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days (38 U.S.C. 5303(a)).

(i) *Compelling circumstances exception.* This bar to benefit entitlement does not apply if compelling circumstances mitigate the prolonged unauthorized absence, as discussed in paragraph (e) of this section.

(ii) *Applicability prior to October 8, 1977.* This statutory bar applies to any person awarded an honorable or general discharge prior to October 8, 1977, under one of the programs listed in paragraph (i) of this section, and to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Department of Veterans Affairs benefits. ''Basic eligibility'' for purposes of this paragraph means either a Department of Veterans Affairs determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge issued prior to October 8, 1977, under criteria other than those prescribed by one of the programs listed in paragraph (i) of this section. However, if a person was discharged or released by reason of the sentence of a general court-martial, only a finding of insanity (paragraph (b) of this section) or a decision of a board of correction of records established under 10 U.S.C. 1552 can establish basic eligibility to receive Department of Veterans Affairs benefits.

(d) *Regulatory bars to benefits.* Benefits are not payable where the former service member was discharged or released under one of the following conditions listed in (d)(1) or (2) of this section.

(1) Compelling circumstances exception is not applicable for:

(i) *Dischage in lieu of trial.* Acceptance of a discharge under other than honorable conditions or its equivalent in lieu of trial by general court-martial.

(ii) *Mutiny or espionage.* Mutiny or spying.

(2) Compelling circumstances exception is applicable for:

(i) *An offense involving moral turpitude.* For purposes of this section, ''an offense involving moral turpitude'' means a willful act that gravely violates accepted moral standards and would be expected to cause harm or loss to person or property. Minor misconduct, as defined in paragraph (d)(2)(ii) of this section, will not be considered an offense involving moral turpitude.

(ii) *Willful and persistent misconduct.* For purposes of this section, instances of minor misconduct occurring within two years of each other are persistent; an instance of minor misconduct occurring within two years of more serious misconduct is persistent; and instances of more serious misconduct occurring within five years of each other are persistent. For purposes of this section, minor misconduct is misconduct for which the maximum sentence imposable pursuant to the Manual for Courts-Martial United States would not include a dishonorable discharge or confinement for longer than one year if tried by general court-martial.

(iii) *Sexual acts involving aggravating circumstances or other factors affecting the performance of duty.* Examples include child molestation; prostitution or solicitation of prostitution; sexual acts or conduct accompanied by assault or coercion; and sexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.

(e) *Compelling circumstances exception.* The bar to benefits for prolonged AWOL under paragraph (c)(6) of this section and the three types of misconduct described in paragraph (d)(2) of this section will not be applied if compelling circumstances mitigate the AWOL or misconduct at issue. The following factors will be considered in a determination on this matter:

(1) Length and character of service exclusive of the period of prolonged AWOL or misconduct. Service exclusive of the period of prolonged AWOL or misconduct should generally be of such quality and length that it can be characterized as honest, faithful and meritorious and of benefit to the Nation.

(2) Reasons for prolonged AWOL or misconduct. Factors considered are as follows:

(i) Mental impairment at the time of the prolonged AWOL or misconduct, to include a clinical diagnosis of, or evidence that could later be medically determined to demonstrate existence of, posttraumatic stress disorder (PTSD), depression, bipolar disorder, schizophrenia, substance use disorder, attention deficit hyperactivity disorder (ADHD), impulsive behavior, cognitive disabilities, and co-morbid conditions (*i.e.,* substance use disorder and other mental disorders).

(ii) Physical health, to include physical trauma and any side effects of medication.

(iii) Combat-related or overseas-related hardship.

(iv) Sexual abuse/assault.

(v) Duress, coercion, or desperation.

(vi) Family obligations or comparable obligations to third-parties.

(vii) Age, education, cultural background, and judgmental maturity.

(3) Whether a valid legal defense would have precluded a conviction for AWOL or misconduct under the Uniform Code of Military Justice. For purposes of this paragraph, the defense must go directly to the substantive issue of absence or misconduct rather than to procedures, technicalities, or formalities.

(f) *Board of corrections upgrade.* An honorable discharge or discharge under honorable conditions issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Department of Veterans Affairs. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) of this section.

(g) *Discharge review board upgrades prior to October 8, 1977.* An honorable or general discharge issued prior to October 8, 1977, under authority other than that listed in paragraphs (i)(1), (2), and (3) of this section by a discharge review board established under 10 U.S.C. 1553, sets aside any bar to benefits imposed under paragraph (c) or (d) of this section except the bar contained in paragraph (c)(2) of this section.

(h) *Discharge review board upgrades on or after October 8, 1977.* An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553, sets aside a bar to benefits imposed under paragraph (d), but not under paragraph (c) of this section provided that:

* * * * *

(i) *Special review board upgrades.* Unless a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis that the discharge would be upgraded under uniform standards meeting the requirements set forth in paragraph (h) of this section, an honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed under this section:

* * * * *

(j) *Overpayments after October 8, 1977, due to discharge review board upgrades.* No overpayments shall be created as a result of payments made after October 8, 1977, based on an upgraded honorable or general discharge issued under one of the programs listed in paragraph (i) of this section which would not be awarded under the standards set forth in paragraph (h) of this section. Accounts in payment status on or after October 8, 1977, shall be terminated the end of the month in which it is determined that the original other than honorable discharge was not issued under conditions other than dishonorable following notice from the appropriate discharge review board that the discharge would not have been upgraded under the standards set forth in paragraph (h) of this section, or April 7, 1978, whichever is the earliest. Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment or April 7, 1978, whichever is the earliest.

(k) *Overpayments after October 8, 1977, based on application of AWOL statutory bar.*

* * * * *

[FR Doc. 2020–14559 Filed 7–9–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2020–0339; FRL–10011–79–Region 7]

Air Plan Approval; Missouri; Control of Emissions From Industrial Surface Coating Operations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on March 7, 2019. The submission revises Missouri's regulation that restricts the emissions of volatile organic compounds from industrial surface coating operations in St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis Counties. Specifically, the revisions to the rule adds a new surface coating category for the decorative coating of foam products, establishes an appropriate emission limit for this type of surface coating operation, removes obsolete provisions that were applicable prior to March 1, 2012, removes a reference to a rule that is being rescinded, removes the unnecessary use of restrictive words, adds definitions specific to this rule, changes rule language to be consistent with defined terms, and updates incorporations by reference.

The new emission limit for decorative coating of foam products is a SIP strengthening and will not adversely impact the air quality in the St. Louis area. The remaining revisions are administrative in nature and do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally-approved rules.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0339 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7714; email address: *stone.william@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2020–0339, at *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or

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

II. What is being addressed in this document?

The EPA is proposing to approve revisions to the Missouri SIP received on March 7, 2019. The revisions are to Title 10, Division 10 of the Code of State Regulations, 10 CSR 10–5.330 ''Control of Emissions From Industrial Surface Coating Operations'', which restricts the emissions of volatile organic compounds from industrial surface coating operations in St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis Counties. These revisions are described in detail in the technical support document (TSD) included in the docket for this action.

Missouri received three comments from EPA during the comment period. Missouri responded to all three comments, as noted in the State submission included in the docket for this action. Therefore, the EPA is proposing to approve the revisions to this rule because it will not have a negative impact on air quality.

III. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from August 1, 2018, to October 4, 2018, and held a public hearing on September 27, 2018. The state received and addressed three comments. As explained in more detail in the TSD which is part of this docket, the SIP revision submission meets the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What action is EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10–5.330 ''Control of Emissions From Industrial Surface Coating Operations.'' Approval of these revisions will ensure consistency between state and federally-approved rules. The EPA has determined that these changes will not adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on the action. Final rulemaking will occur after consideration of any comments.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Particulate matter, Volatile organic compounds.

Dated: June 29, 2020.

James Gulliford,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart—AA Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry ''10–5.330'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5-Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.330	Control of Emissions From Industrial Surface Coating Operations.	3/30/2019	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–14444 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2020–0309; FRL–10011–43–Region 9]

Finding of Failure To Attain the 2006 24-Hour Fine Particulate Matter Standards; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Los Angeles-South Coast Air Basin nonattainment area failed to attain the 2006 24-hour fine particulate matter (''$PM_{2.5}$'') national ambient air quality standards by the December 31, 2019 ''Serious'' area attainment date. This proposed determination is based on ambient air quality monitoring data from 2017 through 2019. If the EPA finalizes this determination as proposed, the State of California will be required to submit a revision to the California State Implementation Plan that, among other elements, provides for expeditious attainment within the time limits prescribed by regulation and provides for a five percent annual reduction in the emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant. We are also proposing to correct an error in the table of California area designations for the 2006 $PM_{2.5}$ national ambient air quality standards.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2020–0309 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Background

A. $PM_{2.5}$ National Ambient Air Quality Standards

Under section 109 of the Clean Air Act (CAA or ''Act''), the EPA has established national ambient air quality standards (NAAQS or ''standards'') for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established.

In October 2006, the EPA revised the 24-hour NAAQS for fine particulate matter (particles with a diameter of 2.5 microns or less or $PM_{2.5}$) [1] (''2006 $PM_{2.5}$ NAAQS'') to provide increased protection of public health by lowering

[1] The EPA established both primary and secondary standards for the 2006 24-hour $PM_{2.5}$ NAAQS. Primary standards provide public health protection, including protecting the health of ''sensitive'' populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Since the primary and secondary standards for 24-hour $PM_{2.5}$ are set at the same level, we refer to them herein using the singular ''2006 $PM_{2.5}$ NAAQS'' or ''2006 $PM_{2.5}$ standard.''

its level from 65 micrograms per cubic meter (μg/m^3) to 35 μg/m^3.[2]

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), changes in lung function and increased respiratory symptoms. There is also new evidence for more subtle indicators of cardiovascular health. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[3]

$PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (primary $PM_{2.5}$ or direct $PM_{2.5}$) or can be formed in the atmosphere as a result of various chemical reactions from precursor emissions of nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (secondary $PM_{2.5}$).[4]

B. South Coast Designations, Classifications, and Attainment Dates for the 2006 $PM_{2.5}$ NAAQS

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. Effective December 14, 2009, the EPA designated Los Angeles-South Coast Air Basin (''South Coast'') as a nonattainment area for the 2006 $PM_{2.5}$ NAAQS.[5] In June 2014, the EPA classified the South Coast as a ''Moderate'' nonattainment area for the 2006 $PM_{2.5}$ NAAQS under subpart 4 of part D, title I of the Act.[6]

In January 2016, the EPA reclassified the South Coast as a Serious nonattainment area, based on our determination that the area could not practicably attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2015.[7] As a consequence, California was required to submit a nonattainment new source review program revision and a Serious area attainment plan, including a demonstration that the plan provides for attainment of the 2006 $PM_{2.5}$ NAAQS in the South Coast as expeditiously as practicable, but no later than December 31, 2019, which is the latest permissible attainment date under CAA section 188(c)(2).

The local air district with primary responsibility for developing a plan to attain the 2006 $PM_{2.5}$ NAAQS in this area is the South Coast Air Quality Management District (''District'' or SCAQMD). The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources in the South Coast is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources and some categories of consumer products. In 2017, in response to the area's classification as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS, SCAQMD and CARB prepared and submitted state implementation plan (SIP) revisions to address the related CAA requirements.[8] In 2019, the EPA approved the SIP revisions for the South Coast for the 2006 $PM_{2.5}$ NAAQS except for the contingency measure element.[9] On June 5, 2020, the EPA Region IX Regional Administrator signed a notice proposing to conditionally approve the contingency measure element as meeting the applicable Serious area requirements for the 2006 $PM_{2.5}$ NAAQS.[10]

II. Proposed Determination and Consequences

A. Applicable Statutory and Regulatory Provisions

Sections 179(c)(1) and 188(b)(2) of the CAA require the EPA to determine whether a $PM_{2.5}$ nonattainment area attained the applicable $PM_{2.5}$ NAAQS by its applicable attainment date, based on the area's air quality as of the attainment date.

A determination of whether an area's air quality meets the $PM_{2.5}$ NAAQS is generally based upon the most recent three years of complete, quality-assured data gathered at established state and local air monitoring stations (SLAMS) in a nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from ambient air monitors operated by state and local agencies in compliance with the EPA monitoring requirements must be submitted to AQS. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of areas.[11] All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix N.

Under EPA regulations in 40 CFR 50.13 and in accordance with 40 CFR part 50, Appendix N, the 2006 $PM_{2.5}$ NAAQS is met when the design value is less than or equal to 35 μg/m^3 at each eligible monitoring site within the area.[12] Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.

B. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. Our monitoring requirements are specified by regulation in 40 CFR part 58. These requirements are applicable to state and, where delegated, local air monitoring agencies that operate criteria pollutant monitors. Our regulations in 40 CFR part 58 establish specific requirements for operating air quality surveillance networks to measure ambient concentrations of $PM_{2.5}$, including requirements for measurement methods,

[2] 71 FR 61144 (October 17, 2006). The EPA set the first NAAQS for $PM_{2.5}$ on July 18, 1997 (62 FR 36852), including annual standards of 15 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 μg/m^3 based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7). In 2012, the EPA revised the annual standard to lower its level to 12 μg/m^3. 78 FR 3086 (January 15, 2013), codified at 40 CFR 50.18. Unless otherwise noted, all references to the $PM_{2.5}$ standard in this notice are to the 2006 24-hour standard of 35 μg/m^3 codified at 40 CFR 50.13.

[3] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[4] 81 FR 58010, 58011 (August 24, 2016).

[5] 74 FR 58688 (November 13, 2009). The South Coast 2006 $PM_{2.5}$ NAAQS nonattainment area includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. A precise description of the South Coast $PM_{2.5}$ nonattainment area is contained in 40 CFR 81.305. The South Coast $PM_{2.5}$ nonattainment area is home to about 17 million people, has a diverse economic base, and contains one of the highest volume port areas in the world.

[6] 79 FR 31566 (June 2, 2014).

[7] 81 FR 1514 (January 13, 2016).

[8] The first SIP revision submission is the 2006 $PM_{2.5}$ NAAQS portion of the ''Final 2016 Air Quality Management Plan (March 2017),'' adopted by the SCAQMD Governing Board on March 3, 2017 (''2016 AQMP''). CARB submitted the 2016 AQMP to the EPA on April 27, 2017. The second submission, also submitted to the EPA on April 27, 2017, is CARB's ''2016 State Strategy for the State Implementation Plan (March 2017)'' (''2016 State Strategy'').

[9] 84 FR 3305 (February 12, 2019).

[10] A pre-publication copy of this proposal is included in the docket for this rulemaking. We expect it to be published in the **Federal Register** soon.

[11] See 40 CFR 50.13; 40 CFR part 50, Appendix N; 40 CFR part 53; 40 CFR part 58, and 40 CFR part 58, Appendices A, C, D, and E.

[12] The 24-hour $PM_{2.5}$ standard design value is the 3-year average of 98th percentile concentrations, and the 2006 24-hour $PM_{2.5}$ NAAQS are met when the standard design value at each eligible monitoring site is less than or equal to 35.0 μg/m^3.

network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as SLAMS.

In section 4.7 of Appendix D to 40 CFR part 58, the EPA specifies design criteria for $PM_{2.5}$ monitoring at SLAMS. SLAMS produce data that are eligible for comparison with the NAAQS, and therefore, the monitor must be an approved federal reference method (FRM), federal equivalent method (FEM), or approved regional method (ARM). The minimum number of SLAMS required is described in section 4.7.1, and can be met by either filter-based or continuous FRMs or FEMs. The monitoring regulations also provide that each core-based statistical area must operate a minimum number of $PM_{2.5}$ continuous monitors (section 4.7.2); however, this requirement can be met by either an FEM or a non-FEM continuous monitor, and the continuous monitors can be located with other SLAMS or at a different location. Consequently, the monitoring requirements for $PM_{2.5}$ can be met with filter-based FRMs/FEMs, continuous FEMs, continuous non-FEMs, or a combination of monitors at each required SLAMS.

Under 40 CFR 58.10, states are required to submit annual network plans for ambient air monitoring networks for approval by the EPA. Within the South Coast Air Basin, the District and the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation (''Pechanga Band'') are the agencies responsible for assuring that the area meets $PM_{2.5}$ air quality monitoring requirements. The District submits annual monitoring network plans (ANP) to the EPA that describe the various monitoring sites operated by the District. The Pechanga Band does the same for the monitoring site it operates. These plans discuss the status of the air monitoring network, as required under 40 CFR 58.10. The EPA regularly reviews these annual network plans for compliance with the applicable reporting requirements in 40 CFR part 58. The most recent plan submitted by the District is the 2019 ANP, dated July 1, 2019. On October 29, 2019, the EPA approved those portions of the District's 2019 ANP that pertain to the adequacy of the network for $PM_{2.5}$ monitoring purposes.[13] The most recent plan submitted by the Pechanga Band is the 2018 ANP, dated July 1, 2018. On October 29, 2018, the EPA approved those portions of the Pechanga Band's 2018 ANP that pertain to the adequacy of the network for $PM_{2.5}$ monitoring purposes.[14] Although the EPA has not received the 2019 ANP for the Pechanga Band, because we have approved the 2018 ANP elements and because the Pechanga Band's monitoring site is one of the lower design value sites in the area, approval of a 2019 ANP is not necessary for this action.

During the 2017–2019 period, $PM_{2.5}$ ambient concentration data that are eligible for use in determining whether an area has attained the $PM_{2.5}$ NAAQS were collected at a total of 18 sites within the South Coast. The District operates 17 of these sites while the Pechanga Band operates one site. All of the sites are designated SLAMS for $PM_{2.5}$.[15] The primary monitors at all 17 District sites are FRMs, while the primary monitor at the Pechanga site is a beta attenuation monitor FEM.

Based on our review of the $PM_{2.5}$ monitoring network, we find that the monitoring network in the South Coast is adequate for the purpose of collecting ambient $PM_{2.5}$ concentration data for use in determining whether the South Coast attained the 2006 24-hour $PM_{2.5}$ NAAQS by the December 31, 2019 attainment date.

C. Data Considerations and Proposed Determination

Under 40 CFR 58.15, monitoring agencies must submit a letter to the EPA each year to certify that all of the ambient concentration and quality assurance data for the previous year have been submitted to AQS and that the ambient concentration data are accurate to the best of their knowledge, taking into consideration the quality assurance findings. The letter must address data for all FRM, FEM, and ARM monitors at SLAMS and special purpose monitoring stations that meet the criteria specified in 40 CFR 58, Appendix A. The District[16] and the Pechanga Band[17] submit this certification annually, as required by 40 CFR 58.15.

As noted in section II.A of this document, CAA sections 179(c)(1) and 188(b)(2) require the EPA to determine whether a $PM_{2.5}$ nonattainment area attained the applicable $PM_{2.5}$ standards by the applicable attainment date, based on the area's air quality ''as of the attainment date.'' For the reasons discussed in section I.B of this document, the South Coast's attainment date for the 2006 24-hour $PM_{2.5}$ NAAQS was December 31, 2019. Because determinations of $PM_{2.5}$ NAAQS compliance are based on three calendar years of data,[18] to determine the South Coast's air quality as of December 31, 2019, we reviewed the data collected during the three-year period immediately preceding December 31, 2019, *i.e.,* January 1, 2017–December 31, 2019.

We verified that the data for the 2017–2019 period have been certified by the District, and then we reviewed the data for completeness.[19] We described the most recent annual data certifications from the District and the Pechanga Band in section II.B of this document. With respect to completeness, we determined that the data collected by the District meet the quarterly completeness criterion for all 12 quarters of the three-year period at most of the $PM_{2.5}$ monitoring sites in the South Coast.

More specifically, among the 18 $PM_{2.5}$ monitoring sites from which regulatory data are available, the data from 6 of the sites did not meet the 75% completeness criterion for at least one quarter in the 2017–2019 period; however, the data from all but one site (Pechanga) are sufficient nonetheless to produce a valid design value for the 24-hour $PM_{2.5}$ NAAQS pursuant to the rules governing design value validity in 40 CFR part 50, Appendix N, section 4.2. We note that monitors with incomplete data in one or more quarters may still produce valid design values if the conditions for applying one of the EPA's data substitution tests are met.[20]

[13] Letter dated October 29, 2019, from Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office, to Matt Miyasato, Deputy Executive Officer, Science and Technology Advancement, SCAQMD.

[14] Letter dated October 29, 2018, from Gwen Yoshimura, Manager, EPA Region IX, Air Quality Analysis Office, to Kelcey Stricker, Environmental Director, Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation.

[15] There are a number of other $PM_{2.5}$ monitoring sites within the South Coast, including other sites operated by the District, the National Park Service, and certain Indian tribes, but the data collected from these sites are non-regulatory and not eligible for use in determining whether the South Coast has attained the $PM_{2.5}$ NAAQS.

[16] For example, see letter dated April 30, 2020, from Jason Low, Assistant Deputy Executive Officer, Science and Technology Advancement, SCAQMD, to John Busterud, Regional Administrator, EPA Region IX, certifying calendar year 2019 ambient air quality data and quality assurance data.

[17] For example, see letter dated April 29, 2020, from Kelcey Stricker, Environmental Director, Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, to Gwen Yoshimura, Manager, Air Quality Analysis Office, EPA Region IX, certifying calendar year 2019 ambient air quality data and quality assurance data.

[18] 40 CFR part 50, Appendix N.

[19] The Pechanga Band has not yet submitted a letter certifying data for calendar year 2018. However, certified data from the District for 2017–2019 are sufficient to demonstrate that the area did not attain the NAAQS during this period.

[20] See 40 CFR part 50, Appendix N, section 4.2(b) for the 24-hour $PM_{2.5}$ NAAQS.

Table 1 shows the 24-hour $PM_{2.5}$ design values at each of the 18 monitoring sites within the South Coast nonattainment area for the relevant three-year period (2017–2019). The table shows that the 24-hour $PM_{2.5}$ design values for the 2017–2019 period are greater than 35.0 μg/m³ at two of the sites.

TABLE 1—2017–2019 24-HOUR $PM_{2.5}$ DESIGN VALUES FOR THE SOUTH COAST NONATTAINMENT AREA

General location	Site (AQS ID)	98th percentile (μg/m³)			2017–2019 24-hour design values (μg/m³)
		2017	2018	2019	
Los Angeles County					
East San Gabriel Valley	Azusa (06–037–0002)	21.2	30.2	22.8	25
Central Los Angeles	Los Angeles (Main St.) (06–037–1103)	30.9	34.1	28.3	31
West San Fernando Valley	Reseda (06–037–1201)	20.7	23.8	26.3	24
South Central Los Angeles County	Compton (06–037–1302)	53.4	34.8	26.6	38
South San Gabriel Valley	Pico Rivera #2 (06–037–1602)	29.5	35.4	27.5	31
West San Gabriel Valley	Pasadena (06–037–2005)	18.8	29.5	27.5	25
South Coastal Los Angeles County	Long Beach (North) (06–037–4002)	32.3	33.0	20.7	29
South Coastal Los Angeles County	South Long Beach (06–037–4004)	31.1	33.5	23.2	29
South Coastal Los Angeles County	Long Beach-Route 710 Near Road (06–037–4008).	35.6	36.1	26.4	33
Orange County					
Central Orange County	Anaheim (06–059–0007)	38.1	32.1	23.8	31
Saddleback Valley	Mission Viejo (06–059–2022)	15.0	20.3	14.7	17
Riverside County					
Temecula Valley	Pechanga (06–065–0009)	13.6	14.7	9.5	*13
Metropolitan Riverside County	Rubidoux (06–065–8001)	30.7	28.2	32.7	31
Mira Loma	Mira Loma (Van Buren) (06–065–8005)	39.9	34.2	36.2	37
San Bernardino County					
Southwest San Bernardino Valley	Ontario-Route 60 Near Road (06–071–0027).	36.9	32.7	31.4	34
Central San Bernardino Valley	Fontana (06–071–2002)	26.5	26.8	35.7	30
East San Bernardino Mountains	Big Bear (06–071–8001)	23.5	16.0	31.0	24
Central San Bernardino Valley	San Bernardino (06–071–9004)	25.6	22.9	34.8	28

*The design value for the Pechanga site is invalid. All other design values are valid.
Source: EPA, AQS Design Value Report (AMP480), Report Request ID: 1846520, June 3, 2020.

For an area to attain the 2006 $PM_{2.5}$ NAAQS by December 31, 2019, the 2019 design value (reflecting data from 2017–2019) at each eligible monitoring site must be equal to or less than 35 μg/m³. Table 1 shows that the 2019 design values at two sites in the South Coast are greater than that value. The 2019 annual design value site, *i.e.,* the site with the highest design value based on 2017–2019 data, is the Compton site with a 2019 24-hour $PM_{2.5}$ design value of 38 μg/m³. Therefore, based on quality-assured and certified data for 2017–2019, we are proposing to determine that the South Coast failed to attain the 2006 $PM_{2.5}$ standard by the December 31, 2019 attainment date.

A monitoring agency may request that the EPA exclude data showing exceedances or violations of the standard from use in regulatory determinations by demonstrating that an exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.[21] If the EPA concurs that the exceedance or violation was caused by an exceptional event, the relevant data will be excluded from the design value calculation. A monitoring agency notifies the EPA of its intent to request exclusion of concentrations by placing a ''flag'' in the appropriate AQS field for the data of concern.

For $PM_{2.5}$ ambient data collected from 2017–2019, the District flagged one 24-hour concentration at the Compton site and two 24-hour concentrations at the Mira Loma site due to fireworks, and one additional 24-hour concentration at the Compton site due to wildfire. The District also flagged multiple 24-hour concentrations at several other sites in the South Coast due to either fireworks or wildfire; however, these sites already have attaining design values for the 24-hour $PM_{2.5}$ NAAQS.[22]

The State has not provided a demonstration that the flagged data were caused by exceptional events and has not requested EPA concurrence on the flagged data. Consequently, the EPA has not reviewed the flagged data to determine if they were influenced by an exceptional event, and the flagged data are included in the set of data used to determine whether the standard was attained. However, even if the flagged data were excluded, the two exceeding design values reported in Table 1 would remain above the NAAQS.[23]

Specifically, if all the flagged data were to be excluded, the 2019 24-hour $PM_{2.5}$ design value at the Compton monitoring site would be 37 μg/m³ instead of 38 μg/m³ and the design value for the Mira Loma site would

[21] 40 CFR 50.14.

[22] EPA, AQS Raw Data Qualifier Report (AMP360), Report Request ID: 1846503, June 3, 2020.

[23] EPA, AQS Design Value Report (AMP480), Report Request ID: 1846500, June 3, 2020.

remain 37 μg/m^3. Thus, the two sites would still fail to attain the applicable standard of 35 μg/m^3. Also, exclusion of flagged data at other sites in the South Coast area that already have design values that attain the NAAQS would not affect the conclusions regarding the two sites that have design values above the NAAQS.

D. Consequences for a Serious $PM_{2.5}$ Nonattainment Area Failing To Attain the Standards by the Attainment Date

The consequences for a Serious $PM_{2.5}$ nonattainment area for failing to attain the NAAQS by the applicable attainment date are set forth in CAA sections 179(d) and 189(d) and in 40 CFR 51.1003(c). Under these provisions, a state must submit a SIP revision for the area meeting the requirements of CAA section 110 and 172, the latter of which requires, among other elements, a demonstration of attainment and reasonable further progress, and contingency measures. CAA section 189(d) requires that the SIP revision must provide for attainment of the standards and, from the date of the SIP submittal until attainment, for an annual reduction in the emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory prepared for such area.[24] The requirement for a new attainment demonstration under CAA section 189(d) also triggers the requirement for the SIP revision for quantitative milestones as set forth in 40 CFR 51.1013.

The new attainment date is set by 40 CFR 51.1004(a)(3). Under 40 CFR 51.1004(a)(3), the new attainment date is the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the effective date of the final determination of failure to attain. The EPA may extend the attainment date for a period no greater than 10 years from the effective date of the final determination, considering the severity of nonattainment and the availability and feasibility of pollution control measures. Lastly, consistent with section 179(d) of the CAA, 40 CFR 51.1003(c) requires that the state submit the required SIP revision within 12 months after the applicable Serious area attainment date that was missed. If the EPA finalizes this proposed rule, the State of California will be required to submit a SIP revision that complies with CAA sections 179(d) and 189(d) and 40 CFR 51.1003(c) within 12 months of December 31, 2019, *i.e.,* by December 31, 2020.

III. Proposed Error Correction

Section 110(k)(6) of the CAA, as amended in 1990, provides that, whenever the EPA determines that the EPA's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the EPA may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the state.

As described in section I.B of this document, in 2009, the EPA designated areas of the country for the 2006 $PM_{2.5}$ NAAQS.[25] In so doing, we excluded the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County from the South Coast nonattainment area and designated the lands as a separate ''Unclassifiable/Attainment'' area for the 2006 $PM_{2.5}$ NAAQS.[26] In 2014, in response to a court decision affecting the implementation of the $PM_{2.5}$ NAAQS, we classified the South Coast as Moderate for the 2006 $PM_{2.5}$ NAAQS.[27] Our 2014 final rule again excluded the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County from the South Coast Moderate nonattainment area and again listed the lands as a separate unclassifiable/attainment area for the 2006 $PM_{2.5}$ NAAQS.[28]

In 2016, we reclassified the South Coast from Moderate to Serious for the 2006 $PM_{2.5}$ standard, but we erroneously considered the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County to be part of the South Coast Moderate nonattainment area and revised the designation for lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County from unclassifiable/attainment to Serious nonattainment. The inclusion of the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County as part of the South Coast in our 2016 action was clearly in error because we did not propose any change in designations, such as a change in designation from unclassifiable/attainment to nonattainment, but rather only proposed a change to the classification of an existing nonattainment area.[29] In our 2016 action, we erroneously reclassified the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County to Serious in concert with the reclassification of the South Coast nonattainment area in which we mistakenly thought the lands were located. We are proposing to correct this error and revise the table for California area designations for the 2006 $PM_{2.5}$ NAAQS in 40 CFR 81.305, accordingly.

IV. Proposed Actions and Request for Public Comment

Under CAA sections 179(c)(1) and 188(b)(2), the EPA proposes to determine that the South Coast ''Serious'' $PM_{2.5}$ nonattainment area has failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2019. If finalized as proposed, the State of California will be required under 40 CFR 51.1003(c) to submit a revision to the SIP for the South Coast that, among other elements, demonstrates expeditious attainment of the NAAQS within the time period prescribed by 40 CFR 51.1004(a)(3) and that provides for annual reduction in the emissions of direct $PM_{2.5}$ or a $PM_{2.5}$ plan precursor pollutant within the area of not less than five percent until attainment. The SIP revision required under 40 CFR 51.1003(c) would be due for submittal to the EPA no later than December 31, 2020.

We are also proposing to correct an error in a previous rulemaking and restore the designation of ''Unclassifiable/Attainment'' for the 2006 $PM_{2.5}$ NAAQS for the lands of the Santa Rosa Band of Cahuilla Mission Indians in Riverside County in the appropriate table in 40 CFR 81.305.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

V. Statutory and Executive Order Reviews

This proposed action in and of itself establishes no new requirements; it merely documents that air quality in the South Coast did not meet the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office

[24] 40 CFR 51.1003(c). The EPA defines $PM_{2.5}$ plan precursor as those $PM_{2.5}$ precursors required to be regulated in the applicable attainment plan and/or nonattainment new source review program. 40 CFR 51.1000.

[25] 74 FR 58688 (November 13, 2009). The area designations for California are promulgated at 40 CFR 81.305.

[26] Id., at 58708.

[27] 79 FR 31566 (June 2, 2014).

[28] Id., at 31597.

[29] 80 FR 63640 (October 20, 2015) (proposed reclassification of the South Coast from Moderate to Serious for the 2006 $PM_{2.5}$ NAAQS).

of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes and thus this proposed action will not impose substantial direct costs on tribal governments or preempt tribal law. Nonetheless, the EPA has notified the tribes within the South Coast $PM_{2.5}$ nonattainment area of the proposed action and offered formal consultation. No tribe requested formal consultation.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: June 26, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–14299 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2020–0315; FRL–10011–08–Region 6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas, Louisiana, Oklahoma, New Mexico, and Albuquerque-Bernalillo County, New Mexico; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is notifying the public that we have received CAA section 111(d)/129 negative declarations from Arkansas, Louisiana, Oklahoma, New Mexico, and Albuquerque-Bernalillo County, New Mexico, for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units. These negative declarations certify that HMIWI subject to the requirements of sections 111(d) and 129 of the CAA do not exist within the jurisdictions of Arkansas, Louisiana, Oklahoma, New Mexico, and Albuquerque-Bernalillo County. The EPA is proposing to accept the negative declarations and amend the CFR in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 10, 2020.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2020–0315, at *https://www.regulations.gov* or via email to *ruan-lei.karolina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Karolina Ruan Lei, (214) 665–7346, *ruan-lei.karolina@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and the EPA has established emission guidelines for such existing sources. CAA section 129 directs the EPA to establish standards of performance for new sources (NSPS)

and emissions guidelines (EG) for existing sources for each category of solid waste incinerator specified in CAA section 129. Under CAA section 129, NSPS and EG must contain numerical emissions limitations for particulate matter, opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. While NSPS are directly applicable to new sources (affected facilities), EG for existing sources (designated facilities) are intended for states to use to develop a state plan to submit to the EPA. Once approved by the EPA, the state plan becomes federally enforceable. If a state does not submit an approvable state plan to the EPA, the EPA is responsible for developing, implementing, and enforcing a federal plan.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for controlling designated pollutants from designated facilities. Additionally, 40 CFR part 62, subpart A, provides the procedural framework by which the EPA will approve or disapprove such plans submitted by a state. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant(s). However, 40 CFR 60.23(b) and 62.06 provide that if there are no designated facilities of the designated pollutant(s) in the state, the state may submit a letter of certification to that effect (*i.e.,* negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a CAA section 111(d)/129 plan.

On September 15, 1997, the EPA first promulgated the HMIWI NSPS at 40 CFR part 60, subpart Ec, and the HMIWI EG at 40 CFR part 60, subpart Ce (62 FR 48348). The HMIWI NSPS and EG were amended on October 6, 2009, and on April 4, 2011 (74 FR 51368, 76 FR 18407). The federal plan for HMIWI subject to the EG at subpart Ce was first promulgated on August 15, 2000, at 40 CFR part 62, subpart HHH (65 FR 49868). The HMIWI federal plan was amended on May 13, 2013, to incorporate the HMIWI EG revisions (78 FR 28051).

As provided under 40 CFR 60.32e(a), the designated facilities to which the EG apply are HMIWI that: (1) Commenced construction on or before June 20, 1996, or commenced modification on or before March 16, 1998; or (2) commenced construction after June 20, 1996, but no later than December 1, 2008, or commenced modification after March 16, 1998, but no later than April 6, 2010, with limited exceptions as provided in paragraphs 40 CFR 60.32e(b) through (h).

In order to fulfill obligations under CAA sections 111(d) and 129, the Arkansas Department of Environmental Quality (ADEQ), Louisiana Department of Environmental Quality (LDEQ), Oklahoma Department of Environmental Quality (ODEQ), New Mexico Environment Department (NMED), and City of Albuquerque Environmental Health Department (AEHD) submitted negative declarations for HMIWI for their individual air pollution control jurisdictions.[1] The submittal of these negative declarations exempts Arkansas, Louisiana, Oklahoma, and New Mexico (including Albuquerque-Bernalillo County) from the requirement to submit a state plan for HMIWI under 40 CFR part 60, subpart Ce.

ADEQ, LDEQ, ODEQ, NMED and AEHD each determined that there are no existing HMIWI subject to CAA sections 111(d) and 129 requirements in their individual air pollution control jurisdictions. In order to fulfill obligations under CAA sections 111(d) and 129, ADEQ, LDEQ, ODEQ, NMED and AEHD submitted negative declaration letters to the EPA on May 21, 2012, June 25, 2012, April 1, 2020, February 11, 2014, and February 4, 2014, respectively. A copy of each negative declaration letter is included in the docket for this rulemaking (Docket No. EPA–R06–OAR–2020–0315).

II. Proposed Action

The EPA is proposing to amend 40 CFR part 62 to reflect receipt of the negative declaration letters from ADEQ, LDEQ, ODEQ, NMED and AEHD certifying that there are no existing HMIWI subject to 40 CFR part 60, subpart Ce, in their respective jurisdictions in accordance with 40 CFR 60.23(b), 40 CFR 62.06, and sections 111(d) and 129 of the CAA. If a designated facility (*i.e.,* existing HMIWI) is later found within the aforementioned jurisdictions after publication of a final action, then the overlooked facility will become subject to the requirements of the federal plan for that designated facility, including the compliance schedule. The federal plan will no longer apply if we subsequently receive and approve the section 111(d)/129 plan from the jurisdiction with the overlooked facility.

[1] These HMIWI negative declarations from ADEQ, LDEQ, ODEQ, NMED and AEHD do not cover sources located in Indian country.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d)/129 submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Ce; and 40 CFR part 62, subpart A. With regard to negative declarations for designated facilities received by the EPA from states, the EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. For that reason, this action:

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

This rule also does not have Tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

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

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

Dated: June 29, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

[FR Doc. 2020–14361 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1989–0011; FRL–10010–03–Region 10]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the American Crossarm & Conduit Co. Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 is issuing a Notice of Intent to Delete American Crossarm & Conduit Co. Superfund Site (Site) located in Chehalis, Lewis County, Washington, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Washington, through the Department of Ecology, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by *August 10, 2020.*

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1989–0011, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Jeremy Jennings, Remedial Project Manager, at *jennings.jeremy@epa.gov.*
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1989–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Jeremy Jennings, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, 12–D12–1, Seattle, WA 98101, (206) 553–2724, email: *jennings.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 10 announces its intent to delete the American Crossarm & Conduit Co. Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan

(NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met at the American Crossarm & Conduit Co. Superfund Site.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the state 30 working days for review of this action prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of Washington, through the Department of Ecology, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, The Daily Chronicle. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this action, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The EPA placed copies of documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: July 1, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–14650 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2004–0004; FRL–10011–56–Region 7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Annapolis Lead Mine Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 is issuing a Notice of Intent to Delete the Annapolis Lead Mine Superfund Site (Site) located in Annapolis, Missouri, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state of Missouri, through the Missouri Department of Natural Resources (MDNR), have determined

that all appropriate response actions under CERCLA have been completed, other than operation and maintenance, monitoring and five-year reviews. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received on or before August 10, 2020.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2004–0004, by one of the following methods:

- *https://www.regulations.gov.* Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*
- *Email: gunter.jason@epa.gov* or *kramer.elizabeth@epa.gov.*
- *Phone:* Public comment by phone may be made by calling Jason Gunter at (913) 551–7358, or Elizabeth Kramer at 913–551–7186.
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2004–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *https://www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means the 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 the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov.*

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT: Jason Gunter, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7 Office, SEMD/LMSE, 11201 Renner Boulevard, Lenexa, Kansas 66219; (913) 551–7358; email: *gunter.jason@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The EPA Region 7 is proposing to delete the Annapolis Lead Mine Superfund Site (Site) from the National Priorities List (NPL) and is requesting public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures the EPA is using for this action. Section IV of this preamble discusses the Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), the EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, the EPA conducts Five-Year Reviews (FYRs) to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. The EPA conducts such FYRs even if a site is deleted from the NPL. The EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with the state of Missouri before developing this Notice of Intent to Delete.

(2) The EPA provided the state of Missouri 30 working days for review of this document prior to publication of it today.

(3) In accordance with the criteria discussed above, the EPA has determined that no further response is appropriate.

(4) The state of Missouri, through MDNR, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the Mountain Echo, in Ironton, Missouri. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(6) The EPA has placed copies of documents supporting the proposed deletion in the deletion docket and has made these items available for public inspection and copying at the Site information repositories identified above.

If comments on this document are received within the 30-day public comment period, the EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if the EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions, and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter the EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides the EPA's rationale for deleting the Site from the NPL:

A. Site Background and History

i. Site Location and Geography

The Site is listed under CERCLIS ID MO0000958611 and is located east of Annapolis, Iron County, Missouri, on the east side of Iron County Road (ICR) 138 approximately three eights of one mile north of Missouri State Highway (Highway) 49. The geographic coordinates of the Site are latitude 37°21′40″N and longitude 90°40′30″ W. The Site is located on the Des Arc, Missouri Quadrangle 7.5-Minute Topographic Map in sections 13 and 14, township 31 North, range 3 East.

The Site is situated on relatively rugged terrain that slopes westward toward Sutton Branch Creek. The Site is largely forested except for the chat/tailings area, and the road cut for ICR 138. The land surrounding the Site is predominantly forested, with limited agricultural production and isolated residential properties within 1,000 meters of the Site.

The Site consists of three operable units (OUs). OU1 is defined as the Sutton Branch Creek floodplain from the Probable Point of Entry (PPE) to the confluence with Big Creek and includes the historical mining area. OU2 is defined as Big Creek from the mouth of Sutton Branch Creek downstream to the confluence with the St. Francois River, which is a total of approximately 20 miles of stream. OU3 is defined as the town of Annapolis.

OU1 includes the historical mining area and the Sutton Branch Creek Floodplain. The total area of OU1 is approximately 200 acres. Prior to the removal action, the dominant feature of the Site was a chat/tailings residue pile that covered approximately 10 acres in the northern portion of the Site. The pile was composed of grey- to tan-colored material that resembled fine-grained sand. The material was highly erodible, resulting in steep-sided features and an outwash area that fanned westward to Sutton Branch Creek, which flows north to south on the west side of ICR 138. The chat/tailings residue dominated the substrate of Sutton Branch Creek for approximately 0.75 mile, where Sutton Branch Creek merged with Big Creek. Tailings originating at the Site could be seen as greyish creek bed sediments in Sutton Branch Creek and in portions of the flood plain.

OU2 includes Big Creek from the confluence with Sutton Branch Creek to the residential soil in the town of Annapolis. The EPA sampled OU2 in 2006 and 2007 and determined that no remedial action was necessary to ensure protection of human health and the environment. A No Action Record of Decision (ROD) for OU2 was issued on June 28, 2007.

OU3 is located in Southern Iron County in the Old Lead Belt of southeast Missouri. OU3 covers the town of Annapolis. Lead mining occurred near the town from approximately 1919 to 1940. The EPA signed a ROD for OU3 on June 29, 2007. The EPA determined that the CERCLA action necessary for OU3 was to remove lead contamination from the driveway of one residence. The lead contamination in the property's driveway exceeded 400 parts per million (ppm), the EPA screening level for lead. The driveway was removed and taken by dump truck to the existing lead-contaminated-material repository at OU1. The contaminated driveway was replaced with uncontaminated gravel. No additional remedial response action is necessary for OU3.

The Iron County area is within the St. Francois Mountains Physiographic Province of Missouri. Geologically, this area is characterized by lower Paleozoic carbonates and siliciclastics onlapping the Precambrian highland mass. Faults cutting basement and Paleozoic rocks are responsible for much of the Mississippi Valley-type mineralization present in the vicinity of the Site. Stratigraphy associated with completed groundwater wells includes unconsolidated valley alluvium typically 20–25 feet thick, and the underlying Cambrian sandstones and dolomites. Cambrian formations within 4 miles of the Site include, in descending stratigraphic order, Potosi, Derby-Doerun, Davis, Bonne Terre, and Lamotte. The Potosi Formation is moderately permeable and is a medium to massively bedded dolomite. The Davis Formation is comprised of a shale

and dolomite sequence with low permeability; however, vertical jointing facilitates localized movement of groundwater. The Bonne Terre Formation has several facies and lithologic changes and is quite permeable; it also contains the area's lead deposits. In the vicinity of the Site, the Bonne Terre Formation rests upon the Precambrian basement rocks.

On-site soils are mainly dark brown, Midco cherty silt loam, typically found on 0- to 3-percent slopes downgradient of upland areas. Typically, the surface layer is dark brown cherty loam approximately 7 inches thick. Below this to a depth of 60 inches or more are brown strata of very cherty sandy loam and extremely cherty sandy loam. In some areas, the dark surface layer is more than 10 inches thick. Excessively drained areas, including sandy soils mainly composed of chat with gravel bars, are near or in the stream channels. Permeability is moderately rapid in the Midco soil, and surface water runoff is slow. The available water capacity is low.

ii. Former Use and History of Contamination

Galena ore (lead-bearing ore) was mined from the Site beginning in the 1920s. Mining activities continued sporadically until 1940. The mine had one shaft to 450 feet below the ground surface (BGS) with several hundred feet of lateral shafts to work the ore bodies. In addition to mining the ore, various equipment was used on site to crush and mill the ore to concentrate the lead. Annapolis Lead Company, a now-defunct company, owned/operated the mine from 1919 to 1931, when the majority of ore was extracted. Production figures from 1923 to 1931 indicated that approximately 1,173,000 tons of mining waste containing elevated metals was generated during that time period. The Ozark Lead Mining Corporation, a now-defunct company, owned the property from 1931 to 1934 but apparently did not conduct mining activities. Basic Metals Mining Corporation, also now defunct, owned the mine from 1934 to 1941 and conducted mining activities for a short time between 1938 and 1940 (no production figures were located for that time period). Apparently, no mining occurred on site after that time. American Waste Material Corporation owned the property for several months in 1942 then sold the property to H. Hoffman, Fred S. Fuld, and J.J. Rubenstein, who deeded their rights to St. Joseph Lead Company in 1952. In 1982, St. Joseph Lead Company sold the surface rights to Larry W. and Oneta Mayberry, but retained the mineral rights until 1987. The Doe Run Company has owned the mineral rights from 1987 until present. From 1982 through the present, the surface rights to various tracts within the Site were conveyed to several owners.

Site features included numerous former mining operation buildings, located primarily in the northern portion of the Site. Most of the buildings have deteriorated to where only foundations are present. An exception is a single story of a once multi-storied structure near the center of the Site, which was last used as a residence in 1997. Mining refuse, including boulder-sized chunks of waste rock, is interspersed among the former buildings.

iii. Sampling and Removal Activities

MDNR collected sediment and surface water samples near OU1 in September 1992. The analyses showed sediments in Sutton Branch Creek contained elevated lead, copper, nickel, and zinc concentrations. Lead levels in the creek water were near threshold concentrations for safe drinking water and protection of aquatic life, as established by Missouri water quality standards at that time. The state of Missouri conducted no source area sampling of sediment, soil, surface water, or groundwater.

The EPA's contractor conducted a Screening Site Inspection in June 1996, collecting data primarily on background information, waste and source sampling, groundwater exposure pathways, surface water exposure pathways, soil exposure pathways, and air exposure pathways. Results of this report were documented in the Removal Assessment.

In March 1997, the EPA collected dust and wipe samples from the then-existing on-site residence, and an X-Ray Flourescence Spectrometer (XRF) was used to screen surface soils at the Site. Results from these samples, along with the results from blood-lead samples taken from the children living at the residence on the Site, were used in making a determination that individuals living on the Site were being adversely impacted. In May 1997, the EPA performed a removal action which resulted in the Iron County Division of Family Services relocating the children and their immediate family from the Site. The EPA completed an Expanded Site Inspection and Removal Assessment (ESI/RA) of the northern segment of the Site in February 1999. Data collected during the ESI/RA indicated that the Site has had an impact on the environment, primarily through the surface water pathway.

A removal action was conducted in 2004, as discussed in further detail below. During this removal action, 152,868 cubic yards of lead-contaminated soil was excavated and placed in a repository constructed on site. The repository was capped and vegetated to prevent future exposure risk. Excavated areas were either backfilled or regraded to prevent ponding, and vegetated.

iv. NPL Listing

The Site was proposed for listing on the NPL on March 9, 2004 (69 FR 10646). It was listed on the NPL on July 22, 2004 (69 FR 43755) due to elevated levels of heavy metals, particularly lead, which were present throughout the Site. In addition, surface water bodies downstream of the Site contained elevated concentrations of site-related hazardous substances that could pose a threat to recreational fisheries and wetlands in the area.

B. Remedial Investigation and Feasibility Study (RI/FS)

i. Scope of Remedial Investigation

The Remedial Investigation (RI), with expanded sections on surface water, sediments, and soil, was completed in August 2005. The purpose of the RI was to determine the nature and extent of contamination. A Hydrology and Flood Plain Report was conducted to evaluate the existing conditions and behavior of the Sutton Branch Creek flood plain.

The Contaminants of Concern included:

Soil	Sediment	Surface water
Lead	Arsenic	Arsenic.
Cadmium	Cadmium	Cadmium.
Zinc	Lead	Lead.
	Zinc	Zinc.

Based on information collected during the RI along with historical documentation, four lead-contaminated source areas were delineated for assessment purposes: The heavily-eroded chat and tailings waste pile, the outwash area of the chat and tailings waste pile, the former mining operations area, and the mill slime pond. An estimated 51,677 cubic yards of lead-contaminated tailings, chat, and soil (above 500 mg/kg) were calculated for these four areas.

The RI concluded that thousands of cubic yards of mining waste (tailings) migrated to the Sutton Branch Creek floodplain via the surface water pathway. Waste management practices likely included dumping mining waste along a former railroad spur that was located in the western portion of the Site. To assess the extent of metals-contaminated soils and sediments at the Site, the EPA conducted an investigation of Sutton Branch Creek and the soils within its floodplain. The 100-year floodplain of Sutton Branch Creek contains elevated lead concentrations, especially in the depositional areas south of Highway 49.

ii. Ecological Risk Assessment

In August 2005, the EPA prepared a baseline ecological risk assessment (BERA), which evaluated risk to aquatic and terrestrial systems at the Site. The BERA addressed risks to aquatic and terrestrial biota, or animal and plant life, by comparing the maximum measured concentrations of contaminants of concern (COCs) to ambient water quality criteria and conservative toxicity criteria.

The EPA determined that the principal threat for OU1 was the ecological risk to both the aquatic and terrestrial environments. Living organisms within both ecosystems had elevated exposure to mining-related metals, and the metals could cause adverse effects on some receptors in each ecosystem.

iii. Human Health Risk Assessment

In August 2005, the EPA also prepared a baseline Human Health Risk Assessment (HHRA). The HHRA evaluated current and potential future risks to human health associated with the presence of heavy metals, particularly lead, in soils, surface water, sediment, and groundwater at the Site.

Based on the results of field investigations and the HHRA, the EPA concluded that surficial lead residual contamination in the mine operations area was generally below levels of concern for lead; however, hotspots exist under the 18″ engineered soil cover in limited areas that could be associated with unacceptable exposures to lead. Unacceptable exposure could be realized for both future construction workers and future residents. In addition, lead exposures for recreational visitors to the floodplain soils could reach unacceptable levels, but lead exposures for recreational users to surface water and sediment in Sutton Branch Creek did not appear to cause unacceptable risk.

In addition, for all other COCs, cancer risks and non-cancer hazards for recreational exposures in the floodplain and creek fell within the acceptable risk range for cancer and noncancer hazards. These results suggested that recreational exposure to COCs other than lead may be in an acceptable range.

iv. Findings From Feasibility Study

The EPA screened the following alternatives in the Feasibility Study (FS):

- *Alternative 1:* No Further Action.
- *Alternative 2:* Phosphate Amendment of Flood Plain Soils with In-Stream Stabilization Techniques and Limited Sediment Removal.
- *Alternative 3:* Excavation of Sediments in Sutton Branch Creek.
- *Alternative 4:* Excavation of Sediments in Sutton Branch Creek and Soil Cap.
- *Alternative 5:* Complete Source Removal and On-Site Disposal.
- *Alternative 6:* Complete Source Removal and Disposal in an Off-Site Landfill.

After screening the alternatives, the EPA concluded that all of the action alternatives would result in significant reductions in metal loadings to surface water from floodplain sources. The EPA selected Alternative 2 as the preferred remedy for the Site.

C. Selected Remedy

i. Components of the Selected Remedy

The selected remedy for OU1 included the following actions:

- Addition of phosphate to floodplain soils (away from the outer edge of the riparian zone) during the dry season to improve the density of vegetation and to reduce the bioavailability of lead to terrestrial receptors.
- Mining wastes in heavily forested, thickly vegetated areas, such as the riparian buffer, will not be subject to excavation, consolidation, or capping.
- Excavation of sediments from Sutton Branch Creek in pockets, or depositional areas. The amount of excavation will be determined during the Remedial Design (RD) phase.
- Placement of excavated sediments in the existing repository area and cap with a simple soil cover.
- Stabilization of the Sutton Branch Creek channel with large rock and/or other material to prevent washouts and stream channel meandering. The extent of stabilization will be determined during the RD phase.
- Implementation of institutional controls.
- Performance of annual monitoring to determine remedial effectiveness The monitoring frequency will be evaluated to determine whether it should be more frequent or can be extended to periods beyond annual monitoring.
- MDNR will manage post-removal maintenance of the protective cover consistent with all federal and state laws.

ii. Remedial Action Objectives (RAOs)

1. RAOs for Soils and Source Materials

The RAOs for soils and source materials were based on the findings of the BERA and HHRA. These RAOs were designed to address the potential ecological risks associated with direct exposure to COCs in mine and mill wastes, and in the affected soils surrounding the wastes. Terrestrial vertebrates, specifically vermivores whose diet consists of earthworms and other soil-dwelling invertebrates, were identified as the receptors of concern based on the information from the BERA. Ecological risks associated with source material erosion (as sediment) and seepage/runoff were addressed in other RAOs. Due to these findings, the following RAO was developed:

Limit the exposure of terrestrial biota to COCs in surficial materials that would potentially result in excessive ecological risks associated with intake of site COCs.

The human health exposure routes were addressed at much of OU1. However, surficial contamination in the southern portion of OU1 could cause unacceptable exposures. Due to this minor risk, the following RAO was developed:

Limit human ingestion of COCs from on-site soils or source materials that would potentially result in cancer risks greater than 10^{-6} (one in one million), non-carcinogenic hazard indexes greater than 1 (1 or lower means adverse noncancer effects are unlikely), or unacceptable blood lead levels that present human health risks.

2. RAOs for Surface Water and Sediment

Aquatic and terrestrial biota are exposed to COCs in surface waters or

sediments derived from mill wastes. Site-specific, risk-based contaminant levels for aquatic biota have not been established for the Site. However, consensus-based sediment quality guidelines were used as reference material. Sediment with elevated COC concentrations may pose risks to benthic, or bottom-level, communities that live and feed in sediment deposits and benthic feeders that may ingest sediment. Applicable or relevant and appropriate requirements (ARARs) for sediments were not developed for the Site, but consensus-based guidelines can be followed. Based on the discussion presented above, a surface water RAO and a sediment RAO have been developed. These RAOs address the interactions between source materials and surface waters and the potential exposure of aquatic biota to COCs from mill waste. The surface water and sediment RAOs are as follows:

a. Limit the exposure of aquatic biota to waters contaminated with COCs in Sutton Branch Creek in excess of chronic and acute Federal Ambient Water Quality Criteria (AQWC) for such COCs.

b. Limit the risks to aquatic biota by controlling erosion and transport of lead-contaminated mill wastes and sediments containing lead-contaminated mill wastes in classified perennial or state-listed ephemeral streams or rivers.

iii. Explanations of Significant Differences (ESDs)

1. September 9, 2008 Explanation of Significant Differences #1 (ESD #1)

The 2005 OU1 ROD included addition of phosphate to floodplain soils (away from the outer edge of the riparian zone) during the dry season to improve the density of vegetation and to reduce the bioavailability of lead to terrestrial receptors. The significant difference under ESD #1 was the exclusion of phosphate application as part of the remedy.

Since the signing of the 2005 OU1 ROD, pilot testing of phosphate application to residential soils was conducted in Region 7 and reductions in bioavailability were achieved by tilling phosphoric acid into the soil. A second finding of the pilot testing was that surface application of fertilizer-grade phosphate was ineffective in reducing bioavailability. This meant that to have an impact upon bioavailability, phosphoric acid would have to be tilled into the lead-contaminated riparian areas.

A vegetative cover reduces the potential for human exposure to lead in soils under the vegetation. Tilling up the established vegetation would, for at least the short term, increase the exposure potential to lead in such soils until regrowth of the vegetative cover. The efficacy of applying the phosphate fertilizer to the riparian areas as described in the ROD was reevaluated. The EPA, in consultation with MDNR, made the decision to leave the vegetation in place and omit the phosphate treatment because (1) the current vegetative cover was sufficient and removing it could cause more harm than good, and (2) surface application of phosphate fertilizer would not result in significant reductions in bioavailability of the lead in the target soils/sediments.

2. May 29, 2019 Explanation of Significant Differences #2 (ESD #2)

The 2005 OU1 ROD's selected alternative regarding institutional controls provided for the imposition of restrictive covenants or easements. The EPA determined that the voluntary environmental covenants described in the 2005 OU1 ROD were not obtainable due to property owners refusing to sign and record the environmental covenants. Therefore, the EPA determined that an alternative to environmental covenants was required. Under ESD #2, the EPA could record notices of contamination for each tract of contaminated land that did not have an environmental covenant.

The use of a notice of contamination differs significantly from the use of an environmental covenant described in the ROD. An environmental covenant can prohibit certain uses of a property and can also require that certain actions be taken, thus achieving all the ROD's objectives. A notice of contamination cannot prohibit or mandate certain uses or actions and only provides information that may inform human behavior. A notice of contamination may be effective in achieving the ROD's objectives of providing notice to prospective purchasers and occupants that there may be contaminants in the subsurface soils and groundwater and ensuring that future owners are aware of engineered controls put into place as part of the Site's remedial action and under the prior removal action. Thus, by recording a notice of contamination with the Iron County recorder of deeds office, the goals of minimizing exposures to contamination remaining at OU1 and limiting the possibility of the spread of contamination may be achieved. The EPA also will conduct annual reviews of the deeds to ensure that the notices remain in effect.

In addition to the filing of notices of contamination, the EPA will conduct reviews every five years of the protectiveness of the remedy as required by section 121(c) of CERCLA. During these reviews, the EPA will again engage the owners of all properties where the notices of contamination have been recorded and attempt to gain landowner consent to the use of an environmental covenant. For properties that have been conveyed to new owners, the EPA will engage those new owners to determine whether they will agree to the use of environmental covenants. Due to the current impossibility of placing environmental covenants on all affected properties, the EPA determined that this is the most prudent and protective manner to address land use.

D. Response Actions

i. Removal Action

In September 2003, the EPA proposed a time-critical removal action for the Site. The goal of the removal action was to identify, consolidate, and stabilize the lead-contaminated waste mine tailings on site. The time-critical removal action work began at the Site in May 2004. When the removal action began at the Site, settling basins were constructed to manage storm water runoff. Earth-moving equipment was used to form the tailings and contaminated soil into a mound in the middle of the ravine where the pile was originally located. All areas in the tailings pile vicinity that had a mean lead surface concentration greater than 1,000 ppm were delineated and excavated. Excavations proceeded to the lesser of a depth of 18 inches or until a lead level below 400 ppm was achieved. All excavated areas were backfilled with clean material (<240 ppm lead) and excavated soil was consolidated into the on-site tailings pile. The tailings pile was graded and compacted with an engineered protective cover installed over the tailings. The protective cover consists of uncontaminated clay and topsoil, allowing for the establishment of vegetative cover.

ii. Remedial Action

The RI determined that additional actions were required after the completion of the Removal Action. The EPA developed the RD, which was reviewed by MDNR and approved by the EPA on June 14, 2007. Remedial action (RA) on-site construction commenced on July 25, 2007.

The following paragraphs describe the specific components of the selected remedy.

1. Erosion Work Around the Repository and the Historical Mining Area

This included the area around the former mining area containing significant erosion. Work in this area was required to protect the integrity of the existing soil repository and to prevent further runoff into Sutton Branch Creek. The specific areas of work included the following:

- *Point of Entry (POE) Area:* Work at the POE Area included constructing the channel between the repository and the settling basin.
- *Borrow Area:* The Borrow Area was a major erosional area. It was stabilized to minimize future erosion. This included regrading, placement of rock for cover/erosion control, and diverting potential runoff around this area through channelization.
- *North Area Erosion:* This area was stabilized with rock to minimize future erosion.
- *North Hillside Erosion:* This area was regraded and stabilized with rock to minimize future erosion.
- *North Lower Erosion:* This area was regraded, covered with rock, and two benches were constructed to slow the water entering the Site.
- *Repository Drainage Extension:* This area consisted of an extension of the rock drainage around the perimeter of the existing repository, along with a 6-foot rock blanket around the inside perimeter of the drainage channel.

2. Additional Blanket on Northeast Side

This area required regrading and a rock blanket on the northeast side.

3. Removal and Disposal of Sediment/Soil

The selected remedy included excavation and vacuum dredging of contaminated sediment from Sutton Branch Creek. Contaminated sediment in the depositional areas (pools) was removed to reduce the potential of downstream migration of contaminated sediment. Approximately 500 cubic yards (yd^3) of contaminated sediment required removal.

The contaminated sediment was removed until the natural substrate was uncovered. The banks of excavated areas were stabilized as needed. To minimize disturbance of the natural substrate, the EPA used the most non-invasive technique to remove the fine sediment. The specific areas that required removal are:

- *POE Area:* This included the area where the mine runoff historically entered Sutton Branch Creek. The EPA removed approximately 115 yd^3 of sediment/floodplain soil and placed approximately 100 yd^3 of riprap to achieve stability. The removed sediment/soil was placed in the new repository cell.
- *Sycamore Tree Area:* This included the area of Sutton Branch Creek where a sycamore tree caused the east stream bank to erode. This tree was removed, and the east bank was stabilized. The EPA removed approximately 135 yd^3 of sediment/floodplain soil and placed approximately 100 yd^3 of riprap to achieve stability. The removed sediment/soil was placed in the new repository cell.
- *Beaver Dam Area:* This included the area of Sutton Branch Creek where a breached beaver dam was trapping sediment. The remnants of the beaver dam were removed along with the sediment on the east and west banks and in the channel. The EPA removed approximately 185 yd^3 of sediment/floodplain soil and placed approximately 60 yd^3 of riprap for stabilization. The removed sediment/soil was placed in the new repository cell.
- *Bridge Area:* This was the furthest downstream section (furthest southern point) of the project. This section required two separate removals: One preceding the other stream work and one following the other stream work. During the first stage, approximately 40 yd^3 of sediment was removed from the large hole under the bridge using vacuum dredging and placed in the new repository cell. During the second stage, approximately 30 yd^3 of sediment was removed and placed in the new repository cell.

An on-site repository exists for disposal of the excavated sediment. Approximately 500 yd^3 of sediment was placed in the repository. The existing repository is located on the historical mine waste pile. The repository was constructed so that the contaminated sediment could be placed on the south side of the repository, thus greatly reducing the distance for contaminant transport. The new cell on the repository required approximately 300 yd^3 of clean fill to be placed on top of the contaminated sediment. The top 12 inches of this fill met the soil criteria in RD specifications and was properly graded, stabilized with jute mat, and vegetated using the criteria in the RD specifications. The vegetative cover has been inspected biannually since 2007 and has provided adequate erosion control.

Final inspection of the Site by the EPA and MDNR concluded that the soils RA had been conducted and completed in accordance with the soils RD plans and specifications; a punch list of additional work items was not needed. The remedy was complete with approval of the Final Closeout Report by the EPA and MDNR in September 2007.

E. Cleanup Levels

After the RA construction was complete, the EPA began monitoring sediment, surface water, and macroinvertebrates in Sutton Branch Creek and Big Creek. This sampling was conducted biannually (each fall and spring) from 2007–2011 and was reduced to one sampling event during the second FYR, which occurred in July 2017. Sampling occurred at five different sites along Sutton Branch Creek and Big Creek. Data was collected for the following analytes in sediment and surface water: Arsenic, cadmium, cobalt, copper, lead, nickel, and zinc.

A historic flooding event occurred in the greater Annapolis, Missouri, area on April 28–30, 2017. This flooding event dumped upwards of 15 inches of rain in a short period of time, resulting in widespread flooding. Numerous roads, bridges, and buildings were destroyed. Many roads were flooded through the event, including Highway 49 in Iron County. Several rivers reached major and historic levels. The U.S. Geological Survey Stream Gage #07037300 is located approximately 20 river miles downstream of the Site on Big Creek. The mean daily discharge at this gage from 2006 through 2016 was 272 cubic feet per second (cfs). The highest peak flow from 2006 through 2016 was 23,800 cfs, which occurred on March 18, 2008. In late April of 2017, during the record-breaking flood, the gage recorded a peak flow of 17,400 cfs on April 29, and a peak flow of 27,500 cfs on April 30. The discharge on April 30 was the highest event ever recorded since the gage has been in operation, which began in 2006.

Post-flooding site inspections indicated that the flooding event washed chat tailings from the floodplain into Sutton Branch Creek and depositional areas around sampling site 3 (Sutton Branch Creek 500 feet downstream of the Highway 49 bridge). During the RA, the pool located below the Highway 49 bridge was remediated using excavation as well as a vacuum truck. This is a major depositional area. The EPA and MDNR have visually monitored this area two times per year. Over the last ten years, the lead concentration at sampling site 3 has been elevated; however, the lead levels that were discovered (2,840 ppm) after the large flood in April 2017 exceeded the lead levels that were found prior to remediation. The EPA and MDNR have continued to monitor this area along

with sampling site 5 (mouth of Sutton Branch Creek at confluence with Big Creek) to determine whether this is having an impact on Big Creek. The most recent sampling event was conducted on February 14, 2019, and the results for each sampling station are as follows:

- Sampling Site 3 (Sutton Branch Creek south of Highway 49 Bridge)—438 ppm lead
- Sampling Site 5 (Mouth of Sutton Branch Creek at confluence with Big Creek)—19 ppm lead

As seen in the most recent data set, sediment concentrations continue to decline at the monitoring stations. The EPA will continue to monitor these areas as part of the FYRs. Corrective measures may be taken if the levels do not continue to decrease over time.

F. Operation and Maintenance

i. Ongoing and Completed Operation and Maintenance

Approximately one month after construction, the EPA and MDNR inspected the Site to observe the condition of the cap, identify any erosional features, and assess the success of each remedial component. After inspection, the EPA and MDNR considered each of these areas construction complete, although several areas were identified where improvement was required. One major issue was the concern that erosion would occur where vegetation was not established. Therefore, the EPA and MDNR focused the majority of their efforts on revegetating the Site in 2008. Approximately 1,015 trees were planted, along with a site-specific seed mix, to help stabilize the Site. Additionally, the EPA and MDNR performed inspections every six months along with monitoring and maintenance activities. Some of the trees that were planted are now over 25 feet tall and the improved vegetation has stabilized the slopes and decreased sediment accumulation in the settling basin.

During the reporting period for the second FYR, one major area of concern was the north repository drainage channel. During high water events, the water would occasionally overflow the existing channel onto the surrounding area instead of down to the settling basin. Due to the concern of the water flowing out of the channel, MDNR performed maintenance activities in October 2012. MDNR modified the north repository drainage channel as well as the channel below the repository downgradient to the settling basin. he large rock that had been placed in the channel was pulled out to the channel edges. The filter rock was left in place within the channel. The goal was to allow additional flow through the channel down to the settling basin during high water events. The report of these activities is included in the second FYR. In June 2013, MDNR performed maintenance activities to repair a leak in the outlet pipe in the settling basin. The report of these activities is included in the second FYR.

During the reporting period for the third FYR, the northeast branch of the drainage channel around the tailings pile that washed out was repaired. MDNR developed engineered designs to repair the channel and construct a detention pond dam to reduce the flow velocity in the channel during high rainfall events. MDNR hired a contractor to perform the repairs. The contractor finished the repairs in April 2019.

ii. Institutional Controls

Under the selected remedy, the EPA required implementation of institutional controls at properties where elevated lead concentrations remain on site. The EPA determined that 13 parcels were subject to the institutional controls. Two different mechanisms were used as part of the Site's Institutional Control Plan: Environmental covenants and notices of contamination. On May 21, 2019, one of the 13 property owners recorded an environmental covenant with the Iron County Recorder of Deeds. On August 29, 2019, the EPA recorded notices of contamination regarding the 12 remaining properties with the Iron County Recorder of Deeds.

As discussed in depth above, the use of a notice of contamination differs significantly from the use of an environmental covenant described in the ROD, but still may be effective in achieving the ROD's objectives. Therefore, as documented in 2019, the EPA issued ESD #2 that provided for the EPA to record notices of contamination instead of entering into environmental covenants at the contaminated properties. The EPA also will conduct annual reviews of the deeds to ensure that the notices remain in effect.

In addition to the filing of notices of contamination, the EPA will conduct reviews every five years of the protectiveness of the remedy as required by section 121(c) of CERCLA. During these reviews, the EPA will again engage the owners of all properties where the notices of contamination have been recorded and attempt to gain landowner consent to the use of an environmental covenant. For properties that have been conveyed to new owners, the EPA will engage those new owners to determine whether they will agree to the use of environmental covenants.

G. Five-Year Reviews

Statutory FYRs are required for the Site due to the fact that hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unlimited use and unrestricted exposure.

Two FYRs have been conducted at the Site, the most recent being the Second FYR, which was completed on September 29, 2017. The protectiveness determination was Short-term Protective, and included the following protectiveness statement: The remedy currently protects human health and the environment because soils and sediments with elevated lead levels have been excavated or capped and no unacceptable exposures are occurring. In order to be protective in the long term, to reduce the potential for future risk, ongoing pursuit of the [institutional control]s must occur along with routine Operation and Maintenance indicative of an engineered soil cover. In order for the remedy to be protective in the long term, [institutional control]s should be implemented. Additional routine maintenance of the eroded areas around the repository should be implemented to prevent future exposure.

Issues from the Second FYR included the following:

- Institutional Controls had not been implemented. The recommendation was to implement the institutional controls by 7/31/2018. **Please note:** The EPA implemented institutional controls on 9/13/2019.
- During the reporting period for the Second FYR, significant erosion had formed on the north end of the repository drainage channel. The recommendation was to repair the drainage channel by 7/31/2018. **Please note:** MDNR repaired the area in April 2019.
- A small amount of lead-contaminated sediment (less than 60 cubic yards) was deposited below the Highway 49 bridge in the pool that was excavated during the RA after the large flood in April 2017. The EPA and MDNR will continue to monitor this area along with the mouth of Sutton Branch Creek from 2018 to 2021. If this area continues to be elevated with COCs, further action may be taken to remove the sediment from the pool above sampling site 3. As these levels have significantly declined, no response is anticipated. **Please note:** This will be assessed during the third FYR.

H. Community Involvement

Before and during the RAs, the EPA held multiple public meetings on site. The EPA has updated the public regarding the FYRs by placing ads in the local newspaper, as well as updating the local information repository and the Site's web page. Community involvement activities associated with the deletion will include making the notice of intent to delete available for public comment. In addition, the Region 7 Superfund Records Management Service Center will construct a special document collection that will include the listed document IDs for the deletion docket documents. This collection will be available for public review and is located on the Site's web page and the *Regulations.gov* website.

I. Determination That the Site Meets the Criteria for Deletion in the NCP

In accordance with 40 CFR 300.425(e), EPA Region 7 finds that the Annapolis Lead Mine Site (the subject of this deletion action) meets the substantive criteria for deletion from the NPL. The EPA has consulted with and has the concurrence of the state of Missouri. All appropriate Fund-financed response under CERCLA was implemented, and no further response action by responsible parties is appropriate.

The implemented remedy at the Site has achieved the degree of cleanup specified in the ROD for all pathways of exposure. All selected RA objectives and associated cleanup levels are consistent with agency policy and guidance. No further Superfund response is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

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

Authority: 33 U.S.C. 1251 *et seq.*

Dated: July 2, 2020.

James Gulliford,

Regional Administrator, Region 7.

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DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Part 2569

[LLAK940000 L14100000.HM0000 20X]

RIN 1004–AE66

Alaska Native Vietnam-Era Veterans Allotments

AGENCY: Bureau of Land Management, Interior

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to issue regulations to enable certain Alaska Native Vietnam-era veterans to apply for land allotments under Section 1119 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Dingell Act). The Dingell Act requires the BLM to issue regulations to implement the Act's land allotment provisions. This proposed rule would enable certain Alaska Native Vietnam-era veterans who, because of their military service, were not able to apply for an allotment during the late 1960s and early 1970s to do so now.

DATES: Please submit comments on this proposed rule to the BLM on or before August 10, 2020. The BLM is not obligated to consider any comments received after this date in making its decision on the final rule.

The proposed rule includes information collection activities that must be approved by the Office of Management and Budget (OMB). If you wish to comment on the information collection requirements in this proposed rule, please note that the OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to the OMB on the proposed information collection requirements is best assured of being given full consideration if the OMB receives it by August 10, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by the number ''RIN 1004–AE66,'' to the BLM by any of the following methods:

—*Mail/Personal or Messenger Delivery:* U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 2134 LM, 1849 C St. NW, Washington, DC 20240, Attention: RIN 1004–AE66.

—*Federal eRulemaking Portal: http://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE66'' and click the ''Search'' button. Follow the instructions at this website.

For Comments on Information Collection

Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document 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.

Please indicate ''OMB Control Number 1004–XXXX/RIN 1004–AE66,'' regardless of the method used to submit comments on the information collection burdens. If you submit comments to the OMB on the information-collection burdens, you should provide the BLM with a copy, at the BLM address provided above, so that all written comments can be summarized and addressed in the final rulemaking. Comments not pertaining to the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB, rather than the BLM.

FOR FURTHER INFORMATION CONTACT: Paul Krabacher, Division of Lands and Cadastral, Bureau of Land Management, 222 West Seventh Avenue, Mail Stop 13, Anchorage, Alaska 99513–7409; telephone (907) 271–5681, for information relating to the substance of this proposed rule. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to leave a message or question with the above individuals. You will receive a reply during normal business hours, Alaska time.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

If you wish to comment on the information collection requirements, you should send those comments directly to the OMB as outlined under the **ADDRESSES** heading; however, we ask that you also provide a copy of those comments to the BLM. You may submit comments on the proposed rule itself, marked with the number ''RIN 1004–AE66,'' to the BLM by any of the methods described in the **ADDRESSES** section. Please make your comments on

the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and

2. Those that include citations to, and analyses of, the applicable laws and regulations. The BLM is not obligated to consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

The BLM has determined that a public comment period of 30 days is required for this proposed rule, per 318 DM HB 5.4(A). The universe of parties who will be affected by this proposed rule is relatively limited, and those parties have received notice that this proposed rule is being prepared, either through the enactment of the Dingell Act itself, or through the BLM's extensive pre-publication outreach efforts, or both. At the same time, Section 1119 of the Dingell Act requires a final rule to be promulgated by September 12, 2020, which cannot be accomplished with a longer comment period. Therefore, the BLM concludes that a public comment period of 30 days is adequate for all affected parties to provide feedback, and is necessary to comply with the statutory directive.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised 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.

Comments on the proposed rule, including names and street addresses of respondents, will be posted as they arrive at the BLM, and will be available for public review at *http://www.regulations.gov.* Enter ''1004–AE66'' in the Searchbox to find the proposed rule.

II. Background

On December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA; 43 U.S.C. 1601, *et seq.*), which repealed the Alaska Native Allotment Act (34 Stat. 197, as amended). During the time leading up to the repeal of the Alaska Native Allotment Act, certain Alaska Natives who were eligible to apply for allotments were serving in the U.S. military and may have missed their opportunity to apply because of their military service.

In 1998, Congress enacted a law allowing certain Alaska Native veterans a new opportunity to apply for allotments under the Alaska Native Allotment Act, as it was in effect before its repeal (Alaska Native Veterans Allotment Act of 1998; 43 U.S.C. 1629g). Those Alaska Native veterans were able to apply for allotments from July 31, 2000 to January 31, 2002. Under the Alaska Native Veterans Allotment Act of 1998, about 250 allotments were issued to Alaska Native veterans or their heirs.

On March 12, 2019, Congress enacted the Dingell Act, in order to provide an additional opportunity for Alaska Native veterans who have not applied for or received an allotment under prior laws to apply for an allotment. Congress required the BLM to issue regulations implementing the Dingell Act. This proposed rule would carry out that congressional mandate.

The BLM, in coordination with the Bureau of Indian Affairs (BIA), consulted with the federally recognized Tribes located in Alaska and Alaska Native Corporations, and conducted presentations throughout Alaska. The purpose of these meetings was to share information and gather input from entities representing Alaska Natives who will be impacted by these regulations. Participants included both Native and non-Native individuals. Oral comments were recorded at each meeting; notes of the meetings, as well as all written comments submitted to the BLM at the meetings, are included in the administrative record for this rule.

III. Discussion of the Proposed Rule

§ 2569.100 What is the purpose of this subpart?

This section explains why the BLM is promulgating these regulations. Specifically, promulgating these regulations is required under 43 U.S.C. 1629g–1(b)(2), and will specify the procedures under which Alaska Native Vietnam-era Veterans will be able to select and receive lands.

§ 2569.101 What is the legal authority for this subpart?

The legal authority for this subpart is 43 U.S.C. 1629g–1(b)(2).

§ 2569.201 What terms do I need to know to understand this subpart?

This section lays out the definitions that will be needed for the reader to fully understand the proposed regulations.

Allotment. The BLM adopts the definition of allotment from 43 CFR 2561.0–5, which defined ''allotment'' in the regulations for the Alaska Native Allotment Act. The Dingell Act does not specifically provide for this definition, but the intent of Congress was to offer Alaska Natives who served in the military during the Vietnam era a chance to receive an allotment similar to the one that they otherwise could have received under the Alaska Native Allotment Act. Additionally, the Dingell Act uses a Certificate of Allotment as the conveyance instrument. This conveyance instrument was only used in the past for restricted fee and trust allotments. As such, the BLM adopts the definition of ''allotment'' as it has been used for the Certificate of Allotment under the Alaska Native Allotment Act and the Alaska Native Veterans Allotment Act of 1998. Certificates of Allotment granted under those acts include the following recitation: ''[T]he land above-described shall be deemed the homestead of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his delegate, pursuant to the provision of the said Act of May 17, 1906, as amended, approves a deed of conveyance vesting in the purchaser a complete title to the land.'' A similar recitation should be used in conveyances under the Dingell Act as well to ensure that Alaska Natives receiving land under the Dingell Act will receive the same rights as those granted to Alaska Natives under the Alaska Native Allotment Act and the Alaska Native Veterans Allotment Act of 1998.

Available Federal Lands. This term incorporates the definition from the Dingell Act. In general, ''available Federal land'' is defined as vacant, unappropriated, and unreserved public land. Additionally, land that has been selected but not conveyed to either the State of Alaska or to an Alaska Native Corporation is available as long as the selection is voluntarily relinquished. Land that has already been conveyed out of Federal ownership is not available. ''Available Federal land'' further incorporates the requirement that the land is certified as free of known contaminants, a requirement that is found separately in the statute.

Eligible Individual. This term is used throughout the proposed regulations for a Native veteran who is eligible to receive an allotment under the Dingell Act, or another person who is eligible to receive an allotment on the behalf of such a veteran. 43 U.S.C. 1629g–1(a)(2) defines such an individual as a Native Veteran who served in the Armed Forces between August 5, 1964, and December 31, 1971, and who did not receive an allotment under one of the three previous allotment statutes specified in the Dingell Act. While the Dingell Act only expressly excludes individuals who have already received an allotment under one of these three statutes, because the Dingell Act was intended to benefit individuals who missed their opportunities to apply under these statutes, the proposed regulations also exclude individuals who applied under these statutes, but whose applications remain pending.

Native. The proposed regulations restate the definition from the Dingell Act, which in turn uses the definition of Native from the ANCSA. As stated in the ANCSA, this definition requires either proof of a minimum blood quantum, or else proof that one is a citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which one claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Additionally, any decision of the Secretary regarding eligibility for enrollment is final. As used, this term would include all Alaska Natives, including enrolled members of the Metlakatla Indian Community, Annette Island Reserve.

Native Corporation. This term refers to the Alaska Native Corporations created pursuant to the ANCSA.

Realty Service Provider. This term refers to the tribal and intertribal organizations that provide Trust Real Estate Services pursuant to a contract or compact with the Bureau of Indian Affairs (BIA).

Receipt date. This term is used in the proposed regulations to refer to the date on which an application arrives at the BLM Alaska State Office. The Receipt Date is used to determine which application would receive preference if two or more applications contain conflicting selections.

Segregate. This term is given the same meaning in the proposed regulations that it has in the BLM's general land resource management regulations. By incorporating this widely used definition, the proposed regulations help the reader understand that once an application is received, the land selected in that application is removed from the operation of the public land laws so no other entity can make a claim on that land.

Selection. This term refers to the lands that an Eligible Individual chooses to apply for in an application.

State. This term means the political entity of the State of Alaska.

State or Native corporation selected land. This term refers to lands that have been selected by, but not conveyed to, the State or a Native corporation. This definition helps readers understand that while applicants can select from lands that have been selected by the State and Native corporations, they may not select lands that have already been conveyed to the State or a Native Corporation.

Valid relinquishment. The Dingell Act allows an Eligible Individual to select, and receive from the BLM, lands that have been selected by the State or a Native corporation if that entity ''agrees to voluntarily relinquish the selection.'' For the relinquishment to be valid, the voluntary relinquishment must be signed by either a person authorized by a board resolution of the Native corporation or a delegated official of the State. A valid relinquishment may be conditioned upon the application being accepted and the location of the selection being fully established by survey, and may also be conditioned upon who receives the land. This provision ensures that relinquishments go into effect only at such time as there is certainty regarding the location and that the applicant will receive the land.

Veteran. The proposed regulations incorporate the definition from 38 U.S.C. 101. The BLM found that attempting to restate all the incorporated parts of that definition within the regulations would confuse readers. Therefore, the proposed regulations point the reader to the statute instead. For purposes of implementing the Dingell Act, this definition includes individuals who died in service and who meet the other requirements of 38 U.S.C. 101.

Who Is Qualified for an Allotment

§ 2569.301 How will the BLM let me know if I am an Eligible Individual?

The BLM has been working with the BIA, the Department of Defense (DoD), and the Department of Veterans Affairs (VA) to identify Eligible Individuals prior to the selection period. Pursuant to the Dingell Act, the VA and the DoD provided to the BIA a list of all individuals whose records indicated military service during the time period set forth in the statute. The BIA compared that list to its list of Alaska Natives and removed those individuals who are not Alaska Natives. The BLM refined the list further to remove Native Veterans who received an allotment or have an application pending under one of the earlier statutes listed in the Dingell Act. The BLM would use this list to identify individuals that the BLM believes to be Eligible Individuals.

After the list is created, the BLM would mail letters to all individuals included on the list at the most recent addresses on file with the VA and BIA. The purpose of this initial letter would be to provide additional notice to these individuals of the opportunity to apply for an allotment. Being included on this list would not guarantee that a person is an Eligible Individual under the Dingell Act, however, and therefore, an individual who receives such notice would still be required to certify that the statements made on his or her application are complete and correct to the best of his or her knowledge and belief, including that he or she is an Alaska Native, has not received an allotment, meets the definition of a Veteran, and served during relevant time period.

§ 2569.302 What if I believe I am an Eligible Individual, but I was not notified by the BLM?

This section addresses the information that Eligible Individuals who were not identified through the process described above would need to provide in order to demonstrate that they are eligible. The BLM foresees that there may be individuals who would not be included on the list due to errors or inconsistencies in the records at the DoD, the VA, or the BIA. This section informs those individuals that in addition to the application, they would be required to provide a Certificate of Degree of Indian Blood or other documentation from the BIA demonstrating that they meet the definition of a Native, and a Certificate of Release or Discharge from Active Duty (Form DD–214) or other documentation from the DOD or VA demonstrating that they meet the definition of a Veteran.

§ 2569.303 Who may apply for an allotment under this subpart on behalf of another person?

This section explains who may apply on behalf of an Eligible Individual who is unable to apply on his or her own behalf. In paragraph (a), the BLM addresses how a person could apply on behalf of a deceased veteran. The Dingell Act allows for a personal representative, ''appointed in the appropriate Alaska State court or

registrar has qualified,'' to apply on behalf of the estate of a deceased Eligible Individual. The BLM understands the term ''registrar,'' as used in the Dingell Act, to refer to an Alaska State court employee who adjudicates informal probates. The phrase ''Alaska State court or registrar has qualified'' therefore allows the appointment of a personal representative only through the Alaska State court system, through either the informal probate process, which is adjudicated by the registrar, or the formal process, which is adjudicated by a judge. The BLM does not understand the Dingell Act, as enacted, to allow for personal representatives to be appointed by a Tribal court or an out-of-state court. The apparent intent of the statutory language is to ensure that the BLM would not have to decide between competing claims of individuals who assert that they are duly appointed personal representatives of the same deceased veteran.

In paragraph (b) of this section, the proposed regulations address the situation in which a veteran is alive, but is unable to apply on his or her own behalf or chooses to have another person do so. The BLM has attempted to be as broad as possible in recognizing the legal mechanisms by which a person could legally apply on behalf of a veteran. A conservator or guardian is typically appointed by a court for a person who is no longer capable of managing his or her affairs. Unlike a personal representative, a conservator or guardian need not be appointed by an Alaska State court, because the Dingell Act contains no such restriction for conservators or guardians. An attorney-in-fact, meanwhile, is appointed by the Eligible Individual him- or herself before becoming incapacitated. An individual would also be able to appoint an attorney-in-fact if the individual is not incapacitated but would like to allow the attorney-in-fact to complete the application on his or her behalf for some other reason. Commenters are encouraged to suggest any other legal mechanisms that may not be captured in this paragraph.

Applying for an Allotment

§ 2569.401 When can I apply for an allotment under this subpart?

This section identifies the period during which the BLM would accept applications. The application period would begin on the effective date of the final regulations and run for a period of 5 years, as provide in the Dingell Act (43 U.S.C. 1629g–1(b)(3)(B)). Under the proposed rules, certain circumstances described in § 2569.410, 2569.502(b), or 2569.503(a) may require the BLM to request more or new information from an applicant who initially filed his or her application during the period described in paragraph (a). The BLM would continue to accept this information for up to 60 days after the information is requested, even after the termination of the 5-year period in paragraph (a). The BLM further recognizes that a legal representative may need to be appointed to provide the required information, and § 2569.507(c) would further extend the time in which the BLM could receive this information for two years when needed for the applicant or the applicant's heirs to complete that process.

§ 2569.402 Do I need to fill out a special application form?

The proposed regulations would require that applications be submitted on a BLM form, ''Alaska Native Vietnam-Era Veteran Land Allotment Application,'' under an OMB form number to be assigned when OMB approves the collection.

§ 2569.403 How do I obtain a copy of the application form?

The BLM is proposing to directly mail a copy of the application form to those persons who have been preliminarily identified as Eligible Individuals through the process described in § 2569.301. The applications would be mailed to the most recent addresses on file with the VA, BIA, and BLM.

This section also identifies locations where copies of the application form would be available for applicants who do not receive an application in the mail. Those locations include the BIA, BIA Realty Service Provider's offices, BLM Public Rooms located in Anchorage or Fairbanks, or on the internet at *blm.gov/ak-native-vietnam-vet-land-allotment-2019.*

§ 2569.404 What must I file with my application form?

This section identifies the documents that would be necessary to file a complete application under various applicant scenarios.

Paragraph (a) applies to every applicant and explains how the applicant would identify the lands they select for their allotment. The BLM is attempting to make this process as easy as possible for applicants. Therefore, applicants would be asked to provide a map with the selection marked on the map. In previous allotment acts, the BLM required a legal description. The difficulty of creating the legal description created uncertainty for the applicant about what land they would receive, and the BLM has determined that the map approach would create greater certainty. The BLM intends to provide a mapping tool on its website to help applicants identify available Federal lands. The BLM intends to keep this map updated with the identified available Federal lands throughout the selection period. The applicant would even be able to draw their desired selection onto a map using the map tool and know they are keeping their description within available Federal lands and within the acreage limit.

The only written requirement would be that the applicant identify the section, township, range, and meridian of the selection so that the BLM can properly locate the selection. The applicant would be able to easily find that information on the mapping tool on the BLM's website or ask a Realty Service Provider or the BLM for assistance. The BLM would also accept, but not require, any additional information about the location that the applicant would like to supply. The regulation clarifies that the BLM would defer to the depiction on the map unless the applicant specifies that they want the written description to be the controlling document.

In paragraph (b) of this section, the BLM describes the other materials that may need to be filed with the application besides the selection. Under the proposed regulations, applicants whose names appear on the list of individuals believed by the BLM to be Eligible Individuals would not have to provide proof of the applicant's military service or documentation identifying the applicant as an Alaska Native. This information would already have been collected by the DoD, VA, BIA, and BLM at the time the list of presumed Eligible Individuals is created. As noted above, however, these individuals would still need to certify that they meet the requirements for eligibility by signing the application form. Those applicants whose names did not appear on the list of presumed Eligible Individuals, meanwhile, would need to provide proof of their status as a Native Veteran. The documentation identifying the applicant as a Native may consist of a Certificate of Degree of Indian Blood or of other documentation from the BIA verifying that the applicant meets the definition of Alaska Native, such as a letter issued by the BIA Alaska Region. The documentation showing military service, usually a Form DD–214, would need to demonstrate that the applicant served during the period between August 5, 1964, and December 31, 1971,

and was released or discharged in some way other than dishonorably.

For those persons applying on behalf of another individual or his or her estate, the proposed rules also identify the types of proof that would be necessary to apply as a personal representative, guardian, conservator, or attorney-in-fact. An individual applying as a personal representative of a deceased veteran would need to prove that he or she had been appointed by an Alaska State Court and that the appointment was still in effect. An individual applying on behalf of a living veteran as a guardian or conservator would have to provide proof of his or her appointment by a court of law. An individual applying as the attorney-in-fact for a living veteran would be able to do so as long as the power of attorney documentation is legally valid and current, and is either a general grant of power-of-attorney, or specifically grants the individual either the power to conduct real estate transactions on behalf of the veteran, or the specific power to apply for this allotment program.

In paragraph (c), the proposed regulations explain that an applicant would be required to certify that the statements in the application are true, complete, and correct to the best of their knowledge. This section is included to make applicants aware that there are serious ramifications if an applicant were to lie on the application. A person could be prosecuted pursuant to 18 U.S.C. 1001 for false statements on the application.

§ 2569.405 What are the special provisions that apply to selections that include State or Native corporation selected land?

Under the proposed rules, an applicant could select, in whole or in part, land that has been selected by the State or a Native corporation but has not yet been conveyed to that entity.

Lands selected by the State pursuant to the Alaska Statehood Act or a Native corporation under the provisions of ANCSA are segregated from operation of the public land laws. The Dingell Act allows Eligible Individuals to select from these lands even though the lands are otherwise segregated from the operation of the public land laws. However, in order for BLM to allow such a selection, the State or Native corporation would have to choose to make that land available by relinquishing its selection.

Under the proposed regulations, an applicant could request that the State or Native corporation relinquish its selection; the proposed regulations further provide that the relinquishment could be conditioned on the approval of the applicant's application. Applicants need to be aware that even if the State or Native corporation could relinquish their selection, the law does not require them to do so.

The relinquishment would have to be in the form of a letter from the State or Native corporation, and would have to include either the legal description of the parcel the entity is willing to relinquish or a copy of the applicant's application with its land description. The letter would also have to describe the conditions, if any, for the relinquishment. If the relinquishment is by a Native corporation, the letter would have to be accompanied by a board resolution authorizing the relinquishment and granting the person signing the letter authority to do so. If the State or ANCSA selection were being relinquished only on behalf of an individual, the relinquishment would have to name the individual.

A conditional relinquishment would become effective when the BLM formally accepts the relinquishment, which would occur after the BLM has issued a Final Plan of Survey Notice for the application at issue. In the case of a conditional relinquishment, if the applicant was determined not to be eligible or if the application was rejected on other grounds, the relinquishment would be of no effect and the State or ANCSA selection would remain in place. The State or Native corporation would be notified in the decision rejecting the application.

The BLM also proposes to allow the State or a Native corporation to make a blanket conditional relinquishment of certain of its selections, which would take effect if any valid application is received for the lands at issue. Any selections that are conditionally relinquished in this manner would be identified on a map. Such a blanket conditional relinquishment would become effective as to a given parcel of land when the BLM formally accepts the relinquishment, which would occur after the BLM has issued a Final Plan of Survey Notice for an application embracing that parcel.

Paragraph (b) of this section describes a scenario in which a Native corporation may not relinquish a selection. Under ANCSA, each Native corporation is entitled to receive a certain amount of land. The regulation specifies that a relinquishment cannot cause a Native corporation to become under-selected. ''Under-selected'' refers to the situation where the Native corporation has less land selected than it needs to receive in order to fulfill its entitlement under ANCSA. For example, if a Native corporation needs to receive 500 acres from the BLM to fulfill its entitlement and has 600 acres selected, it cannot relinquish 160 acres under these proposed regulations.

Paragraph (c) of this section defines when the lands would become segregated when an applicant applies for State or Native corporation selected land. In some cases, land that has been selected by the State or a Native corporation is ''top-filed''—that is, another entity has expressed its intent to select the same land in the event that the land is not conveyed to the first entity. The BLM interprets the Dingell Act as expressing Congress's intent to give Eligible Individuals first preference to any selections relinquished by the State or Native corporations, even if another entity has a ''top-filing'' on those lands. In such a case, the regulations would allow the Eligible Individual's selection to fall into place as soon as the conditional relinquishment is accepted, and would segregate those lands immediately from the operation of the public land laws. This would resolve any conflict between the applicant and the top-filing entity in favor of the applicant.

Paragraph (d) defines what would happen if the State or Native corporation is unable or unwilling to provide a valid relinquishment. Applicants need to be aware that even if the State or Native corporation could relinquish its selection, the law does not require it to do so. In this scenario, the BLM would treat the selection like any other selection that includes unavailable land by following the procedures laid out at 43 CFR 2569.503.

§ 2569.406 What are the rules about the number of parcels and size of the parcel for my selection?

The statute provides that an applicant may select only 1 parcel of land ranging in size from 2.5 to 160 acres.

§ 2569.407 Is there a limit to how much water frontage my selection can include?

Applications made under these regulations would be subject to 43 CFR 2094. That subpart establishes a general limitation of 160 rods (one half-mile) of water frontage. An application may be submitted for a selection that exceeds the 160-rod (one half-mile) limitation, but the application would be subject to a determination that the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest. If the BLM could not waive the 160-rod (one half-mile) limitation, the BLM would issue a

decision finding the selection includes lands that are not available Federal lands, and then follow the procedures set out at § 2569.503.

§ 2569.408 Do I need to pay any fees when I file my application?

The BLM does not propose to charge any fees in connection with the Alaska Native Veterans Allotment Program of 2019.

§ 2569.409 Where do I file my application?

Applications would have to be delivered to the BLM Alaska State Office in Anchorage, in person, by mail, or by delivery service. The BLM does not propose to accept electronic applications.

§ 2569.410 What will the BLM do if it finds a technical error in my application?

If the BLM finds a technical error in an application, it would send a notice identifying the error and provide 60 days after receiving the notice to correct the error. A ''technical error,'' as referred to in this section, includes such matters as a missing portion of the application form, a missing signature, or missing materials that would be required to be provided along with the application under § 2569.404–405. Generally, a ''technical error'' is one that the BLM can identify relatively easily upon reviewing the application. A ''technical error'' does not include an application that conflicts with an earlier application or that includes lands that are not available Federal lands; these scenarios are dealt with separately, in § 2569.502 or 503, respectively.

The purpose of the proposed 60-day correction period is to allow applicants to correct technical errors without the inconvenience of submitting a completely new application package. As noted, any corrected or completed application would be deemed received, for purposes of preference, on the date that the last correction is received.

Throughout the proposed regulations, the BLM provides the applicant 60 days to respond to various requests. Because mail delivery can be unreliable in some Native villages, the BLM proposes to start the 60-day response time from the point that the applicant receives the decision or notice. Hence, any delay in the mail being received in the village would not affect the length of time for his or her reply. The BLM is not proposing a period of time longer than 60 days because an application is deemed received when BLM receives the last correction, so that the benefit to applicants of extending the period beyond 60 days would be limited.

§ 2569.411 When is my application considered received by the BLM?

Under the proposed rules, an application that is free from technical errors and from conflicts with higher-preference applications or with unavailable lands would be considered received on the receipt date—that is, the date on which the application is physically received by the BLM Alaska State Office (see paragraph 2569.02(f)). This means that even if the BLM took some time to review an application and determine whether the application is free from technical errors, the application would not lose preference during that time; once the application is reviewed and confirmed to be complete and correct, it would receive the preference corresponding to the date on which it was physically received.

The proposed rule clarifies that applications received prior to the effective date of the regulations would be deemed received on the effective date. This would protect applicants who want to apply on the first day of the selection period from being penalized if the mail arrives to the BLM sooner than expected, while preserving the integrity of the effective date as the start date for the selection process.

If an application contained a technical error, the BLM would provide notice as set forth in § 2569.410 and require the applicant to correct the error. The application would then receive the preference corresponding to the date on which the corrected application was physically received.

If an application conflicts with higher-preference applications or with unavailable lands, the BLM would proceed according to § 2569.502 (for conflict with higher-preference applications) or 2569.503 (for conflicts with unavailable lands). In each of those cases, the applicant would have the choice to continue with adjudication of those portions of his or her selection that are free from conflict, in which case the application would receive the preference corresponding to the date on which the application was physically received (see §§ 2569.502(b)(2) and 2569.503(a)(2)). On the other hand, if the applicant chooses to file a substitute selection in order to adjust the original selection or replace it with a new selection altogether, the applicant would receive the preference corresponding to the date on which the substitute application was physically received (assuming that the substitute application is free from technical errors or conflicts).

The BLM is not proposing to allow corrected, completed, or substitute applications to ''relate back'' to the original application—that is, to receive the preference date corresponding to the date on which the original application was physically received—for several reasons. First, the BLM is concerned that if corrected or completed applications could relate back to earlier applications, the BLM would receive a large number of incomplete, even skeletal, ''placeholder'' applications at the beginning of the filing period. This would unfairly prejudice applicants who take the time to submit complete and accurate applications, because the BLM would be unable to process those applications until it waits to see whether the applicants responsible for the placeholder applications eventually file completed and corrected applications within the correction period, and then determine whether any of the placeholder applications conflict with the later-received applications.

A second reason for not allowing corrected, completed, or substitute applications to relate back to earlier applications is that doing this would not prevent unfairness from occurring, but rather would shift the potential unfairness to other situations and other applicants. Consider, for example, a situation in which Applicant A files an application containing a technical error, shortly before Applicant B files a complete and correct application that conflicts with Applicant A's selection. Under the rules as proposed, Applicant B would receive his or her selection, while Applicant A would be required to submit a corrected or completed application, and to change his or her selection to avoid a conflict with Applicant B's selection. While this outcome may seem unfair to Applicant A, who filed an earlier application and may have only made a relatively minor technical error, the result is that the selection is awarded to the first applicant who submitted a complete and correct application for that land.

By contrast, if Applicant A's corrected or completed application were allowed to relate back to the original application, Applicant A would eventually receive his or her selection, after correcting all technical errors, and Applicant B would lose out. This outcome may seem fairer to Applicant A, but it would be arguably unfair to Applicant B, the first applicant to submit a complete and correct application for that land. Moreover, this scenario could result in a chain reaction in which multiple applicants lose out to applications that were submitted later in time than their own applications. Consider what happens if Applicant B

submits a substitute application to avoid the conflict with Applicant A, which in turn conflicts with the application of Applicant C, who submitted a complete and correct application in the interim between Applicant B's original and substitute applications. Under the relate-back approach, Applicant B's substitute selection would relate back to his or her original application and would receive preference over Applicant C's selection. The result would be that Applicant C, like Applicant B, would lose out to an applicant whose complete and correct application for the land in question was received *after* Applicant C's own complete and correct application. Moreover, Applicant C would then presumably file a substitute application him- or herself, potentially continuing the chain reaction.

For these reasons, the BLM believes that the approach set forth in the proposed regulations, which would not allow any new applications to relate back to earlier applications, is the fairest and most practical approach.

§ 2569.412 Where can I go for help with filling out an application?

The Department of the Interior and the VA have been tasked in the Dingell Act with providing assistance in applying for allotments.

Applicants are encouraged to seek help in filing their applications. Applicants should contact their local VA or BIA office. In addition, certain tribal and intertribal organizations that are registered as BIA Realty Service Providers could also provide assistance and information. To find the list of the BIA Realty Service Providers, go to *https://www.bia.gov/regional-offices/alaska/real-estate-services/tribal-service-providers.* The BLM would also have many locations where an applicant could receive help. You could contact the BLM in person, by email, or by telephone, Monday through Friday, excluding Federal holidays. The BLM would not provide legal advice, but would answer questions and provide assistance regarding the application process.

An applicant could also get information through the BLM's website at *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.* This website includes frequently asked questions and a mapping tool depicting available Federal lands. The mapping tool on the website could be used to identify and print selections.

§ 2569.413 How will I receive notices and decisions?

This section describes how the BLM would provide notices and decisions and would provide instructions for changing an applicant's contact information of record with the BLM after the application process has begun. The BLM would mail all decisions and notices related to the application to the address of record, and it would be very important for the applicant to be able to receive every mailing. This section makes it clear it is the applicant's duty to keep their address of record up to date.

The BLM would attempt to deliver all notices and decisions by Certified Mail with Return Receipt. If this first attempt fails, the BLM would make a second attempt using an alternative method. If the second attempt fails, the BLM may issue a decision rejecting the application. Generally, the BLM would only issue a decision rejecting the application if a second attempt at delivery fails for a notice that requires action from the applicant, such as a notice of a decision finding that the application did not have preference under section § 2569.502.

The BLM may, in its discretion, call the applicant or contact a representative of the applicant's Tribe or Native corporation in order to resolve an issue involving undeliverable mail, but would not guarantee that it would do so in every case. Applicants should ensure that their address of record is kept up to date, and that arrangements are made to receive mail at that address at all times. If an applicant were to be unavoidably unreachable at some point during the application process, the applicant might consider designating a temporary attorney-in-fact.

Processing the Application

§ 2569.501 What will the BLM do with my application after it is received?

This section describes the steps that the BLM proposes to take after an application is deemed received, as set forth in § 2569.411. The full processing of the application would also include a review of whether an application is complete under § 2569.410 and should be deemed received.

As stated in paragraph (a), the BLM would enter the land selection into the BLM's Master Title Plats (MTPs). MTPs are large scale graphic representations of Federal ownership, agency jurisdictions, and rights reserved to the Federal Government. MTPs for Alaska are located online within the Resources section of the BLM's website at: *https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/land-transfer.*

The purpose of this step is primarily informational, to help later applicants avoid selecting lands that are subject to an earlier-received, higher-preference application. Applicants are advised that because some time may pass between the date when an application is received and the date when the MTP is updated, the fact that certain lands are not shown as selected on the MTP would not guarantee that the lands are not subject to an earlier-received application, and that selecting those lands would not result in a conflict. Additionally, inclusion in the MTP would indicate to the general public that the lands had been segregated from the public land laws for purposes other than allotment selection under the Dingell Act, such as mining claims.

In paragraph (b) of this section, the BLM would review the selection for conflicts with other applications, and for inclusion of any lands that are not available Federal lands. If the selection were in conflict, or contained unavailable lands, the BLM would proceed as described in §§ 2569.502 and 2569.503, respectively.

During this step, the BLM would also review its records to identify any valid existing rights within the selection. Any such rights that were identified by the BLM would be noted in the Notice of Survey, as described in paragraph (d). Applicants should be aware that there may be valid existing rights that the BLM does not discover through its review. Even if the BLM does not discover those valid existing rights on a selection, the conveyance of an allotment under the Dingell Act would be made subject to those rights.

Next, in paragraph (c) of this section, the BLM would make minor adjustments to the selection, if needed, in order to match existing property boundaries, roads, or meanderable waterbodies, or to reduce the number of corners or curved boundary segments. For example, if a selection appeared to stop just short of a waterbody or existing property boundary, the BLM might adjust the selection to avoid leaving a narrow strip outside the selection. Similarly, if the selection contained excessive corners or curved segments that did not correspond to existing property boundaries or significant natural features, such as waterbodies, the BLM might adjust the selection to simplify its boundaries. The BLM intends to use this authority sparingly; however, such authority is required in order to ensure that the remaining public lands outside the selection could be managed efficiently. Moreover, many

of these issues that would be removed through this step are likely to be inadvertent, in which case applying this authority would result in better property boundaries in the interest of the applicant.

Next, under paragraphs (d) and (e) of this section, the BLM would send the applicant a Notice of Survey, informing the applicant of the lands that the BLM planned to survey, and provide the applicant an opportunity to challenge the Draft Plan of Survey. This step would allow the applicant to notify the BLM of any objections to the BLM's exercise of its adjustment authority under paragraph (c), or of any errors in the survey plan. Paragraphs (f) and (g) of this section specify that the BLM would finalize the Plan of Survey and conduct the survey based on that plan.

Under paragraph (h), the BLM would inform the applicant of the survey results by sending him or her a document that shows the land surveyed and provide the applicant an opportunity to dispute any errors within 60 days.

Paragraph (i) of this section specifies that the BLM would then issue a Certificate of Allotment, as described in § 2569.506. This paragraph makes clear that the applicant would not receive title or any right to the land until the certificate is issued. This recognizes that situations may arise that show the BLM missed something in the adjudication process which would preclude issuing a certificate, even if it had finished all of the other enumerated steps above, and the applicant should not receive any right to the land. The BLM cannot convey land if at any point during the process it learns the conveyance would not meet the terms of the statute. Therefore, the applicant would not hold title to the land or have any rights to use it until he or she receives a Certificate of Allotment.

Finally, under paragraph (j) of this section, the BLM would remove the land selection from the MTP if an application is rejected. This would make the public aware that the land would be subject to the public land laws again.

§ 2569.502 What if more than one Eligible Individual applies for the same lands?

It is likely that two or more Eligible Individuals would select the same lands, in whole or part, and that the BLM would be required to decide which application would be accepted. The Dingell Act provides that if two or more Eligible Individuals submit an application for the same parcel of available Federal land, the BLM shall ''give preference to the selection application received on the earliest date; and . . . provide to each Eligible Individual the selection application of whom is rejected . . . an opportunity to select a substitute parcel of available Federal land.''

In keeping with the statute, the BLM is proposing that first preference would be given to the complete application bearing the earliest receipt date. If two or more complete applications bear an identical receipt date, and one or more application bears a legible postmark or shipping date, then it is proposed that preference would be given to the application with the earliest postmark or shipping date. If applications for the same land still were tied after reviewing the receipt date and postmark or shipping date, the BLM is proposing that a number in sequence would be issued to those applications that are still tied. The BLM would then run a random number generator to pick the application that would receive preference. The BLM would then issue a decision to all applicants with conflicting selections with the outcome of the BLM's determination of preference rights. An appeal of this decision could impact all conflicting applications. The proposed regulations specifically address an appeal of this decision at § 2569.801(b).

Applicants whose selections were in conflict with another application and who did not receive preference according to the methods described above would have to make a choice. Within 60 days of receipt of the BLM's notice, the applicant could provide the BLM a substitute selection that consists of either an adjustment to the original selection that avoids the conflict, or a new selection in another location. Such a substitute selection would be considered a new application, which would be assigned a new receipt date. Under this option the applicant would need to submit the new land description and a new map but would not need to resubmit any other portions of their application.

Alternately, if only part of the selection were in conflict, the applicant could ask the BLM to keep processing the portion of the selection that is not in conflict. Under this option, the applicant would retain its original receipt date. However, the legislation only allows for one parcel of land to be selected and the applicant could not apply for more acreage later.

The applicant would have 60 days to make a choice after receiving the BLM's decision. If the applicant did not respond within that time, the BLM would issue a decision rejecting the application. The applicant could, however, then file a new application before the end of the application period.

§ 2569.503 What if my application includes lands that are not available Federal lands?

This section addresses what would happen if an applicant's selection included lands that were not available Federal lands. While the BLM is maintaining a mapping tool to help applicants identify available Federal lands, it recognizes that situations may arise where the applicant still applies for lands that were not available because the land status changed or the BLM later found the lands are not vacant. This situation could also arise where an applicant's selection is within State or Native corporation selected land and that entity refuses to relinquish its selection or the applicant applies for over 160 rods (one half-mile) worth of shoreline and the BLM could not issue a waiver under 43 CFR 2094.2 (see § 2569.407).

If an applicant's selection included lands that are not available Federal lands, the BLM is proposing that it would issue the applicant a decision informing the applicant that the lands selected are not available. The applicant would then have the same choices he or she would have under § 2569.503(b). The applicant could make a substitute selection that consists of an adjustment to his or her original selection that excludes the lands that are not available, or of a new selection in a different area. In either case, the new selection would be considered a new application, with a new receipt date. The applicant would only need to submit a new land description and a new map, however, and would not need to resubmit any other portions of his or her application.

In the alternative, if only part of the applicant's selection is unavailable, the applicant could ask the BLM to continue processing the part of the selection that was within available Federal lands. The applicant would retain the original receipt date but would not be allowed to apply for more acreage later, since the Dingell Act only allows for one allotment for each Eligible Individual.

The applicant would have 60 days after receiving the BLM's decision to make a choice between these options. After 60 days, if the BLM did not receive a response, the application would be rejected. If the application were rejected, the applicant could file a new application for different lands before the end of the application period

or appeal the decision, pursuant to § 2569.801.

§ 2569.504 Once I file, can I change my land selection?

Once an application has been received in accordance with § 2569.411, the applicant could only change his or her land selection if it was in conflict with another selection or if the selected land were not available Federal land. Allowing an applicant to change his or her land selection under other circumstances would require the BLM to expend a lot of resources when processing a selection, and may raise fairness issues, because the initial selection would segregate the land from future applicants selecting that land.

§ 2569.505 Does the selection need to be surveyed before I can receive title to it?

Yes. In order to accurately convey selected land, all land would have to be surveyed before the BLM could convey it to an Eligible Individual. The survey process is described in § 2569.501(g). The applicant would not have to pay for the survey.

§ 2569.506 How would the BLM convey the land?

The Act requires the BLM to issue a Certificate of Allotment to convey the land. Once the survey process is completed, a Certificate of Allotment would be issued to the applicant, or to the heirs of the estate of a deceased applicant. All Certificates of Allotment would be made subject to any valid existing rights and would reserve all minerals to the United States. The Certificate of Allotment is a specific type of conveyance instrument that includes a recitation similar to that found in Certificates of Allotment issued under the Alaska Native Allotment Act, which states: ''The land above-described shall be deemed the homestead of the allottee and his or her heirs in perpetuity and shall be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his or her delegate, pursuant to the provision of the Act of May 17, 1906, as amended, approves a deed of conveyance vesting in the purchaser a complete title to the land.''

§ 2569.507 What should I do if the Eligible Individual dies or becomes incapacitated during the application process?

This section deals with situations in which an Eligible Individual begins the application process but dies or becomes incapacitated before completing the process. In most cases, in order to complete the application process, a personal representative (in the case of a deceased applicant) or a guardian, conservator, or attorney-in-fact (in the case of an incapacitated applicant) would be required to be appointed to continue the application process.

Under paragraphs (a) and (b), the general provisions for an individual who dies or becomes incapacitated during the application process would be the same as the provisions for an individual who dies or becomes incapacitated before the application begins (see § 2569.303). Specifically, a personal representative, guardian, conservator, or attorney-in-fact would be required to provide the materials described in § 2569.404(b). Note that an applicant may choose to appoint an attorney-in-fact for reasons other than incapacitation. In such a case, the applicant should follow the instructions in paragraph (b).

Paragraph (c) deals with the situation in which a deceased or incapacitated applicant has been sent a notice or decision from the BLM that requires prompt action, but no personal representative, guardian, or conservator has been appointed, or no attorney-in-fact has been designated. The BLM would allow any individual who receives the notice, or an employee of the BIA or a Realty Service Provider, to make a request for the application to be held in abeyance while a personal representative, guardian, conservator, or an attorney-in-fact is appointed. Under these circumstances, after receiving such a request, the BLM proposes to extend the time for responding to the BLM notice or decision for up to two years in order to allow for such a person to be appointed.

Paragraph (d) of this section deals with two situations in which an applicant would be allowed, but not required, to respond to a notice from the BLM. If the applicant (or his or her estate) wished to accept the BLM's determination, then no further action would be required, and no personal representative, guardian, conservator, or attorney-in-fact would need to be designated or appointed. Conversely, if the applicant (or his or her estate) wished to respond and dispute or take other action on the determination, then a personal representative, guardian, conservator, or attorney-in-fact would have to be designated or appointed, as described above. If the applicant were to die and the estate did not appoint a personal representative, as permitted under this paragraph, then the Certificate of Allotment would issue in the name of the applicant, rather than his or her estate. Paragraph (e) of this section clarifies that outside of the circumstances described in paragraphs (b), (c), and (d), the BLM would not accept any correspondence on behalf of an applicant from any person other than the applicant or a duly appointed personal representative, guardian, conservator, or attorney-in-fact.

Available Federal Lands—General

§ 2569.601 What lands are available for selection?

The Dingell Act defines the lands that are available to be conveyed, and the BLM has no role in determining the lands available for selection through these regulations. The BLM is only identifying the lands that meet the definition of the Dingell Act. The lands must be federally owned lands in Alaska that are vacant, unappropriated, and unreserved, and certified as free of known contaminants. Unless Congress makes new lands available in the future, these lands are only those managed by the BLM. The Dingell Act also makes lands available that are selected, but not conveyed to, the State of Alaska or an Alaska Native Corporation, but only if the State or Native corporation chooses to relinquish its selection. Lands which the BLM cannot certify as free of known contaminants under § 2569.602 would also not be available.

The Dingell Act also states the lands cannot be in the right-of-way of the Trans Alaska Pipeline; the inner or outer corridor of such a right-of-way; withdrawn or acquired for purposes of the Armed Forces; under review for a pending right-of-way for a natural gas corridor; within the Arctic National Wildlife Refuge; within a unit of the National Forest System; designated as wilderness by Congress; within a unit of the National Park System, a National Preserve, or a National Monument; within a component of the National Trails System; within a component of the National Wild and Scenic Rivers System; or within the National Petroleum Reserve in Alaska.

The BLM maintains an online map identifying the available Federal lands that is accessible at *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019* or directly at *https://arcg.is/1HTrrO.* For those without access to the internet, a physical copy of the map of available Federal lands could be requested by either calling the BLM Alaska Public Room, the BIA Regional Realty Office or Fairbanks Agency Office, or your local BIA Service Provider, or by requesting a physical copy in person at any of the offices listed above under § 2569.412.

§ 2569.602 How will the BLM certify that the land is free of known contaminants?

The BLM would review the databases listed in the regulation for contamination reports. If there were information indicating that the land is potentially contaminated in any of the databases, the land would not be available for selection. The BLM would not be able to provide warranty that the land is free from contamination beyond what is discernible from these databases.

Commenters are encouraged to suggest any other sources the BLM should review before it certifies the lands as free from contamination.

§ 2569.604 Are lands that are valuable for minerals available?

The BLM can convey an allotment that is valuable for minerals, but the ownership of the minerals would remain with the Federal Government.

§ 2569.605 What happens if new lands become available?

If new lands were to become available due to action by Congress or otherwise, such as the BLM rejecting over-selections, or the State or Native corporations relinquishing over-selections, the BLM would first review those lands for any known contamination as described in § 2569.602. The BLM would then update the map tool at *https://arcg.is/1HTrrO* and its records to show those additional lands that would become available for selection. If an Eligible Individual did not have a pending selection, the individual could apply for these newly available Federal lands.

National Wildlife Refuge System

§ 2569.701 If Congress makes lands available within a National Wildlife Refuge, what additional rules apply?

Currently, no lands are available within National Wildlife Refuges. The Dingell Act, however, requires the U.S. Fish and Wildlife Service to conduct a study to determine whether any additional Federal lands within units of the National Wildlife Refuge System in the State should be made available for allotment selection. If a subsequent act of Congress were to make lands available within a Refuge, the Dingell Act requires that lands conveyed within a National Wildlife Refuge include patent provisions that the land remain subject to the laws and regulations governing the use and development of the Refuge.

If any such lands were made available by Congress, the BLM would update the list of available Federal lands as described in § 2569.605.

Appeals

§ 2569.801 What can I do if I disagree with any of the decisions that are made about my allotment application?

If any party is adversely affected by a decision issued by the BLM under these regulations, that party may appeal the decision to the Interior Board of Land Appeals by filing a notice of appeal in the manner set forth in 43 CFR part 4. The appellant would have the burden of showing that the decision appealed was in error. Failure to file a notice of appeal with the BLM within the time allowed would result in dismissal of the appeal. In order to avoid dismissal of the appeal, strict compliance with the regulations at 43 CFR part 4 and DOI Form 1842–1, ''INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS'' would be required.

Paragraph (b) of this section addresses appeals of decisions made pursuant to § 2569.502(b), when more than one applicant applies for the same land. The BLM addresses this topic separately in the regulations because the applicant that receives preference for the lands could be harmed by the delay caused while a decision is being appealed by another applicant. Therefore, unless the BLM's decision were stayed on appeal pursuant to 43 CFR 4.21, the BLM would continue to process the application that received preference, and any substitute selection made by the applicant who did not receive preference. This approach is consistent with 43 CFR 4.21(a)(2), which states, ''A decision will become effective on the day after the expiration of the time during which a person adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal.'' A Petition for Stay, which must occur early in the process, requires the appellant to demonstrate he or she has a reasonable likelihood to win on the merits. If the appellant could not show a likelihood to win on the merits, the Board would not stay the decision and the BLM would continue to process the application of the applicant with preference, and potentially convey the land despite the ongoing appeal. This provision also makes it clear that the losing party would still have the right to select a substitute parcel following the appeal.

Paragraph (c) of this section similarly informs a potential appellant that the lands included in his or her selection would become available for all future entries, such as another allotment application or a mining claim, if the decision rejecting his or her application were not stayed. A Petition for Stay, which must occur early in the process, would require the appellant to demonstrate that he or she has a reasonable likelihood to win on the merits. If the appellant could not show a likelihood to win on the merits, the BLM would not continue to segregate the land from future entries. This paragraph also informs the applicant that he or she would lose the preference right if he or she is not granted a stay, even if he or she wins his appeal. This would ensure that a later applicant who believed the land was open for entry due to the BLM lifting the segregation did not lose his or her selection when the appeal was decided. It would be inequitable for a good faith applicant to lose his or her rights to the land where the appellant could protect his rights by filing a Petition for Stay.

IV. Procedural Matters

Regulatory Planning and Review Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. These draft regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rule-making process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

These draft regulations would not have an effect of $100 million or more on the economy and will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The effect of these draft regulations

would be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period is limited by law to 5 years. The regulations create simple adjudication tasks for BLM staff to implement the Dingell Act.

For more detailed information, see the Regulatory Impact Analysis (RIA) prepared for this proposed rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN1004–AE66,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This rule is not a significant regulatory action under E.O. 12866, and therefore is not considered an E.O. 13771 regulatory action.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*), to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed rule would apply only to certain Alaska Native veterans eligible to apply for allotments and applies only to Alaska Native veterans as individuals. Therefore, the Department of the Interior certifies that this document would not have any significant impacts on small entities under the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The BLM is proposing regulations to implement Section 1119 of the Dingell Act, which provides an additional opportunity for Alaska Native veterans who have not applied for or received allotments under prior laws to apply for allotments. This rule will have no significant economic impact. This rule will specify the procedures under which applications for allotments under Section 1119 of the Dingell Act are submitted and processed. Processing of these applications by the BLM will result in the transfer of lands selected by veterans from the Federal Government to the veterans, as required by Congress. Submitting and processing these applications will result in minor costs to the applicants and to the government.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This proposed rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630. Section 2(a) of E.O. 12630 identifies policies that do not have takings implications, such as those that abolish regulations, discontinue governmental programs, or modify regulations in a manner that lessens interference with the use of private property.

Under the proposed rules, lands selected by an applicant must be federally owned lands in the State of Alaska that are vacant, unappropriated, and unreserved. An applicant may select, in whole or in part, land that has been selected by the State or a Native corporation, but has not yet been conveyed to that entity; however, the State or Native corporation must choose to make that land available by relinquishing their selection.

The proposed rule would not affect private property rights. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

A federalism assessment is not required because the rule 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.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. This proposed rule complies with the requirements of Executive Order 13175 and Department of the Interior Secretarial Order 3317. Specifically, while preparing this proposed rule, the BLM initiated consultation with potentially affected tribes. Examples of consultation to date include written correspondence, and meetings and discussions about objectives of this rulemaking effort with representatives of tribal governments.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements identified below associated with the Alaska Native Vietnam Veteran Land Allotment Program require approval by OMB:

(1) *Provide Proof of Eligibility (43 CFR 2569.302)*—Section 2569.302 would allow individuals who believe that they are eligible to participate in the program, but who have not been automatically notified by the BLM that they are eligible, to apply for an allotment. Such individuals would be

required to provide with their application supporting documents to prove they are eligible, such as a Certificate of Degree of Indian Blood, and a Certificate of Release or Discharge from Active Duty (Form DD–214).

(2) *Appointment of Personal Representative/Guardian/Attorney-in-fact (43 CFR 2569.303 and 2569.404)*—Section 2569.303 would allow another person to apply for an allotment on behalf of an Eligible Individual. A personal representative of the estate of an Eligible Individual could apply for an allotment for the benefit of the estate. The personal representative must be appointed in an appropriate Alaska State court by either a judge in the formal probate process or the registrar in the informal probate process. A court-appointed guardian or conservator or an attorney-in-fact of an Eligible Individual could apply for an allotment for the benefit of the Eligible individual. Similarly, under § 2569.507 if an applicant dies or becomes incapacitated before completing the application process, a personal representative, guardian, conservator, or attorney-in-fact could be appointed to continue to represent the applicant or the applicant's estate.

Section 2569.404 identifies the information and documents that applicants would be required to include on their initial application form under various applicant scenarios. This form would collect basic contact information, along with the Eligible Individual's date of birth, and:

- A map showing the location of the requested allotment, along with a written description of the land requested. The BLM will provide an internet-based mapping tool with the identified available Federal lands;
- Appropriate documentation proving that the Eligible Individual is an Alaska Native;
- Appropriate documentation proving that the Eligible Individual is a Veteran who served during the Vietnam Conflict (between August 5, 1964, and December 31, 1971).
- If applicable, documentation from an Alaska State Court that shows that a personal representative, guardian/conservator, or attorney-in-fact is authorized to file the application or pursue an already-filed application on behalf of the Eligible Individual or his/her estate.

If additional time is needed for the applicant or the applicant's heirs to arrange for a personal representative, guardian, conservator, or attorney-in-fact to be appointed, the BLM would allow the applicant, an employee of the BIA, or a Realty Service Provider to request that the application be held in abeyance for 2 years.

Note: With regard to the application process, section 2569.407 specifies that if an applicant's selection contains more than 160 rods (one-half mile) of water frontage, the BLM will automatically request the Secretary to waive the 160-rod limitation contained in Section 1 of the Act of May 14, 1898 (48 U.S.C. 371).

(3) *Request for 2-year Extension of Application Deadline (43 CFR 2569.401 and 2569.507)*—Section 2569.401 would set a 5-year deadline for Eligible Individuals, their heirs, or representatives to submit initial applications. In the case of those who submit applications that are incorrect, incomplete, or conflict with other selections, Eligible Individuals would have 60 days after the BLM notifies them of these defects to submit corrected, completed, or substitute applications. This period may be extended for up to 2 years in order to allow a personal representative, guardian, conservator, or attorney-in-fact to be appointed. (see §§ 2569.410, 2569.502, and 2569.503) (This two-year extension language appears in both 2569.401(b) and 2569.507(c) reg text. The preamble in the proposed rule discusses the two-year extension under the 2569.401 discussion and includes the .507(c) citation.)

(4) *Allotment Application—Form BLM No. AK–2469 (43 CFR 2569.402 and 2569.404)*—Section 2569.402 would require applicants to fill out and sign an application form (BLM No. AK–2569). The requirements associated with 2569.404 are specified above.

Section 2569.403 would require the BLM to directly mail a copy of the application form to those persons who have been preliminarily identified as Eligible Individuals through the process described in § 2569.301. The applications would be mailed to the most recent addresses on file with the VA, BIA, and the BLM. This section also identifies locations where copies of the application form would be available for applicants who do not receive an application in the mail.

(5) *Multiple App Applications That Include Selected State and Native Corporation Lands (43 CFR 2569.405)*—If an applicant requests land previously selected by, but not yet conveyed by the Federal Government to the State or a Native corporation, the applicant, or the BLM acting on behalf of the applicant, could request that the State or Native Corporation relinquish the land to the applicant. This relinquishment would be conditioned upon the applicant successfully completing the application process. In conjunction with this rulemaking, the BLM anticipates that the State and Native corporations would also issue blanket conditional relinquishments of certain selected unconveyed lands. These blanket relinquishments also would take effect only if valid applications for these lands are successfully completed.

Upon receipt of an application requesting State or Native Corporation selected, unconveyed lands, if the application does not include a relinquishment request from either the State or Naive Corporation, the BLM would automatically request such relinquishment on behalf of the applicant. The BLM must receive a valid relinquishment from the State or Native Corporation, agreeing to relinquish the land to the applicant before approving the application. Following existing Alaska Conveyance Program policy, the relinquishment would be in the form of a letter from the State or Native Corporation, and must include the legal description of the parcel the entity is willing to relinquish. The letter must also describe the conditions, if any, for the relinquishment. If the relinquishment is by a Native corporation, the letter must be accompanied by a board resolution authorizing the relinquishment and granting the person signing the letter authority to do so.

If an application requests land covered by a blanket State or Native corporation relinquishment, a relinquishment letter and a Native corporation board resolution would not be required.

(6) *Correcting Technical Errors on Applications (43 CFR 2569.410)*—If the BLM finds a technical error in an application, such as an incomplete or unsigned application, it would notify the applicant. The applicant would then have 60 days after receiving notification to correct the error.

(7) *Correcting Errors in Survey-related Documents (43 CFR 2569.501)*—After receiving an application, reviewing the legal description of the land requested, and making minor boundary adjustments, if needed, the BLM would send the applicant a Notice of Survey, informing the applicant of the shape and location of the lands the BLM planned to survey. The applicant would have an opportunity to challenge, in writing, the draft Plan of Survey within 60 days of receipt of the BLM's notice.

(8) *Substitute Selections—Multiple Applications on Same Lands (43 CFR 2569.502)*—If two or more Eligible Individuals select the same lands, in whole or in part, the BLM would decide which application would be given preference based on either submission

dates and times, or a lottery. The non-preferred applicants could, within 60 days of receipt of the BLM's decision, either provide the BLM a new substitute selection or request that the BLM continue to adjudicate the non-conflicting portion of the selection.

If a non-preferred applicant does not respond to the BLM's decision within 60 days, the BLM would reject the application and the Eligible Individual could file a new application for different lands before the end of the five-year program. Upon completion of the survey, the BLM would mail the applicant a document titled Conformance to Plat of Survey. If the applicant found an error in the way the BLM surveyed the land, based on the Plan of Survey, the applicant could dispute the survey in writing within 60 days of receipt of the Conformance of Plat of Survey.

(9) *Substitute Selections and Requests for Partial Adjudication (2569.502 and 43 CFR 2569.503)*—If an Eligible Individual's selection includes lands that are not available Federal lands, the BLM would issue a decision informing the applicant that the land is unavailable. The applicant could, within 60 days of receipt of the BLM's decision either provide the BLM a new substitute selection or request that the BLM continue to adjudicate the portion of the selection that is within available Federal lands.

If the applicant fails to respond within 60 days of receipt of the BLM's decision, the BLM will reject the initial application and the Eligible Individual could file a new application for different lands before the end of the five-year application period.

(10) *Appeals of BLM Decisions (43 CFR 2569.502, 2569.503, and 2569.801)*—Applicants would be allowed to appeal any of the BLM's decisions regarding their applications to the Interior Board of Land Appeals as provided for under 43 CFR part 4. If the applicant is a non-preferred applicant under proposed 43 CFR 2569.502, the losing applicant could select a substitute parcel under proposed § 2569.502(b).

Title of Collection: Alaska Native Vietnam Era Veterans Land Allotment.

OMB Control Number: 1004–New.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals and State/Local/Tribal governments.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Estimated Annual Nonhour Burden Cost: $55,000 (associated with court fees and miscellaneous expenses).

Requirement	Estimated annual number of responses	Estimated annual hours per response	Estimated total annual burden hours *
Provide Proof of Eligibility (43 CFR 2569.302)			
Individuals/Households	50	2	100
Appointment of Personal Representative/Guardian/Attorney-in-fact (43 CFR 2569.303 and .404)			
Individuals/Households	200	2.5	500
Request for 2-year Extension of Application Deadline (43 CFR 2569.401 and 2569.507)			
Individuals/Households	20	.5	10
Allotment Application (43 CFR 2569.402 and 2569.404			
Individuals/Households	500	4.5	2,250
State/Native Corporation Relinquishments (43 CFR 2569.405)			
State/Local/Tribal Governments	75	2	150
Correcting Technical Errors on Applications (43 CFR 2569.410)			
Individuals/Households	175	2	350
Correcting Errors in Survey-related Documents (43 CFR 2569.501)			
Individuals/Households	20	2	40
Substitute Selections—Multiple Applications on Same Lands (43 CFR 2569.502)			
Individuals/Households	150	2	300
Substitute Selections and Requests for Partial Adjudication (2569.502 and 43 CFR 2569.503)			
Individuals/Households	15	.5	8
Appeals of BLM Decisions (43 CFR 2569.502, 2569.503, 2569.801)			
Individuals/Households	60	2	120
Totals	*1,265*	.....	*3,828*

* Rounded.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to 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 response.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please indicate ''Attention: OMB Control Number 1004–AE66'' regardless of the method used to submit comments on the information collection burdens. If you submit comments on the information-collection burdens, you should provide the BLM with a copy, at one of the addresses shown earlier in this section, so that we can summarize all written comments and address them in the final rulemaking. Comments not pertaining to

the proposed rule's information-collection burdens should not be submitted to OMB. The BLM is not obligated to consider or include in the Administrative Record for the final rule any comments that are improperly directed to OMB. You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.*

National Environmental Policy Act

The BLM does not believe this proposed rule would constitute a major Federal action significantly affecting the quality of the human environment, and has prepared preliminary documentation to this effect, explaining that a detailed statement under the National Environmental Policy Act (NEPA) would not be required because the proposed rule is categorically excluded from NEPA review. This proposed rule would be excluded from the requirement to prepare a detailed statement because, as proposed, it would be a regulation entirely procedural in nature. (For further information see 43 CFR 46.210(i)). We have also determined, as a preliminary matter, that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Documentation of the proposed reliance upon a categorical exclusion has been prepared and is available for public review with the other supporting documents for this proposed rule.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Author

The principal authors of this proposed rule are: Paul Krabacher and Candy Grimes, Division of Lands and Cadastral Survey; assisted by the Office of the Solicitor.

Casey Hammond,

Principal Deputy Assistant Secretary, Exercising the Authority of the Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian-lands, Public lands-sale, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the BLM proposes to amend 43 CFR part 2560 as follows:

■ 1. The authority citation for part 2560 is revised to read as follows:

Authority: 43 U.S.C. 1201, 1740.

■ 2. Add subpart 2569 to read as follows:

Subpart 2569—Alaska Native Vietnam-Era Veterans Land Allotments

Sec.

Authority: 43 U.S.C. 1629g–1(b)(2).

Subpart 2569—Alaska Native Vietnam-Era Veterans Land Allotments

General Provisions

§ 2569.100 What is the purpose of this subpart?

The purpose of this subpart is to implement Section 1119 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019, Public Law 116–9, codified at 43 U.S.C. 1629g–1, which allows Eligible Individuals to receive an allotment of a single parcel of available Federal lands in Alaska containing not less than 2.5 acres and not more than 160 acres

§ 2569.101 What is the legal authority for this subpart?

43 U.S.C. 1629g–1(b)(2).

§ 2569.201 What terms do I need to know to understand this subpart?

Allotment is an allocation to an Alaska Native of land which shall be deemed the homestead of the allottee and his or her heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress;

Available Federal lands means land in Alaska that meets the requirements of 43 U.S.C. 1629g–1(a)(1) and that the BLM has certified to be free of known contamination;

Eligible Individual means a Native Veteran who meets the qualifications listed in 43 U.S.C. 1629g–1(a)(2), and does not have a pending application and has not already received an allotment pursuant to the Act of May 17, 1906 (34 Stat. 197, chapter 2469) (as in effect on December 17, 1971); or section 14(h)(5) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(5)); or section 41 of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g);

Native means a person who meets the qualifications listed in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b));

Native corporation means a regional corporation or village corporation as defined in sections 3(g) and (j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602);

Realty Service Provider means a Public Law 93–638 ''Contract'' or Public Law 103–413 ''Compact'' Tribe or Tribal organization that provides Trust Real Estate Services for the Bureau of Indian Affairs;

Receipt date means the date on which an application for an allotment is physically received by the BLM Alaska State Office, whether the application is delivered by hand, by mail, or by delivery service;

Segregate has the same meaning as in 43 CFR 2091.0–5(b);

Selection means an area of land that has been identified in an application for an allotment under this part;

State means the State of Alaska;

State or Native corporation selected land means land that is selected, as of the receipt date of the allotment application, by the State of Alaska under the Statehood Act of July 7, 1958, Public Law 85–508, 72 Stat. 339, as amended, or the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980, 94 Stat. 2371, or by a Native corporation under the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1611 and 1613, and that has not been conveyed to the State or Native corporation;

Valid relinquishment means a signed document from a person authorized by a board resolution from a Native corporation or the State that terminates its rights, title and interest in a specific area of Native corporation or State selected land. A relinquishment may be conditioned upon conformance of a selection to the Plat of Survey and the identity of the individual applicant; and

Veteran means a person who meets the qualifications listed in 38 U.S.C. 101(2) and served in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, including the reserve components thereof, during the period between August 5, 1964, and December 31, 1971.

Who Is Qualified for an Allotment

§ 2569.301 How will the BLM let me know if I am an Eligible Individual?

The Bureau of Land Management (BLM), in consultation with the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Bureau of Indian Affairs (BIA), has identified individuals whom it believes to be Eligible Individuals. If the BLM identifies you as a presumed Eligible Individual, it will inform you by letter at your last address of record with the BIA or the VA. Even if you are identified as presumptively eligible, you still must certify in the application that you do meet the criteria of the Dingell Act.

§ 2569.302 What if I believe I am an Eligible Individual, but I was not notified by the BLM?

If the BLM has not notified you that it believes that you are an Eligible Individual, you may still apply for an allotment under this subpart. However, as described in § 2569.404(b), you will need to provide evidence with your application that you are an Eligible Individual. Supporting evidence with your application must include:

(a) A Certificate of Degree of Indian Blood or other documentation from the BIA to verify you meet the definition of Native; and

(b) A Certificate of Release or Discharge from Active Duty (Form DD–214) or other documentation from DoD to verify your military service.

§ 2569.303 Who may apply for an allotment under this subpart on behalf of another person?

(a) A personal representative of the estate of an Eligible Individual may apply for an allotment for the benefit of the estate. The personal representative must be appointed in an appropriate Alaska State court by either a judge in the formal probate process or the registrar in the informal probate process. The Certificate of Allotment will be issued in the name of the heirs, devisees, and/or assigns of the deceased Eligible Individual.

(b) A court-appointed guardian or conservator or an attorney-in-fact of an Eligible Individual may apply for an allotment for the benefit of the Eligible individual. The Certificate of Allotment will be issued in the name of the Eligible Individual.

Applying for an Allotment

§ 2569.401 When can I apply for an allotment under this subpart?

(a) You can apply between [EFFECTIVE DATE OF THE FINAL RULE] and [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(b) Notwithstanding paragraph (a) of this section, in the case of a corrected or completed application or of an application for a substitute selection for resolution of a conflict or an unavailable land selection, you can submit a corrected, completed, or substitute application within 60 days of receiving the notice described in § 2569.410, 2569.502(b), or 2569.503(a), respectively. This period may be extended for up to two years in order to allow a personal representative, guardian, conservator, or attorney-in-fact to be appointed, as provided in § 2569.507(c).

(c) Except as set forth in paragraph (b) of this section, the BLM will issue a decision rejecting any application received after [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

§ 2569.402 Do I need to fill out a special application form?

Yes. You must complete and sign BLM Form No. AK–2569–[OMB NUMBER], ''Alaska Native Vietnam-Era Veteran Land Allotment Application.''

§ 2569.403 How do I obtain a copy of the application form?

The BLM will mail you an application form if you are determined to be an Eligible Individual under § 2569.301. If you do not receive an application in the mail, you can also obtain the form at the BIA, a BIA Realty Service Provider's office, the BLM Public Room, or on the internet at *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.*

§ 2569.404 What must I file with my application form?

(a) You must include the following along with your signed application form:

(1) A map showing the selection you are applying for:

(i) Your selection must be drawn on a map in sufficient detail to locate the selection on the ground.

(ii) You must draw your selection on a map that is either a topographic map or a printout of a map that shows the section lines from the BLM mapping tool, available at *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.*

(2) A written description of the lands you are applying for, including:

(i) Section, township, range, and meridian; and

(ii) If desired, additional information about the location. The submitted map will be given preference if there is a conflict between the written description and the submitted map, unless you specify otherwise.

(b) In addition to the materials described in paragraph (a) of this section, you must also provide the following materials, under the circumstances described in this paragraph (b):

(1) If you, or the person on whose behalf you are applying, are an Eligible Individual as described in § 2569.301, and were not notified by the BLM of your eligibility, you must provide proof that you, or the person on whose behalf you are applying, are an Eligible Individual, consisting of:

(i) A Certificate of Degree of Indian Blood or other documentation from the BIA to verify that you (or the person on whose behalf you are applying) are an Alaska Native; and

(ii) A Certificate of Release or Discharge from Active Duty (Form DD–214) or other documentation from DoD to verify that you (or the person on whose behalf you are applying) are a Veteran and served between August 5, 1964 and December 31, 1971.

(2) If you are applying on behalf of the estate of an Eligible Individual who is deceased, you must provide proof that you have been appointed by an Alaska State court as the personal representative of the estate, and an affidavit stating that the appointment has not expired. The appointment may have been made before or after the enactment of the Act, as long as it has not expired.

(3) If you are applying on behalf of an Eligible Individual as that individual's guardian or conservator, you must provide proof that you have been appointed by a court of law, and an affidavit stating that the appointment has not expired.

(4) If you are applying on behalf of an Eligible Individual as that individual's attorney-in-fact, you must provide a legally valid and current power of attorney that either grants a general power-of-attorney or specifically includes the power to apply for this benefit or conduct real estate transactions.

(c) You must sign the application, certifying that all the statements made in the application are true, complete, and correct to the best of your knowledge and belief and are made in good faith.

§ 2569.405 What are the special provisions that apply to selections that include State or Native corporation selected land?

(a) If the selection you are applying for includes State or Native corporation selected land, the BLM must receive a valid relinquishment from the State or Native corporation that covers all of the lands in your selection that are State or Native corporation selected lands. This requirement does not apply if all of the State or Native corporation selected land included within your selection consists of land for which the State or Native corporation has issued a blanket conditional relinquishment as shown on the mapping tool available at *http://www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.*

(b) No such relinquishment may cause a Native corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.

(c) An application for Native corporation or State selected land will segregate the land from any future entries on the land once the BLM receives a valid relinquishment.

(d) If the State or Native corporation is unable or unwilling to provide a valid relinquishment, the BLM will issue a decision finding that your selection includes lands that are not available Federal lands and then follow the procedures set out at § 2569.503.

§ 2569.406 What are the rules about the number of parcels and size of the parcel for my selection?

(a) You may apply for only one parcel.

(b) The parcel cannot be less than 2.5 acres or more than 160 acres.

§ 2569.407 Is there a limit to how much water frontage my selection can include?

Generally, yes. You will normally be limited to a half-mile along the shore of a navigable water body, referred to as 160 rods (one half-mile) in the regulations at 43 CFR subpart 2094. If you apply for land that extends more than 160 rods (one half-mile), the BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, the BLM can waive the half-mile limitation if the BLM determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver will not harm the public interest. If the BLM determines it cannot waive the 160-rod (one half-mile) limitation, the BLM will issue a decision finding your selection includes lands that are not available Federal lands and then follow the procedures set out at § 2569.503.

§ 2569.408 Do I need to pay any fees when I file my application?

No. You do not need to pay a fee to file an application.

§ 2569.409 Where do I file my application?

You must file your application with the BLM Alaska State Office in Anchorage, Alaska, by one of the following methods:

(a) Mail or delivery service: Bureau of Land Management, ATTN: Alaska Native Vietnam-era Veterans Land Allotment Section, 222 West 7th Avenue, Mail Stop 13, Anchorage, Alaska 99513–7504; or

(b) In person: Bureau of Land Management Alaska, Public Information Center, 222 West 7th Avenue, Anchorage, Alaska 99513–7504.

§ 2569.410 What will the BLM do if it finds a technical error in my application?

If the BLM finds a technical error in your application, such as an incomplete or unsigned application form or missing materials that are required by § 2569.402, 2569.404 or 2569.405, then the BLM will send you a notice identifying any correctable errors or omissions. You will have 60 days from the date you received the notice to correct the errors or provide the omitted materials. You will be required to submit the corrections to the BLM within the 60-day period or the BLM will issue a decision rejecting your application and require you to submit a new application. Your corrected or completed application will be deemed received, for purposes of preference, on the date that the last correction is received, as set forth in § 2569.411.

§ 2569.411 When is my application considered received by the BLM?

(a) An application that is free from technical errors, as described in § 2569.410, will be deemed received on the receipt date, except that if such an application is received before (EFFECTIVE DATE OF THE FINAL RULE), the application will be deemed received on (EFFECTIVE DATE OF THE FINAL RULE).

(b) An application that contains technical errors, as described in § 2569.410, will be deemed received on the receipt date of the last required correction.

(c) In the case of a substitute selection for conflict resolution under § 2569.502, or for correction of an unavailable lands

selection under § 2569.503, the substitute application will be deemed received on the receipt date of the substitute selection application.

§ 2569.412 Where can I go for help with filling out an application?

You can receive help with your application at:

(a) The BIA or a BIA Realty Service Provider for your home area or where you plan to apply. To find the list of the BIA Realty Service Providers, go to *https://www.bia.gov/regional-offices/alaska/real-estate-services/tribal-service-providers* or call 907–271–4104 or 1–800–645–8465;

(b) The BLM Alaska Public Room:

The Anchorage Public Room located at 222 West 7th Avenue, Anchorage, Alaska 99513–7504, by email at *AK_AKSO_Public_Room@blm.gov,* by telephone at 907–271–5960, Monday through Friday from 8:00 a.m. to 4:00 p.m. excluding Federal Holidays

The Fairbanks Public Room located at 222 University Ave, Fairbanks, Alaska 99709, by email at *BLM_AK_FDO_generaldelivery@blm.gov* or by telephone at 907–474–2252 or 2200, Monday through Friday from 7:45 a.m. to 4:30 p.m. excluding Federal Holidays;

(c) The following BLM Field Offices:

Anchorage Field Office located at 4700 BLM Road, Anchorage, Alaska, by email at *blm_ak_afo_general_delivery@blm.gov,* by phone 907–267–1246, Monday through Friday from 7:30 a.m. to 4:00 p.m. excluding Federal Holidays

Glennallen Field Office located at Mile Post 186.5 Glenn Highway, by email at *blm_ak_gfo_general_delivery@blm.gov,* by phone 907–822–3217, Monday through Friday 8:00 a.m. to 4:30 p.m. excluding Federal Holidays

Nome Field Station located at the U.S. Post Office Building, by phone 907–443–2177, Monday through Friday excluding Federal holidays;

(d) Your local VA office; and

(e) Online at the BLM website which gives answers to frequently asked questions and a mapping tool which will show the available Federal lands and provide online tools for identifying and printing your selection: *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.*

§ 2569.413 How will I receive notices and decisions?

(a) The BLM will provide all notices and decisions by Certified Mail with Return Receipt to your address of record.

(b) Where these regulations specify that you must take a certain action within a certain number of days of receiving a notice or decision, the BLM will determine the date on which you received the notice or decision as follows:

(i) If you sign the Return Receipt, the date on which you received the notice or decision will be the date on which you signed the Return Receipt.

(ii) If the notice or decision is returned as undelivered, or if you refuse to sign the Return Receipt, the BLM will make a second attempt by an alternative method. If the second attempt succeeds in delivering the notice or decision, the BLM will deem the notice or decision to have been received on the date when the notice or decision was delivered according to the mail tracking system.

(iii) If the notice or decision is returned as undelivered following the second attempt, the BLM may issue a decision rejecting your application.

(c) You have a duty to keep your address up to date. If your mailing address or other contact information changes during the application process, please notify the BLM by mail at the address provided in § 2569.409(a), or by telephone at 907–271–5960. If you notify the BLM by mail, please prominently include the words ''Change of Contact Information'' in your letter.

Processing the Application

§ 2569.501 What will the BLM do with my application after it is received?

After your application is deemed received in accordance with § 2569.411, the BLM will take the following steps:

(a) The BLM will enter your selection onto the Master Title Plat (MTP) to make the public aware that the land has been segregated from the public land laws.

(b) The BLM will then determine whether the selection includes only available Federal lands or if the selection conflicts with any other applicant's selection. The BLM will also review its records and aerial imagery to identify, to the extent it can, any valid existing rights that exist within the selection.

(c) The BLM may make minor adjustments to the shape and description of your selection to match existing property boundaries, roads, or meanderable waterbodies, or to reduce the number of corners or curved boundary segments.

(d) After any adjustments have been made, the BLM will send you a Notice of Survey to inform you of the shape and location of the lands the BLM plans to survey. The Notice of Survey will include:

(1) Your original land description;

(2) The adjusted land description plotted onto a Topographic Map and a MTP;

(3) Imagery of your original land description with the adjusted land description projected onto it;

(4) A Draft Plan of Survey; and

(5) A list of valid existing rights that the BLM has identified within the selection.

(e) The Notice of Survey will provide you an opportunity to challenge, in writing, the Draft Plan of Survey of the adjusted land description within 60 days of receipt of the BLM's notice. If no challenge is received within 60 days, the BLM will deem the Draft Plan of Survey to have been accepted.

(f) The BLM will finalize the Plan of Survey based on the Draft Plan of Survey in the Notice of Survey or the adjustment you provide pursuant to paragraph (e) of this section.

(g) The BLM will survey the selection based on the Plan of Survey.

(h) After survey, the BLM will mail you a document titled Conformance to Plat of Survey. That document will:

(1) Show the selection as actually surveyed;

(2) Plot the survey onto imagery; and

(3) If you found an error in the way the BLM surveyed the selection based on the Plan of Survey, provide an opportunity to dispute the survey in writing within 60 days of receipt of the Conformance of Plat of Survey. If no notice of dispute is received within 60 days, the BLM will deem the survey to have been accepted.

(i) The BLM will issue a Certificate of Allotment. No right or title of any sort will vest in the selection until the Certificate of Allotment is issued.

(j) If an application is rejected for any reason, the BLM will remove the corresponding selection from the MTP to make the public aware that the land is no longer segregated from the public land laws.

§ 2569.502 What if more than one Eligible Individual applies for the same lands?

(a) If two or more Eligible Individuals select the same lands, in whole or part, the BLM will:

(1) Give preference to the application bearing the earliest receipt date;

(2) If two or more applications bear an identical receipt date, and one or more application bears a legible postmark or shipping date, give preference to the application with the earliest postmark or shipping date; or

(3) Assign to any applications for the same land that are still tied after the criteria in paragraphs (a)(1) and (2) of this section are applied a number in sequence, and run a random number

generator to pick the application that will receive preference.

(4) For purposes of paragraphs (a)(1) and (2) of this section, an application received, postmarked, or shipped before (EFFECTIVE DATE OF THE FINAL RULE) will be deemed to have been received, postmarked, or shipped on (EFFECTIVE DATE OF THE FINAL RULE).

(b) The BLM will issue a decision to all applicants with conflicting selections setting out the BLM's determination of preference rights. Applicants who do not have preference must make one of the following choices:

(1) Provide the BLM a substitute selection within 60 days of receipt of the BLM's decision. The substitute selection may consist of either an adjustment to the original selection that avoids the conflict, or a new selection located somewhere else. The substitute selection will be considered a new application for purposes of preference, as set forth in § 2569.411(c), but the applicant will not need to resubmit any portions of the application other than the land description and map; or,

(2) If only a portion of the selection is in conflict, the applicant may request that the BLM continue to adjudicate the portion of the selection that is not in conflict. The BLM must receive the request within 60 days of your receipt of the BLM's decision. Each applicant is are allowed only one selection of land under this act, and will not be allowed to apply for more acreage later.

(c) If you receive a decision finding your application does not have preference under paragraph (b) of this section and the BLM does not receive your choice within 60 days of receipt of the notice, the BLM will issue a decision rejecting your application. If your application is rejected, you may file a new application for different lands before the end of the five-year application period.

§ 2569.503 What if my application includes lands that are not available Federal lands?

(a) If your selection includes lands that are not available Federal lands, the BLM will issue you a decision informing you of the unavailable land selection and give you the following choices:

(1) Provide the BLM a substitute selection within 60 days of your receipt of the decision. The substitute selection may consist of either an adjustment to your original selection that avoids the unavailable lands, or a new selection located somewhere else. Your substitute selection will be considered a new application for purposes of preference, as set forth in § 2569.411(c), but you will not need to resubmit any portions of your application other than the land description and map; or,

(2) If only a portion of your selection is unavailable, you may request that the BLM continue to adjudicate the portion of the selection that is within available Federal lands. The BLM must receive your request within 60 days of your receipt of the BLM's decision. You are allowed only one parcel of land under this act, and you will not be allowed to apply for more acreage later.

(b) If you receive a decision finding your selection includes unavailable lands under paragraph (a) of this section and the BLM does not receive your choice within 60 days of receipt of the notice, the BLM will issue a decision rejecting your application. If your application is rejected, you may file a new application for different lands before the end of the five-year application period.

§ 2569.504 Once I file, can I change my land selection?

Once your application is received in accordance with § 2569.411, you will not be allowed to change your selection except as set forth in § 2569.502 or 2569.503.

§ 2569.505 Does the selection need to be surveyed before I can receive title to it?

Yes. The land in your selection must be surveyed before the BLM can convey it to you. The BLM will survey your selection at no charge to you, as set forth in § 2569.501(g).

§ 2569.506 How will the BLM convey the land?

(a) The BLM will issue a Certificate of Allotment which includes language similar to the language found in Certificates of Allotment issued under the Act of May 17, 1906 (34 Stat. 197, chapter 2469), providing that the land conveyed will be deemed the homestead of the allottee and his or her heirs in perpetuity, and will be inalienable and nontaxable until otherwise provided by Congress or until the Secretary of the Interior or his or her delegate approves a deed of conveyance vesting in the purchaser a complete title to the land.

(b) The Certificate of Allotment will be issued subject to valid existing rights.

(c) The United States will reserve to itself all minerals in the Certificate of Allotment.

§ 2569.507 What should I do if the Eligible Individual dies or becomes incapacitated during the application process?

(a) If an Eligible Individual dies during the application process, another individual may continue the application process as a personal representative of the estate of the deceased Eligible Individual by providing to the BLM the materials described in § 2569.404(b)(2).

(b) If an Eligible Individual becomes incapacitated during the application process, another individual may continue the application process as a court-appointed guardian or conservator or as an attorney-in-fact for the Eligible Individual by providing to the BLM the materials described in § 2569.404(b)(3) or (4).

(c) If a deceased or incapacitated Eligible Individual has received a notice from the BLM that requires a response within 60 days, as described in § 2569.410, 2569.501(e), 2569.501(h)(3), 2569.502(b), or 2569.503(a), and no personal representative, guardian, or conservator has been appointed, or no attorney-in-fact has been designated, the individual who receives the notice, or an employee of the BIA or a Realty Service Provider, may respond to the notice in order to request that the BLM extend the 60-day period to allow for a personal representative, guardian, or conservator to be appointed. The BLM will extend a 60-day period under this paragraph (c) for up to two years.

(d) If the BLM has completed a Draft Plan of Survey as described in § 2569.501(d) or a survey as described in § 2569.501(g), and the estate of the deceased Eligible Individual does not wish to dispute the Draft Plan of Survey as described in § 2569.501(e) or the results of the survey as described in § 2569.501(h), then the BLM will not require a personal representative to be appointed. The BLM will continue to process the application and will issue the Certificate of Allotment in the name of the deceased Eligible Individual.

(e) Other than as provided in paragraphs (b), (c), and (d) of this section, the BLM will not accept any correspondence on behalf of a deceased or incapacitated Eligible Individual from an individual who has not provided the materials described in § 2569.404(b)(2), (3), or (4).

Available Federal Lands—General

§ 2569.601 What lands are available for selection?

You may receive title only to lands identified as available Federal land. You can review the available Federal lands on the mapping tool available at *www.blm.gov/ak-native-vietnam-vet-land-allotment-2019.* If you do not have access to the internet, a physical copy of the map of available Federal lands can be requested by either:

(a) Calling the BLM Alaska Public Room, the BIA Regional Realty Office or Fairbanks Agency Office, or your local

BIA Service Provider. The map will be current as of the date it is printed, and mailed to the mailing address provided at the time of request; or

(b) Requesting a physical copy in person at any of the offices listed in this section.

§ 2569.602 How will the BLM certify that the land is free of known contaminants?

The BLM will review land for contamination by using current contaminated site database information in the Alaska Department of Environmental Conservation database, the U.S. Army Corps of Engineers Formerly Used Defense Sites database, the U.S. Air Force database, and the Federal Aviation Administration database, or any equivalent databases if any of these databases are no longer available. Any land found to have possible contamination based on these searches will not be available for selection.

§ 2569.604 Are lands that are valuable for minerals available?

Yes, however, the minerals will be reserved to the United States and will not belong to you.

§ 2569.605 What happens if new lands become available?

(a) New lands may become available during the application period. As additional lands become available, the BLM will review the lands to determine whether they are free of known contaminants as described in § 2569.602.

(b) After review, the BLM will update the online web maps of available Federal lands to include these additional lands during the five-year application period.

National Wildlife Refuge System

§ 2569.701 If Congress makes lands available within a National Wildlife Refuge, what additional rules apply?

Any Certificate of Allotment for lands within a National Wildlife Refuge will contain provisions that the lands remain subject to the laws and regulations governing the use and development of the Refuge.

Appeals

§ 2569.801 What can I do if I disagree with any of the decisions that are made about my allotment application?

a. You may appeal all decisions to the Interior Board of Land Appeals under 43 CFR part 4.

b. On appeals of decisions made pursuant to § 2569.502(b):

1. Unless the BLM's decision is stayed on appeal pursuant to 43 CFR 4.21, the BLM will continue to process the conflicting applications that received preference over your application.

2. Within 60 days of receiving a decision on the appeal, the losing applicant may exercise one of the two options to select a substitute parcel pursuant to § 2569.502(b).

c. On appeals of decisions which reject the application or of a decision made pursuant to § 2569.503(a):

1. Unless the BLM's decision is stayed on appeal pursuant to 43 CFR 4.21, the BLM will lift the segregation of your selection and the land will be available for all future entries.

2. If you win the appeal and the decision was not stayed, your selection will be considered received as of the date of the Interior Board of Land Appeals decision for purposes of preference under § 2569.502(a).

[FR Doc. 2020–13808 Filed 7–9–20; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BJ76

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the South Atlantic States; Amendment 11

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

ACTION: Availability of proposed amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted Amendment 11 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 11 to the Shrimp FMP (Amendment 11) would modify the transit provisions for shrimp trawl vessels with brown, pink, and white shrimp on board in Federal waters of the South Atlantic that have been closed to shrimp trawling to protect white shrimp as a result of cold weather events. The purpose of Amendment 11 is to update the regulations to more closely align with current fishing practices, reduce the socio-economic impacts for fishermen who transit these closed areas, and improve safety at sea while maintaining protection for overwintering white shrimp.

DATES: Written comments must be received on or before September 8, 2020.

ADDRESSES: You may submit comments on Amendment 11, identified by ''NOAA–NMFS–2020–0066,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 11, which includes a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-11-shrimp-trawl-transit-provisions/.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review, and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the Shrimp FMP that is being revised by

Amendment 11. If approved, Amendment 11 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

Amendment 9 to the Shrimp FMP revised the criteria and procedures by which a South Atlantic state may request that NMFS implement a concurrent closure to the harvest of penaeid shrimp (brown, pink, and white shrimp) in the exclusive economic zone (EEZ) when state waters close as a result of severe winter weather (78 FR 35571; June 13, 2013). The Shrimp FMP provides that if a state has determined there is at least an 80-percent reduction in the population of overwintering white shrimp, or that state water temperatures were 9 °C (48 °F) or less for at least 7 consecutive days, the state can request NMFS to close the EEZ adjacent to that state's closed waters to the harvest of penaeid shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather.

Currently, shrimp trawl vessels transiting these EEZ cold weather closed areas with penaeid shrimp on board are required to stow a trawl net with a mesh size of less than 4 inches (10.2 cm) below deck. Since the most recent cold weather EEZ closures off South Carolina (83 FR 2931; January 22, 2018) and Georgia (83 FR 3404; January 25, 2018), fishermen requested that the Council update these transit provisions. Fishermen requested this change to achieve increased ability to transit the closed areas, as recent vessel design changes have limited access to below deck storage.

Amendment 11 is expected to update the FMP and the regulations to better match the current design of the vessels in the fishery, reduce the socio-economic impact for fishermen who have difficulty transiting the cold weather closed areas with penaeid shrimp onboard their vessels under the current regulations, and improve safety at sea for fishermen through reduced travel time around the closed areas and by not having to disassemble fishing gear while at sea for stowage below deck, while maintaining protection for overwintering white shrimp and regulation enforceability of the cold weather closed areas.

Action Contained in Amendment 11

Amendment 11 would allow a vessel to transit South Atlantic cold weather closed areas in the EEZ while possessing penaeid shrimp, provided the vessel is in transit and fishing gear is appropriately stowed. Transit would be defined as non-stop progression through the area with fishing gear appropriately stowed. Fishing gear appropriately stowed would be defined as trawl doors are in the rack (cradle) on deck, nets would be in the rigging and tied down, and the try net would be on the deck. Doors in the rack means the trawl doors are stowed in their storage racks out of the water on the vessel's deck. Nets in the rigging means the trawl nets are out of the water and are tied to the trawl vessel's rigging.

The proposed transit provision was developed and recommended to the Council by the Council's Law Enforcement, Shrimp, and Deep-water Shrimp Advisory Panels. Amendment 11 and the proposed rule are expected to reduce adverse socio-economic and safety at sea impacts associated with the current transit provisions through reduced travel time around the closed areas and time on the water for fishermen by not requiring gear stowage below deck. Fishermen also stated that having to disassemble trawl gear for below deck stowage in rough sea conditions is a safety-at-sea concern.

Proposed Rule for Amendment 11

A proposed rule that would implement Amendment 11 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the Shrimp FMP, Amendment 11, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 11 for Secretarial review, approval, and implementation. Comments on Amendment 11 must be received by September 8, 2020. Comments received during the respective comment periods, whether specifically directed to Amendment 11 or the proposed rule, will be considered by NMFS in the decision to approve, disapprove, or partially approve Amendment 11. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 6, 2020.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–14815 Filed 7–9–20; 8:45 am]

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Notices

Federal Register
Vol. 85, No. 133
Friday, July 10, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Custer Gallatin National Forest; Montana; Revision of the Land Management Plan for the Custer Gallatin National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of opportunity to object to the revised land management plan for the Custer Gallatin National Forest.

SUMMARY: The Forest Service is revising the Custer Gallatin National Forest's 1986 and 1987 Land and Resource Management Plans. The Forest Service has prepared a final environmental impact statement (final EIS) for the revised land management plan, and a draft record of decision (ROD). This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns about the Custer Gallatin National Forest's revised land management plan and the associated final EIS may file objections for Forest Service review prior to the approval of the revised land management plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern (SCC) for the Custer Gallatin National Forest.

DATES: The publication date of the legal notice in the Custer Gallatin National Forest's newspapers of record, Billings Gazette, Bozeman Daily Chronicle and Rapid City Journal, initiates the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at *www.fs.usda.gov/custergallatin.*

ADDRESSES: The Custer Gallatin National Forest's revised land management plan, final EIS, draft ROD, and other supporting information will be available for review at: *www.fs.usda.gov/custergallatin* and click on Forest Plan Revision. The Custer Gallatin National Forest's list of species of conservation concern and other supporting information will be available for review at: *http://bit.ly/NorthernRegion-SCC.* These web addresses include an objection template as an aid to providing the required information. Please be explicit as to whether the objection is for the land management plan or the species of conservation concern.

Electronic objections must be submitted to the Objection Reviewing Officer via the CARA objection webform at *https://cara.ecosystem-management.org/Public/CommentInput?project=50185.* Electronic submissions must be submitted in a format that is readable with optical character recognition software (*e.g.* Word, PDF, Rich Text) and be searchable.

The following address should be used for objections submitted by regular mail, private carrier, or hand delivery: Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804. Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Objections can be faxed to the Objection Reviewing Officer at (406) 329–3411. The fax coversheet must include a subject line with ''Custer Gallatin Forest Plan Objection'' or ''Custer Gallatin Species of Conservation Concern'' and should specify the number of pages being submitted.

If you are unable to submit objections via electronic submission, fax, or regular mail and must submit them by hand to the Northern Regional Office, please refer to signage at the front door regarding the delivery of hand-delivered items, which will include a phone number to arrange delivery of your objection.

FOR FURTHER INFORMATION CONTACT: Project Leader, Virginia Kelly, 10 E Babcock (P.O. Box 130, Bozeman, MT 59771), 406–587–6735.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. Additional information concerning the draft RODs may be obtained on the internet at the websites listed in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: The decision to approve the revised land management plan for the Custer Gallatin National Forest and the Regional Forester's identification of species of conservation concern will be subject to the objection process identified in 36 CFR part 219, subpart B (§§ 219.50 through 219.62).

How To File an Objection

Objections must be submitted to the Reviewing Officer, at the address shown in the **ADDRESSES** section of this notice. An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan revision or forest plan amendment being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan revision comment period.

It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period (36 CFR 219.56(d)).

Responsible Official

The responsible official who will approve the record of decision for the Custer Gallatin National Forest revised land management plan is Mary Erickson, Forest Supervisor for the Custer Gallatin National Forest, 10 E Babcock (P.O. Box 130, Bozeman, MT 59771), 406–587–6735. The Responsible Offical for the identification of the species of conservation concern for the Helena-Lewis and Clark National Forest is Leanne Marten, Northern Region Regional Forester, 26 Fort Missoula, Missoula, MT 59804.

The Regional Forester is the reviewing officer for the revised land management since the Forest Supervisor is the deciding official (36 CFR 219.56(e)(2)). Objection review of the list of species of conservation concern will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for the list of species of conservation concern identification as the Regional Forester is the responsbile official (36 CFR 219.56(e)(2)).

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–14825 Filed 7–9–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

[FOA No.: OPPE–015]

Funding Opportunity Announcement—Solicitation for Applications To Assist Persistent Poverty Farmers, Ranchers, Agriculture Producers and Communities Through Agriculture Resources

AGENCY: Office of Partnerships and Public Engagement (OPPE), Agriculture (USDA).

ACTION: Funding Opportunity Announcement (FOA).

Catalog of Federal Domestic Assistance (CFDA) Nos.: 10.902-Soil and Water Conservation (CTA): Soil Conservation and Domestic Allotment Act; 10.443–Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers

SUMMARY: This notice announces the availability of funds and solicits applications for grants from community-based and non-profit organizations, institutions of higher education, and tribal entities to compete for financial assistance through the OPPE. Funding will be made available for the purpose of leveraging USDA, state, local and private sector resources, to address local agricultural and natural resource issues, encourage collaboration and to develop state and local leadership and partnerships to assist limited resource and socially disadvantaged and veteran farmers, ranchers, agricultural producers and communities through agriculture industries. The eligible entities will provide technical assistance to persistent poverty communities, with emphasis on socially disadvantaged and/or veteran farmers, ranchers and agricultural producers to assist them in establishing a local working leaders group, identifying issues, challenges and assets, preparing a plan of action and identifying resources and means to address and accomplish results through available programmatic services and opportunities.

DATES: Proposals must be received via *Grants.gov* by 11:59 p.m. Eastern Standard Time on August 24, 2020.

For Further Information or for Programmatic Complaints, Please Contact: U.S. Department of Agriculture, Office of Partnerships and Public Engagement, Attn: Jacqueline Davis-Slay, Deputy Director, Jamie L. Whitten Building, Room 520–A, 1400 Independence Avenue SW, Washington, DC 20250; Phone: (202) 720–6350; Fax: (202) 720–7704; Email: *CommunityProsperity@usda.gov*.

Persons with Disabilities: Persons who require alternative means for communication (Braille large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). Additionally, alternative means for submissions due to disability status will be approved on a case-by-case basis.

SUPPLEMENTARY INFORMATION: Proposals will be scored as they are received and, if eligible, added to a ranking list of projects for funding consideration. Funding recommendations will be forwarded to the Director of OPPE who will make final selections. Funds will be awarded to eligible entities that have documented knowledge of and experience with USDA programs, experience in providing agricultural education or other agricultural-related services to socially disadvantaged and/or veteran farmers, ranchers and agricultural producers, experience with economic development in persistent poverty areas, and in developing partnerships with relevant entities and individuals to reach a common goal.

An applicant MUST be an entity or organization. ''Individuals'' do not meet the eligibility criteria.

Funds under this announcement may *not* be used for the following: Planning, repair, rehabilitation, acquisition, or construction of a building or facility; for start-up or financing costs for businesses or for an organization's capacity building; as small agricultural loans for individual farmers; or to incentivize individuals to attend an event.

Funding/Awards: The total funding available for this competitive opportunity is approximately $4 million (including funds provided in the 2018 Farm Bill and the Consolidated Appropriations Act of 2020). The OPPE will award grants from this announcement subject to availability of funds and the quality of applications received. All applicants will compete based on their organization's entity type (*e.g.,* nonprofit organization or higher education institution). The maximum project period is 3 years. The maximum amount of requested federal funding for projects shall not exceed $450,000 over the 3-year period. Additionally, the maximum award per year is $150,000. USDA has the discretion to fund multi-year projects in an effort to maximize outreach, education and technical assistance ensuring geographical distribution of funds. Eligible entities may receive subsequent years funding provided that:

(a) Activities and associated costs do not overlap with projects awarded in previous years; and

(b) Recipients and their key partners are successfully vetted through the *SAM.gov* Federal award system.

The OPPE reserves the right to approve one-year no cost extensions (no additional funds).

Funding will be awarded based on competition described below:

1890 Land Grant colleges and universities, 1994 Tribal Land-Grant, Alaska Native and American Indian Tribal colleges and universities, Hispanic-Serving Institutions of higher education), and other private or state institutions of higher education with an agricultural curriculum. Also included are nonprofit organizations, community-based organizations, including a network or a coalition of community-based organizations, and Native American tribal government (federally recognized or non-federally recognized).

Higher consideration will be given to socially disadvantaged, limited resource, beginning, or veteran farmer or rancher) servicing legal entities, or joint operations according to the definition in the Agriculture Improvement Act of 2018.

OPPE reserves the right to allocate funding between the two categories based upon the number and quality of applications received.

I. Funding Opportunity Description

A. Background

The OPPE is committed to ensuring that socially disadvantaged, historically underserved (including limited resource, socially disadvantaged, and veteran farmers, ranchers and agricultural producers) are able to equitably participate in USDA programs. Community-based and non-profit organizations, higher education institutions, and eligible Tribal entities with an expertise in working within rural persistent poverty areas of socially disadvantaged or veteran farmers, ranchers and agricultural producers can play a critical role in addressing the unique difficulties they face and can help improve their ability to start and maintain successful agricultural businesses and create sustainable growing communities. With this funding, organizations must establish partnerships to provide local agricultural education and training and extend outreach efforts to connect with and assist local socially disadvantaged and/or veteran farmers, ranchers and agricultural producers to provide them with information on available USDA resources. Only one proposal will be accepted from each organization.

Eligible entities may compete for funding on projects that provide outreach, education and training in agriculture, conservation, agribusiness, and forestry, with a focus on economic and workforce development, innovation and technology, and quality of life through agriculture industries. This partnership includes working closely with OPPE, USDA Liaisons and the State Food and Agriculture Council (SFAC) to coordinate outreach and training events and attend OPPE-led events in your proposed service territory.

The overall goal is to develop partnerships with eligible entities to expand outreach and assistance to help socially disadvantaged and historically underserved farmers, ranchers, ag producers and communities in persistent poverty areas, including in Opportunity Zones, through the agriculture sector to foster hope and opportunity, build assets and create wealth. *Eligible entities will* identify communities to receive tailored technical assistance and support by organizing and facilitating summits and training through partnerships with the USDA Liaisons and *SFAC, collectively known and the OneUSDA* team. Entities will establish a local prosperity council that consists of (but not limited to) the mayor, county planning committee, board of supervisors, superintendents and Board of Education, farmers, ranchers, agriculture producers, faith-based, etc. to focus on locally driven, bottom up solutions to address communities self-identified challenges and issues.

Proposals will be accepted for projects in any of the 50 States, the District of Columbia, the Caribbean area (Puerto Rico and the U.S. Virgin Islands), and the Pacific Islands area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). A total of up to $4 million is available for Fiscal Year 2020 for this funding opportunity. Applicants must be a Native American tribal government (federally recognized or non-federally recognized), a nonprofit having a 501(c)(3) status with the IRS (other than institutions of higher education), or a private, public or state-controlled institution of higher education.

B. Program Description

The statutory authority for this action is 7 U.S.C. 2279(c), which authorizes award funding for projects designed to provide outreach, education and technical assistance to socially disadvantaged and/or veteran farmers or ranchers.

Funds are also being awarded under the Conservation Technical Assistance, Soil and Water Conservation (CTA): Soil Conservation and Domestic Allotment Act, Public Law 74–76, N/A, 16. U.S.C. 590a–590f, 590q.

C. Purpose

The purpose of this funding is to leverage USDA and partnering entities to assist persistent poverty communities with socially disadvantaged and/or veteran farmers, ranchers and agricultural producers, to improve, restore, maintain natural resources and growth in their communities through an established platform and process that focuses on fostering hope and opportunity, asset building and wealth creation. In addition, funding may be used to educate and assist persistent poverty communities with socially disadvantaged and/or veteran farmers, ranchers and agricultural producers on accessing resources and opportunities available through the Coronavirus Aid, Relief, and Economic Security Act. Through the approved grant, organizations will assist persistent poverty communities and farmers, ranchers and agriculture producers by developing partnerships and strategies to address self-identified challenges and issues to:

1. Enhance coordination and collaboration through outreach, education, and training summits and workshops;

2. Educate persistent poverty communities with limited resource, socially disadvantaged and/or veteran farmers and ranchers on increasing their access to and participation in USDA programs;

3. Assist persistent poverty communities to become economically sustainable through a locally driven bottom-up process;

4. Assist persistent poverty communities with limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers to build and strengthen access to USDA programmatic services and opportunities that promote economic and community development;

5. Improve natural resources concerns;

6. Increase the number of agriculture producers;

7. Improve the environment and economic status of working agriculture lands;

8. Create *Local Prosperity Councils* through coordination and collaboration of USDA local officials, community

leaders, farmers, ranchers and agricultural producers;

9. Develop plans to create sustainable communities that address self-identified challenges through the agriculture industry.

Proposals from eligible entities must address at least five of the following priority areas:

1. Increased access of USDA's programs and services.

2. Resolution of heirs' property issues.

3. Improved financial literacy.

4. Increased and retained new entrepreneurs in agriculture industry to include farmers, ranchers and agricultural producers.

5. Improved knowledge of agriculture business understanding.

6. Promotion of USDA programs and services to build capacity to promote economic and workforce development, innovation and technology through the agriculture industry.

7. Improved knowledge of agriculture and natural resources.

8. Increased use or implementation of conservation practices.

Eligible projects will increase the delivery of agriculture and conservation assistance to limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers through coordinating and leveraging program outreach and technical assistance to manage natural resources. Outreach projects should focus on assisting socially disadvantaged and/or veteran farmers, ranchers and agricultural producers with all aspects of participating in USDA programs, including understanding and assisting in the program application process.

Eligible projects will identify and organize persistent poverty communities that include farmers, ranchers and agriculture producers to identify key challenges and develop strategies to assist them through agriculture industries to become economically sustainable, safe, educated and prosperous. Projects must follow the program summary six-step action items required and target economic development, innovation and technology, workforce development and quality of life.

Projects may include, but not limited to, providing technical assistance, transfer of technology, developing natural resource tools and information to address resource concerns in soil, water, air and plants, and animals.

The following steps will be required of all successful awardees:

(a) *Identify persistent poverty communities https://www.ers.usda.gov/data-products/county-typology-codes.aspx, including communities located in Opportunity Zones, with limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers.* Assist with identifying local leaders and partners to create a *Local Prosperity Council* to champion in order to carry out local efforts needed to engage Federal, state, and local partners, to connect them with USDA programs and resources.

(b) *Conduct an assessment of local challenges and issues within identified communities.* This step is to list and describe, with appropriate detail, resources needed to assist the local community. These should be concrete, practical opportunities for partnerships or projects of interest to the *Local Prosperity Council.*

(c) *List all local assets with a detailed description of each one.* This step is required to identify and describe all local assets and community resources that are being leveraged by the *Local Prosperity Council* to accomplish its goals.

(d) *Identify key collaborators and partners.* This should be a list of potential and existing community partners with contact information.

(e) *Describe ongoing implementation efforts in the community.* Additional information must be provided, in narrative form, regarding steps that stakeholders in the community have taken to address the challenges independently.

(f) *Provide technical assistance to communities applying for programmatic resources, services, and opportunities.* Host in-person and/or online trainings for socially disadvantaged and/or veteran farmers, ranchers and agricultural producers in persistent poverty areas (*https://www.ers.usda.gov/data-products/county-typology-codes.aspx*), including in Opportunity Zones (*https://www.irs.gov/pub/irs-drop/n-18-48.pdf*). Trainings can include, but are not limited to bringing awareness to USDA capacity building programs, conservation awareness, urban agriculture awareness, and other types of trainings and workshops.

D. Anticipated Outputs (Activities), Outcomes (Results), and Performance Measures

1. Outputs (Activities)

The term ''output'' means an outreach, educational component, or assistance activity, task, or associated work product related to improving the ability of socially disadvantaged or veteran farmers, ranchers and agricultural producers to own and operate farms and ranches, assistance with agriculture related activities, or guidance for participation in USDA programs. Outputs may be quantitative or qualitative but must be measurable during the period of performance. Examples of outputs from the projects to be funded under this announcement may describe an organization's activities and their participants such as: Number of workshops or meetings held and number of participants attending (including a list of participants with contact information); frequency of services or training delivered and to whom; development of products, curriculum, or resources provided. Other examples include but are not limited to the following:

a. Number of limited resource, socially disadvantaged and/or veteran farmers or ranchers served or trained;

b. number of trainings held and number of limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers that attended;

c. number of local prosperity councils with self-identified challenges and assessments;

d. number of persistent poverty communities, including communities in Opportunity Zones, identified;

e. number of USDA agencies providing resources;

f. number of programs and resources applied for by communities and limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers;

g. number of mentors and local leaders identified;

h. number of State and local resources leveraged;

i. number of private sector partners and resources leveraged;

j. creation of a program to enhance the operational viability of limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers;

k. number of limited resource, socially disadvantaged and/or veteran farmers and/or ranchers and agricultural producer applications assisted with submitting for consideration for USDA programs;

l. activity that supports increased participation of limited resource, socially disadvantaged and/or veteran farmers, ranchers and agricultural producers in USDA programs; or

m. Partnerships formed locally to improve access to USDA's programs and services.

n. Progress and Financial Reports will be required, no more than quarterly.

2. Outcomes (Results)

The term ''outcome'' means the difference or effect that has occurred as

a result from carrying out an activity, workshop, meeting, or from delivery of services related to a programmatic goal or objective. Outcomes refer to the final impact, change, or result that occurs as a direct result of the activities performed in accomplishing the objectives and goals of your project. Outcomes may refer to results that are agricultural, behavioral, social, or economic in nature. Outcomes may reflect an increase in knowledge or skills, a greater awareness of available resources or programs, or actions taken by stakeholders as a result of learning. Specifically, outcomes must be quantitative as it relates to the project goals and objectives. Project Directors will be required to document anticipated outcomes that are funded under this announcement including, but not limited to the following:

a. Documenting the number of new farmers and/or ranchers your organization assisted as a result of your project and the type of assistance;

b. Documenting the number of local prosperity councils created; Document the number of assessments, plans and strategies developed;

c. Documenting race, sex, national origin, disability and number of limited resource, socially disadvantaged and/or veteran farmers or ranchers *applying* for USDA programs and services by program area;

d. Documenting race, sex, national origin, disability and number of USDA program applications *approved* for funding, by program area, for socially disadvantaged or veteran farmers or ranchers as a result of your activities;

e. Documenting the number of limited resource, socially disadvantaged and/or veteran farmers and ranchers that have better access to USDA Programs, including conservation implementation, as a result of your outreach and/or training efforts;

f. Documenting the enhanced sustainability and retention of farming operations among limited resource, socially disadvantaged and/or veteran farmers or ranchers;

g. Documenting higher profitability and economic stability among limited resource, socially disadvantaged and/or veteran farmers or ranchers resulting from increased access to marketing and enhanced sales opportunities for their products;

h. Documenting an increase in the number and types of USDA programs and services utilized as a result of your project; and

i. Documenting partnerships and resources leveraged, including a list of all individuals, parties, entities or organization.

3. Performance Measures

Performance measures are tied to the goals or objectives of each activity and ultimately the overall purpose of the project. They provide insight into the effectiveness of proposed activities by indicating areas where a project may need adjustments. Applicants must develop performance measure expectations which will occur as a result of their proposed activities. These expectations will be used as a mechanism to track the progress and success of a project. Project performance measures should include statements such as: Whether workshops or technical assistance will meet the needs of farmers or ranchers in the service area and why; how much time will be spent in group training or individual hands-on training of farmers, ranchers and agricultural producers; or whether activities will meet the demands of stakeholders. Project performance measures must include the assumptions used to make those estimates. Consider the following questions when developing performance measurement statements:

a. What is the measurable short-term and long-term impact your project will have on serving the needs of historically underserved farmers, ranchers and agricultural producers?

b. How will your organization measure the effectiveness and efficiency of our proposed activities to meet the overall goals and objectives for this project?

c. How will your project track the compilation of a complete assessment of local challenges and document how the connection will be made to link them with available resources for assistance?

d. Who can you best partner with to leverage resources available to assist historically underserved farmers, ranchers and agricultural producers?

II. Award Information

A. Statutory Authority

The statutory authority for this action is 7 U.S.C. 2279(c), which authorizes award funding for projects designed to provide outreach, education and technical assistance to socially disadvantaged and/or veteran farmers or ranchers.

Grant funds are also being awarded under the Conservation Technical Assistance, Soil and Water Conservation (CTA): Soil Conservation and Domestic Allotment Act, Public Law 74–76, N/A, 16. U.S.C. 590a–590f, 590q.

Applicants may charge their negotiated indirect cost rate or 10 percent, whichever is lower. *Indirect cost rates exceeding 10 percent will not be permitted.*

B. Expected Amount of Funding

The total estimated funding expected to be available for awards under this competitive opportunity is approximately $4 million, including funds provided in the 2018 Farm Bill and the Consolidated Appropriations Act of 2020.

C. Project Period

The performance period for projects selected from this solicitation will not begin prior to the effective award date listed in the grant agreement. The maximum project period is 3 years.

D. Award Type

Funding for selected projects will be in the form of a grant which must be fully executed no later than September 30, 2020. The anticipated Federal involvement will be limited to the following activities:

1. Approval of recipients' final budget and Project Narrative or statement of work accompanying the grant agreement;

2. Monitoring of recipients' performance through quarterly, annual (for multi-year projects) and final financial and performance reports; and

3. Evaluation of recipients' use of federal funds through desk audits and on-site visits.

III. Eligibility Information

A. Eligible Entities

Applicants and applications must meet eligibility criteria by the application deadline to be considered for award. Eligible applicant type is determined by the implementing program statute. Eligibility for this opportunity is limited to the following entity types:

1. Nonprofits having a 501(c)(3) status with the IRS (other than institutions of higher education).

2. Native American tribal governments (federally and non-federally recognized).

3. Private institutions of higher education.

4. Public and State-controlled institutions of higher education.

(*Please note that in order to submit proposals, organizations must create accounts in Grants.gov and in the System for Awards Management www.SAM.gov; both of which could take several weeks.*) Therefore, it is strongly suggested that organizations begin this process immediately. Registering early could prevent unforeseen delays in submitting your proposal.

Applicants identified in the *SAM.gov* exclusions database as ineligible, prohibited/restricted or excluded from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits will not be considered for Federal funding (2 CFR 200.205(d)).

B. Cost-Sharing or Matching

There are no cost-sharing nor matching requirements associated with this funding announcement.

C. Threshold Eligibility Criteria

Applications from eligible entities that meet all criteria will be evaluated as follows:

1. Proposals must comply with the submission instructions and requirements. Pages in excess of the page limitation will not be considered.

2. Proposals must be received through *Grants.gov* on or before the proposal submission deadline. Applicants will receive an electronic confirmation receipt of their proposal from *Grants.gov*. Proposals received after the submission deadline will not be considered. Proposals must address a minimum of five priority areas to provide outreach, training and technical assistance to socially disadvantaged or veteran farmers or ranchers as stated in leveraging partnerships.

3. Incomplete or partial applications will not be eligible for consideration.

IV. Proposal and Submission Information

A. Data Universal Numbering System

In accordance with the Federal Funding Accountability and Transparency Act (FFATA) and the USDA implementation, all applicants must obtain and provide an identifying number from Dun and Bradstreet's (D&B) Data Universal Numbering System (DUNS). Applicants can receive a DUNS number, at no cost, by calling the toll-free DUNS number request line at (866) 705–5711 or visiting the D&B website at *www.dnb.com*.

B. System for Award Management (SAM)

It is a requirement to register for SAM (*www.sam.gov*).There is NO fee to register for this site. *This registration must be maintained and updated annually.* Applicants can register or update their profile, at no cost, by visiting the SAM website at *www.sam.gov.* This is a requirement to registering for *Grants.gov* where all organizations must submit their application.

Per 2 CFR part 200, applicants are required to: (1) Be registered in SAM prior to submitting an application; (2) provide a valid unique entity identifier in the application; and (3) continue to maintain an active SAM registration with current information at all times during which the organization has an active Federal award or an application or plan under consideration by a Federal awarding agency. The OPPE may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time the OPPE is ready to make a Federal award, the OPPE may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

SAM contains the publicly available data for all active exclusion records entered by the Federal Government identifying those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits. All applicant organizations and their key personnel will be vetted through SAM to ensure they are in compliance with this requirement and not on the Excluded Parties List. Organizations identified as having delinquent Federal debt may contact the Treasury Offset Program at (800) 304–3107 for instructions on resolution but will not be awarded a 2501 Program grant prior to resolution.

Should an applicant be awarded a grant, ezFedGrants (USDA's financial grants management system) is linked with SAM to ensure funding payments are directed properly as entities must enter their banking information through SAM; as a result, Federal agencies cannot award funding to any organization not properly/fully registered in SAM.

C. Obtain Proposal Package From Grants.gov (www.grants.gov)

All applicants must register for an account on *Grants.gov* to submit their application. There is no cost for registration. All applications must be submitted through *www.grants.gov.* This website is managed by the Department of Health and Human Services, not the OPPE. Many Federal agencies use this website to post Funding Opportunity Announcements (FOA). Please click on the ''Support'' tab to contact their customer support personnel if you need help with submitting your application.

Applicants may download individual grant proposal forms from *www.grants.gov.* For assistance with *www.grants.gov,* please consult the Applicant User Guide at *http://grants.gov/assets/ApplicantUserGuide.pdf.*

Applicants are required to submit proposals through *www.grants.gov* will be required to register with *www.grants.gov* to begin the proposal submission process. We strongly suggest you initiate this process immediately to avoid processing delays due to registration requirements.

Federal agencies post funding opportunities on *www.grants.gov.* The OPPE is not responsible for submission issues associated with *www.grants.gov.* If you experience submission issues, please contact *www.grants.gov* support staff for assistance.

Proposals must be submitted by August 24, 2020, via *www.grants.gov* at 11:59 p.m. EST. Proposals submitted after this deadline *will not* be considered.

D. Content of Proposal Package Submission

All submissions must contain completed and electronically signed original application forms, as well as a Project Narrative and a Budget Narrative as described below:

1. Forms, documents, and attachments. The forms listed below can be found in the proposal package at *www.grants.gov* and must be submitted with all applications. Required forms are provided in the package as fillable forms. Applicants must download and complete these forms and submit them in the application submission portal at *www.grants.gov.* PDF documents listed below are documents the applicant must create and submit in PDF format. Please use the checklist of documents below to submit your application through *Grants.gov*:

a. Standard Form (SF) 424, Application for Federal Assistance.

b. Project Abstract Summary (including site location(s) with demographic information).

c. Project Narrative File (this is where you will attach your Project Narrative in PDF format).

d. Standard Form (SF) 424A, Budget Information—Non-Construction Programs.

e. Budget Narrative File (this is where you will attach your Budget Narrative in PDF format).

f. Standard Form (SF) 424B, Assurances—Non-Construction Programs.

g. Key Contacts Form (please provide first, middle, and last names).

h. Form AD–3030 Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants.

i. Form AD–3031, Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.

j. Attachments Form (where you may place all your appendices).

Please note, additional required forms from organizations being awarded a grant will be provided for execution upon approval.

2. Below is further guidance, where needed, for completing the forms, documents, and attachment forms listed above.

SF–424 Application for Federal Assistance

Complete all highlighted areas on this form. Please pay particular attention to block 18a of the SF–424. This is the amount of Federal funding you are requesting under this funding opportunity. This form is the official requesting document and the amount that will be considered if you should have any discrepancies between this form and your Budget Information Form, SF–424A. Ensure this form is completed with accuracy; particularly email addresses and phone numbers. The OPPE may not be able to reach you if your information is incorrect.

Project/Performance Site Location(s)

Please include all locations if your proposed project will be carried out at additional sites.

Each page must be on numbered 8½″ × 11″ paper with one-inch margins. The text of the proposal must be double spaced and typed in New Times Roman, no smaller than 12-point font and must not exceed 10 pages. Letters of support and are not included in the page restriction.

Proposals that fail to comply with the required content and format will not be considered for funding. Materials submitted exceeding the maximum page limits and/or formatting structure will not be considered. Incomplete proposals will not be considered. Proposals must be divided into the following sections and are limited to the number of pages stated per section:

a. Project Summary: 250 words maximum.

b. Introduction: One (1) page maximum.

c. Needs Assessment: One (2) page maximum.

d. Program Objectives: One (2) page maximum.

e. Methods: Two (2) page maximum plus Deliverables Table.

f. Budget: One (1) page maximum.

g. Evaluation: 250 words maximum.

E. Project Summary—Up to 10 Points: (First Page of Grant Application. 250-Word Maximum.)

A good summary will provide a frame of reference for the reviewer as they begin the review process. It should be clear, concise, and interesting. The summary should be one to three paragraph long and include the Project Title. The summary should include one or two sentences about each of the following: The applicant organization, a statement on capacity of the organization to implement the proposed activities, a statement on the communities' needs and challenges and strategies for addressing them, a statement on the objectives and methods, the need motivating the request, the project start and end dates, the measurable outcomes and methodology, other organizations that will be involved, the project total cost, including funds already obtained, and the amount requested in this proposal.

F. Introduction—Up to 10 Points: One (1) Page Narrative Maximum

This section should introduce your organization to the reviewer and lend credibility to your organization's qualifications and ability to successfully manage a federal agreement. The response should be succinct, offer a good balance between quantitative and qualitative information, and be free of unnecessary verbiage. It should include a brief history of the organization, including its mission statement and goals, capacity to implement your proposal, evidence of past events, accomplishments, and description of your clientele, including demographic information, organizational funding sources. Describe your history of successfully managing these federal and non-federal agreements, including meeting and complying with reporting requirements, submitting final acceptable technical reports, and reporting on progress made in achieving the results under those agreements.

Applicants must state if they are assisting either a Historically Underserved Community (socially disadvantaged, limited resource, beginning, or veteran farmers or ranchers) according to the definition in the Agriculture Improvement Act of 2018. Applicants who self-certifying as Historically Underserved may be requested to provide records to verify their claim. For more information visit: *https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/people/outreach/slbfr/?cid=nrcsdev11_001040.*

G. Needs Assessment—Up to 25 Points: (Two (2)-Page Maximum.)

The needs assessment is critical to the success of your application. It is the justification for your proposal and should focus on the condition that your proposal will address. Use care to ensure your proposal makes no unsupported assumptions. Your Needs Assessment should make a compelling case and identify focal area(s) within the project area or priority criteria, demonstrate the tie-in to the organizational mission and goals, describe the issues to be addressed, and the history of, and need for, the proposed innovation, provide statistical and authoritarian evidence that clearly supports the needs identified in the proposal and supports a high probability for success, and makes a compelling case for the project funding based on demonstrated need, the extent to which the proposal addresses at least five of the priority areas identified, the narrative includes a well-conceived strategy for addressing those requirements, objectives and the needs or problems to be solved, relates to purposes and goals of the applicant, includes reasonable dimensions versus trying to solve global issues, developed with input from clients and beneficiaries, and makes no unsupportive assumptions.

H. Programmatic Objectives—Up to 20 Points (Two (2)-Page Maximum)

This section of the proposal should make a compelling case identifying focal area(s) within the project area or priority criteria, thoroughly address project outcomes, not project activities. Identify the primary beneficiary of the grant such as veteran, beginning, tribal, socially disadvantaged, limited resource farmers/ranchers, etc. You should be using language that supports the issues identified in the needs assessment. Avoid including topics that pertain to *providing, establishing, or developing* a method to address the problem. Your objectives should include at least one objective for each problem identified in the Needs Assessment. Each objective must be specific, measurable, achievable, realistic, and contain a timeline for completion. Be sure to describe how the outcomes will be measured.

I. Methods—Up to 20 Points: (Two (2)-Page Maximum.)

Clearly describe program activities that constitute a solution with reasons for selections of activities, methods, activities and procedures are innovative and explain to the grant reviewer the

steps that will be taken to complete the objectives identified in the previous section. This section demands clarity and justification in describing how the objectives will be met. Use care to present a reasonable number of activities that can be completed within the budget and grant period. Clearly describe the program activities, their sequence, and explain your reason for choosing this combination of activities. Provide a detailed description of how the project will be organized and managed. Include a list of key project personnel, their relevant education or experience, and their anticipated contributions to the project. Explain the level of participation required in the project by government (USDA) and non-government/public-sector entities and identify who will participate in monitoring and evaluating the project. Proposal must describe how the project will be sustained post agreement and if the activities and outcomes are transferable to other organizations.

J. Budget—Up to 10 Points: (One (1) Page Maximum)

The extent which the proposal describes the costs required to achieve the desired objectives, including personnel, fringe benefits, travel, equipment, supplies, indirect costs, and requested USDA financial assistance, lists partnering organizations, provides detailed costs, and includes a well written description of the costs required (including time, responsibilities and number of key staffs). Applicants may charge their negotiated indirect cost rate or 10 percent, whichever is lower. *Indirect cost rates exceeding 10 percent will not be permitted.*

K. Evaluation—Up to 5 Points-(One (1) Page Maximum)

The extent to which the proposal presents a plan for determining the degree to which objectives are met and methods are followed, presents a plan for evaluating accomplishments of objectives, a plan for evaluating and modifying methods over the course of the project, clearly states criteria of success and describes how success will be measured, and define how progress will be reported and technical representative(s) kept informed. *DO NOT PASSWORD PROTECT ANY OF YOUR SUBMITTED DOCUMENTS OR FORMS.*

L. Sub-Awards and Partnerships

Funding may be used to provide sub-awards, which includes using sub-awards to fund partnerships; however, the recipient must utilize at least 50 percent of the total funds awarded, and no more than three sub-awards will be permitted. All sub-awardees must comply with applicable requirements for sub-awards. Applicants must provide documentation of a competitive bidding process for services, contracts, and products, including consultants and contractors, and conduct cost and price analyses to the extent required by applicable procurement regulations.

The OPPE awards funds to *one eligible applicant* as the lead award recipient. Please indicate a lead applicant as the responsible party if other organizations are named as partners or co-applicants or members of a coalition or consortium. The lead award recipient will be held accountable to the OPPE for the proper administrative requirements and expenditure of all funds.

M. Submission Dates and Times

The closing date and time for receipt of proposal submissions is August 24, 2020, at 11:59 p.m., EST, via *www.grants.gov.* Proposals received after the submission deadline will be considered late without further consideration. Proposals must be submitted through *Grants.gov* without exception. Additionally, organizations must also be registered in the System of Awards Management (SAM) at *www.sam.gov*. The proposal submission deadline is firm.

N. Confidential Information

In accordance with 2 CFR part 200, the names of entities submitting proposals, as well as proposal contents and evaluations, will be kept confidential to the extent permissible by law. Any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked as such in the proposal. If an applicant chooses to include confidential or proprietary information in the proposal, it will be kept confidential to the extent permitted by law.

Pre-Submission Proposal Assistance

1. *The OPPE may not assist individual applicants by reviewing draft proposals or providing advice on how to respond to evaluation criteria.* However, the OPPE will respond to questions from individual applicants regarding eligibility criteria, administrative issues related to the submission of the proposal, and requests for clarification regarding the announcement. Any questions should be submitted to *CommunityProsperity@usda.gov.* Additionally, the OPPE will host public teleconferences to address questions and clarify requirements during the open period of this solicitation. Dates, time, and phone numbers are provided on Page 1 of this announcement.

2. The OPPE will post questions and answers relating to this funding opportunity during its open period on the Frequently Asked Questions (FAQs) section of our website: *http://www.outreach.usda.gov/grants/.* Reviewing this section of our website will likely save you valuable time. The OPPE will update the FAQs on a weekly basis and conduct teleconferences on an as-needed basis.

3. Please visit our website: *https://www.outreach.usda.gov/grants/index.htm* to review the most recent Terms and Conditions for administering grants. This version is subject to change upon new program requirements.

4. Applicants selected for funding must inform their participants that USDA, or any of its third-party representatives, may contact them for quality assurance.

V. Application Review Information

A. Evaluation Criteria

Only eligible entities whose proposals meet the threshold criteria of this announcement will be reviewed according to the evaluation criteria set forth below. Applicants should explicitly and fully address these criteria as part of their proposal package. Each proposal will be evaluated under the regulations established under 2 CFR part 200.

Proposals will be screened for completeness and compliance with the provisions of this notice. Incomplete, noncompliant, and/or proposals not meeting the formatting criteria will be eliminated from competition.

Merit/technical reviews will be conducted by a qualified evaluation panel (panel). Risk reviews will be conducted prior to making the final award decisions. Evaluated proposals will be forwarded to the Director of the Office of Partnerships and Public Engagement who will make the final selections.

Each proposal will be reviewed by at least two members of the panel. Panel members will review, and score all submitted applications. The Panel Lead will numerically score and rank each application and funding will be awarded within the two funding categories. Funding decisions will be based on the Panel's recommendations. Final funding decisions are *not appealable.*

Please be patient as processing all submitted applications, vetting key personnel, proposal reviews, approval process, and agreement creation is a

lengthy process that takes approximately two to three months. All applicants will be notified electronically of their application status when final selections have been made and will be provided an opportunity for application feedback as provided within the correspondence.

B. Selection of Reviewers

All applications will be reviewed by the Review Panel. Panel members are selected based upon training and experience in assisting historically undeserved farmers, ranchers and agricultural producers. This assistance includes, but is not limited to, bringing increased awareness of USDA's programs and services in underserved communities, outreach, technical assistance, cooperative extension services, civil rights, education, statistical and ethnographic data collection and analysis, and agricultural programs, and are drawn from a diverse group of experts, including applicant peers, to create a balanced panel.

VI. Award Administration Information

A. Award Notices

Proposal Notifications and Feedback

1. Successful applicants will be notified by the OPPE via telephone, email, and/or postal mail that its proposed project has been recommended for award. The notification will be sent to the *Project Manager* listed on the SF–424, Application for Federal Assistance. Project Managers should be the Authorized Organizational Representative (AOR) and authorized to sign on behalf of the organization. It is imperative that this individual is responsive to notifications by the OPPE. If the individual is no longer in the position, please notify the OPPE immediately to submit the new contact for the application by updating your organization's Key Contacts form and forwarding a résumé of the new key personnel. The grant agreement will be forwarded to the recipient for execution and must be returned to the OPPE Director, who is the authorizing official. Once grant documents are executed by all parties, authorization to begin work will be given. At a minimum, this process can take up to 30 days from the date of notification.

2. Within 10 days of award status notification, unsuccessful applicants may request feedback on their application. Feedback will be provided as expeditiously as possible. Feedback sessions will be scheduled contingent upon the number of requests.

B. Administrative and National Policy Requirements

All awards resulting from this solicitation will be administered in accordance with the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified at 2 CFR part 200, as supplemented by USDA implementing regulations at 2 CFR parts 400 and 415, and the OPPE Federal Financial Assistance Programs—General Award Administrative Procedures, 7 CFR part 2500. Additionally, the authorizing statute and regulation for this opportunity is also the Conservation Technical Assistance, CFDA 10.902—Soil and Water Conservation (CTA): Soil Conservation and Domestic Allotment Act, Public Law 74–76, N/A, 16. U.S.C. 590a–590f, 590q.

In compliance with its obligations under Title VI of the Civil Rights Act of 1964 and Executive Order 13166, it is the policy of the OPPE to provide timely and meaningful access for persons with Limited English Proficiency (LEP) to projects, programs, and activities administered by Federal grant recipients. Recipient organizations must comply with these obligations upon acceptance of grant agreements as written in the OPPE's Terms and Conditions. Following these guidelines is essential to the success of our mission to improve access to USDA programs for socially disadvantaged and/or veteran farmers, ranchers and agricultural producers.

C. Reporting Requirement

Your approved statement of work, timeline, and budget are your guiding documents in carrying out the activities of your project and for your reporting requirements. Please familiarize yourself with USDA's grants management system called ezFedGrants: *https://www.nfc.usda.gov/FSS/ClientServices/ezFedGrants/.* In accordance with 2 CFR part 200, the following reporting requirements will apply to awards provided under this FOA. The OPPE reserves the right to revise the schedule and format of reporting requirements as necessary in the award agreement.

1. No more than Quarterly Progress Reports and Financial Reports will be required as follows:

a. *Quarterly Progress Reports.* The recipient is required to provide a detailed narrative of project performance and activities as described in the award agreement. Quarterly progress reports must be submitted to the designated OPPE official via ezFedGrants within 30 days after the end of each calendar quarter. This includes, but is not limited to, activities completed, events held, and the release of sign-in sheets with participants' contact information.

b. *Quarterly Financial Reports.* The recipient must submit SF 425, Federal Financial Report to the designated OPPE official via ezFedGrants within 30 days after the end of each calendar quarter.

2. Annual reports may be required for multi-year projects.

3. Final Progress and Financial Reports will be required upon project completion. The Final Progress Report must include a summary of the project or activity throughout the funding period, achievements of the project or activity, and a discussion of overall successes and issues experienced in conducting the project or project activities. It should convey the impact your project had on the communities you served and discuss the project's accomplishments in achieving expected outcomes. This requirement includes, but is not limited to, the number of new USDA applicants as a result of your award, the number of approved applicants for USDA programs and services, increased awareness of USDA programs and services, etc.

4. The final Financial Report should consist of a complete SF–425 indicating the total costs of the project. Final Progress and Financial Reports must be submitted to the designated OPPE official via ezFedGrants within 90 days after the completion of the award period as follows:

Report	Performance period	Due date	Grace period
Form SF–425, Federal Financial Report and Progress Report (*Due Quarterly*).	1 October thru 31 December	12/31/2020	1/30/2021
	1 January thru 31 March	3/31/2021	4/30/2021
	1 April thru 30 June 1	6/30/2021	7/30/2021
	July thru 30 September	9/30/2021	10/30/2021
Annual (for multi-year project) and Final Progress and Financial Reports ...	Earlier of December 30, 2021, or 90 days after project completion.		

* Dates subject to change at the discretion of the OPPE.

Signed this 26 day of June 2020.

Jacqueline Davis-Slay,

Deputy Director, Office of Partnerships and Public Engagement.

[FR Doc. 2020–14325 Filed 7–9–20; 8:45 am]

BILLING CODE 3412–89–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–20–CO–OP–0021]

Inviting Applications for the Delta Health Care Services Grant Program

AGENCY: Rural Business-Cooperative Service, Department of Agriculture (USDA).

ACTION: Notice of Funding Availability.

SUMMARY: This Notice of Funding Availability (Notice) announces that the Rural Business-Cooperative Service (Agency) is accepting fiscal year (FY) 2020 applications for the Delta Health Care Services (DHCS) grant program. Approximately $6.0 million is currently available for FY 2020. The Agency will publish the program funding level on the Rural Development website *https://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* The purpose of this program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and economic development entities in the Delta Region.

DATES: Completed applications for grants must be submitted electronically by no later than midnight Eastern Standard Time August 24, 2020 through *http://www.grants.gov* to be eligible for grant funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. Late applications are not eligible for funding under this Notice and will not be evaluated.

ADDRESSES: You are encouraged to contact your USDA Rural Development State Office well in advance of the application deadline to discuss your Project and ask any questions about the application process. Contact information for State Offices can be found at *http://www.rd.usda.gov/contact-us/state-offices.*

Program guidance as well as application templates may be obtained at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants* or by contacting your State Office. To submit an electronic application, follow the instructions for the DHCS funding announcement located at *http://www.grants.gov.* Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you are able to meet the electronic application deadline. You are strongly encouraged to file your application early and allow sufficient time to manage any technical issues that may arise.

FOR FURTHER INFORMATION CONTACT: Honie Turner, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3226, Room 4204-South, Washington, DC 20250–3226, 202–720–1400 or email *CPgrants@usda.gov.*

SUPPLEMENTARY INFORMATION:

Preface

The Agency encourages applications that will support recommendations made in the Rural Prosperity Task Force report to help improve life in rural America. *https://www.usda.gov/topics/rural/rural-prosperity.* Applicants are encouraged to consider projects that provide measurable results in helping rural communities build robust and sustainable economies through strategic investments in infrastructure, partnerships and innovation. Key strategies include:

- Achieving e-Connectivity for Rural America
- Developing the Rural Economy
- Harnessing Technological Innovation
- Supporting a Rural Workforce
- Improving Quality of Life

Overview

Federal Agency Name: USDA Rural Business-Cooperative Service.

Funding Opportunity Title: Delta Health Care Services Grant Program.

Announcement Type: Initial Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.874.

Dates: Application Deadline. Your electronic application must be received by *http://www.grants.gov* no later than Midnight Eastern Standard Time August 24, 2020, or it will not be considered for funding.

Hemp Related Projects

Funding cannot be provided to a project involving hemp unless the Agency can verify that the hemp producer providing hemp to the project has a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115–334. Verification will occur at the time of award.

Persistent Poverty Counties

The Further Consolidated Appropriations Act, 2020, SEC. 740 designates funding for projects in Persistent Poverty Counties. Persistent Poverty Counties as defined in

SEC. 740 is ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States''. Another provision in Section 740 expands the eligible population in Persistent Poverty Counties to include any county seat of such a Persistent Poverty County that has a population that does not exceed the authorized population limit by more than 10 percent. Therefore, applications for projects in Persistent Poverty County seats with populations up to 55,000 (per the 2010 Census) are eligible. Funding of approximately $4.5 million is available to support Persistent Poverty Counties.

COVID–19 Administrative Relief Exceptions: The Agency reviewed the

Office of Budget and Management's (OMB) Memoranda M–20–11, ''Administrative Relief for Recipients and Applicants of Federal Financial Assistance directly impacted by the novel coronavirus (COVID–19)'' and M–20–26, ''Extension of Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID–19) due to Loss of Operations'' and has made every attempt to reduce administrative burden with in our authority. Any reduction in burden will be discussed within the requirement.

The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification on materials contained in the submitted application. See the Application Guide for a full discussion of each item. For requirements of completed grant applications, refer to Section D of this document.

Executive Order (E.O.) 13175 Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this Notice does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this Notice is not subject to the requirements of Executive Order 13175. Tribal Consultation inquiries and comments should be directed to RD's Native American Coordinator at *aian@usda.gov* or (720) 544–2911.

Paperwork Reduction Act

The Paperwork Reduction Act requires Federal agencies to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Agency conducted an analysis to determine the number of applications the Agency estimates that it will receive under the DHCS grant program. It was determined that the estimated number of applications was fewer than nine and in accordance with 5 CFR part 1320, thus OMB approval is not necessary at this time.

A. Program Description

The DHCS program is authorized by Section 379G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008u), as amended by the Agriculture Improvement Act of 2018 (Pub. L. 115–334). The primary objective of the program is to provide financial assistance to address the continued unmet health needs in the Delta Region through cooperation among health care professionals, institutions of higher education, research institutions, and other individuals and entities in the Delta Region. Grants are awarded on a competitive basis. The maximum award amount per grant is $1,000,000.

Definitions

The definitions you need to understand are as follows:

Academic Health and Research Institute—A combination of a medical school, one or more other health profession schools or educational training programs (such as allied health, dentistry, graduate studies, nursing, pharmacy, public health), and one or more owned or affiliated teaching hospitals or health systems; or a health care nonprofit organization or health system, including nonprofit medical and surgical hospitals, that conduct health related research.

Conflict of Interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the Project; or that restrict open and free competition for unrestrained trade. Specifically, Project Funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of conflict of interest occurs when the consortium member's employees, board of directors, or the immediate family of either, have the appearance of a professional or personal financial interest in the recipients receiving the benefits or services of the grant.

Consortium—A group of three or more entities that are regional Institutions of Higher Education, Academic Health and Research Institutes, and/or Economic Development Entities located in the Delta Region that have at least one year of prior experience in addressing the health care issues in the region. At least one of the consortium members must be legally organized as an incorporated organization or other legal entity and have legal authority to contract with the Federal Government.

Delta Region—The 252 counties and parishes within the states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee that are served by the Delta Regional Authority. (The Delta Region may be adjusted by future Federal statute.) To view the areas identified within the Delta Region, visit *http://dra.gov/about-dra/dra-states.*

Economic Development Entity—Any public or non-profit organization whose primary mission is to stimulate local and regional economies within the Delta Region by increasing employment opportunities and duration of employment, expanding or retaining existing employers, increasing labor rates or wage levels, reducing outmigration, and/or creating gains in other economic development-related variables such as land values. These activities shall primarily benefit low- and moderate-income individuals in the Delta Region.

Health System—The complete network of agencies, facilities, and all providers of health care to meet the health needs of a specific geographical area or target populations.

Institution of Higher Education—A postsecondary (post-high school) educational institution that awards a bachelor's degree or provides not less than a two year program that is acceptable for full credit toward such a degree, or a postsecondary vocational institution that provides a program of training to prepare students for gainful employment in a recognized occupation.

Nonprofit Organization—An organization or institution, including an accredited institution of higher education, where no part of the net earnings of which may inure, to the benefit of any private shareholder or individual.

Project—All activities funded by the DHCS grant.

Project Funds—Grant funds requested plus any other contributions to the proposed Project.

Rural and rural area—Any area of a State:

- Not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and
- The contiguous and adjacent urbanized area,

• Urbanized areas that are rural in character as defined by 7 U.S.C. 1991(a)(13).

• For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

State—Includes each of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

B. Federal Award Information

Type of Award: Competitive Grant.
Total Funding: $6,112,667.
Maximum Award: $1,000,000.
Minimum Award: $50,000.
Project Period: Up to 24 months.
Anticipated Award Date: September 30, 2020.

C. Eligibility Information

Applicants must meet all the following eligibility requirements. Your application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. Applicants that fail to submit the required elements by the application deadline will be deemed ineligible and will not be evaluated further. Information submitted after the application deadline will not be accepted.

1. Eligible Applicants

Grants funded through DHCS may be made to a Consortium as defined in Paragraph A of this Notice. One member of the Consortium must be designated as the lead entity by the other members of the Consortium and have legal authority to contract with the Federal Government.

The lead entity is the recipient (see 2 CFR 200.86) of the DHCS grant funds and accountable for monitoring and reporting on the Project performance and financial management of the grant. It is expected that the recipient will make subawards in the form of a grant, cooperative agreement, or contract, as appropriate, to the other members of the Consortium. If a grant or cooperative agreement is awarded, the organization receiving the subaward is a subrecipient (see 2 CFR 200.93), and the recipient is responsible for complying with all applicable requirements of 2 CFR part 200, including provisions for making and monitoring an award. If a contract is awarded, the organization receiving the subaward is a contractor, and the recipient is responsible for following its written procurement procedures and complying with the Federal Acquisition Regulation. Both subrecipients and contractors are required to comply with all applicable laws and regulations, including performance and financial reporting, as described in their award document.

(a) An applicant is ineligible if they do not submit ''Evidence of Eligibility'' and ''Consortium Agreements'' as described in Section D.2. of this Notice.

(b) An applicant is ineligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the DO NOT PAY System to verify this information.

(c) Any corporation (i) that has been convicted of a felony criminal violation under any Federal law within the past 24 months or (ii) that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with funds appropriated by the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

(d) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6.

(e) Applications will be deemed ineligible if the application is not complete in accordance with the requirements stated in Section C.3.

2. Cost Sharing or Matching

Matching funds are not required. However, if you are adding any other contributions to the proposed Project, you must provide documentation indicating who will be providing the matching funds, the amount of funds, when those funds will be provided, and how the funds will be used in the Project budget. Examples of acceptable documentation include: A signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the Project. The matching funds you identify must be for eligible purposes and included in your work plan and budget. Additionally, expected program income may not be used as matching funds at the time you submit your application. If you choose, you may use a template to summarize the matching funds. The template is available either from your State Office or the program website at: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

3. Other Eligibility Requirements

(a) *Use of Funds.* Your application must propose to use Project Funds for eligible purposes. Eligible Project purposes include the development of:

• Health care services;
• health education programs;
• health care job training programs; and
• the development and expansion of public health-related facilities in the Delta Region.

(b) *Project Eligibility.* The proposed Project must take place within the Delta Region as defined in this Notice. However, the applicant need not propose to serve the entire Delta Region.

(c) *Project Input.* Your proposed Project must be developed based on input from local governments, public health care providers, and other entities in the Delta Region.

(d) *Grant Period Eligibility.* All awards are limited to up to a 24-month grant period based upon the complexity of the Project. Your proposed grant period should begin no earlier than October 1, 2020 and should end no later than 24 months following that date. If you receive an award, your grant period will be revised to begin on the actual date of award—the date the grant agreement is executed by the Agency—and your grant period end date will be adjusted accordingly. Your Project activities must begin within 90 days of the date of award. If you request funds for a time

period beginning before October 1, 2020, and/or ending later than 24 months from that date, your application will be ineligible. The length of your grant period should be based on your Project's complexity, as indicated in your application work plan. The Agency understands that fiscal year 2018 and fiscal year 2019 recipients may have had loss of operations due to COVID–19 and will work with them to determine an acceptable grant period if they are awarded in fiscal year 2020 in accordance with OMB Memoranda M–20–11, M–20–26 and 2 CFR 200.308.

(e) *Multiple Application Eligibility.* The Consortium, including its members, is limited to submitting one application for funding under this Notice. We will not accept applications from Consortiums that include members who are also members of other Consortiums that have submitted applications for funding under this Notice. If we discover that a Consortium member is a member of multiple Consortiums with applications submitted for funding under this Notice, all applications will be considered ineligible for funding.

(f) *Satisfactory Performance Eligibility.* If you have an existing DHCS award, you must be performing satisfactorily to be considered eligible for a new DHCS award. Satisfactory performance includes being up to date on all financial and performance reports as prescribed in the grant award, and current on tasks and timeframes for utilizing grant and matching funds as approved in the work plan and budget. If you have any unspent grant funds on DHCS awards prior to FY 2017, your application will not be considered for funding. If your FY 2018 or FY 2019 award has unspent funds of 50 percent or more than what your approved work plan and budget projected at the time your FY 2020 application is evaluated, your application may not be considered for funding. The Agency will verify the performance status of FY 2018 and 2019 awards and make a determination after the FY 2020 application period closes. The Agency understands that fiscal year 2019 recipients may have had a loss of operations due to COVID–19 and will consider providing flexibility in terms of fund utilization on FY 19 awards with acceptable justification of delays resulting from the COVID–19 pandemic in accordance with OMB Memorandum M–20–26 and 2 CFR 200.343.

(g) *Completeness Eligibility.* Your application must provide all the information requested in Section D.2. of this Notice. Applications lacking sufficient information to determine eligibility and scoring will be deemed ineligible and will not be considered for scoring.

(h) *Indirect Costs.* Your negotiated indirect cost rate approval does not need to be included in your application, but you will be required to provide it if a grant is awarded. Approval for indirect costs that are requested in an application without an approved indirect cost rate agreement is at the discretion of the Agency.

D. Application and Submission Information

1. Address To Request Application Package

The application template for this funding opportunity is located at *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.* Use of the application template is strongly recommended to assist you with the application process. You may also contact your State Office for more information. Contact information for State Offices is located at *http://www.rd.usda.gov/contact-us/state-offices.*

2. Content and Form of Application Submission

You must submit your application electronically through *Grants.gov.* Your application must contain all required information.

To apply electronically, you must follow the instructions for this funding announcement at *http://www.grants.gov.* Please note that we cannot accept applications through mail, courier delivery, in-person delivery, email or fax.

You can locate the *Grants.gov* downloadable application package for this program by using a keyword, the program name, or the CFDA number for this program.

When you enter the *Grants.gov* website, you will find information about applying electronically through the site, as well as the hours of operation.

To use *Grants.gov*, you must already have a DUNS number and you must also be registered and maintain registration in SAM. We strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov.*

You must submit all application documents electronically through *Grants.gov.* Applications must include electronic signatures. Original signatures may be required if funds are awarded.

After applying electronically through *Grants.gov*, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

The organization submitting the application will be considered the lead entity. The Contact/Program Manager must be associated with the lead entity submitting the application.

Your application must also contain the following required forms and proposal elements:

(a) Form SF–424, ''Application for Federal Assistance.'' The application for Federal assistance must be completed by the lead entity as described in Section C.1. of this Notice. Your application must include your DUNS number and SAM Commercial and Government Entity (CAGE) code and expiration date (or evidence that you have begun the SAM registration process). Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the CAGE code and expiration date and the DUNS number in your application, it will not be considered for funding. The form must be signed by an authorized representative. In accordance with OMB Memoranda M–20–11 and M–20–26, the Agency can accept an application without an active SAM registration. However, the registration must be completed before an award is made. Current registrants in SAM with active registrations expiring before May 16, 2020 will be afforded a one-time extension of 60 days.

(b) Form SF–424A, ''Budget Information—Non-Construction Programs.'' This form must be completed and submitted as part of the application package. You no longer must complete the Form SF 424B, ''Assurances—Non-Construction Programs'' as a part of your application. This information is now collected through your registration or annual recertification in *SAM.gov* through the Financial Assistance General Certifications and Representation.

(c) Form SF–424C, ''Budget Information—Construction Programs.'' This form must be completed, signed, and submitted as part of the application package for construction Projects. You no longer must complete the Form SF 424D, ''Assurances—Construction Programs'' as a part of your application. This information is now collected through your registration or annual recertification in *SAM.gov.*

(d) Executive Summary. A summary of the proposal, not to exceed one page, briefly describing the Project, tasks to be completed, and other relevant information that provides a general overview of the Project must be provided.

(e) Evidence of Eligibility. Evidence of the Consortium's eligibility to apply

under this Notice must be provided. This section must include a detailed summary demonstrating how each Consortium member meets the definition of an eligible entity as defined under Definitions of this Notice.

(f) Consortium Agreements. The application must include a formal written agreement with each Consortium member that addresses the negotiated arrangements for administering the Project to meet Project goals, the Consortium member's responsibilities to comply with administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies, and facilitate a smooth functioning collaborative venture. Under the agreement, each Consortium member must perform a substantive role in the Project and not merely serve as a conduit of funds to another party or parties. This agreement must be signed by an authorized representative of the lead entity and an authorized representative of each partnering consortium entity.

(g) Scoring Criteria. Each of the scoring criteria in this Notice must be addressed in narrative form. Failure to address each scoring criterion will result in the application being determined ineligible.

(h) Performance Measures. The Agency has established annual performance measures to evaluate the DHCS program. Estimates on the following performance measures, as part of your application, must be provided:

- Number of businesses assisted;
- Number of jobs created;
- Number of jobs saved;
- Number of individuals assisted/trained.

It is permissible to have a zero in a performance element. When calculating jobs created, estimates should be based upon actual jobs to be created by your organization as a result of the DHCS funding or actual jobs to be created by businesses as a result of assistance from your organization. When calculating jobs saved, estimates should be based only on actual jobs that would have been lost if your organization did not receive DHCS funding or actual jobs that would have been lost without assistance from your organization.

You can also suggest additional performance elements for example where job creation or jobs saved may not be a relevant indicator. These additional elements should be specific, measurable performance elements that could be included in an award document.

(i) Financial Information and Sustainability. Current financial statements and a narrative description demonstrating sustainability of the Project, all of which show sufficient resources and expertise to undertake and complete the Project and how the Project will be sustained following completion must be provided. Applicants must provide three years of pro-forma financial statements for the Project.

(j) Evidence of Legal Authority and Existence. The lead entity must provide evidence of its legal existence and authority to enter into a grant agreement with the Agency and perform the activities proposed under the grant application.

(k) Service Area Maps. Maps with sufficient detail to show the area that will benefit from the proposed facilities and services and the location of the facilities improved or purchased with grant funds, if applicable, must be provided.

(l) You must certify that there are no current outstanding Federal judgments against your property and that you will not use grant funds to pay for any judgment obtained by the United States. You must also certify that you are not delinquent on the payment of Federal income taxes, or any Federal debt. To satisfy the Certification requirement, you should include this statement in your application: ''[INSERT NAME OF APPLICANT] certifies that the United States has not obtained an unsatisfied judgment against its property, is not delinquent on the payment of Federal income taxes, or any Federal debt, and will not use grant funds to pay any judgments obtained by the United States.'' A separate signature is not required.

(m) Environmental information necessary to support the Agency's environmental finding. Required information can be found in 7 CFR part 1970, specifically in subpart B, Exhibit C, and subpart C, Exhibit B. These documents can be found here: *http://www.rd.usda.gov/publications/regulations-guidelines/instructions.* Non-construction Projects applying under this Notice are hereby classified as Categorical Exclusions according to 7 CFR 1970.53(b), the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses, which do not require any additional documentation.

3. DUNS Number and SAM Registration

To be eligible (unless you are exempted under 2 CFR 25.110(b), (c) or (d)), you are required to:

(a) Provide a valid DUNS number in your application, which can be obtained at no cost via a toll-free request line at (866) 705–5711;

(b) Register in SAM before submitting your application. You may register in SAM at no cost at *https://www.sam.gov/SAM/.* You must provide your SAM CAGE Code and expiration date. When registering in SAM, you must indicate you are applying for a Federal financial assistance project or program or are currently the recipient of funding under any Federal financial assistance project or program; and

(c) The SAM registration must remain active with current information at all times while the Agency is considering an application or while a Federal grant award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

- If you have not fully complied with all applicable DUNS and SAM requirements, the Agency may determine that the applicant is not qualified to receive a Federal award and the Agency may use that determination as a basis for making an award to another applicant. Please refer to Section F.2 for additional submission requirements that apply to grantees selected for this program. In accordance with OMB Memoranda M–20–11 and M–20–26, the Agency can accept an application without an active SAM registration. However, the registration must be completed before an award is made. Current registrants in SAM with active registrations expiring before May 16, 2020 will be afforded a one-time extension of 60 days.

4. Submission Date and Time

Application Deadline Date. August 24, 2020.

Explanation of Deadline: Electronic applications must be *received* by *http://www.grants.gov* by midnight Eastern Standard Time August 24, 2020, to be eligible for funding. Please review the *Grants.gov* website at *https://www.grants.gov/web/grants/applicants/organization-registration.html* for instructions on the process of registering your organization as soon as possible to ensure you can meet the electronic application deadline. *Grants.gov* will

not accept applications submitted after the deadline.

5. Intergovernmental Review

Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/wp-content/uploads/2017/11/SPOC-Feb.-2018.pdf.* If your State has a SPOC, you may submit your application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC or you do not want to submit your application to the SPOC, your State Office will submit your application to the SPOC or other appropriate agency or agencies.

You are also encouraged to contact Honie Turner, Program Management Division at 202–720–1400 or *CPgrants@usda.gov* if you have questions about this process.

6. Funding Restrictions

Project Funds may not be used for ineligible purposes. In addition, you may not use Project Funds for the following:

(a) To duplicate current services or to replace or to substitute support previously provided. However, Project Funds may be used to expand the level of effort or a service beyond what is currently being provided;

(b) To pay for costs to prepare the application for funding under this Notice;

(c) To pay for costs of the Project incurred prior to the effective date of the period of performance;

(d) To pay expenses for applicant employee training not directly related to the Project;

(e) Fund political activities;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) Engage in any activities that are considered a Conflict of Interest, as defined by this Notice; or

(i) Fund any activities prohibited by 2 CFR part 200;

In addition, your application will not be considered for funding if it does any of the following:

i. Requests more than the maximum grant amount: or

ii. Proposes ineligible costs that equal more than 10 percent of the Project Funds.

We will consider your application for funding if it includes ineligible costs of 10 percent or less of total Project Funds, if it is determined eligible otherwise. However, if your application is successful, those ineligible costs must be removed and replaced with eligible costs before the Agency will make the grant award or the amount of the grant award will be reduced accordingly. If we cannot determine the percentage of ineligible costs, your application will not be considered for funding.

7. Other Submission Requirements

(a) Applications will not be accepted if the text is less than 11-point font. You must submit your application electronically, through *Grants.gov*. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.* You must follow the instructions for this funding announcement at *http://www.grants.gov.* A password is not required to access the website.

(b) National Environmental Policy Act. This Notice has been reviewed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' We have determined that an Environmental Impact Statement is not required because the issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial programs is categorically excluded in the Agency's National Environmental Policy Act (NEPA) regulation found at 7 CFR 1970.53(f). We have determined that this Notice does not constitute a major Federal action significantly affecting the quality of the human environment.

The Agency will review each grant application to determine its compliance with 7 CFR part 1970. The applicant may be asked to provide additional information or documentation to assist the Agency with this determination.

(c) Civil Rights Compliance Requirements. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and Section 504 of the Rehabilitation Act of 1973.

E. Application Review Information

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. Applications will be funded in rank order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion.

1. Scoring Criteria

All eligible and complete applications will be evaluated based on the following criteria. Evaluators will base scores only on the information provided or cross-referenced by page number in each individual scoring criterion. DHCS is a competitive program, so you will receive scores based on the quality of your responses. Simply addressing the criteria will not guarantee higher scores. The total points possible for the criteria are 110. The minimum score requirement for funding is 60 points. It is at the Agency's discretion to fund applications with a score of 59 points or less if it is in the best interest of the Federal Government.

(a) *Community Needs and Benefits Derived from the Project (maximum of 30 points).* A panel of USDA employees will assess how the Project will benefit the residents in the Delta Region. This criterion will be scored based on the documentation in support of the community needs for health services and public health-related facilities and the benefits to people living in the Delta Region derived from the implementation of the proposed Project. It should lead clearly to the identification of the Project participant pool and the target population for the Project and provide convincing links between the Project and the benefits to the community to address its health needs. You must discuss the:

(1) Health care needs/issues/challenges facing the service area and explain how the identified needs/issues/challenges were determined. Discussion should also identify problems faced by the residents in the region.

(2) Proposed assistance to be provided to the service area and how the Project will benefit the residents in the region.

(3) Implementation plan for the Project and provide milestones which are well-defined and can be realistically completed.

(4) Expected outcomes of the proposed Project and how they will be

tracked and monitored. You should attempt to quantify benefits in terms of outcomes from the Project; that is, ways in which peoples' lives, or the community, will be improved. Provide estimates of the number of people affected by the benefits arising from the Project.

(b) *The Project Management and Organization Capability (maximum of 30 points).* A panel of USDA employees will evaluate the Consortium's experience, past performance, and accomplishments addressing health care issues to ensure effective Project implementation. This criterion will be scored based on the documentation of the Project's management and organizational capability. You must discuss:

(1) Your organization's management and fiscal structure including well-defined roles for administrators, staff, and established financial management systems.

(2) Relevant qualifications, capabilities, and educational background of the identified key personnel (at a minimum the Project Manager) who will manage and implement programs.

(3) Your organization's current successful and effective experience (or demonstrated experience within the past five years) addressing the health care issues in the Delta Region.

(4) Your organization's experience managing grant-funded programs.

(5) The extent to which administrative/management costs are balanced with funds designated for the provision of programs and services.

(6) The extent and diversity of eligible entity types within the applicant's Consortium of regional institutions of higher education, academic health and research institutes, and economic development entities located in the Delta Region.

(c) *Work Plan and Budget (maximum of 30 points).* You must provide a work plan and budget that includes the following: (1) The specific activities, such as programs, services, trainings, and/or construction-related activities for a facility to be performed under the Project; (2) the estimated line item costs associated with each activity, including grant funds and other necessary sources of funds; (3) the key personnel who will carry out each activity (including each Consortium member's role); and (4) the specific time frames for completion of each activity.

An eligible start and end date for the Project and for individual Project tasks must be clearly shown and may not exceed Agency specified timeframes for the grant period. You must show the source and use of both grant and other contributions for all tasks. Other contributions must be spent at a rate equal to, or in advance of, grant funds.

A panel of USDA employees will evaluate your work plan for detailed actions and an accompanying timetable for implementing the proposal. Clear and comprehensive work plans detailing all project goals, tasks, timelines, costs, and responsible personnel in a logical and realistic manner will result in a higher score.

(d) *Local Support (maximum 10 points).* A panel of USDA employees will evaluate your application for local support of the proposed Project. The application must include documentation detailing support solicited from local government, public health care providers, and other entities in the Delta Region. Evidence of support can include; but is not limited to surveys conducted amongst Delta Region residents and stakeholders, notes from focus groups, or letters of support from local entities.

(e) *Administrator Discretionary Points (maximum of 10 points).* The Administrator may choose to award:

i. Up to 5 points for projects with a primary purpose of providing treatment and counseling services for opioid abuse. Applicants who want to be considered for discretionary points must discuss how their workplan and budget addresses opioid misuse in the Delta Region; and

ii. up to 5 points for projects that seek to help rural communities build robust and sustainable economies through strategic investment in infrastructure, partnerships and innovation. Eligible applicants who want to be considered for discretionary points must discuss how their workplan and budget supports one or more of the five following key strategies:

- Achieving e-Connectivity for Rural America;
- Improving Quality of Life;
- Supporting a Rural Workforce;
- Harnessing Technological Innovation; and
- Economic Development.

2. Review and Selection Process

The State Offices will review applications to determine if they are eligible for assistance based on requirements in this Notice, and other applicable Federal regulations. If determined eligible, your application will be scored by a panel of USDA employees in accordance with the point allocation specified in this Notice. The review panel will convene to reach a consensus on the scores for each of the eligible applications. The Administrator may choose to award up to 10 Administrator discretionary points based on criterion (e) in section E.1. of this Notice. These points will be added to the cumulative score for a total possible score of 110. Applications will be funded in highest ranking order until the funding limitation has been reached. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If your application is ranked and not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices

If you are selected for funding, you will receive a signed notice of Federal award by postal or electronic mail, containing instructions on requirements necessary to proceed with execution and performance of the award.

If you are not selected for funding, you will be notified in writing via postal or electronic mail and informed of any review and appeal rights. Funding of successfully appealed applications will be limited to available FY 2020 funding.

2. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this in program can be found in 2 CFR parts 25, 170, 180, 200, 400, 415, 417, 418, and 421; and 48 CFR 31.2, and successor regulations to these parts. All recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)). These regulations may be obtained at *https://www.ecfr.gov/cgi-bin/ECFR?page=browse.*

The following additional requirements apply to grantees selected for this program:

- Execution of an Agency approved Grant Agreement.
- Acceptance of a written Letter of Conditions.
- Submission of Form RD 1940–1, ''Request for Obligation of Funds.''
- Submission of Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
- RD Instruction 1940–Q, Exhibit A–1, ''Certification for Contracts, Grants and Loans.''
- SF–LLL, ''Disclosure of Lobbying Activities'' if applicable.

You no longer must complete the following five forms for acceptance of a Federal award. This information is now collected through your registration or annual recertification in *SAM.gov* in the Financial Assistance General Certifications and Representations section:

- Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''
- Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''
- Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''
- Form AD–3031, ''Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants.'' Must be signed by corporate applicants who receive an award under this Notice.
- Form RD 400–4 ''Assurance Statement.''

3. Reporting

After grant approval and through grant completion, you will be required to provide the following:

a. A SF–425, ''Federal Financial Report,'' and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30th and December 31st. The project performance reports shall include a comparison of actual accomplishments to the objectives established for that period;

b. Reasons why established objectives were not met, if applicable;

c. Reasons for any problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

d. Objectives and timetable established for the next reporting period.

e. Provide a final project and financial status report within 90 days after the expiration or termination of the grant.

f. Provide outcome project performance reports and final deliverables.

G. Agency Contacts

For general questions about this announcement and for program Technical Assistance, please contact the appropriate State Office at *http://www.rd.usda.gov/contact-us/state-offices.* You may also contact Honie Turner, Program Management Division, Direct Programs Branch, Rural Business-Cooperative Service, USDA at (202) 720–1400 or email *CPgrants@usda.gov.* You are also encouraged to visit the application website for application tools, including an application template. The website address is: *http://www.rd.usda.gov/programs-services/delta-health-care-services-grants.*

H. Other Information

Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–14849 Filed 7–9–20; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–20–ELECTRIC–0029]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice; comment requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request an extension for a currently approved information collection in support of the RUS Electric Loan Application and Related Reporting Burdens.

DATES: Comments on this notice must be received by September 8, 2020 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Robin M. Jones, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 2445, South Building, Washington, DC 20250. Telephone: (202) 772–1172. email *robin.m.jones@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) 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; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by using the Federal eRulemaking Portal: Go to *https://www.regulations.gov/* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Utilities Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select RUS–20–ELECTRIC–0029 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Number: 0572–0032.

Expiration Date of Approval: April 30, 2021.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178, 7 U.S.C. 6941 *et seq.*) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.,* as amended) (RE Act).

The RE Act authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets and/or revenue. In the interest of protecting loan security, monitoring compliance with debt covenants, and ensuring that RUS loan funds are used for purposes authorized by law, RUS requires that borrowers prepare and submit for RUS evaluation certain studies and reports. Some of these studies and reports are required only once for each loan application; others must be submitted periodically until the loan is completely repaid. These forms and documents serve as support for electric loan applications and summarizes the types and estimated costs of facilities and equipment for which RUS financing is being requested.

The RE Act also authorizes and empowers the Administrator of RUS to make or cause to be made, studies, investigations, and reports concerning the condition and progress of the electrification of the several States and Territories; and to publish and disseminate information with respect thereto. Information supplied by borrowers forms the basis of many of these reports.

In the past two years, RUS has implemented an application intake system called RDApply that allows applicants to create an online application for RUS loans and grants as well as upload attachments, sign certifications, and draw service areas, to name a few features. RDApply streamlines the application process, as well as provides identity security, reduces paper consumption and is expected to reduce the burden associated with this information collection package over time.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14.85 hours per response.

Respondents: Not for profit organizations, business or other for profit.

Estimated Number of Respondents: 625.

Estimated Number of Responses per Respondent: 4.72.

Estimated Annual Responses: 2,803.

Estimated Total Annual Burden on Respondents: 41,633 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center—Regulations Management Division, at (202) 772–1172, email: *robin.m.jones@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2020–14883 Filed 7–9–20; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2020–0003]

Proposed Renewal of Information Collection; Online Architectural Barriers Act (ABA) Complaint Form

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Architectural and Transportation Barriers Compliance Board (Access Board) announces its submission, concurrently with the publication of this Notice or soon thereafter, of the following information collection request to the Office of Management and Budget (OMB) for its review and approval. The Access Board invites comment on its ''Online Architectural Barriers Act (ABA) Complaint Form.'' (OMB Control No. 3014–0012). The information collection is scheduled to expire on August 31, 2020, and we propose to continue using the instrument for an additional three years.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days. Therefore, public comments should be submitted to OMB by not later than August 10, 2020 in order to be assured of consideration.

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: Mario Damiani, Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111. Phone: 202–272–0050 (voice); 202–272–0064 (TTY). Email: *damiani@access-board.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*) and its implementing regulations (5 CFR part 1320), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information,'' within the meaning of the PRA, includes agency requests that pose identical questions to, or impose reporting or recording keeping obligations on, ten or more persons, regardless of whether response to such request is mandatory or voluntary. See 5 CFR 1320.3(c); see also 44 U.S.C. 3502(3). Before seeking clearance from OMB, agencies are generally required, among other things, to publish both 60-day and 30-day Notices in the **Federal Register** concerning any proposed information collection—including extension of a

previously-approved collection—and provide an opportunity for comment. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

To comply with this requirement, the Access Board published its 60-day Notice in April 2020. See 85 FR 18913 (April 3, 2020). The Access Board is now publishing this 30-day Notice for the proposed renewal of this information collection. OMB's approval of the current version of the Access Board's Online ABA Complaint Form is set to expire in August 2020.

OMB Control Number: 3014–0012.

Title: Online Architectural Barriers Act (ABA) Complaint Form.

Type of Review: Extension of a currently approved information collection.

Abstract: The Access Board is statutorily charged with enforcing the ABA through, among other things, investigation of complaints from members of the public concerning the accessibility of covered buildings or facilities, namely—those owned or leased by the Federal government, as well as those constructed or altered using Federal funds from grants or loans. See 29 U.S.C. 792(b)(1), (e). At present, over 90% of individuals elect to submit their ABA complaints using the Online ABA Complaint Form; the remainder are submitted in writing, without the need to use a hard-copy complaint form, by email, regular mail, or fax.

By this notice, the Access Board is proposing to continue using essentially the same Online ABA Complaint Form for another three years. We propose to make formatting-type changes only that will make update the ''look and feel'' of the online form; we are not making any material, substantive revisions.

In sum, the Online ABA Complaint Form seeks information needed by the Access Board to investigate complaints and, if desired, contact the complainant. Mandatory fields are: Name and location (by city and state) of the building/facility at issue and description of accessibility barrier(s). Optional fields include the building/facility address and the complainant's name and contact information. (Where provided, a complainant's identity and other personal information may not be disclosed outside the agency without his or her written permission.) Individuals may also upload electronic attachments (*e.g.,* pictures, drawings) relevant to their complaint, if desired. Once a complaint is submitted, the system automatically provides confirmation of successful submission, a complaint number, and the option to print a copy of the submitted complaint. Complainants who elect to provide an email address as part of their contact information also receive an automatically generated confirmation email.

Description of Respondents: Individual members of the public.

Estimated Total Annual Number of Responses: Approximately 185 individuals submit complaints using the Online ABA Complaint Form each year.

Estimated Frequency of Response: Occasional. Complainants submit one complaint for each building or facility at which they noted accessibility barriers, regardless of the number of barriers encountered.

Estimated Time Burden per Response: On average, about 30 minutes per online complaint; the time burden may vary depending on the number of accessibility barriers identified in a complaint. There is no financial burden to complainants.

Estimated Total Annual Burden Hours: Approximately 93 hours.

Request for Comment: Comments are again invited on: (a) Whether the proposed collection of information is necessary for performance of the Access Board's work; (b) the accuracy of the estimated burden; (c) ways for the Access Board to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. If you wish to comment in response to this Notice, you may send your comments as specified under the **ADDRESSES** section of this Notice by August 10, 2020.

Gretchen Jacobs,

Acting Executive Director.

[FR Doc. 2020–14767 Filed 7–9–20; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Public Briefing, *COVID–19 in Indian Country: The Impact of Federal Broken Promises on Native Americans,* Notice of Commission Business Meeting, and Call for Public Comments

DATES: Friday, July 17, 2020, 10:00 a.m. ET.

ADDRESSES: Virtual Briefing and Business Meeting.

FOR FURTHER INFORMATION CONTACT: Zakee Martin (202) 376–8359; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: On Friday, July 17, at 10:00 a.m. Eastern Time, the U.S. Commission on Civil Rights will hold a virtual briefing to evaluate the impacts of COVID–19 on Native Americans. In 2018, the Commission issued *Broken Promises: Continuing Federal Funding Shortfall for Native Americans,* which addressed the inadequacy of federal funding for Native American programs despite the United States' trust responsibility to promote tribal self-government, support the general wellbeing of Native American people, tribes and villages, and to protect their land and resources.

The Commission will hear testimony from experts on how the pandemic has impacted Native American communities with respect to healthcare, housing, and infrastructure components such as access to water and broadband, and whether the federal government is meeting its obligations to Native American people in this current crisis.

This briefing is open to the public via Weblink. The event will live-stream at *https://www.youtube.com/user/USCCR/videos.* (Streaming information subject to change.) Public participation is available for the event with view access, along with an audio option for listening.

Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, July 17, 2020, is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript. To request additional accommodations, persons with disabilities should email *access@usccr.gov* by Monday, July 13, 2020, indicating ''accommodations'' in the subject line.

Briefing Agenda for COVID–19 in Indian Country: The Impact of Federal Broken Promises on Native Americans: 10:00 a.m.–11:45 a.m.

I. Introductory Remarks: Chair Catherine E. Lhamon: 10:00 a.m.—10:10 a.m.

II. Panel: 10:10 a.m.—11:40 a.m.

- A. Geoffrey Blackwell, Chief Strategy Officer, AMERIND Risk Management Corporation
- B. William Smith, Chairman, National Indian Health Board
- C. Lynn Malerba, Chairwoman, Mohegan Tribe/Tribal Governance Advisory Committee
- D. Jonathan Nez, President, Navajo Nation
- E. Fawn Sharp, President, National Congress of American Indians

III. Closing Remarks: Chair Catherine E. Lhamon: 11:40 a.m.—11:45 a.m.

III. Break: 11:45 a.m.—12:00 p.m.
Commission Business Meeting
Agenda: 12:00 p.m.–1:00 p.m.
A. Approval of Agenda
B. Business Meeting
a. Discussion and vote on Commission Advisory Committees
i. Vermont Advisory Committee
ii. Idaho Advisory Committee
iii. Louisiana Advisory Committee
b. Discussion and vote on timeline for Commission's study on bail reform
c. Discussion and vote on timeline for Commission's study on maternal health disparities
C. Management and Operations
a. Staff Director's Report
V. Adjourn Meeting.
Schedule is subject to change.
Call for Public Comments:

In addition to the testimony collected on Friday, July 17, 2020 via virtual briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information no later than Friday, July 24, 2020, to *BrokenPromises@usccr.gov* or OCRE/Public Comments, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425. Please address the following questions:

1. *Broken Promises* found that Native Americans experience distinct health disparities as compared to other Americans which are compounded by Native American healthcare programs being chronically underfunded. How has the outbreak of COVID–19 impacted these health disparities?

2. *Broken Promises* found that there is a severe lack of affordable housing and adequate physical infrastructure in Indian Country. Due to a lack of federal investment in affordable housing and infrastructure such as roads, water, sewer, and electricity, Native Americans often find themselves living in overcrowded housing without basic utilities and infrastructure. What have been the consequences of these disparities in housing conditions and access to infrastructure during the outbreak of COVID–19?

3. *Broken Promises* found that telecommunications infrastructure, especially wireless and broadband internet services, is often inaccessible to many Native Americans in Indian Country. These services are necessary to keep the community connected to telehealth services, remote education, economic development, and public safety. Has this lack of telecommunications created additional barriers for Native Americans in coping with and reacting to the pandemic?

4. Have the congressional responses to the pandemic—especially the passage of the CARES Act and other stimulus packages—done enough to help Native people with the challenges posed by COVID–19?

5. Has the Executive Branch's responses to the pandemic—including its statutory interpretation and administrative implementation of laws passed by Congress—done enough to help Native peoples cope with the challenges passed by Congress?

6. What recommendations should the Commission make to Congress and the federal government to ensure that Native American communities can address the coronavirus pandemic?

Dated: July 8, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15027 Filed 7–8–20; 11:15 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; correction to call-in number and conference ID number.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** of Tuesday, June 16, 2020, concerning a meeting of the Missouri Advisory Committee. The document contained a call-in number and conference ID number that has now been changed to a new call-in number and conference ID number.

FOR FURTHER INFORMATION CONTACT: David Barreras, (202) 499–4066, *dbarerras@usccr.gov.*

Correction: In the **Federal Register** of Tuesday, June 16, 2020, in FR Doc. 2020–13058, on page 36528, second column of 36528, correct the call-in number to read: (206) 800–4892 and the conference ID: 345799543.

Dated: July 7, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14930 Filed 7–9–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Wednesday August 5, 2020 at 12:00 p.m. Central time. The Committee will discuss civil rights concerns in the state.

DATES: The meeting will take place on Wednesday August 5, 2020 at 12:00 p.m. Central Time.

Public Call Information: Dial: 800–437–2398, Confirmation Code: 5636288.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer (DFO), at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this

Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Discussion: Civil Rights in Mississippi
  a. Prosecutorial Discretion Report Release
  b. Other Topics
III. Public comment
IV. Next steps
V. Adjournment

Dated: July 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14784 Filed 7–9–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a meeting via teleconference on Thursday, July 23, 2020 at 1:00 p.m. Pacific Time. The purpose of the meeting is for the Committee to discuss post-report stage and overview of project process.

DATES: The meeting will be held on Thursday, July 23, 2020 at 1:00 p.m. PT.

Public Call Information: Dial: 800–437–2398; Conference ID: 9501582.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmYAAQ* Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcome & Introductions
II. Overview of Project Process
III. Discussion on Post-Report Stage
IV. Public Comment
V. Adjournment

Dated: July 6, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14866 Filed 7–9–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Michigan Advisory Committee (Committee) will hold a meeting via teleconference on Tuesday, July 20, 2020, at 10:00 a.m. Eastern Time, for the purpose of discussing civil rights issues in the state.

DATES: The meeting will be held on Tuesday, July 20, 2020, at 10:00 a.m. Eastern Time.

Public Call Information: Dial: 800–367–2403, Confirmation Code: 7890399.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer (DFO), at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll-free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and confirmation code.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at 202–618–4158.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjPAAQ* under the Commission on Civil Rights, Michigan Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Civil Rights in Michigan

Public Comment
Adjournment

Dated: July 2, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14777 Filed 7–9–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Hawai'i Advisory Committee (Committee) to the Commission will be held at 10:00 a.m. on Thursday, July 23, 2020 (Hawai'i Time). The purpose of the meeting will be to discuss project topics.

DATES: The meeting will be held on Thursday, July 23, 2020 at 10:00 a.m. Hawai'i Time.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–353–6461; Conference ID: 7720803.

This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 7720803. Any interested member of the public may call this number and listen to the meeting. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the 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 or email Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 681–0857.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Update from Commission
III. Concept Stage Presentation
IV. Review Civil Rights Topics
V. Public Comment
VI. Discuss Next Steps
VII. Adjournment

Dated: July 6, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–14865 Filed 7–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2020]

Foreign-Trade Zone (FTZ) 43—Battle Creek, Michigan; Authorization of Production Activity; Zoetis, LLC; (Pharmaceutical Products) Kalamazoo, Michigan

On March 9, 2020, Zoetis, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 43B, in Kalamazoo, Michigan.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 14883, March 16, 2020). On July 7, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: July 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–14905 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–897, C–580–898]

Large Diameter Welded Pipe From the Republic of Korea: Initiation and Expedited Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating and issuing expedited preliminary results of changed circumstances reviews (CCR) of the antidumping duty (AD) and countervailing duty (CVD) orders on large diameter welded pipe from the Republic of Korea (Korea).

DATES: Applicable July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Sergio Balbontin, 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) 482–6478, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2019, Commerce published the AD and CVD orders on large diameter welded pipe from Korea.[1] On June 11, 2020,[2] SeAH Steel Corporation (SeAH), a Korean producer of large diameter welded pipe, requested that Commerce initiate CCRs to revoke, in part, the AD and CVD orders on large diameter welded pipe from Korea with respect to certain large diameter welded pipe products within four specific groups of grades, outside diameters, and wall thicknesses.[3] In its June 11 CCR

[1] *See Large Diameter Welded Pipe from Korea: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order,* 84 FR 18767 (May 2, 2019); and *Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019) (collectively, *Orders*).

[2] This request was originally filed on the record of the investigation on May 7, 2020, without any of the attachments referenced therein. It was refiled on June 11, 2020, on the correct segment and with the referenced attachments included.

[3] *See* SeAH's Letter, ''Large Diameter Welded Pipe from Korea: Request for Changed Circumstances Review and Revocation, in Part,''

Request, SeAH included as attachments the CCR requests filed in the companion India AD and CVD proceedings by nine members of the domestic industry, including the petitioners in the underlying investigations (individually and as members of the American Line Pipe Producers Association) and Welspun Global Trade LLC.[4] In those CCR requests, the domestic industry requested that Commerce initiate CCRs to revoke, in part, the AD and CVD orders on large diameter welded pipe from India, with respect to certain large diameter welded pipe products within four specific groups of grades, outside diameters, and wall thicknesses.

In its June 11 CCR Request, SeAH states that Commerce recently made determinations to revoke, in part, the AD and CVD orders on large diameter welded pipe from India and the AD order on large diameter welded pipe from Greece for these same four product groups. SeAH argues that because the domestic industry has expressed ''no interest'' in these four product groups from India, the domestic industry's statement should apply equally to the AD and CVD orders on Korea. According to SeAH, the AD and CVD orders for India and the AD order for Greece, as well as the AD and CVD orders for Korea, were the result of the same set of original January 17, 2018, petitions,[5] each of which included the four product groups in which the domestic industry has now expressed ''no interest.''[6] SeAH requests that Commerce modify the Korea large diameter welded pipe AD and CVD orders in a manner consistent with the changes that have been made to the corresponding India and Greece orders.

Scope of the Orders

The merchandise covered by these orders is welded carbon and alloy steel pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded 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. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded 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 pipe meeting the physical description set forth above is covered by the scope of these orders, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded 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 pipe.

Excluded from the scope are any products covered by the existing antidumping duty order on welded line pipe from the Republic of Korea. *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056 (December 1, 2015).[7]

The large diameter welded 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, 7305.19.5000, 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(d), Commerce will conduct a CCR of an AD or CVD order when it receives information which shows changed circumstances sufficient to warrant such a review. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. In the event Commerce determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits Commerce to combine the notices of initiation and preliminary results.

For the reasons discussed below, we find that such sufficient information exists to warrant the initiation of the CCRs requested by SeAH. Further, Commerce requires no additional information to make preliminary findings. For this reason, as permitted by 19 CFR 351.221(c)(3)(ii), Commerce finds that expedited action is warranted and is conducting these reviews on an expedited basis by publishing preliminary results in conjunction with this notice of initiation.

Furthermore, pursuant to 19 CFR 351.216(c), Commerce will not review a final determination in an investigation less than 24 months after the date of publication of notice of the final determination, unless Commerce determines that good cause exists. In the *India CCR Preliminary Results,* Commerce found that ''good cause'' existed to initiate the India CCRs even though the request was made less than 24 months after the final determination.[8] The 10 domestic producers who requested the India CCRs represented substantially all of the production of the domestic like product covered by the India orders,[9] and have stated in those proceedings that they are no longer interested in the merchandise

dated June 11, 2020 (June 11 CCR Request) and Attachment to this notice.

[4] *See* June 11 CCR Request at Exhibits 1–3.

[5] *See Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 83 FR 7154 (February 20, 2018) (*Initiation Notice*).

[6] *See Large Diameter Welded Pipe from India: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 85 FR 26930 (May 6, 2020) (*India CCR Final Results*); and *Large Diameter Welded Pipe from Greece: Final Results of Antidumping Duty Changed Circumstances Review,* 85 FR 37424 (June 22, 2020) (*Greece CCR Final Results*).

[7] This paragraph does not appear in the scope of the CVD order on large diameter welded pipe from Korea.

[8] *See Large Diameter Welded Pipe from India: Initiation and Expedited Preliminary Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 84 FR 69356, 69357 (December 18, 2019) (*India CCR Preliminary Results*); *see also India CCR Final Results,* 85 FR at 26930.

[9] In its administrative practice, 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).

at issue being covered by the orders.[10] Additionally, the domestic industry does not currently produce the particular large diameter welded pipe products subject to this CCR request, nor were these products produced in the United States during the period of investigation. Furthermore, according to the domestic producers, the investment needed for the industry to 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.[11]

Furthermore, in the *Greece CCR Preliminary Results,* Commerce stated:

> 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.[12]

The AD and CVD orders on large diameter welded pipe from Korea began with the same scope in the petitions [13] that resulted in the AD orders against India and Greece and the CVD order against India. Accordingly, we find that the domestic producers' statements are also applicable to the CCR requests for Korea. All of the facts that led Commerce to determine that there was ''good cause'' to initiate CCRs and finally modify the scopes of the India and Greece orders pertaining to large diameter welded pipe are equally applicable to the AD and CVD orders on large diameter welded pipe from Korea.

Preliminary Results of Changed Circumstances Reviews

In the absence of any objection by any other interested parties, and consistent with the revocation, in part, of the AD and CVD orders on large diameter welded pipe from India and the AD order on large diameter welded pipe from Greece, we preliminarily determine that substantially all of the domestic producers of the like product have no interest in the continued application of part of the AD and CVD orders on large diameter welded pipe from Korea. Accordingly, we are notifying the public of our intent to revoke, in part, the Korea AD and CVD orders as they relate to certain specific large diameter welded pipe products produced in Korea. We intend to amend the scope of the AD and CVD orders on large diameter welded pipe from Korea 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.[14] 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.[15] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[16] 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.

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, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230 in a room to be determined.[17]

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: July 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Attachment

Proposed Revision to the Scope of the Orders

Excluded from the scope of the AD/CVD orders are large diameter welded pipe products 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.

[FR Doc. 2020–14920 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–880]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), September 1, 2017 through August 31, 2018.

DATES: Applicable July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Alice Maldonado or Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4682 or (202) 482–6274, respectively.

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[10] *See India CCR Preliminary Results,* 84 FR at 69357 (unchanged in *India CCR Final Results* 85 FR at 26930).

[11] *Id.*

[12] *See Large Diameter Welded Pipe from Greece: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 85 FR 26924, 26926 (May 6, 2020) (*Greece CCR Preliminary Results*) (unchanged in *Greece CCR Final Results*).

[13] The scope in each of the large diameter welded pipe petitions was identical except for the exclusion of certain products covered by existing AD and/or CVD orders at the time of the initiation of the investigations. *See Initiation Notice* at Appendix.

[14] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for filing of case briefs.

[15] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for filing of rebuttal briefs.

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

[17] *See* 19 CFR 351.310(d).

SUPPLEMENTARY INFORMATION:

Background

This review covers 21 producers and exporters of the subject merchandise. Commerce selected Dong-A Steel Company (DOSCO), HiSteel Co., Ltd (HiSteel), and Kukje Steel Co., Ltd. (Kukje Steel), for individual examination. DOSCO informed Commerce that it did not intend to respond to the questionnaire or participate as a mandatory respondent in this administrative review. The producers and or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On November 18, 2019, Commerce published the *Preliminary Results.*[1] In January and February 2020, the petitioner,[2] Kukje Steel, and HiSteel submitted case and rebuttal briefs. On February 12, 2020, we postponed the final results until May 15, 2020.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 6, 2020.[4]

Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are certain heavy walled rectangular welded steel pipes and tubes from the Republic of Korea (Korea). Products subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 7306.61.1000. Subject merchandise may also be classified under 7306.61.3000. Although the HTSUS numbers and ASTM specification are provided for convenience and for customs purposes, the written product description remains dispositive.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum.[6] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for HiSteel and Kukje Steel and for those companies not selected for individual review.[7]

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period September 1, 2017 through August 31, 2018:

Producers/exporters	Weighted-average dumping margin (percent)
Dong-A Steel Company[8]	53.80
HiSteel Co., Ltd	26.20
Kukje Steel Co., Ltd	35.11
Review-Specific Average Rate Applicable to the Following Companies:[9]	
Ahshin Pipe & Tube Company	29.07
Bookook Steel Co., Ltd	29.07
Dongbu Steel Co., Ltd	29.07
Ganungol Industries Co. Ltd	29.07
Hanjin Steel Pipe	29.07
Husteel Co., Ltd	29.07
Hyosung Corporation	29.07
Hyundai Steel Co	29.07
Hyundai Steel Pipe Company	29.07
K Steel Co. Ltd	29.07
Miju Steel Manufacturing Co., Ltd	29.07
NEXTEEL Co., Ltd	29.07
POSCO DAEWOO	29.07
Sam Kang Industrial Co., Ltd	29.07
Sam Kang Industries Co., Ltd	29.07
Samson Controls Ltd., Co	29.07
SeAH Steel Corporation	29.07
Yujin Steel Industry Co. Ltd	29.07

Weintend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where HiSteel and Kukje Steel reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 63613 (November 18, 2019) (*Preliminary Results*).

[2] The petitioner is Nucor Tubular Products Inc., formally known as Independence Tube Corporation and Southland Tube, Incorporated, Nucor companies.

[3] *See* Memorandum, ''Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated February 12, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] For a full description of the scope of the order, *see* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *Id.*

[7] *See* accompanying Issues and Decision Memorandum.

[8] As explained in the *Preliminary Results* and accompanying Preliminary Decision Memorandum, mandatory respondent DOSCO failed to respond to Commerce's questionnaire, and we applied facts otherwise available with adverse inferences (AFA), in accordance with section 776 of the Act. No party challenged our *Preliminary Results* with respect to DOSCO or the rate selected. Therefore, we continue to apply AFA to DOSCO, and we have continued to apply the same rate that we are able to corroborate using transaction-specific margins from HiSteel and Kukje Steel.

[9] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act. *See* Memorandum, ''Final Results of the Antidumping Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Calculation of the Cash Deposit Rate for Non-Reviewed Companies,'' dated July 6, 2020.

average [10] of the cash deposit rates calculated for HiSteel and Kukje Steel. Because DOSCO withdrew its participation from this review and reported no information to Commerce for this POR, we will instruct CBP to apply an assessment rate to all entries it produced and/or exported equal to the dumping margin of 53.80 percent, as indicated above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[11]

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 3.24 percent, the all-others rate established in the LTFV investigation.[12] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

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[10] This rate was calculated as discussed in footnote 9.

[11] *See* section 751(a)(2)(C) of the Act.

[12] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders,* 81 FR 62865, 62866 (September 13, 2016).

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 May anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable July 10, 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 May 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

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

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.

Respondent Selection—Aluminum Extrusions From the People's Republic of China

In the event Commerce limits the number of respondents for individual examination in the administrative review of the antidumping duty order on aluminum extrusions from the People's Republic of China (''China''), Commerce intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, Commerce intends to limit the number of Q&V questionnaires issued in the review based on CBP data for U.S. imports of aluminum extrusions from China. The extremely wide variety of individual types of aluminum extrusion products included in the scope of the order on aluminum extrusions would preclude meaningful results in attempting to determine the largest China exporters of subject merchandise by volume. Therefore, Commerce will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for imported quantities. Parties subject to the review to which Commerce does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which Commerce will select mandatory respondents. The Q&V questionnaire will be available on Commerce's website at *http://trade.gov/enforcement/news.asp* on the date of publication of this notice in the **Federal Register**. The responses to the Q&V questionnaire must be received by Commerce within 14 days of publication of this notice. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, Commerce does not intend to grant any extensions for the submission of responses to the Q&V questionnaire. Parties will be given the opportunity to comment on the CBP data used by Commerce to limit the number of Q&V questionnaires issued. We intend to release the CBP data under APO to all parties having an APO within seven days of publication of this notice in the **Federal Register**. Commerce invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

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

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

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.

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 May 31, 2021.

AD proceedings	Period to be reviewed
BELGIUM: Carbon and Alloy Steel Cut-to-Length Plate A–423–812	5/1/19–4/30/20
A.G. der Dillinger Hütte	
C.A. Picard GmbH	
Doerrenberg Edelstahl GmbH	
Edgen Murray	
EEW Steel Trading LLC	
Fike Europe B.A	
Industeel Belgium S.A	
Industeel France S.A.S	
Macsteel International	
NLMK Clabecq S.A./NLMK Plate Sales S.A./NLMK Sales Europe S.A./NLMK Manage Steel Center S.A./NLMK La Louviere S.A	
NLMK Dansteel A.S	
NLMK Verona SpA	
NobelClad Europe GmbH & Co. KG	
RP Technik GmbH Profilsysteme	
Salzgitter Mannesmann International GmbH	
Stahlo Stahl Service GmbH & Co. KG	
Stemcor USA	
Thyssenkrupp Steel Europe	
TWF Treuhandgesellschaft Werbefilm mbH	
Tranter Service Centers	
Válcovny Trub Chomutov A.s	

[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.

AD proceedings	Period to be reviewed
Voestalpine Grobblech GmbH	
CANADA: Large Diameter Welded Pipe A–122–863	8/27/18–4/30/20
Acier Profile SBB Inc	
Aciers Lague Steels Inc	
Amdor Inc	
BPC Services Group	
Bri-Steel Manufacturing	
Canada Culvert	
Canadian National Steel Corp	
Canam (St Gedeon)	
Cappco Tubular Products Canada Inc	
CFI Metal Inc	
Dominion Pipe & Piling	
Enduro Canada Pipeline Services	
Evraz Inc. NA/Evraz Inc. NA Canada/The Canadian National Steel Corporation [5]	
Fi Oilfield Services Canada	
Forterra	
Gchem Ltd	
Graham Construction	
Groupe Fordia Inc	
Grupo Fordia Inc	
Hodgson Custom Rolling	
Hyprescon Inc	
Interpipe Inc	
K K Recycling Services	
Kobelt Manufacturing Co	
Labrie Environment	
Les Aciers Sofatec	
Lorenz Conveying P	
Lorenz Conveying Products	
Matrix Manufacturing	
MBI Produits De Forge	
Nor Arc	
Peak Drilling Ltd	
Pipe & Piling Sply Ltd	
Pipe & Piling Supplies	
Prudental	
Prudential	
Shaw Pipe Protecction	
Shaw Pipe Protection	
Tenaris Algoma Tubes Facility	
Tenaris Prudential	
Welded Tube of Can Ltd	
GERMANY: Carbon and Alloy Steel Cut-to-Length Plate A–428–844	5/1/19–4/30/20
AG der Dillinger Hüttenwerke	
GREECE: Large Diameter Welded Pipe [6] A–484–803	4/19/19–4/30/20
Corinth Pipeworks Pipe Industry S.A	
INDIA: Certain Welded Carbon Steel Standard Pipes and Tubes A–533–502	5/1/19–4/30/20
Apl Apollo Tubes Ltd	
Asian Contec Ltd.	
Bhandari Foils & Tubes Ltd	
Bhushan Steel Ltd	
Blue Moon Logistics Pvt. Ltd	
CH Robinson Worldwide	
Ess-Kay Engineers	
Fiber Tech Composite Pvt. Ltd	
Garg Tube Export LLP	
GCL Private Limited	
Goodluck India Ltd	
GVN Fuels Ltd	
Hydromatik	
Jindal Quality Tubular Ltd	
KLT Automatic & Tubular Products Ltd	
Lloyds Line Pipes Ltd	
Manushi Enterprise	
MARINEtrans India Private Ltd	
Nishi Boring Corporation	
Patton International Ltd	
Raajratna Ventures Ltd	
Ratnamani Metals & Tubes Ltd	
SAR Transport Systems Pvt. Ltd	
Surya Global Steel Tubes Ltd	
Surya Roshni Ltd	
Vallourec Heat Exchanger Tubes Ltd	

AD proceedings	Period to be reviewed
Welspun India Ltd	
Zenith Birla (India) Ltd	
Zenith Birla Steels Private Ltd	
Zenith Dyeintermediates Ltd	
ITALY: Carbon and Alloy Steel Cut-to-Length Plate A–475–834	5/1/19–4/30/20
Arvedi Tubi Acciaio	
C.M.T. Construzioni Meccaniche di Taglione Emilio & C. S.a.s	
Lyman Steel Company	
MAM s.r.1	
NLMK Verona SpA	
O.ME.P SpA	
Ofar SpA	
Officine Tecnosider s.r.1	
Sesa SpA	
Tim-Cop Doo Temerin	
JAPAN: Diffusion-Annealed Nickel-Plated Flat-Rolled Steel Products A–588–869	5/1/19–4/30/20
Toyo Kohan Co., Ltd	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate A–580–887	5/1/19–4/30/20
POSCO	
REPUBLIC OF KOREA: Carbon and Alloy Steel Wire Rod A–580–891	5/1/19–4/30/20
POSCO	
REPUBLIC OF KOREA: Large Diameter Welded Pipe A–580–897	8/27/18–4/30/20
AJU Besteel Co., Ltd	
Chang Won Bending Co., Ltd	
Daiduck Piping Co., Ltd	
Dong Yang Steel Pipe Co., Ltd	
Dongbu Incheon Steel Co., Ltd	
EEW KHPC Co., Ltd	
EEW Korea Co., Ltd	
HiSteel Co., Ltd	
Husteel Co., Ltd	
Hyundai RB Co., Ltd	
Hyundai Steel Company	
Kiduck Industries Co., Ltd	
Kum Kang Kind. Co., Ltd	
Kumsoo Connecting Co., Ltd	
Nexteel Co., Ltd	
SeAH Steel Corporation	
Seonghwa Industrial Co., Ltd	
SIN-E B&P Co., Ltd	
Steel Flower Co., Ltd	
WELTECH Co., Ltd	
REPUBLIC OF KOREA: Polyester Staple Fiber A–580–839	5/1/19–4/30/20
Huvis Corporation	
Toray Advanced Materials Korea, Inc. (formerly Toray Chemical Korea, Inc.)	
SULTANATE OF OMAN: Polyethylene Terephthalate Resin A–523–810	5/1/19–4/30/20
OCTAL SAOC–FZC	
TAIWAN: Stilbenic Optical Brightening Agents A–583–848	5/1/19–4/30/20
Teh Fong Min International Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions A–570–967	5/1/19–4/30/20
Allpower Display Co., Ltd	
Amidi Zhuhai	
Anderson International	
Asia-Pacific Light Alloy (Nantong) Technology Co., Ltd	
Beauty Sky Technology Co. Ltd	
Changshu Changsheng Aluminum Products Co., Ltd	
Chenming Industry and Commerce Shouguang Co., Ltd	
China International Freight Co. Ltd	
China State Decoration Group Co., Ltd	
CRRC Changzhou Auto Parts Co. Ltd	
Custom Accessories Asia Ltd	
Everfoison Industry Ltd	
Foshan City Fangyuan Ceramic	
Foshan City Nanhai Yongfeng Aluminum	
Foshan City Top Deal Import and Export Co., Ltd	
Foshan Gold Bridge Import and Export Co. Ltd	
Foshan Golden Promise Import and Export Co., Ltd	
Foshan Guangshou Import and Export Co., Ltd	
Foshan Xingtao Aluminum Profile Co., Ltd	
Fujian Minfa Aluminum Co., Ltd	
Fujian Minfa Aluminum Inc	
Fuzhou Ruifuchang Trading Co., Ltd	
Fuzhou Sunmodo New Energy Equipment Co., Ltd	
Gebruder Weiss	

AD proceedings	Period to be reviewed
Gold Bridge International	
Grupo Emb	
Grupo Europeo La Optica	
Grupo Pe No Mato In	
Guangdong Gaoming Guangtai Shicai	
Guangdong Gaoxin Communication Equipment Industrial Co., Ltd	
Guangdong Golden China Economy	
Guangdong Maoming Foreign Trade Enterprise Development Co	
Guangdong Taiming Metal Products Co., LTD	
Guangdong Victor Aluminum Co., Ltd	
Guangzhou Jintao Trade Company	
Hangzhou Evernew Machinery & Equipment Co., Ltd	
Hangzhou Tonny Electric and Tools Co., Ltd	
Hefei Sylux Imp. & Exp. Co., Ltd	
Hong Kong Dayo Company, Ltd	
Huazhijie Plastic Products	
Huiqiao International Shanghai	
Ilshim Almax	
Jer Education Technology	
Jiangsu Asia-Pacific Light Alloy Technology Co Ltd	
Jiangsu Weatherford Hongda Petroleum Equipment Co., Ltd	
Jiangsu Yizheng Haitian Aluminum Industrial	
Jiang Yin Ming Ding Aluminum & Plastic Products Co. Ltd	
Jilin Qixing Aluminum Industries Co., Ltd	
Jin Lingfeng Plastic Electrical Appliance	
Kanal Precision Aluminum Product Co. Ltd	
Kingtom Aluminio SLR	
Larkcop International Co Ltd	
Ledluz Co Ltd	
Liansu Group Co. Ltd	
Links Relocations Beijing	
Marshell International	
Modular Assembly Technology	
Ningbo Deye Inverter Technology	
Ningbo Hightech Development	
Ningbo Winjoy International Trading	
Orient Express Container	
Ou Chuang Plastic Building Material (Zhejiang) Co., Ltd	
Pentagon Freight Service	
Pro Fixture Hong Kong	
Qingdao Sea Nova Building	
Qingdao Yahe Imports and Exports	
Rollease Acmeda Pty	
Sewon	
Shandong Huajian Aluminum Industry	
Shanghai EverSkill M&E Co., Ltd	
Shanghai Jingxin Logistics	
Shanghai Ouma Crafts Co, Ltd	
Shanghai Phidix Trading	
Sinogar Aluminum	
Sunvast Trade Shanghai	
Suzhou Mingde Aluminum	
Tai-Ao Aluminum (Taishan) Co., Ltd	
Taizhou Puan Lighting Technology	
Transwell Logistics Co., Ltd	
United Aluminum	
Uniton Investment Ltd	
Wanhui Industrial China	
Wellste Material	
Wenzhou Yongtai Electric Co., Ltd	
Winstar Power Technology Limited	
Wisechain Trading Ltd	
Wuxi Lotus Essence	
Wuxi Rapid Scaffolding Engineering	
Wuxi Zontai Int'l Corporation Ltd	
Xuancheng Huilv Aluminum Industry Co., Ltd	
Yekalon Industry Inc	
Yonn Yuu Enterprise Co., Ltd	
Yuyao Royal Industrial	
Zhejiang Guoyao Aluminum Co., Ltd	
Zhejiang Shiner Import and Export	
Zhongshan Broad Windows and Doors and Curtain	
ZL Trade Shanghai	
THE PEOPLE'S REPUBLIC OF CHINA: Cast Iron Soil Pipe A–570–079	8/31/18–4/30/20

AD proceedings	Period to be reviewed
Yuncheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd (aka HengTong Casting Co., Ltd.)	
THE PEOPLE'S REPUBLIC OF CHINA: Oil Country Tubular Goods A–570–943	5/1/19–4/30/20
Angang Steel Co., Ltd	
Anshan Zhongyou Tipo Pipe & Tubing	
APL Logistics China, Ltd	
APL Logistics SCS Hong Kong Ltd	
Baoji Petroleum Steel Pipe Co., Ltd	
Baosteel Group Corporation	
BaoTou Steel Union Co., Ltd	
Baoyi Steel Pipe Limited Co., Ltd	
Beijing Fortune Wind International Trade Co., Ltd	
Beijing Zhongyou TIPO Material & Equipment Co., Ltd	
Benxi Northern Steel Pipe Co., Ltd	
Better Drilling Fluid Solution Ltd	
Bohai NKK Drill Pipe Co., Ltd	
Cameron Systems Shanghai Co., Ltd	
Cangzhou Tianda Petroleum Pipe Co., Ltd	
Cangzhou Qiancheng Steel Pipe Co., Ltd	
Changzhou Darun Steel Tube	
Changzhou Yuanyang Steel Tube Co., Ltd	
Chengdu Heyi Steel Tube Industrial Co., Ltd	
CNBM International Corporation	
CNBM Jian Pu Resources Co., Ltd	
CNOOC Kingland Pipeline Co., Ltd	
Dalian Hongya Pump Industry Co., Ltd	
Daye Special Steel Co., Ltd	
Dongying Jortin Oilfield Technology Co., Ltd	
Dongying Taifung Precision Metal Co., Ltd	
Falconview Energy Products (Jinhu) Co., Ltd	
Fangzheng Valve Group (Shanghai) Co., Ltd	
Faray Petroleum Steel Pipe Co., Ltd	
FES (China) Ltd	
Foshan Shunde Jet Hope Industries	
Fushun Haili Machinery Manufacture Co., Ltd	
GE Energy Hangzhou Co., Ltd	
General Electric Company	
Haicheng Northern Steel Pipe Anti-Corrosion Co., Ltd	
Handan Precise Seamless Steel Pipes Co., Ltd	
Henan Zyzj Petroleum Equipment Co., Ltd	
Hengyang Valin Steel Tube Co., Ltd	
HG Tubulars—1st Huabei OCTG Machinery Co., Ltd	
Hillhead Pipe Alliance (Beijing) Co., Ltd	
Hongze Dongjun Machinery Co., Ltd	
Hunan Great Steel Pipe Co., Ltd	
Huzhou Kingland Petroleum-Gas Pipeline Co., Ltd	
IFA Engineered Components Group	
Jiangsu BenoSton Machinery Co., Ltd	
Jiangsu FORGED Pipe Fittings Co., Ltd	
Jiangsu Hongfei Petroleum Machinery Co., Ltd	
Jiangsu Huacheng Industry Group Co., Ltd	
Jiangsu Jianzhong New Material Co., Ltd	
Jiangsu Leewen Machinery Co., Ltd	
Jiangsu Rio Solar Energy Technology Co., Ltd	
Jiangsu Weatherford Hongda Petroleum Equipment Co., Ltd	
Jiangsu Xiongyue Petroleum Mechanical Equipment Manufacturing Co., Ltd	
Jiangsu Yulong Steel Pipe Co., Ltd	
Jiangyin Changgang Pipe Making Co., Ltd	
Jiangyin Changjiang Oil Special Pipe Manufacture Co., Ltd	
Jiangyin City Changjiang Steel Pipe Co., Ltd	
Jiangyin City Seamless Steel Tube Factory Co., Ltd	
Jiangyin Metal Tube-Making Factory Co., Ltd	
Jianhu Jielin Petrochemical Machinery Co., Ltd	
Jinan Mech Piping Technology Co., Ltd	
Liaoning Northern Steel Pipe Co., Ltd	
Liaoyang Large-Scale Steel Pipe Plant Co., Ltd	
M&M Steel Pipe Co., Ltd	
Nanjing Youtian Metal Technology Co., Ltd	
National Oilwell Varco Grant Prideco China	
Newish Industrial Ltd	
Ningbo Hengfa Steel Tube Co., Ltd	
Ningbo Zhongrui Import & Export Co., Ltd	
North China Petroleum Steel Pipe Co., Ltd	
Northeast Special Steel Group Qiqihar Haoying Iron & Steel Co., Ltd	
Pangang Group Beihai Steel Pipe (PGBH) Corp	

AD proceedings	Period to be reviewed
Puyang City Shuangfa Industry Co., Ltd	
Qing Zhou Kai Tuo Machinery Co., Ltd	
Qingdao CSSC Technical Products Ltd	
Qingdao GBS Machinery Co., Ltd	
Qingdao Vastar Industrial Co., Ltd	
Qingdao Hearld Machinery Co., Ltd	
R&D Technology (Suzhou) Co., Ltd	
Retai Petroleum Machinery	
Rongsheng Machinery Manufacture Ltd	
Shaanxi Newland Industrial Co., Ltd	
Shandong Huabao Steel Pipe Co., Ltd	
Shandong Jianning Metals Co., Ltd	
Shandong Luxing Steel Pipe Co., Ltd	
Shandong Molong Petroleum Machinery Co., Ltd	
Shandong Shuanglun Co., Ltd	
Shangdong Jianning Metals Co., Ltd	
Shanghai AOZE Petroleum Equipment Co., Ltd	
Shanghai Fengyi Supply Chain Management Co., Ltd	
Shanghai Foreign Trade Enterprises Co. Ltd	
Shanghai Kongsberg Automotive Dong Feng Morse	
Shanghai Sunrise Industrial Equipment Co., Ltd	
Shanghai Wogi Industrial Co., Ltd	
Shanghai Xinlin International Trading Co., Ltd	
Shanghai Xiqi Import & Export Co., Ltd	
Shanghai Yinyuan International Trade Co., Ltd	
Shanghai Zheng Lin International Trading Co., Ltd	
Shanxi Huaxiang Group Co., Ltd	
Shanxi Yuci Guolian Pipe Manufacturing Co., Ltd	
Shenyang Bhogart Trading Co., Ltd	
Steel Pipe Works of North China Petroleum	
Suzhou Douson Drilling & Production Equipment Co., Ltd	
Suzhou Innotek Machinery Co., Ltd	
Suzhou Seamless Steel Tube Co., Ltd	
Suzhou Yima Mechanical Technology Co., Ltd	
Taiyuan Huaye Equipment Research Institute Co., Ltd	
Tangshan Hesheng Machinery & Equipment Co., Ltd	
Technoflex (Shanghai) Inc	
Tianjin Baolai Steel Pipe Co., Ltd	
Tianjin Boyu Steel Pipe Co., Ltd	
Tianjin Free Trade Service Co., Ltd	
Tianjin Jingtong Seamless Steel Pipe Co., Ltd	
Tianjin North-Pipe Trade Co., Ltd	
Tianjin Pipe (Group) Corporation	
Tianjin Pipe International Economic & Trading Corp	
Tianjin Shuangjie Steel Pipe Co., Ltd	
Tianjin Tiangang Special Petroleum Pipe Manufacture (Tiangang) Co., Ltd	
Tianjin Tianye Seamless Steel Pipe Plant Co., Ltd	
Tianjin Tubular Goods Machining Co., Ltd	
Tianjin Xingyuda Steel Pipe Co., Ltd	
Tianjin Yingqiang Combination Petroleum Equipment Co., Ltd	
Tianjin Zhongshun Industry Trade Co., Ltd	
Unisteel	
Wellhead Solutions Co., Ltd	
Wuxi Compressor Co., Ltd	
Wuxi Derui Seamless Steel Pipe Co., Ltd	
Wuxi Eastsun Trade Co., Ltd	
Wuxi Erquan Special Steel Tube Co., Ltd	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd	
Wuxi Fastube Industry Co., Ltd	
Wuxi Free Petroleum Tubulars Manufacture Co., Ltd	
Wuxi Huayou Special Steel Co., Ltd	
Wuxi OFD Oil-Field Supply Co., Ltd	
Wuxi Seamless Oil Pipes Co., Ltd	
Wuxi Vokeda Technology Co., Ltd	
Wuxi Xingya Seamless Steel Tube Co., Ltd	
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd	
Xuzhou Guanghuan Steel Tube Co., Ltd	
Yancheng Steel Tube Co., Ltd	
Yufeng Resources Co., Ltd	
Zhangjiagang Sheng Ding Yuan Pipe-Making Co., Ltd	
Zhejiang Bnjis Stainless Steel Co., Ltd	
Zhejiang Dingxin Steel Tube Manufacturing Co., Ltd	
Zhejiang E-Tune Special Steel. Tube Co. Ltd	
ZheJiang Gross Seamless Steel Tube Co., Ltd	

AD proceedings	Period to be reviewed
Zhejiang Jianli Enterprise Co., Ltd	
Zhejiang Jiuli Hi-Tech Metals Co., Ltd	
Zhejiang Kanglong Steel Co., Ltd	
Zhejiang Minghe Steel Pipe Co., Ltd	
Zhejiang Pacific Seamless Steel Tube Co., Ltd	
Zhejiang Ruimai Stainless Steel Tube Co., Ltd	
Zhejiang Shifang Pipe Industry Co., Ltd	
Zhejiang Tsingshan Steel Pipe Co., Ltd	
Zhejiang Xinhang Stainless Steel Co., Ltd	
Zhejiang Yinlong Stainless Steel Co., Ltd	
Zhejiang Zhiju Pipeline Industry Co., Ltd	
Zhejiang Zhongda Special Steel Co., Ltd	
Zhejiang Zhongli Stainless Steel Pipe Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium A–570–832	5/1/19–4/30/20
Tianjin Magnesium International Co., Ltd	
Tianjin Magnesium Metal Co., Ltd	
TURKEY: Circular Welded Carbon Steel Pipes and Tubes A–489–501	5/1/19–4/30/20
Borusan Birlesik Boru Fabrikalari San ve Tic	
Borusan Gemlik Boru Tesisleri A.S	
Borusan Holding	
Borusan Ihracat Ithalat ve Dagitim A.S	
Borusan Ithicat ve Dagitim A.S	
Borusman Istikbal Ticaret T.A.S	
Borusan Mannesmann Boru Sanayi ve Ticaret A.S	
Borusan Mannesmann Yatirim Holding	
Cayirova Boru Sanayi ve Ticaret A.S	
Cinar Boru Profil San. Ve Tic. A.S	
Erbosan Erciyas Boru Sanayi ve Ticaret A.S	
Kale Baglann Teknolojileri San. ve Tic. A.S	
Kale Baglanti Teknolojileri San. ve Tic. A.S	
Noksel Celik Boru Sanayi A.S	
Toscelik Metal Ticaret A.S	
Toscelik Profil Ve Sac Endüstrisi A.S	
Tosyali Dis Ticaret A.S	
Tubeco Pipe and Steel Corporation	
Yucel Boru ve Profil Endustrisi A.S	
Yucelboru Ihracat ve Pazarlama A.S	
TURKEY: Large Diameter Welded Pipe A–489–833	8/27/18–4/30/20
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.[7]	
Borusan Istikbal Ticaret	
HDM Celik Boru Sanayi ve Ticaret A.S.HDM Spiral Kaynakli Boru A.S.[8]	
HDM Spirally Welded Steel Pipe Inc	
Spirally Welded Steel Pipe Inc	
Çimtaş Boru Imalatiral Ticaret Ltd	
Emek Boru Makina Sanayi ve Ticaret A.S	
Erciyas Celik Boru Sanayi A.S	
Mazlum Mangtay Boru Son. Ins. Tar.Urn.San.ve Tic. A.S	
Noksel Celik Boru Sanayi A.S	
Ozbal Celik Boru San. Tic. Ve TAAH A.S	
Toscelik Profil ve Sac End. A.S	
Toscelik Profile and Sheet Ind. Co	
Toscelik Spiral Boru Uretim A.S	
Umran Celik Boru Sanayii A.S	
TURKEY: Light-Walled Rectangular Pipe and Tube A–489–815	5/1/19–4/30/20
Cinar Boru Profil Sanayi ve Ticaret A.S	
Intermetal International Metal, L.L.C	
Parker Steel Company, Inc	
Parker Steel International	
Tata Steel Nederland Tubes BV	
Van Leeuwen Precisie B.V	
UNITED ARAB EMIRATES: Certain Steel Nails A–520–804	5/1/19–4/30/20
Middle East Manufacturing Steel LLC	
Richwell Steel Industries	
CVD Proceedings	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate C–580–888	1/1/19–12/31/19
BDP International	
Blue Track Equipment	
Boxco	
Bukook Steel Co., Ltd	
Buma CE Co., Ltd	
China Chengdu International Techno-Economic Cooperation Co., Ltd	
Daehan I.M. Co., Ltd	
Daehan Tex Co., Ltd	
Daelim Industrial Co., Ltd	

AD proceedings	Period to be reviewed
Daesam Industrial Co., Ltd	
Daesin Lighting Co., Ltd	
Daewoo International Corp	
Dong Yang Steel Pipe	
Dongbu Steel Co., Ltd	
Dongkuk Industries Co., Ltd	
Dongkuk Steel Mill Co., Ltd	
EAE Automotive Equipment	
EEW KHPC Co., Ltd	
Eplus Expo Inc	
GS Global Corp	
Haem Co., Ltd	
Han Young Industries	
Hyosung Corp	
Hyundai Steel Co	
Jinmyung Frictech Co., Ltd	
Khana Marine Ltd	
Kindus Inc	
Korean Iron and Steel Co., Ltd	
Kyoungil Precision Co., Ltd	
Menics	
POSCO	
Qian'an Rentai Metal Products Co., Ltd	
Samsun C&T Corp	
Shinko	
Shipping Imperial Co., Ltd	
Sinchang Eng Co., Ltd	
SK Networks Co., Ltd	
SNP Ltd	
Steel N People Ltd	
Summit Industry	
Sungjin Co., Ltd	
Young Sun Steel	
REPUBLIC OF KOREA: Large Diameter Welded Pipe C–580–898	6/29/18–12/31/19
AJU Besteel Co., Ltd	
Chang Won Bending Co., Ltd	
Daiduck Piping Co., Ltd	
Dong Yang Steel Pipe Co., Ltd	
Dongbu Incheon Steel Co., Ltd	
EEW KHPC Co., Ltd	
EEW Korea Co., Ltd	
HiSteel Co., Ltd	
Husteel Co., Ltd.[9]	
Hyundai RB Co., Ltd	
Hyundai Steel Company[10]	
Kiduck Industries Co., Ltd	
Kum Kang Kind. Co., Ltd	
Kumsoo Connecting Co., Ltd	
Nexteel Co., Ltd	
Samkang M&T Co., Ltd	
SeAH Steel Corporation	
Seonghwa Industrial Co., Ltd	
SIN-E B&P Co., Ltd	
Steel Flower Co., Ltd	
WELTECH Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions C–570–968	1/1/19–12/31/19
Allpower Display Co., Ltd	
Amidi Zhuhai	
Anderson International	
Asia-Pacific Light Alloy (Nantong) Technology Co., Ltd	
Beauty Sky Technology Co. Ltd	
Changshu Changsheng Aluminum Products Co., Ltd	
Chenming Industry and Commerce Shouguang Co., Ltd	
China International Freight Co. Ltd	
China State Decoration Group Co., Ltd	
CRRC Changzhou Auto Parts Co. Ltd	
Custom Accessories Asia Ltd	
Everfoison Industry Ltd	
Foshan City Fangyuan Ceramic	
Foshan City Nanhai Yongfeng Aluminum	
Foshan City Top Deal Import and Export Co., Ltd	
Foshan Gold Bridge Import and Export Co. Ltd	
Foshan Golden Promise Import and Export Co., Ltd	
Foshan Guangshou Import and Export Co., Ltd	

AD proceedings	Period to be reviewed
Foshan Xingtao Aluminum Profile Co., Ltd Fujian Minfa Aluminum Co., Ltd Fujian Minfa Aluminum Inc Fuzhou Ruifuchang Trading Co., Ltd Fuzhou Sunmodo New Energy Equipment Co., Ltd Gebruder Weiss Gold Bridge International Grupo Emb Grupo Europeo La Optica Grupo Pe No Mato In Guangdong Gaoming Guangtai Shicai Guangdong Gaoxin Communication Equipment Industrial Co., Ltd Guangdong Golden China Economy Guangdong Maoming Foreign Trade Enterprise Development Co Guangdong Taiming Metal Products Co., LTD Guangdong Victor Aluminum Co., Ltd Guangzhou Jintao Trade Company Hangzhou Evernew Machinery & Equipment Co., Ltd Hangzhou Tonny Electric and Tools Co., Ltd Hefei Sylux Imp. & Exp. Co., Ltd Hong Kong Dayo Company, Ltd Huazhijie Plastic Products Huiqiao International Shanghai Ilshim Almax Jer Education Technology Jiangsu Asia-Pacific Light Alloy Technology Co Ltd Jiangsu Weatherford Hongda Petroleum Equipment Co., Ltd Jiangsu Yizheng Haitian Aluminum Industrial Jiang Yin Ming Ding Aluminum & Plastic Products Co. Ltd Jilin Qixing Aluminum Industries Co., Ltd Jin Lingfeng Plastic Electrical Appliance Kanal Precision Aluminum Product Co. Ltd Kingtom Aluminio SLR Larkcop International Co Ltd Ledluz Co Ltd Liansu Group Co. Ltd Links Relocations Beijing Marshell International Modular Assembly Technology Ningbo Deye Inverter Technology Ningbo Hightech Development Ningbo Winjoy International Trading Orient Express Container Ou Chuang Plastic Building Material (Zhejiang) Co., Ltd Pentagon Freight Service Pro Fixture Hong Kong Qingdao Sea Nova Building Qingdao Yahe Imports and Exports Rollease Acmeda Pty Sewon Shandong Huajian Aluminum Industry Shanghai EverSkill M&E Co., Ltd Shanghai Jingxin Logistics Shanghai Ouma Crafts Co, Ltd Shanghai Phidix Trading Sinogar Aluminum Sunvast Trade Shanghai Suzhou Mingde Aluminum Tai-Ao Aluminum (Taishan) Co., Ltd Taizhou Puan Lighting Technology Transwell Logistics Co., Ltd United Aluminum Uniton Investment Ltd Wanhui Industrial China Wellste Material Wenzhou Yongtai Electric Co., Ltd Winstar Power Technology Limited Wisechain Trading Ltd Wuxi Lotus Essence Wuxi Rapid Scaffolding Engineering Wuxi Zontai Int'l Corporation Ltd Xuancheng Huilv Aluminum Industry Co., Ltd Yekalon Industry Inc Yonn Yuu Enterprise Co., Ltd	

AD proceedings	Period to be reviewed
Yuyao Royal Industrial	
Zhejiang Guoyao Aluminum Co., Ltd	
Zhejiang Shiner Import and Export	
Zhongshan Broad Windows and Doors and Curtain	
ZL Trade Shanghai	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires C–570–041	2/15/19–12/31/19
Prinx Chengshan (Shandong) Tire Co., Ltd.[11]	
TURKEY: Large Diameter Welded Pipe C–489–834	6/29/18–12/31/19
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.[12]	
Borusan Istikbal Ticaret	
HDM Celik Boru Sanayi ve Ticaret A.S	
HDM Spiral Kaynakli Boru A.S.[13]	
Spirally Welded Steel Pipe Inc	
Çimtaş Boru Imalatiral Ticaret Ltd	
Emek Boru Makina Sanayi ve Ticaret A.S	
Erciyas Celik Boru Sanayi A.S	
Mazlum Mangtay Boru Son. Ins. Tar.Urn.San.ve Tic. A.S	
Noksel Celik Boru Sanayi A.S	
Ozbal Celik Boru San. Tic. Ve TAAH A.S	
Toscelik Profil ve Sac End. A.S	
Toscelik Profile and Sheet Ind. Co	
Toscelik Spiral Boru Uretim A.S	
Umran Celik Boru Sanayii A.S	

Suspension Agreements

None

[5] Commerce has previously treated these companies as a single entity. *See Large Diameter Welded Pipe from Canada,* 84 FR 18775, 18776 n.15 (May 2, 2019). Absent information to the contrary, we intend to continue to treat these companies as a single entity for purposes of this administrative review.

[6] In the opportunity notice that published on May 1, 2020 (85 FR 25394) the POR for the above referenced case was incorrect. The period listed above is the correct POR for this case.

[7] Subject merchandise produced and exported by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) was excluded from the order effective June 1, 2020. *See Large Diameter Welded Pipe from the Republic of Turkey: Notice of Court Decision Not in Harmony With Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part,* 85 FR 35262, 35264 (June 9, 2020). Commerce also stated in this notice that it would not initiate any new reviews of Borusan's entries. Accordingly, we are initiating this administrative review with respect to Borusan only for subject merchandise produced in Turkey where Borusan acted as either the manufacturer or exporter (but not both).

[8] This company's name in English is HDM Spirally Welded Steel Pipe Inc.

[9] Subject merchandise both produced and exported by Husteel Co., Ltd. (Husteel) is excluded from the antidumping duty order. *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019). Thus, Husteel's inclusion in this administrative review is limited to entries for which Husteel was not both the producer and exporter of the subject merchandise.

[10] Subject merchandise both produced and exported by Hyundai Steel Company (Hyundai Steel) and subject merchandise produced by Hyundai Steel and exported by Hyundai Corporation are excluded from the antidumping duty order. *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019). Thus, Hyundai Steel's inclusion in this administrative review is limited to entries for which Hyundai Steel was not the producer and exporter of the subject merchandise and for which Hyundai Steel was not the producer and Hyundai Corporation was not the exporter of subject merchandise.

[11] In *Initiation of Antidumping and Countervailing Duty Administrative Reviews* 85 FR 19730 (April 8, 2020), this company was incorrectly identified and Prinx Changshan (Shandong) Tire Co. Ltd. This notice corrects that error.

[12] Subject merchandise produced and exported by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) was excluded from the order. *See Large Diameter Welded Pipe From the Republic of Turkey: Countervailing Duty Order,* 84 FR 18771, 18772 (May 2, 2019). Accordingly, we are initiating this administrative review with respect to Borusan only for subject merchandise produced in Turkey where Borusan acted as either the manufacturer or exporter (but not both).

[13] This company's name in English is HDM Spirally Welded Steel Pipe Inc.

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,*[14] 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 July 17, 2020, unless extended.[15]

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.*[16] 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.[17] 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 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: July 6, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14834 Filed 7–9–20; 8:45 am]

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[14] *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.*

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 29615 (May 18, 2020).

[16] *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.*

[17] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–817]

Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that exporters of oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam) did not sell subject merchandise in the United States at prices below normal value during the period of review (POR) September 1, 2017 through August 31, 2018.

DATES: Applicable July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on OCTG from Vietnam in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Commerce initiated this review on November 15, 2018.[1] On November 15, 2019, Commerce published the *Preliminary Results* of this administrative review.[2] At that time, we invited interested parties to comment on the *Preliminary Results.* On December 16, 2019, we received case briefs from U.S. Steel (the petitioner), Maverick Tube Corporation and Tenaris Bay City, Inc. (the domestic interested parties), and SeAH Steel VINA Corporation (SSV).[3] However, on April 10, 2020, we rejected the case briefs from the petitioner and the domestic interested parties because they contained new factual information filed after the due date for filing new factual information.[4] The petitioner and the domestic interested parties submitted redacted versions of their case briefs on April 14, 2020.[5] On December 30, 2019,

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review,* 84 FR 62504 (November 15, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See* Petitioner's Case Brief, ''Oil Country Tubular Goods from the Socialist Republic of Vietnam: Case Brief of United States Steel Corporation,'' dated December 16, 2019; Domestic Interested Parties' Case Brief, Oil Country Tubular Goods from the Socialist Republic of Vietnam: Case Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,'' dated December 16, 2019; SSV's Case Brief, ''Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Vietnam—Case Brief of SeAH Steel VINA Corporation and Pusan Pipe America, Inc.,'' dated December 16, 2019.

[4] *See* Commerce's Letter to the Petitioner, ''Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rejection of Case Brief,'' dated April 10, 2020; and Commerce Letter to Domestic Interested Parties, ''Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rejection of Case Brief,'' dated April 10, 2020.

[5] *See* Petitioner's Case Brief, ''Oil Country Tubular Goods from the Socialist Republic of Vietnam: Resubmission of December 16th Case Brief of United States Steel Corporation,'' dated April 14, 2020; Domestic Interested Party's Case Brief, ''Oil Country Tubular Goods from the

the domestic interested parties and SSV submitted rebuttal briefs.[6] On April 10, 2020, Commerce rejected SSV's rebuttal brief because it contained new factual information filed after the due date for filing new factual information.[7] SSV submitted a redacted version of its rebuttal brief on April 14, 2020.[8] On March 12, 2020, Commerce extended the deadline for the final results of review until May 13, 2020.[9] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 2, 2020.[10]

Scope of the Order

The merchandise covered by the order is OCTG from Vietnam. For a full description of the merchandise covered by the scope of the antidumping duty order on OCTG from Vietnam, *see* the Issues and Decision Memorandum.[11]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review and addressed in the Issues and Decision Memorandum are listed in the 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 *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculation for the respondent. For a discussion of these changes, *see* the ''Margin Calculations'' section of the Issues and Decision Memorandum.

Final Results of Review

Commerce determines that the following weighted-average dumping margin exists for the period September 1, 2017 through August 31, 2018:

Exporter	Weighted-average dumping margin (percent)
SeAH Steel VINA Corporation [12]	0.00

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this administrative review in the **Federal Register**.

Consistent with Commerce's assessment practice in non-market economy cases, for entries that were not reported in the U.S. sales database submitted by companies individually examined during the administrative review, Commerce will instruct CBP to liquidate such entries at the Vietnam-wide rate. Additionally, if Commerce determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under the exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the Vietnam-wide rate.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For SSV, a zero cash deposit rate; (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most-recently completed segment of this proceeding in which the exporter was reviewed; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate established for the Vietnam-wide entity, which is 111.47 percent; [14] and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter with the subject merchandise. These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

We intend to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the

Socialist Republic of Vietnam: Resubmission of Case Brief of Maverick Tube Corporation and Tenaris Bay City, Inc., dated April 14, 2020.

[6] *See* Domestic Interested Parties' Rebuttal Brief, ''Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rebuttal Brief of Maverick Tube Corporation and Tenaris Bay City, Inc.,'' dated December 30, 2019.

[7] *See* Commerce's Letter, ''Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Rejection of Rebuttal Brief,'' dated April 10, 2020.

[8] *See* SSV Rebuttal Brief, ''Administrative Review of the Antidumping Order on Certain Oil Country Tubular Goods from Vietnam—Redacted Case (sic) Brief,'' dated April 14, 2020.

[9] *See* Memorandum, ''Oil Country Tubular Goods from the Socialist Republic of Vietnam: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated March 12, 2020.

[10] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[11] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2017–2018 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Socialist Republic of Vietnam,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[12] Commerce initiated a review of both SSV and Pusan Pipe America, Inc. (Pusan Pipe), but the record shows that Pusan Pipe is a U.S. importer of OCTG that is affiliated with SSV, and does not produce OCTG. *See* SSV's December 19, 2018 Section A Questionnaire Response at 1. Therefore, we have not calculated a rate for Pusan Pipe.

[13] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[14] *See Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014).

disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: July 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14919 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 22, 2020, the United States Court of International Trade (CIT) sustained the final results of redetermination pertaining to the fifth administrative review of the antidumping duty order on certain steel threaded rod (steel threaded rod) from the People's Republic of China (China) covering the period of review (POR) April 1, 2013 through March 31, 2014. The Department of Commerce (Commerce) is notifying the public that the CIT's final judgment in this case is not in harmony with the final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin calculated for Jiaxing Brother Fastener Co., Ltd. (a/k/a Jiaxing Brother Standard Parts, Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd. (collectively, RMB/IFI Group).

DATES: Applicable July 2, 2020.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2015, Commerce published its *Final Results* in the 2013–2014 administrative review of steel threaded rod from China.[1] During the review, Commerce selected Thailand as the primary surrogate country, finding that data from Thailand provided the best available information on the record to value the RMB/IFI Group's reported factors of production (FOPs).

Commerce valued hours of labor with data from the National Statistical Office of Thailand's Labor Force Survey of the Whole Kingdom (NSO or NSO data) from the second and third quarters of 2013, because it found the data to be more industry-specific and contemporaneous with the POR than the alternative data on the record, *i.e.,* International Labor Organization Chapter 6A data.[2] In addition, Commerce derived surrogate financial ratios from the financial statements of three Thai companies. In the calculation of surrogate financial ratios, Commerce categorized selling, general, and administrative (SG&A) labor-related line items as SG&A expenses. As a result, the SG&A surrogate financial ratio numerator included these line items' values, along with other SG&A expenses, and the denominator represented the total cost of manufacturing, *i.e.,* the sum of raw materials, manufacturing labor, energy, manufacturing overhead, and finished goods.[3]

The RMB/IFI Group challenged the *Final Results,* contesting Commerce's selection of Thailand as the primary surrogate country, selection of Global Trade Atlas data from Thailand to value steel threaded rod inputs, and decision not to adjust the surrogate financial ratios.[4] On January 29, 2020, the CIT issued the Remand Order, in which it sustained Commerce's selection of Thailand as the primary surrogate country and calculation of the RMB/IFI Group's steel threaded rod FOP.[5] However, the CIT held that Commerce's decision not to make any adjustments to the calculation of the surrogate financial ratios was inadequately explained,[6] and it remanded Commerce's calculation of the surrogate financial ratios as related to labor for further explanation or reconsideration. In particular, the CIT directed Commerce to explain ''the basis for finding record evidence that allows it to conclude that it could capture, and not overstate, labor costs by applying the NSO quarterly data and, as a result, decline to adjust the surrogate financial ratios.'' [7] The CIT also stated that ''{o}n remand, Commerce may wish to reopen the record.'' [8]

On February 25 and 26, 2020, Commerce opened the record and placed additional reports from Thailand's NSO on the record. Commerce received no comments on these reports.

On April 23, 2020, Commerce issued the *Final Remand Results* [9] and determined that, because the NSO data were industry-specific and contemporaneous with the POR, it was appropriate to rely on the NSO data to value labor, and to treat labor-related SG&A costs in the same manner as the surrogate companies did in their financial statements. Moreover, we found that the NSO data did not provide the information necessary to accurately adjust the surrogate financial ratios to account for any potential overstatement in labor costs because the record lacked evidence to support a finding as to what extent, or by what percentage, the NSO data also covered SG&A labor.[10] Moreover, given that the RMB/IFI Group did not report labor hours associated with SG&A staff, we declined to assume

[1] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 69938 (November 12, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Jiaxing Brother Fastener Co., Ltd. et al.* v. *United States,* Court No. 15–00313, Slip Op. 20–11 (CIT January 29, 2020) (Remand Order) at 20.

[3] *Id.* at 20–21.

[4] *Id.* at 2.

[5] *Id.* at 25.

[6] *Id.* at 21.

[7] *Id.* at 24.

[8] *Id.*

[9] *See Final Results of Redetermination Pursuant to Court Remand in Jiaxing Brother Fastener Co., Ltd. (a/k/a Jiaxing Brother Standard Part Co., Ltd.), IFI & Morgan Ltd., and RMB Fasteners Ltd.* v. *United States,* Consol. Ct. No. 15–00313 (April 23, 2020) (*Final Remand Results*).

[10] *Id.* at 8–10.

that the NSO data would accurately compensate for, and not overstate, the respondent's unreported SG&A labor hours. As a result, we did not transfer the surrogate financial statements' SG&A labor-related line items to the denominator in the surrogate financial ratio calculation, because doing so could distort the calculation and result in an undervaluation of labor-related SG&A expenses.[11] We did not make the adjustments proposed by the RMB/IFI Group, but revised the respondent's weighted-average margin to 39.53 percent, which increased from the 39.42 percent margin calculated in the *Final Results* due to the incorporation of additional quarters of labor data that were placed on the record during the remand proceeding.

Timken Notice

In its decision in *Timken,*[12] as clarified by *Diamond Sawblades,*[13] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's June 22, 2020 judgment sustaining the *Final Remand Results* constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the RMB/IFI Group. The revised weighted-average dumping margin for the RMB/IFI Group for the period April 1, 2013 through March 31, 2014 is as follows:

Exporter	Weighted-average margin (percent)
RMB/IFI Group	39.53

Assessment Instructions

In the event the CIT's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the RMB/IFI Group in accordance with 19 CFR 351.212(b)(1). Commerce will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[14] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Pursuant to Commerce's assessment practice, for entries that were not reported in the US sales data submitted by the RMB/IFI Group during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate.[15]

Cash Deposit Requirements

The cash deposit rate calculated for the RMB/IFI Group in the 2013–2014 administrative review has been superseded by cash deposit rates calculated in intervening administrative reviews of the antidumping duty order on steel threaded rod from China.[16] Thus, we will not alter the RMB/IFI Group's cash deposit rate.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14835 Filed 7–9–20; 8:45 am]

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[11] *Id.* at 11–12.

[12] *See Timken Co.,* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[13] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[14] *See* 19 CFR 351.106(c)(2).

[15] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[16] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 83800 (November 22, 2016); and *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 51611 (November 7, 2017).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–886]

Ferrovanadium From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments in Part; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that two of the three companies under review had no shipments of subject merchandise during the period of review (POR), May 1, 2018 through April 30, 2019, and continues to base the dumping margin for the third company on total adverse facts available (AFA).

DATES: Applicable July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Howard Smith, 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) 482–5193.

SUPPLEMENTARY INFORMATION:

Background

Commerce published its *Preliminary Results* of this review on March 23, 2020.[1] No parties commented on the *Preliminary Results.*

Scope of the Order

The product covered by the order is all ferrovanadium regardless of grade (*i.e.,* percentage of contained vanadium), chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium. Ferrovanadium is classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 7202.92.0000. Although this HTSUS item number is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of Review

In the *Preliminary Results,* Commerce determined that Korvan Ind, Co., Ltd. (Korvan) and Woojin Ind. Co., Ltd. (Woojin), had no shipments of subject merchandise to the United States during the POR and based the dumping margin

[1] *See Ferrovanadium From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments in Part; 2018–2019,* 85 FR 16326 (March 23, 2020) (''*Preliminary Results*''), and accompanying Preliminary Decision Memorandum.

for Fortune Metallurgical Group Co., Ltd. (Fortune) on total AFA in accordance with section 776(a)–(b) of the Act because Fortune did not respond to Commerce's questionnaire.[2] No parties commented on the *Preliminary Results.*

In these final results of review, Commerce is adopting the decisions taken in the *Preliminary Results,* as explained in the Preliminary Decision Memorandum. Specifically, Commerce continues to find that Korvan and Woojin had no shipments of subject merchandise to the United States during the POR and continues to assign Fortune a dumping margin of 54.69 percent based on total AFA.

Final Results of Administrative Review

Commerce has determined that the following weighted-average dumping margin exists for the firm listed below for the period May 1, 2018 through April 30, 2019:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Fortune Metallurgical Group Co., Ltd	54.69

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review in accordance with these final results of review.[3] Commerce intends to issue assessment instructions to CBP 15 days after publication of this notice of final results in the **Federal Register**. Commerce intends to instruct CBP to liquidate POR entries of subject merchandise from Fortune Metallurgical Group Co., Ltd. at the rate listed in the table above.

Additionally, because Commerce determines that Korvan and Woojin did not make any sales or shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise during the POR under their case numbers will be liquidated at the all-others rate.[4]

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of ferrovanadium from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for Fortune will be equal to the weighted-average dumping margin listed for Fortune in the table above; (2) for companies not covered by this review, but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate established for the company in the most recently completed segment of the proceeding; (3) if the exporter is not a firm covered in this review, in a prior review, or in the investigation in this proceeding but the producer is, then the cash deposit rate will be the rate established for the producer of the merchandise in the most recently completed segment of the proceeding; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.22 percent, the all-others rate established in the less-than-fair-value investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing these final results of administrative review and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: July 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14917 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that S.C. Silcotub S.A. (Silcotub), a producer/exporter of certain small diameter carbon and alloy seamless standard, line and pressure pipe (small diameter seamless pipe) from Romania, did not sell subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2018 through July 31, 2019. In addition, Commerce determines that ArcelorMittal Tubular Products Roman S.A. (ArcelorMittal) had no shipments of subject merchandise during the POR.

DATES: Applicable July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Samantha Kinney, 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) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2020, Commerce published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on small diameter seamless pipe from Romania.[1]

[2] *Id.*

[3] *See* section 751(a)(2)(A) of the Act; 19 CFR 351.212(b).

[4] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[5] *See Ferrovanadium From the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 82 FR 14874 (March 23, 2017).

[1] *See Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from*

This review covers two producers/exporters of subject merchandise, Silcotub and ArcelorMittal. We invited parties to comment on the *Preliminary Results*.[2] No interested party submitted comments or a request for a public hearing. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The products covered by this *Order* are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this *Order* also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification.

Specifically included within the scope of this *Order* are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this *Order* are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A–106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A–335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A–106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses.

Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A–333 or ASTM A–334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A–589) and seamless galvanized pipe for fire protection uses (ASTM A–795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53, API 5L–B, and API 5L–X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and offshore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A–106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or ''hollow profiles'' of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications.

The scope of this *Order* includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this *Order.* Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A–106 applications. These specifications generally include ASTM A–161, ASTM A–192, ASTM A–210, ASTM A–252, ASTM A–501, ASTM A–523, ASTM A–524, and ASTM A–618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of this *Order.*

Specifically excluded from the scope of this *Order* is boiler tubing and mechanical tubing, if such products are not produced to ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this *Order,* if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, Commerce will not instruct Customs to require end-use certification until such time as petitioner or other

Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019, 85 FR 27359 (May 8, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.,* 85 FR at 27360.

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania,* 65 FR 48963 (August 10, 2000) (the *Order*).

interested parties provide to Commerce a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, Commerce finds a reasonable basis to believe or suspect that seamless pipe produced to the A–161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Changes Since the Preliminary Results

As no parties submitted comments on the margin calculation methodology used in the *Preliminary Results,* Commerce made no adjustments to that methodology in the final results of this review.

Final Results of the Review

As a result of this review, Commerce determines that a weighted-average dumping margin of 0.00 percent exists for entries of subject merchandise that were produced and/or exported by Silcotub during the POR. In addition, after issuing the *Preliminary Results,* we received no information that contradicted our preliminary finding of no shipments with respect to ArcelorMittal.[4] Therefore, for these final results, we continue to find that Arcelor Mittal did not make shipments of the subject merchandise to the United States during the POR.

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results, pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Because we calculated a zero margin for Silcotub, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Consistent with Commerce's clarification of its assessment practice, because we determined that ArcelorMittal had no shipments of subject merchandise to the United States during the POR, for entries of subject merchandise during the POR produced, but not exported by, ArcelorMittal, we will instruct CBP to liquidate any entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[5]

We intend to issue instructions to CBP 15 days after the date of publication of these final results.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of these final results for all shipments of small diameter seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Silcotub will be zero, and the cash deposit rate for ArcelorMittal will remain unchanged from the rate assigned to it in the most recently completed review of ArcelorMittal; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently-completed segment for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 13.06 percent, the all-others rate established in the *Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We intend to issue and publish these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(5).

Dated: July 2, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14921 Filed 7–9–20; 8:45 am]

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[4] *See Preliminary Results,* 85 FR at 27359, and PDM at 5.

[5] For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–849]

Commodity Matchbooks From India: Final Results of the Second 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 commodity matchbooks from India 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 July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 2020, Commerce initiated the second sunset review of the countervailing duty *Order*[1] covering commodity matchbooks from India, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received a notice of intent to participate in this sunset review from D.D. Bean & Sons Co. (the petitioner), within the 15-day period specified in 19 CFR 351.218(d)(1)(i).[3] The petitioner claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product.[4]

The petitioner subsequently filed its substantive response to the *Notice of Initiation*.[5] Commerce did not receive a substantive response from the Government of India (GOI) or any respondent interested parties. 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 commodity matchbooks from India.

Scope of the Order

The scope of this order covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[6] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this order may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, with store brands (*e.g.,* Kroger, 7-Eleven, Shurfine or Giant); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g.,* Penley Corp. or Diamond Brands). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation. All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR 1202.1 through 1202.7.

The scope of this order excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[7] Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike-anywhere matches (*aka* ''SAW'' matches), strike-on-box matches *(aka* ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The merchandise subject to this order is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

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.[8] 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

Commerce determines that revocation of the countervailing duty *Order* on commodity matchbooks from India would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates: 9.88 percent for Triveni Safety Matches Pvt. Ltd. and 9.88 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(a). Timely written notification of the destruction of APO

[1] *See Commodity Matchbooks from India: Countervailing Duty Order,* 74 FR 65740 (December 11, 2009) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 85 FR 12253 (March 2, 2020) (*Notice of Initiation*).

[3] *See* Petitioner's Letter, ''Five Year (''Sunset'') Review of the Countervailing Duty Order on Commodity Matchbooks from India—Notice of Intent to Participate,'' dated March 2, 2020.

[4] *Id.* at 2.

[5] *See* Petitioner's Letter, ''Commodity Matchbooks from India: Substantive Response to a Notice of Initiation,'' dated April 2, 2020 (Petitioner's Substantive Response).

[6] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.,* convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[7] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) If it has no printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Second Expedited Sunset Review of the Countervailing Duty Order on Commodity Matchbooks from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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 351.221(c)(5)(ii).

Dated: June 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–14035 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Deprecation of the United States (U.S.) Survey Foot

AGENCY: The National Institute of Standards and Technology and the National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice, delay in publication of final determination.

SUMMARY: The National Institute of Standards and Technology (NIST) and the National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), announced collaborative action to provide national uniformity in the measurement of length in an October 17, 2019, **Federal Register** notice and anticipated conducting the public comment review and analysis, and publishing and publicly announcing the resulting decision to deprecate the use of the U.S. survey foot before June 30, 2020. It is necessary to announce a 90-day extension of the review and analysis period to address public comments. The final determination will be published by September 28, 2020.

DATES: Final determination to be published on or before September 28, 2020.

ADDRESSES: NIST and NOAA have used the *https://www.regulations.gov* system for the electronic submission and posting of the seventy-two public comments received in this proceeding between October 17, 2019, and December 2, 2019. All comments submitted in response to the previous notice are accessible at *https://www.regulations.gov,* docket number NIST–2019–0003, under the ''Enhanced Content'' section of the **Federal Register** web page for that notice.

FOR FURTHER INFORMATION CONTACT:

U.S. survey foot deprecation resources: https://www.nist.gov/pml/us-surveyfoot.

New Datums: Replacing NAVD 88 and NAD 83: https://www.ngs.noaa.gov/datums/newdatums/index.shtml.

Information on standards development and maintenance: Elizabeth Benham, 301–975–3690, *Elizabeth.Benham@nist.gov.*

Technical and historical information on usage of the foot: Michael Dennis, 240–533–9611, *Michael.Dennis@noaa.gov.*

SUPPLEMENTARY INFORMATION: On October 17, 2019, NIST/NOAA published a notice to deprecate the survey foot titled ''Deprecation of the United States (U.S.) Survey Foot'' in the **Federal Register** (84 FR 55562). In that notice, NIST/NOAA proposed to deprecate the ''U.S. survey foot'' and to require that its use in surveying, mapping, and engineering be discontinued. The intent of this action is to provide national uniformity of length measurement in an orderly fashion with minimum disruption, correcting a measurement dilemma that has persisted for over 60 years.

Deprecation of the U.S. survey foot is associated with ongoing efforts by NGS to modernize the National Spatial Reference System (NSRS), originally planned to occur in 2022. However, operational, workforce, and other issues have arisen causing NGS to re-evaluate the timing of the modernized NSRS launch. NGS has conducted a comprehensive analysis of ongoing projects, programs, and resources required to complete NSRS modernization and will continue to provide regular progress updates that may be obtained by visiting the ''New Datums'' web pages (*https://geodesy.noaa.gov/datums/newdatums/index.shtml*).

NGS and the NIST Office of Weights and Measures continue to evaluate the seventy-two public comments received, identify issues, and develop appropriate solutions related to the deprecation of the U.S. survey foot. Although deprecation is associated with modernizing the NSRS, the planned effective date of December 31, 2022, provided in the October 17, 2019, notice remains the same and is independent from the NSRS modernization implementation timeline. The difference in timelines will have no effect on users of the existing NSRS, and it will ensure that deprecation of the U.S. survey foot occurs prior to the rollout of the modernized NSRS. The planned publication date of the notice summarizing public comment findings has been extended by 90 days from June 30, 2020, to September 28, 2020.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–14882 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA231]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Office of Naval Research Arctic Research Activities

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 the U.S. Navy's Office of Naval Research (ONR) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas. These activities are identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial 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. ONR's activities are considered military readiness activities

pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (NDAA).

DATES: Comments and information must be received no later than July 27, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.Fowler@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. 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: Amy Fowler, 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 original proposed and final authorizations, and the previous 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 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 initial 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-time 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, 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 the notice of the proposed initial IHA, 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 initial 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.'' The activity for which incidental take of marine mammals is being requested addressed here qualifies as a military readiness activity.

National Environmental Policy Act

In 2018, the U.S. Navy prepared an Environmental Assessment analyzing the project. Prior to issuing the IHA for the first year of this project, we reviewed the 2018 EA and the public comments received, determined that a separate NEPA analysis was not necessary, and subsequently adopted the document and issued our own Finding of No Significant Impact in support of the issuance of an IHA. In 2019, the U.S. Navy prepared a supplemental EA. Prior to issuing the

IHA in 2019, we reviewed the supplemental EA and the public comments received, determined that a separate NEPA analysis was not necessary, and subsequently adopted the document and issued our own Finding of No Significant Impact in support of the issuance of an IHA.

We have reviewed ONR's application for a renewed IHA for ongoing Arctic Research Activities from September 2020 to September 2021 and the 2019 IHA monitoring report. Based on that review, we have determined that the proposed action is identical to that considered in the previous IHA. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have preliminarily determined that the preparation of a new or supplemental NEPA document is not necessary.

History of Request

On September 9, 2019, NMFS issued an IHA to ONR to take marine mammals incidental to Arctic Research Activities in the Beaufort and Chukchi Seas (84 FR 50007; September 24, 2019), effective from September 10, 2019 through September 9, 2020. On May 12, 2020, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*) 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.

Description of the Specified Activities and Anticipated Impacts

ONR proposes to continue its Arctic Research Activities for a third year, conducting activities identical to those analyzed in the initial IHA. In 2018, ONR began a three-year project involving several scientific objectives that support the Arctic and Global Prediction Program, as well as the Ocean Acoustics Program and the Naval Research Laboratory, for which ONR is the parent command. Specifically, the project includes the Stratified Ocean Dynamics of the Arctic (SODA), Arctic Mobile Observing System (AMOS), Ocean Acoustics field work (including the Coordinated Arctic Active Tomography Experiment (CAATEX)), and Naval Research Laboratory experiments in the Beaufort and Chukchi Seas. These experiments involve deployment of moored and ice-tethered active acoustic sources, primarily from the U.S Coast Guard Cutter (CGC) HEALY. These acoustic sources are deployed and left behind to transmit intermittently throughout the year. The acoustic sources deployed during the 2018 and 2019 scientific cruises would continue to operate through the course of this IHA Renewal, such that the acoustic transmissions from September 2020 through September 2021 would be identical to those analyzed in the initial IHA. As in the initial IHA, CGC HEALY may also be required to perform icebreaking to deploy the acoustic sources in deep water. Underwater sound from the acoustic sources and icebreaking may result in behavioral harassment of marine mammals.

Anticipated impacts, which would consist of Level B harassment of marine mammals, would also be identical to those analyzed and authorized in the initial IHA (84 FR 50007; September 24, 2019). ONR's request is for take of a small number of bearded seals (*Erignathus barbatus*), ringed seals (*Pusa hispida hispida*), and two stocks of beluga whales (*Delphinapterus leucas*) by Level B harassment only. Neither ONR nor NMFS expects serious injury or mortality to result from ONR's Arctic Research Activities.

Detailed Description of the Activity

A detailed description of the scientific research program conducted by ONR is found in the notice of proposed IHA for the initial authorization (84 FR 37240; July 31, 2019). The location, timing, and nature of the activities, including the acoustic sources planned for use, are identical to those described in the previous notice. The proposed Renewal would be effective for one year past the expiration of the initial IHA (*i.e.,* from September 10, 2020 through September 9, 2021).

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 notice of the proposed IHA (84 FR 37240; July 31, 2019). NMFS has reviewed the monitoring report from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other new information affects which species or stock have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities section contained in the supporting documents for the initial IHA.

Ice Seals UME

Since June 1, 2018, elevated strandings of ringed seals, bearded seals, and spotted seals (*Phoca largha*) have occurred in the Bering and Chukchi Seas. This event has been declared a UME. A UME is defined under the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From June 1, 2018 to February 9, 2020, there have been 278 dead seals reported, with 112 stranding in 2018, 165 in 2019, and one in 2020, which is nearly five times the average number of strandings of about 29 seals annually. All age classes of seals have been reported stranded, and a subset of seals have been sampled for genetics and harmful algal bloom exposure, with a few having histopathology collected. Results are pending, and the cause of the UME remains unknown.

There was a previous UME involving ice seals from 2011 to 2016, which was most active in 2011–2012. A minimum of 657 seals were affected. The UME investigation determined that some of the clinical signs were due to an abnormal molt, but a definitive cause of death for the UME was never determined. The number of stranded ice seals involved in this UME, and their physical characteristics, is not at all similar to the 2011–2016 UME, as the seals in 2018–2020 have not been exhibiting hair loss or skin lesions, which were a primary finding in the 2011–2016 UME. The investigation into the cause of the most recent UME is ongoing. More detailed information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2019-ice-seal-unusual-mortality-event-alaska.*

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 notice of the proposed IHA for the initial authorization (84 FR 37240; July 31, 2019). NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant UMEs, 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

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 initial authorization (84 FR 37240, July 31, 2019; 84 FR 50007, September 24, 2019). Specifically, the source levels, days of operation, and marine mammal density and occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1.

TABLE 1—PROPOSED TAKE OF MARINE MAMMALS AND PERCENT OF STOCKS TAKEN

Species	Density estimate within study area (animals per square km) [a]	Level B harassment from deployed sources	Level B harassment from icebreaking	Level A harassment	Total proposed take	Percentage of stock taken
Beluga Whale (Beaufort Sea Stock)	0.0087	331	32	0	363	0.92
Beluga Whale (Eastern Chukchi Sea stock)	0.0087	178	18	0	196	0.94
Bearded Seal	0.0332	0	0	0	[b] 5	<0.01
Ringed Seal	0.3760	6,773	1,072	0	7,845	2.17

[a] Kaschner *et al.* (2006); Kaschner (2004).
[b] Quantitative modeling yielded zero takes of bearded seals. However, in an abundance of caution, we are proposing to authorize five takes of bearded seals by Level B harassment.

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 initial IHA (84 FR 50007; September 24, 2019), 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 Measures

Ships operated by or for the Navy have personnel assigned to stand watch at all times, day and night, when moving through the water. While in transit, ships must use extreme caution and proceed at a safe speed such that the ship can take proper and effective action to avoid a collision with any marine mammal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

During navigational source deployments, visual observation would start 30 minutes prior to and continue throughout the deployment within an exclusion zone of 55 meters (m; 180 feet (ft), roughly one ship length) around the deployed mooring. Deployment will stop if a marine mammal is visually detected within the exclusion zone. Deployment will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. Visual monitoring will continue through 30 minutes following the deployment of sources.

Once deployed, the spiral wave beacon would transmit for five days. The ship will maintain position near the moored source and will monitor the surrounding area for marine mammals. Transmission will cease if a marine mammal enters a 55-m (180 ft) exclusion zone. Transmission will re-commence if any one of the following conditions are met: (1) The animal is observed exiting the exclusion zone, (2) the animal is thought to have exited the exclusion zone based on its course and speed and relative motion between the animal and the source, or (3) the exclusion zone has been clear from any additional sightings for a period of 15 minutes for pinnipeds and 30 minutes for cetaceans. The spiral wave beacon source will only transmit during daylight hours.

Ships would avoid approaching marine mammals head on and would maneuver to maintain an exclusion zone of 1,500 ft (457 m) around observed mysticete whales, and 600 ft (183 m) around all other marine mammals, provided it is safe to do so in ice free waters.

With the exception of the spiral wave beacon, moored/drifting sources are left in place and cannot be turned off until the following year during ice free months. Once they are programmed they will operate at the specified pulse lengths and duty cycles until they are either turned off the following year or there is failure of the battery and are not able to operate. Due to the ice covered nature of the Arctic is in not possible to recover the sources or interfere with their transmit operations in the middle of the deployment.

These requirements do not apply if a vessel's safety is at risk, such as when a change of course would create an imminent and serious threat to safety, person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. No further action is necessary if a marine mammal other than a whale continues to approach the vessel after there has already been one maneuver and/or speed change to avoid the animal. Avoidance measures should continue for any observed whale in order to maintain an exclusion zone of 1,500 ft (457 m).

All personnel conducting on-ice experiments, as well as all aircraft operating in the study area, are required to maintain a separation distance of 1,000 ft (305 m) from any sighted marine mammal.

Proposed Monitoring Measures

While underway, the ships (including non-Navy ships operating on behalf of the Navy) utilizing active acoustics will have at least one watch person during activities. Watch personnel undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent, including on the job instruction and a formal Personal Qualification Standard program (or equivalent program for supporting contractors or civilians), to certify that they have demonstrated all necessary skills (such as detection and reporting of floating or partially submerged objects). Additionally, watch personnel have taken the Navy's Marine Species Awareness Training. Their duties may be performed in conjunction with other job responsibilities, such as navigating the ship or supervising other personnel. While on watch, personnel employ visual search techniques,

including the use of binoculars, using a scanning method in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent. A primary duty of watch personnel is to detect and report all objects and disturbances sighted in the water that may be indicative of a threat to the ship and its crew, such as debris, or surface disturbance. Per safety requirements, watch personnel also report any marine mammals sighted that have the potential to be in the direct path of the ship as a standard collision avoidance procedure.

The U.S. Navy has coordinated with NMFS to develop an overarching program plan in which specific monitoring would occur. This plan is called the Integrated Comprehensive Monitoring Program (ICMP) (Navy 2011). The ICMP has been developed in direct response to Navy permitting requirements established through various environmental compliance efforts. As a framework document, the ICMP applies by regulation to those activities on ranges and operating areas for which the Navy is seeking or has sought incidental take authorizations. The ICMP is intended to coordinate monitoring efforts across all regions and to allocate the most appropriate level and type of effort based on a set of standardized research goals, and in acknowledgement of regional scientific value and resource availability.

The ICMP is focused on Navy training and testing ranges where the majority of Navy activities occur regularly as those areas have the greatest potential for being impacted. ONR's Arctic Research Activities in comparison is a less intensive test with little human activity present in the Arctic. Human presence is limited to a minimal amount of days for source operations and source deployments, in contrast to the large majority (>95 percent) of time that the sources will be left behind and operate autonomously. Therefore, a dedicated monitoring project is not warranted. However, ONR will record all observations of marine mammals, including the marine mammal's location (latitude and longitude), behavior, and distance from project activities, including icebreaking.

Proposed Reporting Measures

The Navy is committed to documenting and reporting relevant aspects of research and testing activities to verify implementation of mitigation, comply with permits, and improve future environmental assessments. If any injury or death of a marine mammal is observed during the 2020–21 Arctic Research Activities, the Navy will immediately halt the activity and report the incident to the Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator, NMFS. The following information must be provided:

- Time, date, and location of the discovery;
- 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(s) was discovered (*e.g.,* during use of towed acoustic sources, deployment of moored or drifting sources, during on-ice experiments, or by transiting vessel).

ONR will provide NMFS with a draft exercise monitoring report within 90 days of the conclusion of the proposed activity. The draft exercise monitoring report will include data regarding acoustic source use and any mammal sightings or detection will be documented. The report will include the estimated number of marine mammals taken during the activity. The report will also include information on the number of shutdowns recorded. If no comments are received from NMFS within 30 days of submission of the draft final report, the draft final report will constitute the final report. If comments are received, a final report must be submitted within 30 days after receipt of comments.

Public Comments

As noted previously, NMFS published a notice of a proposed IHA (84 FR 37240, July 31, 2019) and solicited public comments on both our proposal to issue the initial IHA for ONR's Arctic Research 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 initial IHA (84 FR 50007; September 24, 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 Marine Mammal Commission (Commission) questioned whether the public notice provisions for IHA renewals fully satisfy the public notice and comment provision in the MMPA and discussed the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommended that NMFS use the IHA Renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: The Commission has submitted this comment multiple times, and NMFS has responded multiple times, including, for example, in the notice of issuance of an IHA to Ørsted Wind Power LLC (84 FR 52464; October 2, 2019), and we refer the Commission to that response. We also include NMFS' original response to the comment received on the 2019 ONR proposed IHA here:

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.

NMFS also strives to ensure the public has access to key information needed to submit comments on a proposed IHA, whether an initial IHA or a Renewal IHA. The agency's website includes information for all projects under consideration, including the application, references, and other supporting documents. Each **Federal Register** notice also includes contact information in the event a commenter has questions or cannot find the information they seek.

For more information, NMFS has published a description of the Renewal

process on our website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*).

Preliminary Determinations

The proposed action of this Renewal IHA, ONR's Arctic Research Activities, would be identical to the activities analyzed in the initial IHA. Based on the analysis detailed in the notices of the initial 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 would have a negligible impact on all affected marine mammal species and stocks.

There is an ongoing UME for ice seals, including ringed and bearded seals. Elevated strandings have occurred in the Bering and Chukchi Seas since June 2018. Though elevated numbers of seals have stranded during this UME, this event does not provide cause for concern regarding population-level impacts, as the population abundance estimates for each of the affected species number in the hundreds of thousands. ONR's Arctic Research Activities Study Area is in the Beaufort and Chukchi Seas, well north and east of the primary area where seals have stranded along the western coast of Alaska (see map of strandings at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2018-2019-ice-seal-unusual-mortality-event-alaska*). The location of ONR's Arctic Research Activities, combined with the low-level potential effects on marine mammals, suggest that the proposed activities are not expected to contribute to, or combine with, the ongoing UME in a manner that would lead to impacts on reproduction or survivorship of any individuals. Therefore, NMFS has preliminarily determined that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA.

Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect 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) ONR'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

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 Alaska Regional Office (AKR), whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed federal action were adequately analyzed in NMFS' Biological Opinion for the ONR Arctic Research Activities 2018–2021, dated August 27, 2019, which concluded that the take NMFS proposes to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to ONR for conducting Arctic Research Activities in the Beaufort and Chukchi Seas from September 2020 through September 2021, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial 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: July 2, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–14731 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA274]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Monday, July 27, 2020, 9:30 a.m.–12:30 p.m.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: During this meeting, the HMSMT will discuss its work plan for reviewing the best scientific information available relevant to essential fish habitat provisions in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species. The HMSMT also will be briefed on and discuss potential changes to the presentation of data in the online version of the Stock Assessment and Fishery Evaluation document. The HMSMT may also discuss other topics scheduled for future Pacific Council meetings.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov,* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–14887 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XY113]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

ACTION: Notification of fee percentage.

SUMMARY: NMFS publishes notification of a 1.31 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program. This action is intended to provide holders of crab allocations with the 2020/2021 crab fishing year fee percentage so they can calculate the required cost recovery fee payment that must be submitted by July 31, 2021.

DATES: The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2021.

FOR FURTHER INFORMATION CONTACT: Doug Duncan, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS Alaska Region administers the Bering Sea and Aleutian Islands Crab Rationalization Program (Program) in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs up to 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Program details may be found in the implementing regulations at 50 CFR 680.44.

Fee Percentage

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than, or greater than, the actual costs and fishery value for that year, because, by regulation, the fee percentage is established in the first quarter of a crab fishery year based on the fishery's value and costs in the prior year.

According to the fee percentage formula described above, the estimated percentage of costs to value for the 2019/2020 fishery was 1.31 percent. Therefore, the fee percentage will be 1.31 percent for the 2020/2021 crab fishing year. This is a decrease of 0.39 percent from the 2019/2020 crab fishing year fee percentage of 1.70 percent (84 FR 43792, August 22, 2019). Direct program costs for managing the fishery decreased by approximately 13 percent from 2018/2019 to 2019/2020, while fishery value increased 12 percent, resulting in the decreased fee percentage. Similar to previous years, the largest direct program costs were incurred by the Alaska Department of Fish and Game and the NOAA Office of Law Enforcement.

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: July 7, 2020.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–14929 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648–XQ012

Recommendations for a Comprehensive Interagency Seafood Trade Strategy

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

ACTION: Notice; request for information.

SUMMARY: On May 7, 2020, the White House issued an Executive Order on Promoting American Seafood Competitiveness and Economic Growth. As part of this effort, the Department of Commerce and the United States Trade Representative (USTR) are co-chairing the Interagency Seafood Trade Task Force (Seafood Trade Task Force), which will develop recommendations to provide to USTR for the development of

a comprehensive interagency seafood trade strategy. On behalf of the Seafood Trade Task Force co-chairs, NOAA requests written input from interested parties on how best to achieve the objectives of the Seafood Trade Task Force as described in the Executive Order, including improving access to foreign markets for U.S. seafood exports through trade policy and negotiations; resolving technical barriers to U.S. seafood exports; and otherwise supporting fair market access for U.S. seafood products. In addition, interested parties are requested to respond to the questions listed below in the **SUPPLEMENTARY INFORMATION** section as appropriate. The public input provided in response to this request for information (RFI) will inform the Seafood Trade Task Force as it works with Federal agencies and other stakeholders to develop recommendations to USTR in the preparation of a comprehensive interagency seafood trade strategy.

DATES: Interested persons are invited to submit comments on or before August 1, 2020.

ADDRESSES: Responses should be submitted via email to *SeafoodTrade.Strategy@noaa.gov.* Include ''RFI Response: Interagency Seafood Trade Task Force'' in the subject line of the message.

Instructions: Response to this RFI is voluntary. Respondents need not comment on all listed objectives. For all submissions, clearly indicate which objective is being addressed. Email attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response. The Department of Commerce may post responses to this RFI, without change, on a Federal website. NOAA, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Andrew Lawler, *Andrew.Lawler@noaa.gov,* 202–689–4590.

SUPPLEMENTARY INFORMATION: On May 7, 2020, the President signed a new Executive Order promoting American seafood competitiveness and economic growth. Specifically, the Executive Order calls for the expansion of sustainable U.S. seafood production through: More efficient and predictable aquaculture permitting; cutting-edge research and development; regulatory reform to maximize commercial fishing; and enforcement of common-sense restrictions on seafood imports that do not meet American standards.

As outlined in Section 11 of the Executive Order, the Secretary of Commerce is establishing a Seafood Trade Task Force to be co-chaired by the Secretary of Commerce and the U.S. Trade Representative (Co-Chairs), or their designees. In addition to the Co-Chairs, the Seafood Trade Task Force will include the following members, or their designees: The Secretary of State; the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Homeland Security; the Director of the Office of Management and Budget; the Assistant to the President for Economic Policy; the Assistant to the President for Domestic Policy; the Chairman of the Council of Economic Advisers; the Under Secretary of Commerce for International Trade; the Commissioner of Food and Drugs; the Administrator of NOAA; and the heads of such other agencies and offices as the Co-Chairs may designate.

The Seafood Trade Task Force will provide recommendations to USTR in the preparation of a comprehensive interagency seafood trade strategy by identifying opportunities to improve access to foreign markets for U.S. seafood products through trade policy and negotiations, resolve technical barriers to U.S. seafood exports, and otherwise support fair market access for U.S. seafood products. USTR will then submit a comprehensive interagency seafood trade strategy to the President, through the Assistant to the President for Economic Policy and the Assistant to the President for Domestic Policy, within 90 days of the receiving the recommendations from the Seafood Trade Task Force.

Questions To Inform Recommendations for the Development of the Comprehensive Interagency Seafood Trade Strategy

Through this RFI, NOAA seeks written public input on how the Administration can best achieve the Seafood Trade Task Force objectives, including but not limited to, responses to the following questions to inform the Task Force recommendations on the development of a comprehensive interagency seafood trade strategy:

1. Which seafood products (to include fish, shellfish, and processed fish and seafood products) are you currently exporting? Please provide the Harmonized Tariff System (HTS) codes for these products.

2. To which countries or other trading partners are you currently exporting?

3. Are there countries or other trading partners to which you are planning to export, or to which you would like to export? Please specify.

4. Are there issues in the markets you currently export to that limit your exports or unnecessarily increase the costs for your exports? Please specify.

5. Are there issues in other markets that have prevented you from exporting? Please specify.

6. Are there other issues that affect the competitiveness of your product in foreign markets? Please specify.

7. Are there barriers that prevent the export of your product to certain markets? Please specify.

Dated: July 7, 2020.

Chris Oliver,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–14938 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Comment on the Draft Prospectus of the Fifth National Climate Assessment

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Oceanic and Atmospheric Research (OAR), Department of Commerce (DOC).

ACTION: Notice of request for public comment on the Fifth National Climate Assessment.

SUMMARY: With this notice, the U.S. Global Change Research Program (USGCRP) seeks public comment on the proposed themes and framework of the Fifth National Climate Assessment (NCA5) as indicated by the draft prospectus presented here. Based on input received from this notice, USGCRP will develop an annotated outline, which will be released for public comment at a later date. A call for author nominations and technical inputs will also be posted in one or more subsequent **Federal Register** Notices. In addition to the proposed themes and framework, this **Federal Register** Notice requests public comment on ways to make the assessment information accessible and useful to multiple audiences; specific types of detailed information on regional scales that would be most useful to stakeholders; how to best

describe risks and impacts, as well as potential opportunities to reduce those risks and impacts on sectors of the economy and natural and social systems; new approaches to topics addressed in previous assessments; overarching themes that NCA5 should consider addressing; and other relevant topics.

DATES: Comments must be submitted to the web address specified below and received by August 10, 2020.

ADDRESSES: Comments from the public will be accepted electronically via *http://www.globalchange.gov/notices.* Instructions for submitting comments are available on the website. Submitters may enter text or upload files in response to this notice.

FOR FURTHER INFORMATION CONTACT: Chris Avery, (202) 419–3474, *cavery@usgcrp.gov,* U.S. Global Change Research Program.

SUPPLEMENTARY INFORMATION: USGCRP is mandated under the Global Change Research Act (GCRA) of 1990 to conduct a quadrennial National Climate Assessment (NCA). The most recent, NCA4, was completed in 2018 and delivered in two volumes: The Climate Science Special Report (CSSR, *science2017.globalchange.gov*) and Impacts, Risks, and Adaptation in the United States (NCA4, *nca2018.globalchange.gov*).

In addition to the two volumes of NCA4, other recent assessments by the U.S. Government will inform NCA5, including the Second State of the Carbon Cycle Report (SOCCR2, *carbon2018.globalchange.gov*); the Impacts of Climate Change on Human Health in the United States (*health2016.globalchange.gov*); and Climate Change, Global Food Security, and the U.S. Food System (*www.usda.gov/oce/climate_change/FoodSecurity.htm*).

NCA5 development will be transparent and inclusive, offering opportunities for public participation throughout the process. The production and review processes are designed to result in a report that is authoritative, timely, relevant, and policy-neutral; valued by authors and users; accessible to the widest possible audience; and fully compliant with the GCRA.

Background information, additional details, and instructions for submitting comments can be found at *http://www.globalchange.gov/notices.* Responses to this Request for Comment can be entered via this website.

Note: The following is intended to be a high-level description of the proposed themes and framework of NCA5. Subsequent **Federal Register** Notices will provide additional details on the structure and content of the report and opportunities for the public to review and give feedback on the same.

Overarching Themes for NCA5

NCA5 will be GCRA compliant and will include a number of overarching themes and perspectives that respond to needs and gaps identified by NCA4. The following is a list of proposed themes for NCA5:

- Identification of advancements or improvements, relative to NCA4, in scientific understanding of human-induced and natural processes of global change and the resulting implications for the United States.
- Identification of vulnerable populations for climate-related risks and potential impacts, a theme highlighted in multiple previous assessments.
- Characterization of scientific uncertainties associated with key findings.
- Characterization of current and future risks associated with global change with quantifiable metrics, such as indicators, where possible, and with the needs of multiple audiences in mind.
- Emphasis on (1) near-term trends and projections that can inform adaptation needs; (2) long-term projections that are more scenario dependent; and (3) in some cases, timeframes past 2100, to be consistent with the GCRA and to indicate anticipated legacy effects of the human influence on the climate and oceans.

We seek comments on these proposed overarching themes, as well as suggestions for potential additional overarching themes.

Proposed Framework for NCA5

What follows is a proposed high-level framework intended to guide the scope and content for NCA5. Public comments are sought on all aspects of this proposed framework. The proposed framework is presented here in five parts: (1) Introduction and context for NCA5; (2) foundational physical and biological science; (3) human health and welfare, societal, and environmental areas that are vulnerable to a changing climate; (4) regional and, where possible, sub-regional analyses within the United States; and (5) information needed to inform climate change adaptation, increased resiliency, and risk reduction.

This framework presents the anticipated scope and content of NCA5; it is not an indicator of the final structure of the report.

1. Introduction and Context for NCA5

This content will describe the following:

- Context for NCA5 as noted above, including the NCA's relationship to complementary domestic and international assessment efforts.
- Advancements in science since NCA4, and discussion of the scientific confidence and uncertainty associated with these findings, as well as any new approaches or differences in scope relative to NCA4. This information will include any special assessments completed or in progress post-NCA4, in particular those under the auspices of USGCRP.
- Changing global and national conditions that influence (1) drivers of climate change, namely the activities that lead to emissions and atmospheric buildup of greenhouse gas concentrations; and (2) factors that affect resiliency and vulnerability, such as demographic and land-use changes, behavioral changes, advances in technology, and economic development.
- The geographic scope (see Part 4) and the temporal scope (*i.e.,* historic to the next 25 to 100 years).
- Risks to interconnected natural, built, and social systems, which are increasingly vulnerable to cascading impacts of global change that are often difficult to predict. For example, extreme weather and climate-related impacts on one system can result in increased risks or failures in other critical systems, including water resources, food production and distribution, energy and transportation, and international trade. However, with proper design and implementation, increased connectivity may have salutary impacts on resiliency to, response to, and recovery from extreme weather and climate-related impacts.
- Terms and their definitions used to describe confidence and uncertainty levels associated with key statements and findings (and accompanying traceable accounts), which may be similar to those used in NCA4.

We seek public comment on the proposed introductory and contextual material described above for NCA5.

2. Foundational Physical and Biological Science

NCA5 will assess the state of scientific evidence regarding the physical and biological drivers of global change, with an emphasis on advances in knowledge since NCA4. This section will include the following:

- Observations of changes in climate-related phenomena such as atmospheric composition, radiative forcing,

temperature, precipitation, climate variability, large-scale climate modes (*e.g.,* El Niño events), drought, floods and associated hydrologic events (*e.g.,* streamflow, snowpack), sea-level rise and other physical ocean changes, biogeochemistry of land and marine systems, ocean acidification, extreme storms (*e.g.,* hurricanes), atmospheric rivers, polar changes (including permafrost and land-ice dynamics), ice-sheet dynamics, and attribution of physical and biophysical processes to human activities. Where appropriate, descriptions of observed changes specific to the United States at national and subnational scales.

○ Future projections of changes in Earth system processes based on modeling results of the Coupled Model Intercomparison Project (CMIP). Treatment of future scenarios, and associated risks and impacts as described below, will emphasize the most recent literature (*i.e.,* CMIP6), with CMIP5 and other future scenarios included as determined by the available literature.

We seek public comment on the proposed physical and biological science framing described above for NCA5.

3. Human Health and Welfare, Societal, and Environmental Vulnerabilities to a Changing Climate

The GCRA of 1990 requires that the NCA analyze ''the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity.'' NCA5 will provide national-level overviews of observed and potential effects and projected trends under a range of emissions scenarios in these key areas of concern for people and the environment, with supporting regional information, as described under Part 4.

To better understand global change, non-climatic trends (*e.g.,* population changes) will be briefly discussed in order to set a broader context within which the effects of climate change can be understood. Current and future risks, impacts, (including differential impacts), and benefits will be identified in each of these topic areas, using quantifiable metrics, such as indicators, where possible. The impact of extreme events in each area will be addressed where possible. In addition, potential adaptive measures to minimize risks will be described for each area, to the extent these are identified in the published literature.

In addition to coverage of these mandated topics, the following additional specific areas are proposed for inclusion in NCA5: Land cover and land use change; forests; ecosystems and ecosystem services; coasts; oceans and marine resources; built environment; urban systems; air quality; effects on tribal and indigenous communities; economics; and international effects, in particular those that may raise environmental, humanitarian, trade, or security issues for the United States.

We seek public comment on the proposed areas of focus for NCA5 as described above and welcome input on other topics that should be considered for inclusion.

4. Regional Analyses Within the United States

This section will describe regional-level perspectives for each of the areas identified in Part 3, allowing for discussion of topics of interest to each region.

The proposed regional analyses for NCA5 will follow the model developed for NCA4, which included the following regions of the United States: Northeast, Southeast, U.S. Caribbean, Midwest, Northern Great Plains, Southern Great Plains, Northwest, Southwest, Alaska, and Hawai'i and U.S.-Affiliated Pacific Islands (see *nca2018.globalchange.gov/chapter/front-matter-guide/#fig-1*). Areas of focus will vary across regions based on the availability of research and the regional identification of needs.

As appropriate and where available, the perspectives described in Part 4 will also highlight state-level information, as well as urban and rural case studies to showcase climate trends, potential risks, and resiliency planning with local specificity.

We seek public comment on the proposed regional breakout for NCA5, the level of detail to be provided at regional scales, sectors or topics to focus on within particular regions, and overarching themes that should inform the regional analyses of NCA5.

5. Information Needed To Support Climate Change Adaptation, Increased Resiliency, and Risk Reduction

Part 5 will identify needs and opportunities for adaptive measures and resiliency planning in the face of observed and projected changes in climate. NCA5 is not a policy document, and therefore will not evaluate policy measures, actions, instruments, or mechanisms to deliver or incentivize either adaptation or mitigation responses at any level of government. Rather, the intention of NCA5 is to inform the Nation, and different regions within the Nation, about near-term adaptation and resiliency needs over the next few decades that are likely to persist regardless of emissions pathway. Adaptation and resiliency needs and opportunities will be drawn from relevant information from Parts 2, 3, and 4 as outlined above, including evidence of successful measures, and discussed in the context of literature described below.

Review of the following is proposed for inclusion in Part 5:

○ Recent literature on economic impacts across sectors, regions, and levels of warming.

○ Recent literature on the potential for greenhouse gas emissions mitigation through natural and technological solutions.

○ Recent literature describing case studies (see Part 4), where relevant.

Links to U.S. government decision-support tools (*e.g.,* the U.S. Climate Resilience Toolkit, *toolkit.climate.gov*) will also be included here, where relevant.

We seek public comment on the proposed framing of information needed to support climate change adaptation, increased resiliency, and risk reduction described above for NCA5.

Finally, various appendices are planned to provide additional background, context, and detail on the inputs to NCA5. Topics currently planned for inclusion include report process details, legal mandates and requirements, tools and technical inputs, and frequently asked questions. Suggestions for other appendix topics are requested.

We seek public comment on all aspects of the anticipated scope and content of this framework for NCA5, as described above.

Responses: Response to this Request for Comment is voluntary. Respondents need not reply to all questions or topics. Responses may be used by the U.S. Government for program planning on a non-attribution basis. NOAA therefore requests that no business proprietary information or copyrighted information be submitted in response to this Request for Comment. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

Dated: July 7, 2020.

David Holst,

Director Chief Financial Officer/CAO, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–14904 Filed 7–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA275]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Mackerel, Squid, and Butterfish (MSB) Monitoring Committee will meet via webinar to develop recommendations for future MSB specifications.

DATES: The meeting will be held on Monday, July 27, 2020, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held via webinar. Details on the proposed agenda, connection information, and briefing materials will be posted at the MAFMC website: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The MSB Monitoring Committee will develop recommendations for MSB specifications, including the mackerel fishery's river herring and shad catch cap.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 7, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–14888 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2020–0031]

Extension of the Cancer Immunotherapy Pilot Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: On June 29, 2016, the United States Patent and Trademark Office (USPTO) implemented the Cancer Immunotherapy Pilot Program, which permits patent applications pertaining to cancer immunotherapy to be advanced out of turn for examination and reviewed earlier (accorded special status). To date, over 500 petitions requesting participation in the pilot program have been filed, and 167 patents have been granted under the pilot program. In view of the continued interest in the program, the USPTO is extending it until June 30, 2022. All parameters will remain the same as in the original pilot.

DATES: *Duration:* The Cancer Immunotherapy Pilot Program will continue to run until June 30, 2022. Therefore, petitions to make special under the Cancer Immunotherapy Pilot Program must be filed on or before June 30, 2022. In addition, any petition to make special under the Cancer Immunotherapy Pilot Program filed between June 30, 2020, and the publication date of this notice will be considered timely. The USPTO may further extend the pilot program (with or without modifications) or terminate it, depending on feedback received, continued interest, and the effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Patent Attorney (telephone: 571–272–7726; email: *pinchus.laufer@uspto.gov*); or Susy Tsang-Foster, Senior Legal Advisor (telephone: 571–272–7711; email: *susy.tsang-foster@uspto.gov*), of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

For questions related to a specific petition, please contact Gary B. Nickol, Supervisory Patent Examiner (telephone: 571–272–0835; email: *gary.nickol@uspto.gov*); or Brandon J. Fetterolf, Supervisory Patent Examiner (telephone: 571–272–2919; email: *brandon.fetterolf@uspto.gov*), of Technology Center 1600.

SUPPLEMENTARY INFORMATION: The USPTO published a notice for the implementation of the Cancer Immunotherapy Pilot Program on June 29, 2016. *See Cancer Immunotherapy Pilot Program,* 81 FR 42328 (June 29, 2016), 1428 *Off. Gaz. Pat. Office* 253 (July 26, 2016) (Cancer Immunotherapy Notice). The pilot program was designed to support the global fight against cancer. The Cancer Immunotherapy Notice indicated that an applicant could have an application advanced out of turn (accorded special status) for examination without meeting all of the current requirements of the accelerated examination program set forth in item VIII of the Manual of Patent Examining Procedure section 708.02(a), if the application contained at least one claim to a method of treating cancer using immunotherapy and met other requirements specified in the Cancer Immunotherapy Notice.

The Cancer Immunotherapy Notice established that the pilot program would run for 12 months, beginning June 29, 2016. The USPTO extended the pilot program to December 31, 2018, through a notice published in the **Federal Register** (*see Extension of the Cancer Immunotherapy Pilot Program,* 82 FR 28645 (June 23, 2017), 1440 *Off. Gaz. Pat. Office* 256 (July 25, 2017)), and again to June 30, 2020 (*see Extension of the Cancer Immunotherapy Pilot Program,* 84 FR 411 (January 28, 2019), 1459 *Off. Gaz. Pat. Office* 239 (February 26, 2019)). In view of the continued interest in the pilot program, the USPTO is hereby extending the pilot program through June 30, 2022. The extension will also allow the USPTO to continue its evaluation of the program. The requirements of the pilot program have not been modified.

Various stakeholders from around the world—including independent inventors, universities, research institutions, hospitals, medical centers, government agencies, and large and small companies—have filed petitions to participate in the pilot program. To date, over 500 petitions requesting participation in the pilot program have been filed, and 167 patents have been granted under the pilot program. The USPTO may again extend the program (with or without modifications), depending on feedback from the participants, continued interest, and the effectiveness of the pilot program.

Dated: June 30, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–14841 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2020–0030]

Manual of Patent Examining Procedure, Ninth Edition, Revision of June 2020

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) issued a revision of the ninth edition of the Manual of Patent Examining Procedure (MPEP), published in June 2020, to provide updated information on patent examination policy and procedure (June 2020 revision). The MPEP provides patent examiners and the public with a reference work on the practices and procedures relative to the prosecution of patent applications and other proceedings before the USPTO. The MPEP contains instructions to examiners, as well as other material on the nature of information and interpretation, and outlines the current procedures that examiners are required or authorized to follow in the normal examination of patent applications and during other Office proceedings.

ADDRESSES: The USPTO prefers that suggestions for improving the form and content of the MPEP be submitted via email to *mpepfeedback@uspto.gov* or via the IdeaScale® tool available at *https://uspto-mpep.ideascale.com/a/index.* Written comments may also be submitted by mail addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Editor, Manual of Patent Examining Procedure.

FOR FURTHER INFORMATION CONTACT: Robert A. Clarke, Editor of the MPEP, by email at *Robert.Clarke@uspto.gov,* or by telephone at 571–272–7735; or James Lisehora, Patent Examination Policy Advisor, by email at *James.Lisehora@uspto.gov,* or by telephone at 571–272–8180.

SUPPLEMENTARY INFORMATION: The USPTO issued a revision to the ninth edition of the MPEP, published in June 2020, which provides USPTO patent examiners, applicants, attorneys, agents, representatives of applicants, and other members of the public with a reference work on the practices and procedures relative to the prosecution of patent applications before the USPTO. The MPEP contains instructions to examiners, as well as other material on the nature of information and interpretation, and outlines the current procedures that examiners are required or authorized to follow in the normal examination of patent applications and during other Office proceedings. Although the MPEP does not have the force of law or the force of the rules in 37 CFR, it ''is well known to those registered to practice in the [US]PTO and reflects the presumptions under which the [US]PTO operates.'' *Critikon, Inc.* v. *Becton Dickinson Vascular Access, Inc.,* 120 F.3d 1253, 1257 (Fed. Cir. 1997).

In the June 2020 publication of the MPEP revision, sections of chapters 100–1000, 1200–1500, and 1700–2800 have been updated. The updated sections have a revision indicator of [R–10.2019], meaning these sections have been updated to reflect USPTO patent practice and relevant case law as of October 31, 2019. In addition, Chapter FPC—Form Paragraphs Consolidated, the Foreword, Introduction, Subject Matter Index, and all appendices except Appendix I and Appendix P have been updated. The changes in the June 2020 publication are discussed in the Change Summary for the Ninth Edition, Revision 10.2019. The Change Summary is available in three renditions at *https://www.uspto.gov/web/offices/pac/mpep/index.html.* Citation to a section in the current revision of the MPEP should be to ''e9 r10.2019,'' *e.g.,* MPEP 2163 (e9 r10.2019).

The June 2020 publication of the revision of the ninth edition of the MPEP may be viewed or downloaded free of charge from the USPTO website at *https://www.uspto.gov/web/offices/pac/mpep/* and is available to search online at *https://mpep.uspto.gov.* Archived copies of each of the prior revisions and editions of the MPEP continue to be available for reference on the USPTO website at *https://www.uspto.gov/web/offices/pac/mpep/old/index.htm.*

Dated: July 2, 2020.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–14931 Filed 7–9–20; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: August 9, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below the nonprofit identified.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):

8415–00–NIB–1374—Face Covering/Mask, Universally Sized, Olive Green, PG/5

8415–00–NIB–1375—Face Covering/Mask, Universally Sized, Brown, PG/5

8415–00–NIB–1376—Face Covering/Mask, Universally Sized, Tan, PG/5

8415–00–NIB–1378—Face Covering/Mask, Universally Sized, Camo, PG/5

8415–00–NIB–1379—Face Covering/Mask, Universally Sized, Black, PG/5

8415–00–NIB–1380—Face Covering/Mask, Universally Sized, Olive Green, PG/50

8415–00–NIB–1381—Face Covering/Mask, Universally Sized, Brown, PG/50

8415–00–NIB–1382—Face Covering/Mask, Universally Sized, Tan, PG/50

8415–00–NIB–1383—Face Covering/Mask, Universally Sized, Camo, PG/50

8415–00–NIB–1384—Face Covering/

Mask, Universally Sized, Black, PG/50

Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC; Industries of the Blind, Inc., Greensboro, NC; Blind Industries & Services of Maryland, Baltimore, MD; Alphapointe, Kansas City, MO; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY

Mandatory For: Broad Government Requirement. The designated mandatory sources of supply will annually produce up to 28,960 packages (5 masks per package) for each of the NSNs 8415–00–NIB–1374 through 8415–00–NIB–1379, and up to 2,896 packages for each of the NSNs 8415–00–NIB–1380 through 8415–00–NIB–1384 (50 masks per package).

Contracting Activity: COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–14899 Filed 7–9–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* August 9, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/5/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s)

MR 13037—Microwave Bacon Crisper
MR 13039—Microwave Popcorn Popper
MR 13065—Microwave Steamer
MR 13074—Set, Bowls, Glass, Prep, 4 Piece
MR 13075—Set, Mini Grate and Slice
MR 13079—Set, Glass Containers, Smart Seal, 12 Piece
MR 13151—POP 3 Pc Slim Container Set
MR 13152—POP 4 Pc Baking Accessories Set
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s)

MR 10767—Saver, Grapefruit, Includes Shipper 20767
MR 13050—Iced Tea Tumbler, 16 Ounces, Green
MR 13051—Iced Tea Tumbler, 16 Ounces, Pink
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s)

MR 13032—Shelf Liner, Biodegradable, Clear
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s)

MR 11129—Bag, Paper, Lunch, 50 Count
Mandatory Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

On 6/5/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s)

4220–00–926–9459—Vest, Life Preserver, USN, Yellow, Small
4220–00–926–9461—Cover, Protective, Life Preserver
4220–00–926–9460—Cover, Protective, Life Preserver
4220–00–926–9462—Cover, Protective, Life Preserver
4220–00–926–9464—Cover, Protective, Life Preserver
4220–00–926–9465—Cover, Protective, Life Preserver
4220–00–926–9466—Cover, Protective, Life

Preserver
4220–00–926–9467—Cover, Protective, Life Preserver
4220–00–926–9469—Cover, Protective, Life Preserver
4220–00–926–9471—Cover, Protective, Life Preserver
4220–00–926–9472—Cover, Protective, Life Preserver
4220–00–926–9473—Cover, Protective, Life Preserver
4220–00–926–9474—Cover, Protective, Life Preserver
4220–00–926–9475—Cover, Protective, Life Preserver
4220–00–926–9476—Cover, Protective, Life Preserver
4220–00–926–9478—Cover, Protective, Life Preserver
4220–00–926–9479—Cover, Protective, Life Preserver
Mandatory Source of Supply: Mississippi Industries for the Blind, Jackson, MS; Lions Volunteer Blind Industries, Inc., Morristown, TN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s)

4220–00–926–9463—Cover, Protective, Life Preserver
4220–00–926–9470—Cover, Protective, Life Preserver
4220–00–926–9477—Cover, Protective, Life Preserver
Mandatory Source of Supply: Lions Volunteer Blind Industries, Inc., Morristown, TN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s)

6532–00–299–9629—Trousers, Operating, Surgical, X-Large
6532–00–299–9630—Trousers, Operating, Surgical, Medium
6532–00–299–9631—Trousers, Operating, Surgical, Small
6532–00–299–9628—Trousers, Operating, Surgical, Large
Mandatory Source of Supply: TradeWinds Services, Inc., Merrillville, IN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s)

MR 462—Grocery Shopping Tote Bag, Laminated, Winter Club Pack, Winter Scene, Small
MR 464—Grocery Shopping Tote Bag, Laminated, Winter Club Pack, Spring Scene, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–14898 Filed 7–9–20; 8:45 am]

BILLING CODE 6353–01–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–007]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing information collection for Office of Management and Budget (OMB) review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: DFC intends to begin use of this collection on November 9, 2020. Comments must be received by September 8, 2020.

ADDRESSES: Comments and requests for copies of the subject information collection may be sent by any of the following methods:

- *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.
- Email: *fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds, (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Impact Assessment Questionnaire.

Type of Review: Revision of a currently approved information collection.

Agency Form Number: DFC–007.

OMB Form Number: 3015–0009.

Frequency: Once per investor per project.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 250.

Estimated Time per Respondent: 2.5 hours.

Total Estimated Number of Annual Burden Hours: 625 hours.

Abstract: The DFC Impact Assessment Questionnaire is the principal document used by the agency's application process to initiate the assessment of a potential project's predicted development impact, as well as the project's ability to comply with environmental and social policies, including labor and human rights, as consistent with the agency's authorizing legislation.

Dated: July 6, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–14843 Filed 7–9–20; 8:45 am]

BILLING CODE 3210–02–P

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

[DFC–008]

Submission for OMB Review; Comments Request

AGENCY: U.S. International Development Finance Corporation (DFC).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is creating a new information collection for Office of Management and Budget (OMB) review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: DFC intends to begin use of this collection on November 9, 2020. Comments must be received by September 8, 2020.

ADDRESSES: Comments and requests for copies of the subject information

collection may be sent by any of the following methods:

• *Mail:* Joanna Reynolds, Agency Submitting Officer, U.S. International Development Finance Corporation, 1100 New York Avenue NW, Washington, DC 20527.

• *Email: fedreg@dfc.gov.*

Instructions: All submissions received must include the agency name and agency form number or OMB form number for this information collection. Electronic submissions must include the agency form number in the subject line to ensure proper routing. Please note that all written comments received in response to this notice will be considered public records.

FOR FURTHER INFORMATION CONTACT: Agency Submitting Officer: Joanna Reynolds (202) 357–3979.

SUPPLEMENTARY INFORMATION: This notice informs the public that DFC will submit to OMB a request for approval of the following information collection.

Summary Form Under Review

Title of Collection: Development Outcomes Survey (DOS).

Type of Review: New information collection.

Agency Form Number: DFC–008.

OMB Form Number: Not assigned, new information collection.

Frequency: Once per investor per project per year.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Total Estimated Number of Annual Number of Respondents: 800.

Estimated Time Per Respondent: 2.0 hours.

Total Estimated Number of Annual Burden Hours: 1600 hours.

Abstract: The Development Outcomes Survey (DOS) is the principal document used by the DFC to review and update a client's developmental impact profile and determine the project's compliance with environmental, labor, and economic policies, as consistent with DFC's authorizing legislation. It will be a comprehensive survey designed to track project performance as compared to their baseline data collected during the application process.

Dated: July 6, 2020.

Nichole Skoyles,

Administrative Counsel, Office of the General Counsel.

[FR Doc. 2020–14844 Filed 7–9–20; 8:45 am]

BILLING CODE 3210–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Three-Year Extension of Defense Health Agency Evaluation of Non-United States Food and Drug Administration Approved Laboratory Developed Tests Demonstration Project

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of demonstration project extension.

SUMMARY: This notice is to advise interested parties of an additional three-year extension of a demonstration project entitled Defense Health Agency (DHA) Evaluation of Non-United States Food and Drug Administration (FDA) Approved Laboratory Developed Tests (LDTs) Demonstration Project. The original notice was published on June 18, 2014. The notice extending the demonstration project for three years was published on June 20, 2017.

DATES: This extension is applicable July 19, 2020.

ADDRESSES: Defense Health Agency (DHA), 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Valerie Palmer, Defense Health Agency, 303–676–3557, *valerie.a.palmer3.civ@mail.mil;* Jim Black, Defense Health Agency, 303–676–3487, *james.n.black.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: For additional information on the DHA Evaluation of Non-United States FDA Approved LDTs Demonstration Project (hereinafter referred to as the ''LDT demonstration''), please see 79 FR 34726–34729 and 82 FR 28052. According to Title 32, Code of Federal Regulations (CFR), Part 199.4, paragraph (g)(15)(i)(A), TRICARE may not cost-share medical devices, including LDTs, that have not received FDA medical device 510(k) clearance or premarket approval. LDTs with FDA approval are available for cost-sharing under the TRICARE Basic Program as long as they otherwise meet TRICARE criteria for coverage.

On June 18, 2014, a notice was published in the **Federal Register** (79 FR 34726) announcing the start of the LDT demonstration initiated by the DHA to review non-FDA approved LDTs to determine if they meet TRICARE's requirements for safety and effectiveness, and otherwise meet TRICARE criteria for coverage, and allow those that do to be covered as a benefit under the demonstration. This demonstration also extends coverage for preconception and prenatal cystic fibrosis (CF) carrier screening, when provided in accordance with the most current American College of Obstetricians and Gynecologists (ACOG) guidelines. The purpose of this demonstration is to improve the quality of health care services for TRICARE beneficiaries.

Currently, non-FDA approved LDTs covered under the LDT demonstration are available for cost-sharing for qualified TRICARE beneficiaries only when performed by laboratories that are assessed and accredited under minimum quality standards set by the Centers for Medicare and Medicaid Services (CMS) under the Clinical Laboratory Improvement Amendments (CLIA) of 1988, *i.e.,* CLIA certified. CMS regulates laboratories that perform non-FDA approved LDTs as well as FDA approved tests. Laboratories performing moderate or high complexity tests are subject to specific regulatory standards governing certification, personnel, proficiency testing, patient test management, quality assurance, quality control, and inspections. CLIA certification and periodic inspections evaluate whether the laboratory has determined the analytical validity of the tests they offer, including LDTs. Analytical validity refers to how well a test performs in the laboratory; that is, how well the test measures the properties or characteristics it is intended to measure. CLIA certification does not, however, assure a device is safe and effective for its intended use, or impose any type of postmarket surveillance or adverse event reporting requirements.

The TRICARE Overseas Program (TOP) is the DoD's program for the delivery of health care support services overseas (all locations outside of the 50 United States (U.S.) and the District of Columbia). TOP provides health care coverage for all overseas beneficiaries, including Active Duty Service Members (ADSMs), eligible Reserve Component (RC) personnel, Active Duty Family Members (ADFMs) (including family members of eligible RC personnel), retired military and their respective family members, and transitional survivors. This coverage applies regardless of where the services are received. The delivery of health care services overseas represents a unique situation that cannot be effectively addressed by applying all of the standards that apply in the 50 U.S. and the District of Columbia. TOP blends many of the features of the TRICARE program in the U.S. while allowing for significant cultural differences unique to health care practices and services in

overseas locations. Cultural differences may apply to things like location of care (provider comes to the patient's home), the manner in which care is provided (services commonly done by a provider class in the U.S. may be performed by a provider assistant or physician overseas, depending on the country), or the manner in which claims are submitted to TRICARE. In some situations, TRICARE may authorize coverage for a specific service or supply under the TOP, even though the service or supply would normally be excluded from coverage by TRICARE. Such situations are expected to be rare and are noted in the TRICARE Policy Manual. The TRICARE manuals may be accessed online at *https://manuals.health.mil/.*

The current TOP contractor has noted a unique situation that only occurs overseas. Because the majority of overseas laboratories are not CLIA certified, samples for genetic testing under the LDT demonstration from TOP beneficiaries must be shipped back to the U.S. for processing at CLIA certified laboratories which can be detrimental to the beneficiary's health care. Cold chain shipment may create a sample that becomes unviable. If a new sample is needed from the beneficiary, this means they may not obtain their test results for some time, impacting their diagnosis and/or treatment. Alternatively, individuals are given travel orders to return to the U.S. for the test, an unnecessary and disruptive requirement. As a result, we are providing an exception to the requirement for CLIA certification for overseas laboratories. This notice provides that non-FDA approved LDTs covered under the LDT demonstration shall be available for cost-sharing for qualified TOP beneficiaries when performed by either CLIA certified laboratories or laboratories that are assessed by the TOP contractor to be in accordance with the host nation's credentialing/accreditation standards when those standards for credentialing/accreditation are comparable to CLIA standards.

LDTs provide an important health care capability for the TRICARE Program. LDTs are complex and do have some risks associated with their use, such as inaccurate tests placing patients at otherwise avoidable risk. While laboratories that offer LDTs are subject to the Federal Food, Drug, and Cosmetic Act (FDCA), the FDA has generally exercised enforcement discretion towards these tests, which includes not enforcing applicable provisions under the FDCA and FDA regulations. The FDA's enforcement discretion stance leaves the TRICARE Program in a difficult position because the requirement at 32 CFR 199.4(g)(15)(i)(A) requires LDTs covered in the TRICARE program to be FDA approved. As a result of the FDA's enforcement discretion, many LDTs do not receive FDA approval. LDTs are important and necessary tests and in many instances there are no FDA-approved alternatives. Therefore, the TRICARE program has endeavored to evaluate LDTs through its demonstration project initiated in 2014. Although ongoing for six years, additional work is necessary to ensure that the TRICARE program conducts the appropriate evaluation of these tests based on reliable evidence and permit TRICARE cost-sharing of LDTs that are found to otherwise meet TRICARE requirements for safety and effectiveness. The DoD has determined that continuation of the demonstration project for an additional three years is necessary to provide TRICARE beneficiaries and their health care providers with seamless access to safe and effective, medically necessary tests to support health care decisions and treatment.

During the next three years, the DHA will continue to evaluate the LDT examination and recommendation process to assess feasibility, resource requirements, and the cost-effectiveness of establishing an internal safety and efficacy review process to permit TRICARE cost-sharing for an ever-expanding pool of non-FDA approved LDTs, including tests for cancer risk, diagnosis, and treatment, blood and clotting disorders, a variety of genetic diseases and syndromes, and neurological conditions. The results of the evaluation will provide an assessment of the potential improvement of the quality of health care services for beneficiaries who would not otherwise have access to these safe and effective tests. Based on the results of the demonstration evaluation, a recommendation will be made on whether to modify 32 CFR 199.4(g)(15)(i)(A) to remove the restriction for non-FDA approved LDTs and permit TRICARE cost-sharing of LDTs that are found to otherwise meet TRICARE requirements for safety and effectiveness. The DoD will also conduct a cost benefit analysis of providing CF carrier screening in accordance with ACOG guidelines to the TRICARE beneficiary population for purposes of determining whether to permanently establish coverage. Our intent is for the demonstration to conclude at the end of this three year extension and additional extensions will not need to be pursued.

The LDT demonstration continues to be authorized by 10 U.S.C. 1092.

Dated: July 7, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–14951 Filed 7–9–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0030]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 10, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rebecca Walawender, 202–245–7399.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed

information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0624.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Federal Government.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 107,400.

Abstract: In accordance with 20 U.S.C. 1416(b)(1), not later than 1 year after the date of enactment of the Individuals with Disabilities Education, as revised in 2004 (IDEA), each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B–SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State also shall report annually to the Secretary on the performance of the State under the State's performance plan. This report is called the Part B Annual Performance Report (Part B–APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600–300.602. Consistent with 20 U.S.C. 1416(d)(A), the Secretary uses this information to make annual determinations on the extent to which the Lead Agency meets the requirements and purposes of IDEA.

The Department is proposing to make revisions to the approved information collection, and to establish a new 6-year SPP cycle (FFY 2020 through FFY 2025). The proposed revisions to the Part B SPP/APR, which would go into effect with States' FFY 2018 SPP/APR to be submitted in February 2022, are focused on ensuring improved outcomes for children with disabilities, and aligning the SPP/APR with the Secretary's priorities, including elevating parent voice.

Dated: July 7, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14915 Filed 7–9–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0028]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 10, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rebecca Walawender, 202–245–7399.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0578.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 61,320.

Abstract: The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Public Law 108–446. In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), each Lead Agency must have in place a performance plan that evaluates the Lead Agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) and 20 U.S.C. 1442 the Lead Agency shall report annually to the public on the performance of each Part C program located in the State on the targets in the Lead Agency's performance plan. The Lead Agency shall report annually to the Secretary on the performance of the State under the Lead Agency's performance plan. This report is called the Part C Annual Performance Report (Part C—APR). Consistent with 20 U.S.C. 1416(d)(A), the Secretary uses this information to make annual determinations on the extent to which the Lead Agency meets the requirements and purposes of IDEA.

The Department is proposing to make minor revisions to the approved information collection, and to establish a new 6-year SPP cycle (FFY 2020 through FFY 2025). The proposed revisions to the Part C SPP/APR, which would go into effect with States' FFY 2020 SPP/APR to be submitted in February 2022, are focused on clarifying existing reporting within the parameters of the current IDEA statutory and regulatory requirements, and aligning the SPP/APR with the Secretary's priorities, such as elevating parent voice.

Dated: July 7, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14914 Filed 7–9–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0111]

Agency Information Collection Activities; Comment Request; Annual State Application Under Part C of the Individuals With Disabilities Education Act as Amended in 2004 for Federal Fiscal Year (FFY) 2021

AGENCY: Office of Special Education and Rehabilitative Services (OSERS); Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0111. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jennifer Simpson, 202–245–6042.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Annual State Application Under Part C of the Individuals with Disabilities Education Act As Amended in 2004 For Federal Fiscal Year (FFY) 2021.

OMB Control Number: 1820–0550.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 560.

Abstract: In order to be eligible for a grant under 20 U.S.C. 1433, a State must provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Some policies, procedures, methods, and descriptions must be submitted to the Secretary.

Dated: July 6, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–14807 Filed 7–9–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2313–000]

Boiling Springs Wind Farm, 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 Boiling Springs Wind Farm, 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 July 27, 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: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14909 Filed 7–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FFP Project 101, LLC; Project No. 14861–002]

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Original major license.

b. *Project No.:* 14861–002.

c. *Date Filed:* June 23, 2020.

d. *Submitted By:* Rye Development on behalf of FFP Project 101, LLC (FFP).

e. *Name of Project:* Goldendale Pumped Storage Project.

f. *Location:* Off-stream (north side) of the Columbia River at River Mile 215.6 in Klickitat County, Washington and Sherman County, Oregon, approximately 8 miles southeast of the City of Goldendale. The project would occupy 18.1 acres of lands owned by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Erik Steimle, Rye Development, 220 Northwest 8th Avenue Portland, Oregon 97209; (503) 998–0230; email—*erik@ryedevelopment.com*.

i. *FERC Contact:* Michael Tust at (202) 502–6522; or email at *michael.tust@ferc.gov*.

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 22, 2020.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. *The proposed project would consist of the following new facilities:* (1) A 61-acre upper reservoir formed by a 175-foot high, 8,000 foot-long rockfill embankment dam at an elevation of 2,950 feet mean sea level (MSL) with a vertical concrete intake-outlet structure; (2) a 63-acre lower reservoir formed by a 205-foot high, 6,100-foot long embankment at an elevation of 590 feet MSL with a horizontal concrete intake-outlet structure and vertical steel slide gates; (3) an underground conveyance tunnel system connecting the two reservoirs consisting of a 2,200-foot-long, 29-foot diameter concrete-lined vertical shaft, a 3,300-foot-long, 29-foot diameter concrete-lined high pressure tunnel, a 200-foot-long, 22-foot diameter high pressure manifold tunnel, three 600-foot-long, 15-foot diameter steel/concrete penstocks, a 200-foot-long, 20-foot diameter steel-lined draft tube tunnel, a 200-foot-long, 26-foot diameter concrete-lined low pressure tunnel, and a 3,200-foot-long, 30-foot diameter concrete-lined tailrace tunnel; (4) an underground powerhouse located between the upper and lower reservoir in a 0.83-acre powerhouse cavern containing three, 400-megawatt (MW) Francis-type pump-turbine units for a total installed capacity of 1,200 MW; (5) a 0.48-acre underground transformer cavern adjacent to the powerhouse containing intermediate step-up transformers that will step up the voltage to 115 kilovolts; (6) two 30-foot diameter tunnels for accessing the powerhouse and transformer caverns; (7) an approximate 1.0-mile-long, 115-kilovolt transmission line routed from the transformer gallery through the combined access/transmission tunnel to a new outdoor 7.3-acre substation/switchyard that will step up the voltage to 500 kilovolts; (8) a 4-mile-long, 500-kilovolt transmission line routed from the substation/switchyard south over the Columbia River and connecting to Bonneville Power Administration's existing John Day Substation; (9) a buried 2.5-foot diameter water fill line leading from a shut-off and throttling valve within a non-project water supply vault owned by Klickitat Public Utility District (KPUD) to an outlet structure within the lower reservoir to convey water for reservoir filling; and (10) appurtenant facilities. The project would also include an existing 0.7-mile road for accessing the lower reservoir site and an existing 8.6-mile road for accessing the upper reservoir site both of which may be modified to provide for construction vehicle access.

The water supply used to initially fill the lower reservoir as well as to provide make-up water would be purchased from KPUD and would be sourced from

KPUD's existing intake pond on the Columbia River. The new project water fill line would connect to a new KPUD-owned flanged water supply service connection in a water supply vault located near the lower reservoir. Within the vault, and just downstream of the service connection, there would be a project shut-off and throttling valve to allow control of the initial fill and make-up water flow rate into the lower reservoir. The initial volume of water necessary to fill the lower reservoir is estimated to be 7,640 acre-feet and would be filled over about six months at an average flow rate of approximately 21 cubic feet per second (maximum flow rate available is 35 cubic feet per second). It is estimated that the project would need 260 acre-feet of water each year to replenish water lost through evaporation. The estimated annual generation for operating 8 hours a day, 7 days a week is 3,500 gigawatt-hours per year.

o. 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 via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. In its application, FFP requested expedited processing pursuant to section 35 of the Federal Power Act for qualifying closed-loop pumped storage projects. The Commission has not yet acted on this request; however, the preliminary schedule below reflects an expedited licensing process in accordance with 18 CFR part 7 of the Commission's Regulations which will be followed while the Commission conducts its review of the application. The Commission will act on FFP's request to use the expedited licensing process no later than 180 days after receipt of the request in accordance with 18 CFR part 7.5. If the request is denied, the application will be processed pursuant to a standard processing schedule under 18 CFR part 4. Revisions to the schedule will be made as appropriate.

Issue deficiency/additional information letter—July 2020
Issue Scoping Document 1 for comments—September 2020
Comments on Scoping Document 1—November 2020
Issue Scoping Document 2 (if necessary)—December 2020
Issue notice of acceptance, ready for environmental analysis, approving request for expedited processing—December 2020
Commission issues draft EA or draft EIS—August 2021
Comments on draft EA or draft EIS—September 2021
Commission issues final EA or final EIS—January 2022

Dated: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14906 Filed 7–9–20; 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: : EC20–78–000.
Applicants: Michigan Electric Transmission Company, LLC, Consumers Energy Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Michigan Electric Transmission Company, LLC, et al.
Filed Date: 7/2/20.
Accession Number: 20200702–5330.
Comments Due: 5 p.m. ET 7/23/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–203–000.
Applicants: SR Baxley, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of SR Baxley, LLC.
Filed Date: 7/2/20.
Accession Number: 20200702–5344.
Comments Due: 5 p.m. ET 7/23/20.

Docket Numbers: EG20–204–000.
Applicants: Milford Solar I, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Milford Solar I, LLC.
Filed Date: 7/2/20.
Accession Number: 20200702–5388.
Comments Due: 5 p.m. ET 7/23/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–2558–001; ER18–974–002.
Applicants: NTE Ohio, LLC, Carolina Power Partners, LLC.
Description: Triennial Market Power Update for the Northeast Region of NTE Ohio, LLC, et al.
Filed Date: 6/30/20.
Accession Number: 20200630–5509.
Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER20–1472–001.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.
Description: Tariff Amendment: 2020–06–29_Entergy Pension Deficiency Filing to be effective 6/1/2020.
Filed Date: 6/29/20.
Accession Number: 20200629–5402.
Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: ER20–1728–000.
Applicants: Borrego Solar Systems, Inc.
Description: Motion for Expedited Action and Remedial Relief of Borrego Solar Systems, Inc.
Filed Date: 7/2/20.
Accession Number: 20200702–5379.
Comments Due: 5 p.m. ET 7/7/20.

Docket Numbers: ER20–2134–000.
Applicants: Cimarron Bend Wind Project III, LLC.
Description: Supplement to June 23, 2020 Cimarron Bend Wind Project III, LLC tariff filing.
Filed Date: 7/2/20.
Accession Number: 20200702–5384.
Comments Due: 5 p.m. ET 7/23/20.

Docket Numbers: ER20–2156–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Supplement to June 23, 2020 Cimarron Bend Wind Project III, LLC tariff filing.
Filed Date: 7/2/20.
Accession Number: 20200702–5338.
Comments Due: 5 p.m. ET 7/7/20.

Docket Numbers: ER20–2309–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: PSCo-Nereo-LGIA–564–0.0.0 to be effective 7/3/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5215.
Comments Due: 5 p.m. ET 7/23/20.

Docket Numbers: ER20–2311–000.

Applicants: Nevada Power Company.
Description: Compliance filing: OATT Revision to Attachment N 07.02.20 to be effective 5/22/2019.
Filed Date: 7/2/20.
Accession Number: 20200702–5227.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2312–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Alta 2012 TOT161 SA No. 115 to be effective 7/3/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5230.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2313–000.
Applicants: Boiling Springs Wind Farm, LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 8/28/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5240.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2314–000.
Applicants: RWE Renewables QSE, LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 8/1/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5257.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2315–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 886 between Tri-State and Basin Electric to be effective 6/30/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5259.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2316–000.
Applicants: Hillcrest Solar I, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 7/3/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5293.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2317–000.
Applicants: ISO New England Inc.
Description: Filing of Permanent De-List Bids and Retirement De-List Bids for 2024–25 Forward Capacity Auction (FCA 15) of ISO New England, Inc.
Filed Date: 7/2/20.
Accession Number: 20200702–5317.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2318–000.
Applicants: Milford Solar I, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 8/11/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5334.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2319–000.
Applicants: NorthWestern Corporation.
Description: Notice of Option to Suspend Transmission Service of NorthWestern Corporation.
Filed Date: 7/1/20.
Accession Number: 20200701–5547.
Comments Due: 5 p.m. ET 7/22/20.
Docket Numbers: ER20–2320–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM submits Revisions to PJM Tariff re: Surety Bonds to be effective 9/1/2020.
Filed Date: 7/2/20.
Accession Number: 20200702–5375.
Comments Due: 5 p.m. ET 7/23/20.
Docket Numbers: ER20–2321–000.
Applicants: San Diego Gas & Electric Company.
Description: Initial rate filing: Narrows Exchange Agreement to be effective 6/2/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5017.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2322–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–06_SA 3526 OTP–NSP FSA Twin Brooks Station (J436 and J437) to be effective 8/1/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5064.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2323–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–07–06_SA 3074 OTP–MDU–NSP MPFCA 1st Rev Twin Brooks Station (J436 and J437) to be effective 6/30/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5076.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2324–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Hickory Park Solar Amended and Restated LGIA Filing to be effective 6/19/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5092.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2325–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing to Revise PJM Tariff Pseudo-Tie Provisions re: EL19–51 to be effective 9/8/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5158.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2326–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing to Revise PJM Tariff Pseudo-Tie Provisions re: EL19–34 to be effective 9/8/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5159.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2327–000.
Applicants: The Connecticut Light and Power Company.
Description: Tariff Cancellation: Cancelation- NTE Connecticut, LLC ? Engineering Design and Procurement Agreement to be effective 6/16/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5113.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2328–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Service Agreement No. 609 between Tri-State and Niyol Wind to be effective 6/25/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5114.
Comments Due: 5 p.m. ET 7/27/20.
Docket Numbers: ER20–2329–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp RS T1167 Interconnection and Operating Agreement to be effective 7/7/2020.
Filed Date: 7/6/20.
Accession Number: 20200706–5116.
Comments Due: 5 p.m. ET 7/27/20.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–41–000.
Applicants: Southern Indiana Gas and Electric Company.
Description: Transmittal Letter to June 30, 2020 Amendments to June 2, 2020 Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southern Indiana Gas and Electric Company, Inc.
Filed Date: 7/1/20.
Accession Number: 20200701–5522.
Comments Due: 5 p.m. ET 7/6/20.

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: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14911 Filed 7–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2314–000]

RWE Renewables QSE, 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 RWE Renewables QSE, 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 July 27, 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: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14908 Filed 7–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2318–000]

Milford Solar I, 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 Milford Solar I, 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 July 27, 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: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14907 Filed 7–9–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–57–000]

Cloverland Electric Cooperative v. *Wisconsin Electric Power Company*; Notice of Complaint

Take notice that on July 1, 2020, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, and 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Cloverland Electric Cooperative (Complainant) filed a formal complaint against Wisconsin Electric Power Company (Respondent), alleging that the current 11 percent return on equity of Wisconsin Electric Power Company is excessive and should be reduced, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission strongly encourages electronic filings of comments, 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 July 21, 2020.

Dated: July 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14910 Filed 7–9–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA R08–OW–2019–0404; FRL—10012–05–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Filter Adoption Survey (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Filter Adoption Survey (EPA ICR Number 2615.01, OMB Control Number 2008–New) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on March 12, 2020 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 10, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–R08–OW–2019–0404, to (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Angelique Diaz, Ph.D., P.E., Section Chief, Drinking Water Section B, Water Division, 8WD–SDB, Environmental Protection Agency Region 8, 1595 Wynkoop Street Denver, Colorado 80202–1129; telephone number: (303)312–6344; email address: *diaz.angelique@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Denver Water is a public water system which must comply with applicable requirements of the lead and copper rule (LCR). On September 6, 2019 Denver Water submitted to the U.S. Environmental Protection Agency Region 8 office a request for a Variance from the optimal corrosion control treatment requirements under the Safe Drinking Water Act's LCR. The request included a multi-pronged approach to result in at least as efficient lead removal to orthophosphate, the designated optimal corrosion control treatment. Three of those prongs of the variance request are: PH and alkalinity adjustments to reduce corrosivity of the water; accelerated lead service line removal; and a filter program where Denver Water will distribute pitcher filters to consumers with known, suspected, and possible lead service

lines. Under section 1415(a)(3) of the Safe Drinking Water Act, on December 16, 2019, the U.S. EPA granted Denver Water a variance from the definition of ''optimal corrosion control treatment'' in 40 CFR 141.2. The Variance contains requirements to determine the efficacy the filter program. EPA will use the survey results that Denver Water annually distributes to determine the consumer filter adoption rate, and to confirm whether customers are using and maintaining the filters correctly, and per manufacturer's instructions. Each year, the filter adoption survey will be sent by Denver Water via postal mail to as many as 20,000 consumers that have known, suspected, and possible lead service lines. Surveys will be sent via direct mailings and will include an online completion option (the survey questions are included below). Direct mailings will be sent with a unique QR code to track which addresses responses have been received from. Surveys will be sent out in both English and Spanish. Additionally, Denver Water will annually conduct, in person surveys at a minimum of 50 locations in use by customers enrolled in the filter program. Information being collected is information on if, and how, consumers use the filter (*e.g.,* for drinking, cooking, or making infant-fed formula), whether the customers are using and maintain the filters correctly (*e.g.,* washing, replacing the filters per manufacturer's instructions), as well as demographic information to inform filter adoption rate by neighborhood or demographic group so Denver Water's health equity and environmental justice principles set forth in their variance request can be evaluated.

Form Numbers: 6700–009.

Respondents/affected entities: Customers of Denver Water or of other integrated systems that have either known or suspected lead service lines (LSLs).

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 20,001 (per year).

Frequency of response: Annually for three years.

Total estimated burden: 1,270 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $100,262 per year, includes $1,000 annualized capital or operations & maintenance costs.

Changes in the Estimates: This is a new collection and therefore there are no changes in burden.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–14822 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9051–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or https://www.epa.gov/nepa.

Weekly receipt of Environmental Impact Statements (EIS)

Filed June 26, 2020, 10 a.m. EST Through July 6, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200135, Draft, CHSRA, CA, California High-Speed Rail: San Francisco to San Jose Project Section: Draft Environmental Impact Report/Environmental Impact Statement, Comment Period Ends: 08/24/2020, Contact: Dan McKell 916–330–5668.

EIS No. 20200136, Final, NIH, MD, NIH Bethesda Surgery, Radiology, And Lab Medicine Building, Review Period Ends: 08/10/2020, Contact: Valerie Nottingham 301–496–7775.

EIS No. 20200138, Fourth Draft Supplemental, FHWA, VT, Champlain Parkway or Southern Connector Limited Scope Burlington, Vermont, Comment Period Ends: 08/24/2020, Contact: Patrick Kirby 802–828–4568.

EIS No. 20200139, Draft, FHWA, MD, I–495 & I–270 Managed Lanes Study Draft Environmental Impact Statement and Draft Section 4(f) Evaluation, Comment Period Ends: 10/08/2020, Contact: Jeanette Mar 410–779–7152.

Dated: July 7, 2020.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2020–14939 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–SFUND–2020–0323; FRL–10010–74—Region 6]

Administrative Settlement Agreement: Conroe Logistics Center, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given by the U.S. Environmental Protection Agency (EPA), Region 6, of a proposed bona fide prospective purchaser settlement agreement, embodied in an Administrative Settlement Agreement for Certain Response Action Activities by Bona Fide Prospective Purchaser, with Conroe Logistics Center, LLC. This agreement pertains to a portion of the Conroe Creosoting Company Superfund Site located at 1776 East Davis Street in Conroe, Montgomery County, Texas.

DATES: Comments must be received by *July 27, 2020.*

ADDRESSES: The proposed settlement and related site documents can be viewed at the Superfund Records Center, United States Environmental Protection Agency, Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. Electronic copies online can be found at *https://www.epa.gov/superfund/conroe-creosoting.*

FOR FURTHER INFORMATION CONTACT: Leonard Schilling, Attorney, Office of Regional Counsel, Environmental Protection Agency Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270; telephone number (214) 665–7166; email address *Schilling.Leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: *Written Comments:* Submit your comments, identified by Docket ID No. EPA–R06–SFUND–2020–0323, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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, 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.*

Notice is hereby given by the U.S. Environmental Protection Agency, Region 6, of a proposed bona fide prospective purchaser settlement agreement, embodied in an Administrative Settlement Agreement for Certain Response Action Activities by Bona Fide Prospective Purchaser, with Conroe Logistics Center, LLC. This agreement pertains to a portion of the former Conroe Creosoting Company Superfund Site (Site) located at 1776 East Davis Street in Conroe, Montgomery County, Texas. Conroe Logistics Center, LLC, an affiliate of Trammell Crow Company, intends to purchase a portion of the Site, conduct a response action, and construct a distribution facility. This project will result in a formerly contaminated property being restored to beneficial use.

The settlement includes a covenant by EPA not to sue or take administrative action against Conroe Logistics Center, LLC pursuant to Sections 106 and 107(a) of CERCLA for Existing Contamination, as that term is defined in the settlement agreement. For fifteen (15) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement agreement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270.

Dated: July 7, 2020.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2020–14978 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–10011–15]

Receipt of Information Under the Toxic Substances Control Act (CASRN 81–33–4)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of information submitted pursuant to a rule, order, or consent agreement issued under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which information has been received; the uses or intended uses of such chemical substance and/or mixture; and describes the nature of the information received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Hannah Blaufuss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–5614; email address: *blaufuss.hannah@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Chemical Substances and/or Mixtures

Information received about the following chemical substance(s) and/or mixture(s) is provided in Unit IV.: *Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone or C.I. Pigment Violet 29 (CASRN 81–33–4).*

II. Authority

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of information submitted pursuant to a rule, order, or consent agreement promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document, which announces the receipt of the information. Upon EPA's completion of its quality assurance review, the information received will be added to the docket identified in Unit IV., which represents the docket used for the TSCA section 4 rule, order, and/or consent agreement. In addition, once completed, EPA reviews of the information received will be added to the same docket. Use the docket ID number provided in Unit IV. to access the information received and any available EPA review.

EPA's dockets are available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

IV. Information Received

As specified by TSCA section 4(d), this unit identifies the information received by EPA: *Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone or C.I. Pigment Violet 29 (CASRN 81–33–4).*

1. *Chemical use(s):* Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone or C.I. Pigment Violet 29 (CASRN 81–33–4) is a specialty pigment that is primarily used in paints and plastics in the automotive sector as well as a chemical intermediate used to make other pigments.

2. *Applicable rule, Order, or Consent agreement:* C.I. Pigment Violet 29 TSCA Section 4(a)(2) Test Order.

3. *Information received:* EPA received the following information:

a. *Physical-Chemical Properties:* Water solubility.

b. *Physical-Chemical Properties:* Octanol solubility.

The docket ID number assigned to this information is EPA–HQ–OPPT–2020–0070.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 6, 2020.

Madison Le,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2020–14857 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–48–OW]

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Supplemental Restoration Plan and Environmental Assessment for the Cypremort Point State Park Improvements Project Modification and Finding of No Significant Impact

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), the Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) have prepared the Final Supplemental Restoration Plan and Environmental Assessment for the Cypremort Point State Park Improvements Project Modification (Final Supplemental RP/EA). The Final Supplemental RP/EA describes and, in conjunction with the associated Finding of No Significant Impact (FONSI), selects the modified Cypremort Point State Park Improvements (Cypremort Improvements) project considered by the Louisiana TIG to compensate for recreational use services lost as a result of the *Deepwater Horizon* oil spill.

ADDRESSES: *Obtaining Documents:* You may download the Final Supplemental RP/EA and FONSI at any of the following sites:

- *http://www.gulfspillrestoration.noaa.gov*
- *http://www.la-dwh.com*

Alternatively, you may request a CD of the Final Supplemental RP/EA and FONSI (see **FOR FURTHER INFORMATION CONTACT**). You may also view the document at any of the public facilities listed at *http://www.gulfspillrestoration.noaa.gov;* check with each facility for their hours of operation.

FOR FURTHER INFORMATION CONTACT:

- Louisiana—Joann Hicks, 225–342–5477
- EPA—Douglas Jacobson, 214–665–6692

SUPPLEMENTARY INFORMATION: The Louisiana TIG evaluated project alternatives under criteria set forth in the OPA natural resource damage assessment (NRDA) regulations and evaluated the environmental consequences of the alternatives in accordance with the NEPA. The selected project is consistent with the restoration alternatives selected in the *Deepwater Horizon* oil spill Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS). The Federal Trustees of the Louisiana TIG have determined that the implementation of the Final Supplemental RP/EA is not a major federal action significantly affecting the quality of the human environment within the context of the NEPA. They have concluded a FONSI is appropriate, and, therefore, an Environmental Impact Statement will not be prepared. This notice informs the public of the approval and availability of the Final Supplemental RP/EA and FONSI.

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in the release of an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. The Trustees conducted the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*). Under the OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The *Deepwater Horizon* oil spill Trustees are:

- U.S. Environmental Protection Agency (EPA);
- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR);
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas Parks and Wildlife Department, General Land Office, and Commission on Environmental Quality.

On April 4, 2016, the Trustees reached and finalized a settlement of their natural resource damage claims with BP in a Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA, LOSCO, LDEQ, LDWF, LDNR, EPA, DOI, NOAA, and USDA.

Background

The original scope of the Cypremort Improvements project was evaluated in the Louisiana TIG Final Restoration Plan and Environmental Assessment #4: Nutrient Reduction (Nonpoint Source) and Recreational Use (RP/EA #4), which was published in the **Federal Register** at 83 FR 34571 on July 20, 2018. As proposed in the RP/EA #4, the project would entail a variety of park enhancements including beach restoration, marsh boardwalk and trail construction, road and jetty repairs, and replacement of the breakwater system that helps protect the park's recreational beach. Following completion of the RP/EA #4, the Louisiana Office of State Parks was successful in securing other

non-NRDA funding to construct the breakwater system that was originally proposed as a component of the Cypremort Improvements project. The Louisiana TIG prepared a Draft Supplemental Restoration Plan and Environmental Assessment for the Cypremort Point State Park Improvements Project Modification (Draft Supplemental RP/EA) to inform the public about potential modifications to the Cypremort Improvements project and to seek public comment. A Notice of Availability of the Draft Supplemental RP/EA was published in the **Federal Register** at 85 FR 21852 on April 20, 2020. The Louisiana TIG hosted a public webinar on April 28, 2020, and the public comment period for the Draft Supplemental RP/EA closed on May 20, 2020. The Louisiana TIG considered the public comments received on the Draft Supplemental RP/EA, which informed the Louisiana TIG's analyses and selection of the modified Cypremort Improvements project in the Final Supplemental RP/EA. A summary of the public comments received and the Trustees' responses to those comments are included in Section 6 of the Final Supplemental RP/EA.

Overview of the Final Supplemental RP/EA

The Final Supplemental RP/EA evaluates modifications to the Cypremort Improvements project and considers three action alternatives, consistent with the purpose and need of the original project. Alternative A includes the components of the original Cypremort Improvements project that were approved for funding but are not currently completed: Improvements to an existing rock jetty, beach reclamation, construction of a marsh boardwalk and trail, and road and parking lot repairs. Alternative B includes the same components as in Alternative A as well as additional improvements at Cypremort Point State Park: A recreational vehicle campground with approximately 30 new paved pull-through campsites with sewer, water, and electrical tie-ins, two mobile bathhouses with sewer, water, and electrical tie-ins, and a boat dock/fishing pier. Alternative C includes the same components as Alternative B but eliminates the mobile bathhouses. In the Final Supplemental RP/EA, the Louisiana TIG selects project Alternative B: Expanded Restoration and Recreation Improvements with Mobile Bathhouses. The estimated total cost of the selected project, as modified, is $4.48 million. In the Final Supplemental RP/EA, the Louisiana TIG presents to the public its plan to continue the process of restoring recreational use services lost in the Louisiana Restoration Area as a result of the *Deepwater Horizon* oil spill. Additional restoration planning for the Louisiana Restoration Area will continue.

Administrative Record

The documents comprising the Administrative Record for the Final Supplemental RP/EA and FONSI can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing NRDA regulations found at 15 CFR part 990, and the NEPA (42 U.S.C. 4321 *et seq.*).

Benita Best-Wong,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2020–14746 Filed 7–9–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 27, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Michael Kaufman Living Trust, Michael Kaufman, as trustee, both of Glencoe, Illinois;* to join the Waterman Acquisition Group by acquiring voting shares of Waterman Acquisition Group, LLC., Wilmette, Illinois, and thereby indirectly acquire voting shares of Waterman State Bank, Waterman, Illinois.

Board of Governors of the Federal Reserve System, July 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14941 Filed 7–9–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Assessing Models of Coordinated Services for Low-Income Children and Their Families (AMCS) (0970–0535)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; Department of Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting an extension to continue collecting data for the study, Assessing Models of Coordinated Services for Low-Income Children and Their Families (AMCS). Data collection has been delayed due to the COVID–19 pandemic and will not be complete by the current expiration date of October 31, 2020. There are no changes proposed to the current instruments.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the

Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Through AMCS, ACF seeks to learn more about how states and communities coordinate early care and education, family economic security, and/or other health and human services to most efficiently and effectively serve the needs of low-income children and their families. ACF aims to understand strategies used to support partnerships, including the Federal barriers to agency collaboration. In support of achieving these goals, the study team is conducting ''virtual site visits'' with six programs that offer coordinated services. The study team will gather information through interviews with program staff members, such as agency leaders or frontline staff, and focus groups with parents.

Data collection activities will include up to six program ''virtual site visits.'' ''Virtual site visits'' include semi-structured interviews with up to 30 total staff at each site and focus groups with 8–10 parents at each site. Semi-structured interviews with program and partner staff will obtain in-depth information about the goals and objectives of programs, the services provided, how the coordinated services are implemented, how staffing is managed, data use, and any facilitators and barriers to coordination. Focus groups with parents participating in the program will provide the opportunity to learn about how parents perceive the program; how it meets their needs; what benefits they gain from the program; and how they enroll, participate, and progress through the program.

Respondents: Lead program and partner program staff members working in six programs across the United States that coordinate early care and education services with family economic security services and/or other health and human services, as well as parents receiving services from these programs. Staff respondents will be selected with the goal of having staff represent each level of the organization. Parents who have participated in the program for at least 6 months and who receive early childhood services and at least one other program service will be invited to participate in focus groups.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Master Virtual Site Visit Interview Protocol	180	1	2	360
Parent Virtual Focus Group Protocol	60	1	1	60

Estimated Total Annual Burden Hours: 420

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 9858(a)(5).

John M. Sweet Jr.,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–14944 Filed 7–9–20; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Child and Family Services Plan (CFSP), Annual Progress and Services Report (APSR), and Annual Budget Expenses Request and Estimated Expenditures (CFS–101) (0970–0426)

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a three-year extension of the collection of information under the Child and Family Services Plan (CFSP), the Annual Progress and Services Report (APSR), and the Annual Budget Expenses Request and Estimated Expenditures (CFS–101) collection (OMB #0970–0426, expiration 1/31/2021). There are minor changes to the APSR, the burden hours for the APSR, and CFS–101 form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of 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.

SUPPLEMENTARY INFORMATION:

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act (the Act), states, territories, and tribes are required to submit a CFSP. The CFSP lays the groundwork for a system of coordinated, integrated, and culturally relevant family services for the subsequent five years (45 CFR 1357.15(a)(1)). The CFSP outlines initiatives and activities the state, tribe or territory will carry out in administering programs and services to promote the safety, permanency, and well-being of children and families, including, as applicable, those activities conducted under the John H. Chafee Foster Care Program for Successful Transition to Adulthood (Section 477 of the Act); and the state grant authorized by the Child Abuse Prevention and Treatment Act. By June 30 of each year,

states, territories, and tribes are also required to submit an APSR and a financial report called the CFS–101. The APSR is a yearly report that discusses progress made by a state, territory or tribe in accomplishing the goals and objectives cited in its CFSP (45 CFR 1357.16(a)). The APSR contains new and updated information about service needs and organizational capacities throughout the five-year plan period and, beginning with the submission due on June 30, 2021, will also include information on the use of the Family First Transition Grants and Funding Certainty Grants authorized by the Family First Transition Act included in Public Law (P.L.)116–94. The CFS–101 has three parts. Part I is an annual budget request for the upcoming fiscal year. Part II includes a summary of planned expenditures by program area for the upcoming fiscal year, the estimated number of individuals or families to be served, and the geographical service area. Part III includes actual expenditures by program area, numbers of families and individuals served by program area, and the geographic areas served for the last complete fiscal year. The revisions to the CFS–101 form are to streamline the data entry and to remove from Part III of the CFS–101 requests for prior year estimates on use of funds that are not required by law.

Respondents: States, territories, and tribes must complete the CFSP, APSR, and CFS–101. Tribes and territories are exempted from the monthly caseworker visits reporting requirement of the CFSP/APSR. There are approximately 180 tribal entities that currently receive IV–B funding. There are 53 states (including the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands) that must complete the CFSP, APSR, and CFS–101. There are a total of 233 possible respondents.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
APSR	233	3	82	57,318	19,106
CFSP	47	1	123	5,781	1,927
CFS–101, Part I, II, and III	233	3	5	3,495	1,165
Caseworker Visits	53	3	99.33	15,794	5,265

Estimated Total Annual Burden Hours: 27,463.

Authority: Title IV–B, subparts 1 and 2 of the Social Security Act (the Act), and title IV–E, section 477 of the Act; sections 106 and 108 of CAPTA (42 U.S.C. 5106a. and 5106d.); and P.L. 116–94, the Family First Transition Act within Section 602, Subtitle F, Title I, Division N of the Further Consolidated Appropriations Act, 2020.

John M. Sweet Jr,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–14881 Filed 7–9–20; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0017]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 10, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0621. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Voluntary National Retail Food Regulatory Program Standards

OMB Control Number 0910–0621—Extension

This information collection request supports implementation of FDA's Voluntary National Retail Food Regulatory Program Standards (the Program Standards). The Program Standards define nine essential elements of an effective regulatory program for retail food establishments, establish basic quality control criteria for each element, and provide a means of recognition for the State, local, territorial, tribal, and Federal regulatory programs that meet the Program Standards. The program elements addressed by the Program Standards are: (1) Regulatory foundation; (2) trained regulatory staff; (3) inspection program based on Hazard Analysis and Critical Control Point (HACCP) principles; (4) uniform inspection program, (5) foodborne illness and food defense preparedness and response; (6) compliance and enforcement; (7) industry and community relations; (8) program support and resources; and (9) program assessment. Each standard includes a list of records needed to document conformance with the standard (referred to in the Program Standards document as ''quality records'') and has one or more corresponding forms and worksheets to facilitate the collection of information needed to assess the retail food

regulatory program against that standard. The respondents are State, local, territorial, tribal, and potentially other Federal regulatory agencies. Regulatory agencies may use existing available records or may choose to develop and use alternate forms and worksheets that capture the same information.

In the course of their normal activities, State, local, territorial, tribal, and Federal regulatory agencies already collect and keep on file many of the records needed as quality records to document compliance with each of the Program Standards. Although the detail and format in which this information is collected and recorded may vary by jurisdiction, records that are kept as a usual and customary part of normal Agency activities include inspection records, written quality assurance procedures, records of quality assurance checks, staff training certificates and other training records, a log or database of food-related illness or injury complaints, records of investigations resulting from such complaints, an inventory of inspection equipment, records of outside audits, and records of outreach efforts (*e.g.,* meeting agendas and minutes, documentation of food safety education activities). No new recordkeeping burden is associated with these existing records, which are already a part of usual and customary program recordkeeping activities by State, local, territorial, tribal, and Federal regulatory agencies, and which can serve as quality records under the Program Standards.

State, local, territorial, tribal and Federal regulatory agencies that enroll in the Program Standards and seek listing in the FDA National Registry are required to report to FDA on the completion of the following three management tasks outlined in the Program Standards: (1) Conducting a program self-assessment; (2) conducting a risk factor study of the regulated industry; and (3) obtaining an independent outside audit (verification audit). The results are reported on FDA's website at: *https://www.fda.gov/food/voluntary-national-retail-food-regulatory-program-standards/voluntary-national-retail-food-regulatory-program-standards-november-2019.* If a regulatory agency follows all the recordkeeping recommendations in the individual standards and their sample worksheets, it will have all the information needed to complete the reports.

Recordkeeping

FDA's recordkeeping burden estimate includes time required for a State, local, territorial, tribal, or Federal agency to review the instructions in the Program Standards, compile information from existing sources, and create any records recommended in the Program Standards that are not already kept in the normal course of the Agency's usual and customary activities. Sample worksheets are provided to assist in this compilation. In estimating the time needed for the program self-assessment (Program Standards 1 through 8, shown in table 1), FDA considered responses from four State and three local jurisdictions that participated in an FDA Program Standards Pilot study. Table 2 shows the estimated recordkeeping burden for the completion of the baseline data collection, and table 3 shows the estimated recordkeeping burden for the verification audit.

In the **Federal Register** of February 21, 2020 (85 FR 10172), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—SELF-ASSESSMENT

Standard	Recordkeeping activity	Hours per record
No. 1: Regulatory Foundation	Self-Assessment: Completion of worksheet recording results of evaluations and comparison on worksheets.[1].	16
No. 2: Trained Regulatory Staff	Self-Assessment: Completion of Conference for Food Protection (CFP) Field Training Manual and Documentation of Successful Completion—Field Training Process; completion of summary worksheet of each employee training records.[1 2].	19.3
No. 3: HACCP Principles	Self-Assessment: Completion of worksheet documentation[1]	4
No. 4: Uniform Inspection Program	Self-Assessment: Completion of worksheet documentation of jurisdiction's quality assurance procedures.[1 2].	19
No. 5: Foodborne Illness Investigation	Self-Assessment: Completion of worksheet documentation.[1]	5
No. 6: Compliance Enforcement	Self-Assessment: Selection and review of 20 to 70 establishment files at 25 minutes per file. Estimate is based on a mean number of 45. Completion of worksheet.[1].	19
No. 7: Industry & Community Relations	Self-Assessment: Completion of worksheet.[1]	2
No. 8: Program Support and Resources	Self-Assessment: Selection and review of establishment files.[1]	8
Total		92.3

[1] Or comparable documentation.

[2] Estimates will vary depending on number of regulated food establishments and the number of inspectors employed by the jurisdiction.

TABLE 2—RISK FACTOR STUDY DATA COLLECTION

Standard	Recordkeeping activity	Hours per record
No. 9: Program Assessment	Risk Factor Study and Intervention Strategy[1]	333

[1] Calculation based on mean sample size of 39 and average FDA inspection time for each establishment type. Estimates will vary depending on number of regulated food establishments within a jurisdiction and the number of inspectors employed by the jurisdiction.

TABLE 3—VERIFICATION AUDIT

Activity	Recordkeeping activity	Hours per record
Administrative Procedures	Verification Audit [1]	46.15

[1] We estimate that no more than 50 percent of time spent to complete self-assessment of all nine standards is spent completing verification audit worksheets. Time will be considerably less if less than nine standards require verification audits.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping for FDA Worksheets [2]	500	1	500	94.29	47,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Or comparable documentation.

FDA bases its estimates of the number of recordkeepers and the hours per record on its experience with the Program Standards over the past 16 years. Based upon the level of ongoing support provided by FDA to enrolled jurisdictions and the number of forms submitted annually, FDA estimates that no more than 500 jurisdictions actively participate in the Program Standards during any given year. There are approximately 3,000 jurisdictions in the United States and its territories that have retail food regulatory programs. Enrollment in the Program Standards is voluntary and, therefore, FDA does not expect all jurisdictions to participate.

FDA bases its estimate of the hours per record on the recordkeeping estimates for the management tasks of self-assessment, risk factor study, and verification audit (tables 1, 2, and 3) that enrolled jurisdictions must perform a total of 471.45 hours (92.3 + 333 + 46.15 = 471.45). Enrolled jurisdictions must conduct the work described in tables 1, 2, and 3 over a 5-year period. Therefore, FDA estimates that, annually, 500 recordkeepers will spend 94.29 hours (471.45 ÷ 5 = 94.29) performing the required recordkeeping for a total of 47,145 hours as shown in table 4.

Reporting

Form FDA 3958, ''Voluntary National Retail Food Regulatory Program Standards FDA National Registry Report,'' used for reporting to FDA, consists of four parts. Part 1 requires the name and address of the jurisdiction; name and contact information for the contact person for this jurisdiction; the jurisdiction's website address; and if the jurisdiction is willing to serve as an auditor for another jurisdiction. Part 2 requires information about enrollment, whether this jurisdiction is a new enrollee and the date of enrollment; indication whether this jurisdiction would like to be removed from the jurisdiction listing; and indication of updated findings to the self-assessment or verification audit. Part 3 requires information about self-assessment findings and verification audit findings; dates when self-assessment was completed; which standards have been met as determined by the self-assessment; and which standards have been met as verified by a verification audit including the completion dates. Part 4 requires permission to publish information on FDA's website by checking the appropriate box(es) to indicate what information FDA may publish on the website.

The reporting burden in table 5 includes only the time necessary to complete a report, as compiling the underlying information (including self-assessment reports, Risk Factor Study data collection, outside audits, and supporting documentation) is accounted for under the recordkeeping estimates in table 4.

FDA estimates the reporting burden for this collection of information as follows:

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of ''Voluntary National Retail Food Regulatory Program Standards FDA National Registry Report''.	500	1	500	0.1 (6 minutes)	50
Request for documentation of successful completion of staff training.	500	3	1,500	0.1 (6 minutes)	150
Total					200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimates of the number of respondents and the hours per response on its experience with the Program Standards. As explained previously, FDA estimates that no more than 500 regulatory jurisdictions will participate in the Program Standards in any given year. FDA estimates a total of 6 minutes annually for each enrolled jurisdiction to complete the form. FDA bases its estimate on the small number of data elements on the form and the ease of availability of the information. FDA estimates that, annually, 500 regulatory jurisdictions will submit one Form FDA 3598 for a total of 500 annual responses. Each submission is estimated to take 0.1 hour (or 6 minutes) per response for a total of 50 hours. In addition, FDA estimates that, annually, 500 regulatory jurisdictions will submit

three requests for documentation of successful completion of staff training using the CFP Training Plan and Log for a total of 1,500 annual responses. Each submission is estimated to take 0.1 hour (or 6 minutes) per response for a total of 150 hours. Thus, the total reporting burden for this information collection is 200 hours.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14879 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2018–N–2434, FDA–2016–N–3535, FDA–2013–N–1619, FDA–2016–N–0736, FDA–2019–N–3885, FDA–2013–N–1423, FDA–2013–N–0804, FDA–2016–N–3995, FDA–2018–D–1592, FDA–2016–N–2066, and FDA–2017–N–0366]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Formal Meetings Between the Food and Drug Administration and Sponsors and Applicants of Prescription Drug User Fee Act Products	0910–0429	5/31/2023
Special Protocol Assessments	0910–0470	5/31/2023
Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements	0910–0606	5/31/2023
Tracking Network for PETNet, LivestockNet, and SampleNet	0910–0680	5/31/2023
Center for Tobacco Products, Food and Drug Administration Funded Trainee/Scholar Survey	0910–0887	5/31/2023
Importer's Entry Notice	0910–0046	6/30/2023
Premarket Notification Submission 510(k), Subpart E	0910–0120	6/30/2023
Medical Devices; Pediatric Uses of Devices; Requirement for Submission of Information on Pediatric Subpopulations	0910–0748	6/30/2023
Controlled Correspondence Related to Generic Drug Development	0910–0797	6/30/2023
Certification of Identity for Freedom of Information Act and Privacy Act Requests	0910–0832	6/30/2023
FDA Advisory Committee Membership Nominations	0910–0833	6/30/2023

Dated: July 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14875 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1391]

Office of Women's Health Strategic Priorities; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is opening a public docket to solicit input and comments from stakeholders interested in informing strategic priorities for the Office of Women's Health (OWH). This will help the Agency ensure that important health concerns are carefully considered in establishing OWH's scientific, educational, and outreach priorities.

DATES: Submit either electronic or written comments by September 8, 2020.

ADDRESSES: You may submit comments as follows. Please note that untimely comments will not be considered. Electronic comments must be submitted on or before September 8, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 8, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1391 for ''Office of Women's Health Strategic Priorities; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Lisa Lineberger, Food and Drug Administration, Office of the Commissioner, Office of Women's Health, 10903 New Hampshire Ave., Bldg. 32, Rm. 2333, Silver Spring, MD 20993, 301–796–8751, *lisa.lineberger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA's OWH was established by Congressional mandate in 1994 as part of the Office of the Commissioner. The mission of the OWH is to:

• Provide leadership and policy direction for the Agency related to women's health and coordinate efforts to establish and advance a women's health agenda for the Agency.

• promote the inclusion of women in clinical trials, the implementation of guidelines concerning the representation of women in clinical trials, and the incorporation of sex and gender considerations into clinical trial data analysis.

• identify and monitor the progress of crosscutting and multidisciplinary women's health initiatives including changing needs, areas that require study, and new challenges to the health of women as they relate to FDA's mission.

• serve as the Agency's liaison with other agencies, industry, professional associations, and advocacy groups with regards to the health of women.

OWH achieves its mission through the foundational principle that sex as a biological variable should be factored into research design, analysis, reporting, and education. To this end, OWH supports FDA's regulatory mission by funding and engaging in intramural and extramural scientific research and collaborating with stakeholders on educational and outreach projects. More information on OWH research and educational activities is available at *https://www.fda.gov/science-research/science-and-research-special-topics/womens-health-research.*

OWH recognizes the unique role FDA can play in protecting and promoting women's health and the value of considering input from consumers, health professionals, and other stakeholders as it works toward this goal. Therefore, FDA is issuing this **Federal Register** notice to open Docket No. FDA–2020–N–1391 for the public to submit comments. FDA will take the suggestions and information submitted to the docket into consideration when developing OWH scientific, educational, and outreach priorities.

II. Issues for Consideration

To maximize FDA OWH's ability to promote, protect, and advance the health of women, we are seeking input on research priorities driven by data gaps and areas of unmet need; topics for education among consumers, health professionals, and other stakeholders; and outreach to women, especially underserved and diverse populations. We are also interested in proposed methods for acting on these priorities, such as collaborations and partnerships. In particular, OWH requests comments on:

• Efforts to encourage analysis and detection of potential sex and gender differences in the safety, efficacy, and use of FDA-regulated products.

• efforts to anticipate, meet, and respond to existing and emerging issues related to women's health and FDA-regulated products.

• direct outreach to diverse groups of women to promote access to relevant information about FDA-regulated products, encourage participation in clinical trials, and maintain dialogue about critical women's health topics.

• coordination and collaboration with other Federal Agencies and external stakeholders to support research and programming on women's health topics.

• identification of regulatory decisions that can benefit from participation of women across the lifespan (*e.g.,* reproductive-age women, pregnant women, post-menopausal women, and elderly women) and women with certain health conditions.

• generation of research and programming topics, interests, and areas of focus that predominantly affect

women and/or would benefit from sex- and gender-related analyses.

Dated: July 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14878 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1066]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Annual Reporting for Custom Device Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 10, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0767. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Annual Reporting for Custom Device Exemption

OMB Control Number 0910–0767—Extension

The custom device exemption is set forth at section 520(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(b)(2)(B)). A custom device is in a narrow category of device that, by virtue of the rarity of the patient's medical condition or physician's special need the device is designed to treat, it would be impractical for the device to comply with premarket review regulations and performance standards.

The Food and Drug Administration Safety and Innovation Act (FDASIA) implemented changes to the custom device exemption contained in section 520(b) of the FD&C Act. The new provision amended the existing custom device exemption and introduced new concepts and procedures for custom devices, such as:

- Devices created or modified to comply with the order of an individual physician or dentist;
- the potential for multiple units of a device type (limited to no more than five units per year) qualifying for the custom device exemption; and
- annual reporting requirements by the manufacturer to FDA about devices manufactured and distributed under section 520(b) of the FD&C Act.

Under FDASIA, ''devices'' that qualify for the custom device exemption contained in section 520(b) of the FD&C Act were clarified to include no more than ''five units per year of a particular device type'' that otherwise meet all the requirements necessary to qualify for the custom device exemption.

In the **Federal Register** of September 24, 2014 (79 FR 57112), FDA announced the availability of the guidance entitled ''Custom Device Exemption.'' FDA has developed this document to provide guidance to industry and FDA staff about implementation of the custom device exemption contained in the FD&C Act. The intent of the guidance is to define terms used in the custom device exemption, explain how to interpret the ''five units per year of a particular device type'' language contained in the FD&C Act, describe information that FDA proposes manufacturers should submit in the custom device annual report, and provide recommendations on how to submit an annual report for devices distributed under the custom device exemption.

In the **Federal Register** of February 21, 2020 (85 FR 10175), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual reporting for custom devices	34	1	34	40	1,360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 40 hours and a corresponding increase of one response/record. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: July 6, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14880 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0601]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 10, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0152. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St. North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR part 225

OMB Control Number 0910–0152—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.,* batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the FD&C Act as to safety, and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required, and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control. Respondents to this collection of information are commercial feed mills and mixer/feeders.

In the **Federal Register** of March 4, 2020 (85 FR 12790), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
225.42(b)(5) through (8) requires records of receipt, storage, and inventory control of medicated feeds.	825	260	214,500	1	214,500
225.58(c) and (d) requires records of the results of periodic assays for medicated feeds that are in accord with label specifications and also those medicated feeds not within documented permissible assay limits.	825	45	37,125	0.50 (30 minutes)	18,562.50
225.80(b)(2) requires that verified medicated feed label(s) be kept for 1 year.	825	1,600	1,320,000	0.12 (7 minutes) ..	158,400
225.102(b)(1) through (5), requires records of Master Record Files and production records for medicated feeds.	825	7,800	6,435,000	0.08 (5 minutes) ..	514,800
225.110(b)(1) and (2) requires maintenance of distribution records for medicated feeds.	825	7,800	6,435,000	0.02 (1 minute)	128,700

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS) [1]—Continued

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
225.115(b)(1) and (2) requires maintenance of complaint files by the medicated feed manufacturer.	825	5	4,125	0.12 (7 minutes) ..	495
Total					1,035,457.50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED MIXER/FEEDERS) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
225.42(b)(5) through (8) requires records of receipt, storage, and inventory control of medicated feeds.	100	260	26,000	0.15 (9 minutes) ..	3,900
225.58(c) and (d) requires records of the results of periodic assays for medicated feeds that are in accord with label specifications and also those medicated feeds not within documented permissible assay limits.	100	36	3,600	0.50 (30 minutes)	1,800
225.80(b)(2) requires that verified medicated feed label(s) be kept for 1 year.	100	48	4,800	0.12 (7 minutes) ..	576
225.102(b)(1) through (5) requires records of Master Record Files and production records for medicated feeds.	100	260	26,000	0.40 (24 minutes)	10,400
Total					16,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED COMMERCIAL FEED MILLS) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
225.142 requires procedures for identification, storage, and inventory control (receipt and use) of Type A medicated articles and Type B medicated feeds.	4,186	4	16,744	1	16,744
225.158 requires records of investigation and corrective action when the results of laboratory assays of drug components indicate that the medicated feed is not in accord with the permissible assay limits.	4,186	1	4,186	4	16,744
225.180 requires identification, storage, and inventory control of labeling in a manner that prevents label mixups and assures that correct labels are used for medicated feeds.	4,186	96	401,856	0.12 (7 minutes) ..	48,223
225.202 requires records of formulation, production, and distribution of medicated feeds.	4,186	260	1,088,360	0.65 (39 minutes)	707,434
Total					789,145

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER/FEEDERS) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.142 requires procedures for identification, storage, and inventory control (receipt and use) of Type A medicated articles and Type B medicated feeds.	3,400	4	13,600	1	13,600
225.158 requires records of investigation and corrective action when the results of laboratory assays of drug components indicate that the medicated feed is not in accord with the permissible assay limits.	3,400	1	3,400	4	13,600

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER/FEEDERS) [1]—Continued

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
225.180 requires identification, storage, and inventory control of labeling in a manner that prevents label mixups and assures that correct labels are used for medicated feeds.	3,400	32	108,800	0.12 (7 minutes) ..	13,056
225.202 requires records of formulation, production, and distribution of medicated feeds.	3,400	260	884,000	0.33 (20 minutes)	291,720
Total	.....	.....	.....	.....	331,976

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects a decrease of 65,265.20 hours. We attribute this adjustment to a decrease in the number of respondents for Registered Licensed Commercial Feed Mills. Medicated Feed Mill licensing is voluntary. Firms may withdraw if they go out of business or if they change the source of the drug and a license is not required.

Dated: July 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14797 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0598]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Type A Medicated Articles

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by August 10, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0154. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Type A Medicated Articles, 21 CFR part 226

OMB Control Number 0910–0154—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including Type A medicated articles. A Type A medicated article is a feed product containing a concentrated drug diluted with a feed carrier substance. A Type A medicated article is intended solely for use in the manufacture of another Type A medicated article or a Type B or Type C medicated feed. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or for growth promotion and feed efficiency.

Statutory requirements for cGMPs for Type A medicated articles have been codified in part 226 (21 CFR part 226). Type A medicated articles that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 226, a manufacturer is required to establish, maintain, and retain records for Type A medicated articles, including records to document procedures required under the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (*i.e.,* batch and stability testing), and product distribution.

The required records are used by both the respondents and FDA. The records are used by manufacturers of Type A medicated articles to verify that appropriate control measures have been maintained, or that appropriate corrective actions were taken if the control measures were not maintained. Such verification activities are essential to ensure that the cGMP system is working as planned. We review the records during the conduct of periodic plant inspections. This information is needed so that we can monitor drug usage and possible misformulation of Type A medicated articles. The information could also prove useful to us in investigating product defects when a drug is recalled. In addition, we will use the cGMP criteria in part 226 to determine whether or not the systems used by manufacturers of Type A medicated articles are adequate to ensure that their medicated articles meet the requirements of the FD&C Act as to safety and also meet the article's claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

In the **Federal Register** of February 21, 2020 (85 FR 10170), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
226.42; requires records be prepared and maintained for 2 years with respect to components (drug and nondrug) used in the manufacture of the medicated premixes.	65	260	16,900	0.75 (45 minutes).	12,675
226.58; requires recordkeeping for establishment of laboratory controls to ensure that adequate specifications and test procedures for the drug components and Type A medicated articles conform to appropriate standards of identity, strength, quality, and purity.	65	260	16,900	1.75	29,575
226.80; requires maintenance of records for packaging and labeling of Type A medicated articles.	65	260	16,900	0.75 (45 minutes).	12,675
226.102; requires maintenance of master-formula and batch-production records for Type A medicated articles.	65	260	16,900	1.75	29,575
226.110; requires maintenance of distribution records (for 2 years) for each shipment of Type A medicated articles for recall purposes.	65	260	16,900	0.25 (15 minutes).	4,225
226.115; requires maintenance of complaint files for Type A medicated articles for 2 years.	65	10	650	0.5 (30 minutes).	325
Total	.....	.....	.....	.....	89,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 2, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14796 Filed 7–9–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Redesignation for the Northwestern Band of the Shoshone Nation

AGENCY: Indian Health Service, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) for the Northwestern Band of the Shoshone Nation (NWBSN) in the State of Utah to include the Utah counties of Box Elder, Davis, Salt Lake, and Weber. The current PRCDA for the NWBSN is Box Elder County in the State of Utah. Tribal members residing on the Fort Hall Indian Reservation are provided health services through the IHS direct care facility in Fort Hall, Idaho, or by Purchased/Referred Care (PRC) referrals to private providers. NWBSN members residing outside of the PRCDA are eligible for direct care services, however, they are not eligible for PRC services. The sole purpose of this expansion would be to authorize additional Tribal members and beneficiaries to receive PRC services.

DATES: Comments must be submitted August 10, 2020.

ADDRESSES: In commenting, please refer to FR Number 2020–14760. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Evonne Bennett, Acting Director, Division of Regulatory and Policy Coordination, Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

FOR FURTHER INFORMATION CONTACT: CDR John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone 301/443–0969 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Background: The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C, provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all

or part of a reservation and any county or counties which have a common boundary with the reservation. The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, IHS is publishing this Notice and requesting public comments.

The NWBSN is a federally recognized Tribe that was signatory to the Treaty of Box Elder of 1863 and the Treaty of Fort Bridger of 1868. The NWBSN traditionally lived in small family groups scattered throughout its identified historic use area. These ancestral lands included areas across the States of Utah and Idaho. While the NWBSN's PRCDA currently consists of Box Elder County in the State of Utah, the NWBSN attests by Tribal Resolution that many NWBSN members reside outside of Box Elder County. Specifically, many NWBSN members reside in the nearby Utah counties of Davis, Salt Lake, and Weber. These counties are not currently part of a Tribe's designated PRCDA. Accordingly, IHS proposes to expand the NWBSN's PRCDA to include the Utah counties of Davis, Salt Lake, and Weber.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding, the NWBSN estimates the current eligible population will be increased by 171.

2. The NWBSN has determined that these 171 individuals are members of the NWBSN and they are socially and economically affiliated with the NWBSN.

3. The expanded area including Davis, Salt Lake and Weber Counties in the State of Utah maintain a boundary on or near the current Box Elder County, Utah PRCDA.

4. The NWBSN will use its existing Federal allocation for PRC funds to provide services to the expanded population. No additional financial resources will be allocated by IHS to the NWBSN to provide services to NWBSN members residing in Davis, Salt Lake, and Weber counties in the State of Utah.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Tribe/reservation	County/state
Ak Chin Indian Community	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapahoe Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmacs	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Brigham City Intermountain School Health Center, Utah	Permanently closed on May 17, 1984.[4]
Burns Paiute Tribe	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation (AKA Catawba Tribe of South Carolina)	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation	Alleghany, NY,[7] Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Chickahominy Indian Tribe	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[8]
Chickahominy Indian Tribe—Eastern Division	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[9]
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish and Kootenai Tribes of the Flathead Reservation	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes and Bands of the Yakama Nation	Klickitat, WA, Lewis, WA, Skamania, WA,[10] Yakima, WA.
Confederated Tribes of Siletz Indians of Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Chehalis Reservation	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation	Chelan, WA,[12] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians	Coos, OR,[13] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	The entire State of Nevada, Juab, UT, Toole, UT.

Tribe/reservation	County/state
Confederated Tribes of the Grand Ronde Community of Oregon	Marion, OR, Multnomah, OR, Polk, OR,[14] Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Umatilla Indian Reservation	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Coquille Indian Tribe	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, the city limits of Elton, LA.[15]
Cow Creek Band of Umpqua Tribe of Indians	Coos, OR,[16] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Peirce, WA, Skamania, WA, Thurston, WA, Columbia, OR,[17] Kittitas, WA, Wahkiakum, WA.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[18] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Eastern Band of Cherokee Indians	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	The entire State of Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	The entire State of Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Antrim, MI,[19] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[20]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ, Mohave, AZ.[21]
Ho-Chunk Nation of Wisconsin	Adams, WI,[22] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe	Jefferson, WA.
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians	Aroostook, ME.[23]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians	Grand Parish, LA,[24] LaSalle Parish, LA, Rapides, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Reservation	Pend Oreille, WA, Spokane, WA.
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo).	Sandoval, NM, Santa Fe, NM.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[25]
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown, KS, Jackson, KS.
Klamath Tribes	Klamath, OR.[26]
Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California).	Lake, CA, Sonoma, CA.[27]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Superior Chippewa Indians of Wisconsin	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan	Gogebic, MI.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[28] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Shell Tribe of Chippewa Indians of Montana	Blaine, MT, Cascade, MT, Glacier, MT, Hill, MT.[29]
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[30] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation	Whatcom, WA.
Makah Indian Tribe of the Makah Indian Reservation	Clallam, WA.
Mashantucket Pequot Indian Tribe	New London, CT.[31]

Tribe/reservation	County/state
Mashpee Wampanoag Tribe	Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[32]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[33] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Minnesota Chippewa Tribe, Minnesota, Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Fond du Lac Band	Carlton, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Grand Portage Band	Cook, MN.
Minnesota Chippewa Tribe, Minnesota, Leech Lake Band	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Minnesota Chippewa Tribe, Minnesota, White Earth Band	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Mississippi Band of Choctaw Indians	Attala, MS, Jasper, MS,[34] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[35] Scott, MS,[36] Winston, MS.
Mohegan Tribe of Indians of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Monacan Indian Nation	Amherst, VA, Nelson, VA, Albemarle, VA, Buckingham, VA, Appomattox, VA, Campbell, VA, Bedford, VA, Botetourt, VA, Rockbridge, VA, Augusta, VA, and the independent cities of Lynchburg, VA, Lexington, VA, Buena Vista, VA, Staunton, VA, Waynesboro, VA, and Charlottesville, VA.[37]
Muckleshoot Indian Tribe	King, WA, Pierce, WA.
Nansemond Indian Tribe	The independent cities of Chesapeake, VA, Hampton, VA, Newport News, VA, Norfolk, VA, Portsmouth, VA, Suffolk, VA, and Virginia Beach, VA.[38]
Narragansett Indian Tribe	Washington, RI.[39]
Navajo Nation, Arizona, New Mexico, & Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[40]
Nez Perce Tribe	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe	Whatcom, WA.
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[41] Rosebud, MT.
Northwestern Band of Shoshone Nation	Box Elder, UT,[42] Davis, UT, Salt Lake, UT, Weber, UT.[43]
Nottawaseppi Huron Band of the Pottawatomi, Michigan	Allegan, MI,[44] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Oglala Sioux Tribe	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[45] Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Ohkay Owingeh, New Mexico	Rio Arriba, NM.
Oklahoma	Entire State.[46]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin).	Brown, WI, Outagamie, WI.
Oneida Indian Nation (previously listed as the Oneida Nation of New York).	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Onondaga Nation	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[47] Millard, UT, Sevier, UT, Washington, UT.
Pamunkey Indian Tribe	Caroline, VA, Hanover, VA, Henrico, VA, King William, VA, King and Queen, VA, New Kent, VA, and the independent city of Richmond, VA.[48]
Pascua Yaqui Tribe of Arizona	Pima, AZ.[49]
Passamaquoddy Tribe	Aroostook, ME,[50] [51] Hancock, ME,[52] Washington, ME.
Penobscot Nation	Aroostook, ME,[53] Penobscot, ME.
Poarch Band of Creeks	Baldwin, AL,[54] Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Pottawatomi Indians, Michigan and Indiana	Allegan, MI,[55] Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[56] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawatomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble S'Klallam Tribe	Kitsap, WA.
Prairie Band of Pottawatomi Nation	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.

Tribe/reservation	County/state
Pueblo of Laguna, New Mexico	Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, Arizona and California.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation	Clallam, WA, Jefferson, WA.
Quinault Indian Nation	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[57]
Rappahannock Tribe, Inc.	King and Queen County, VA, Caroline County, VA, Essex County, VA, King William County, VA.[58]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Brown, KS, Richardson, NE.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[59] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
Saint Regis Mohawk Tribe	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Nation	Clallam, WA,[60] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Alger, MI,[61] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of Indians	Alleghany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shinnecock Indian Nation	Nassau, NY,[62] Suffolk, NY.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation	Pacific, WA.
Shoshone-Bannock Tribes of the Fort Hall Reservation	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[63] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	The entire state of Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Indian Tribe	King, WA,[64] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation	Mason, WA.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Standing Rock Sioux Tribe of North & South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stillaguamish Tribe of Indians of Washington	Snohomish, WA.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Suquamish Indian Tribe of the Port Madison Reservation	Kitsap, WA.
Swinomish Indian Tribal Community	Skagit, WA.
Tejon Indian Tribe	The State of California including Kern, CA.[65]
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tolowa Dee-ni' Nation (formerly known as Smith River Rancheria of California).	California, Curry, OR.[66]

Tribe/reservation	County/state
Tonawanda Band of Seneca	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[67] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe	Avoyelles, LA, Rapides, LA.[68]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation	Niagara, NY.
Upper Mattaponi Tribe	Caroline, VA, Charles City, VA, Essex, VA, Hanover, VA, Henrico, VA, James City, VA, King and Queen, VA, King William, VA, Middlesex, VA, New Kent, VA, Richmond, VA and the independent city of Richmond, VA.[69]
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Ute Tribe	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampanoag Tribe of Gay Head (Aquinnah)	Dukes, MA,[70] Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[71]
Washoe Tribe of Nevada & California	The State of Nevada, The State of California except for the counties listed in footnote.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Wilton Rancheria, California	The State of California including Sacramento, CA.[72]
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona	Yavapai, AZ.
Yavapai-Prescott Indian Tribe	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[73]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.

[4] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).

[5] Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with Public Law. 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.

[7] There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.

[8] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[9] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe—Eastern Division as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[10] Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.

[12] Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.

[13] Pursuant to Public Law 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.

[14] The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Public Law 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.

[15] The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include city limits of Elton, LA.

[16] Cow Creek Band of Umpqua Tribe of Indians recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deschutes, OR, Klamath, OR, and Lane, OR.

[17] The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. The CHSDA was administratively expanded to included Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 74 FR 67884, December 21, 2009.

[18] Treasure County, MT, has historically been a part of the Crow Service Unit population.

[19] The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.

[20] Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).

[21] The PRCDA for the Havasupai Tribe of Arizona was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include Mohave County in the State of Arizona.

[22] CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.

[23] Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.

[24] The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[25] Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Public Law 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[26] The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''.

[27] The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[28] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[29] In Public Law 116–92, that became law on December 20, 2019, Congress federally recognized the Little Shell Tribe of Chippewa Indians of Montana. Consistent with Public Law 116–92, the IHS designated the counties as the PRCDA for the Little Shell Tribe of Chippewa Indians of Montana.

[30] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[31] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.

[32] The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[33] The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[34] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[35] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[36] Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

[37] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Monacan Indian Nation as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[38] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Nansemond Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[39] The Narragansett Indian Tribe was recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[40] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

[41] Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

[42] Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshone Nation in 1986.

[43] The PRCDA for the Northwest Band of Shoshone Nation was expanded administratively by the Principle Deputy Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Davis, Salt Lake, and Weber, in the State of Utah.

[44] The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[45] Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

[46] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

[47] Paiute Indian Tribe of Utah Restoration Act, Public Law 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

[48] In the **Federal Register** on July 8, 2015 (80 FR 39144), the Pamunkey Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. The counties listed were designated administratively as the PRCDA, for the purposes of operating a PRC program.

[49] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[50] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

[51] The Passamaquoddy Tribe has two reservations: Indian Township and Pleasant Point. The PRCDA for the Passamaquoddy Tribe at Indian Township, ME, is Aroostook County, ME, Washington County, ME, and Hancock County, ME. The PRCDA for the Passamaquoddy Tribe at Pleasant Point, ME, is Washington County, ME, south of State Route 9, and Aroostook County, ME.

[52] The Passamaquoddy Tribe's counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[53] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide PRC to the Passamaquoddy Tribe and the Penobscot Nation.

[54] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[55] Public Law 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

[56] The Ponca Restoration Act, Public Law 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Public Law 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

[57] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[58] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Rappahannock Tribe, Inc. as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[59] Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

[60] The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[61] CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

[62] The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[63] Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

[64] The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[65] On December 30, 2011 the Office of Assistant Secretary-Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. Kern County, CA, was designated administratively as part of the Tribe's CHSDA in addition to the CHSDA established by Congress for the State of California. Kern County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[66] The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[67] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[68] Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

[69] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Upper Mattaponi Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[70] According to Public Law 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

[71] The counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[72] The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as part of the Rancheria's CHSDA in addition to the CHSDA established by Congress for the State of California. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[73] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Chris Buchanan,

RADM, Assistant Surgeon General, USPHS, Deputy Director, Indian Health Service.

[FR Doc. 2020–14760 Filed 7–9–20; 8:45 a.m.]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Council of Research Advocates, July 16, 2020, 1:00 p.m. to July 16, 2020, 4:00 p.m., National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD, 20892 which was published in the **Federal Register** on June 17, 2020, 85 FR 36605.

This meeting notice is amended to change the meeting start and end times. The meeting will now be held from 12:00 p.m. to 3:30 p.m. on July 16, 2020. The meeting is open to the public.

Dated: July 6, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14877 Filed 7–9–20; 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; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19) (R21, R01 Clinical Trials Not Allowed).

Date: July 16, 2020.

Time: 11:00 a.m. to 4:00 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 3G51, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Thomas F. Conway, 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 3G51, Bethesda, MD 20892–9834, 240–507–9685, *thomas.conway@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14809 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Strengthening the Impact of Community Health Workers on the HIV Care Continuum in the U.S.

Date: July 14, 2020.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Nursing Research, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ming Yan, MD, Ph.D., Scientific Review Officer, National Institute of Nursing Research, Immunology (IMM), DPPS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4205, Bethesda, MD 20892, *yanming@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: July 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14946 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Complementary and Integrative Health Special Emphasis Panel; NCCIH Training and Education Review Panel (CT).

Date: July 30–31, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Martina Schmidt, Ph.D. Chief Office of Scientific Review, National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14876 Filed 7–9–20; 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; Novel Therapeutics Directed to Intracellular HIV Targets (R21 Clinical Trial Not Allowed).

Date: July 29–30, 2020.

Time: 10:00 a.m. to 6:00 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 3G21A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Roberta Binder, 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 3G21A, Bethesda, MD 20892–9823, (240) 669–5050, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14810 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Catalyze Product Definition.

Date: August 17, 2020.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14838 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development Special Emphasis Panel; Centers for Collaborative Research in Fragile X and FMR1-Associated Conditions Review.

Date: August 7, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Videoconference/Teleconference, 6710–B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14837 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 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 Complementary and Integrative Health Special Emphasis Panel HEAL Initiative: Pragmatic and Implementation Studies for the Management of Pain to Reduce Opioid Prescribing (PRISM) (UG3/UH3, Clinical Trials Optional).

Date: July 24, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Center for Complementary and Integrative 6707 Democracy Blvd. Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ashlee Tipton, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Room 401, Bethesda, MD 20892, 301–451–3849, *ashlee.tipton@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 6, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14840 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pathologies of the Retina, Optic and Oculomotor Nerves, and Eye Immune Responses in Infection and Degeneration.

Date: July 30, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alessandra C. Rovescalli, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm 5205, MSC7846, Bethesda, MD 20892, (301) 435–1021, *rovescaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: August 7, 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 Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM. 3206, Bethesda, MD 20892, (301) 402–9448, *shinako.takada@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: July 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14948 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuropsychiatric Disorders and Review of PAR–19–289 Applications.

Date: August 4, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., Chief, BDCN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular & Cellular Neurobiology.

Date: August 4, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Glia.

Date: August 5, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14950 Filed 7–9–20; 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; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19) (R21, R01 Clinical Trials Not Allowed).

Date: July 30, 2020.

Time: 11:00 a.m. to 5:00 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 3G31, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/Room 3G31B, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Bethesda, MD 20892–9834, (240) 669–5060, *james.snyder@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: July 2, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14808 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent Commercialization License: N6, a Novel, Broad, Highly Potent HIV-Specific Antibody and a Broadly Neutralizing Human Anti-HIV Monoclonal Antibody (10E8) Capable of Neutralizing Most HIV–1 Strains

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID), an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent commercialization license to RNAceuticals, Inc. located at 12 Indian Trail Road, Woodbridge, CT, USA to practice the inventions embodied in the patent applications listed in the Supplementary Information section of this notice.

DATES: Only written comments and/or applications for a license which are received by the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, on or before July 27, 2020 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent commercialization license should be directed to: Chris Kornak, Lead Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC 9804, Rockville, MD 20852–9804, phone number 240–627–3705; Email: *chris.kornak@nih.gov*.

SUPPLEMENTARY INFORMATION: The following represents the intellectual property to be licensed under the prospective agreement.

N6: To date, NIAID has filed the following patent applications for this matter: Two U.S. Provisionals (E–131–

2015–0–US–01, 62/136,228, filed on 03/20/2015 and E–131–2015–1–US–01, 62/250,378 filed on 11/03/2015) that were combined into one PCT Application (E–131–2015–2–PCT–01, PCT/US2016/023145, filed on 03/18/2016), and entered the national stage in the United States (E–131–2015–2–US–07, 15/559,791, filed on 09/19/2017 and E–131–2015–2–US–09, 16/786,267, filed on 02/10/2020), Europe (E–131–2015–2–EP–05, 16716979.6 and E–131–2015–2–EP–10, 20156388.9), Canada (E–131–2015–2–CA–03, 2,980,005), Australia (E–131–2015–2–AU–02, 2016235541), China (E–131–2015–2–CN–04, 201680028822.8), South Africa (E–131–2015–2–ZA–08, 2017/06155), and India (E–131–2015–2–IN–06, 201737032671).

10E8: NIAID has filed the following patent applications for this matter, three U.S. Provisionals (E–253–2011–0–US–01, 61/556,660, filed on 11/07/2011, E–253–2011–1–US–01, 61/672,708, filed on 07/17/2012, and E–253–2011–2–US–01, 61/698,480, filed on 09/07/2012) that were combined into one PCT application (E–253–2011–3–PCT–01, PCT/US2012/063958, filed on 11/07/2012), and entered the national stage, in seven countries: United States (E–253–2011–3–US–05, 14/356,557, filed on 05/06/2014, E–253–2011–4–US–01, 14/450,773, filed on 08/04/2014, E–253–2011–3–US–09, 15/226,744, filed on 08/02/2016, E–253–2011–3–US–13, 15/699,902, filed on 09/08/2017), Europe (E–253–2011–3–EP–03, 12847241.2), China (E–253–2011–3–CN–02, 201280065580.1), India (E–253–2011–3–IN–04, 3678/DELNP/2014), South Africa (E–253–2011–3–ZA–06, 2014/03264), Brazil (E–253–2011–3–BR–07, BR112014010823–4), and Russia (E–253–2011–3–RU–08, 2014118462).

All rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive patent commercialization license territory may be worldwide and the field of use may be limited to: (1) Administration to humans of DNA and/or RNA including without limitation modified RNA encoding a protein or proteins, containing all or some of the CDRs of N6 and (2) Administration to humans of DNA and/or RNA including without limitation modified RNA encoding a protein or proteins, containing all or some of the CDRs of 10E8.

The N6 antibody has evolved a unique mode of binding that depends less on a variable area of the HIV envelope known as the V5 region and focuses more on conserved regions, which change relatively little among HIV strains. This allows N6 to tolerate changes in the HIV envelope, including the attachment of sugars in the V5 region, a major mechanism by which HIV develops resistance to other VRC01-class antibodies. N6 was shown in pre-clinical studies to neutralize approximately 98 percent of HIV isolates tested. The studies also demonstrate that N6 neutralizes approximately 80 percent of HIV isolates which were resistant to other antibodies of the same class, and does so very potently. Its breadth and potency makes N6 a highly desirable candidate for development in therapeutic or prophylactic strategies. An abstract for this invention was published in the **Federal Register** on March 13, 2017.

The other invention, 10E8, has great potential to provide passive protection from infection, as a therapeutic, or as a tool for the development of vaccine immunogens. 10E8 is one of the most potent HIV-neutralizing antibodies isolated thus far and it can potently neutralize up to 98% of genetically diverse HIV–1 strains. 10E8 is specific to the membrane-proximal external region (MPER) of the HIV envelope protein, GP41. An abstract for this invention was published in the **Federal Register** on April 24th, 2012 and June 24th, 2014.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive patent commercialization license will be royalty bearing and may be granted unless within fifteen (15) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license. In response to this notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2020–14836 Filed 7–9–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2040]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and

Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Houston	City of Dothan (19–04–4944P).	The Honorable Mark Saliba, Mayor, City of Dothan, P.O. Box 2128, Dothan, AL 36303.	Engineering Services Department, P.O. Box 2128, Dothan, AL 36303.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 15, 2020	010104
Mobile	Unincorporated areas of Mobile County (19–04–4767P).	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	Mobile County Department of Public Works, 205 Government Street, Mobile, AL 36644.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 16, 2020	015008
Montgomery	Town of Pike Road (19–04–1913P).	The Honorable Gordon Stone, Mayor, Town of Pike Road, 9575 Vaughn Road, Pike Road, AL 36064.	City Hall, 9575 Vaughn Road, Pike Road, AL 36064.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 6, 2020	010433
Montgomery	Unincorporated areas of Montgomery County (19–04–1913P).	The Honorable Elton Dean, Chairman, Montgomery County Board of Commissioners, P.O. Box 1667, Montgomery, AL 36104.	Montgomery County Engineering Department, 25 Washington Avenue, Montgomery, AL 36104.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 6, 2020	010278
Colorado:						
Arapahoe	City of Aurora (19–08–0731P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	080002
Boulder	City of Longmont (19–08–1079P).	The Honorable Brian Bagley, Mayor, City of Longmont, 350 Kimbark Street, Longmont, CO 80501.	Public Works and Natural Resources Department, 350 Kimbark Street, Longmont, CO 80501.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2020	080027
Boulder	Unincorporated areas of Boulder County (19–08–1079P).	The Honorable Deb Gardner, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, CO 80306.	Boulder County Transportation Department, 2525 13th Street, Suite 203, Boulder, CO 80304.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2020	080023

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Broomfield	City and County of Broomfield (19–08–0374P).	The Honorable Patrick Quinn, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	085073
Denver	City and County of Denver (19–08–0731P).	The Honorable Michael B. Hancock, Mayor, City and County of Denver, 1437 North Bannock Street, Room 350, Denver, CO 80202.	Department of Public Works, 201 West Colfax Avenue, Denver, CO 80202.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	080046
El Paso	City of Colorado Springs (19–08–0754P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	080060
El Paso	City of Fountain (19–08–0957P).	The Honorable Gabriel Ortega, Mayor, City of Fountain, 116 South Main Street, Fountain, CO 80817.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	080061
El Paso	Town of Monument (20–08–0011P).	The Honorable Don Wilson, Mayor, Town of Monument, 645 Beacon Lite Road, Monument, CO 80132.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2020	080064
El Paso	Unincorporated areas of El Paso County (19–08–0957P).	The Honorable Mark Waller, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	080059
El Paso	Unincorporated areas of El Paso County (20–08–0011P).	The Honorable Mark Waller, Chairman, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	Pikes Peak Regional Development Center, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2020	080059
Jefferson	City of Westminster (19–08–0374P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4880 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4880 West 92nd Avenue, Westminster, CO 80031.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	080008
Florida:						
Lee	City of Sanibel (20–04–3626P).	The Honorable Kevin Ruane, Mayor, City of Sanibel, 800 Dunlop Road, Sanibel, FL 33957.	Community Services Department, 800 Dunlop Road, Sanibel, FL 33957.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 29, 2020	120402
Miami-Dade	City of Miami (20–04–1579P).	The Honorable Francis X. Suarez, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33130.	Building Department, 444 Southwest 2nd Street, 4th Floor, Miami, FL 33130.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	120650
Pasco	Unincorporated areas of Pasco County (19–04–4754P).	Mr. Dan Biles, Pasco County Administrator, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Administration Building, 8731 Citizens Drive, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2020	120230
Sarasota	City of Sarasota (20–04–2087P).	The Honorable Jennifer Ahearn-Koch, Mayor, City of Sarasota, 1565 1st Street, Room 101, Sarasota, FL 34236.	Development Services Department, 1565 1st Street, Sarasota, FL 34236.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	125150
Sarasota	Unincorporated areas of Sarasota (20–04–1981P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	125144
Sarasota	Unincorporated areas of Sarasota (20–04–1982P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	125144

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Sarasota	Unincorporated areas of Sarasota (20–04–2329P).	The Honorable Charles D. Hines, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	125144
Sumter	Unincorporated areas of Sumter County (20–04–1391P).	The Honorable Steve Printz, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	Sumter County Development Department, 7375 Powell Road, Wildwood, FL 34785.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120296
Georgia:						
Chatham	City of Savannah (19–04–5445P).	The Honorable Eddie Deloach, Mayor, City of Savannah, P.O. Box 1027, Savannah, GA 31402.	Development Services Department, 5515 Abercorn Street, Savannah, GA 31405.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	135163
Richmond	City of Augusta (19–04–6591P).	The Honorable Hardie Davis, Jr., Mayor, City of Augusta, 535 Telfair Street, Suite 200, Augusta, GA 30901.	Planning and Development Department, 535 Telfair Street, Suite 300, Augusta, GA 30901.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	130158
New Mexico:						
Bernalillo	City of Albuquerque (19–06–3069P).	The Honorable Timothy M. Keller, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Development Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	350002
Bernalillo	Unincorporated areas of Bernalillo County (19–06–3069P).	Ms. Julie Morgas Baca, Bernalillo County Manager, 1 Civic Plaza Northwest, 10th Floor, Albuquerque, NM 87102.	Bernalillo County Public Works Division, 2400 Broadway Boulevard Southeast, Albuquerque, NM 87102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	350001
South Carolina: Charleston..	City of Isle of Palms (20–04–2088P).	The Honorable Jimmy Carroll, Mayor, City of Isle of Palms, 1207 Palm Boulevard, Isle of Palms, SC 29451.	Building and Planning Department, 1207 Palm Boulevard, Isle of Palms, SC 29451.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2020	455416
Texas:						
Bastrop	City of Bastrop (20–06–1063P).	The Honorable Connie Schroeder, Mayor, City of Bastrop, P.O. Box 427, Bastrop, TX 78602.	City Hall, 1311 Chestnut Street, Bastrop, TX 78602.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	480022
Bastrop	Unincorporated areas of Bastrop County (20–06–1063P).	The Honorable Paul Pape, Bastrop County Judge, 804 Pecan Street, Bastrop, TX 78602.	Bastrop County Engineering and Development Department, 211 Jackson Street, Bastrop, TX 78602.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	481193
Chambers	City of Cove (19–06–3771P).	The Honorable Leroy Stevens, Mayor, City of Cove, 7911 Cove Loop Road, Cove, TX 77523.	Chambers County Road and Bridge Department, 201 Airport Road, Anahuac, TX 77514.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	481510
Chambers	City of Mont Belvieu (19–06–3771P).	The Honorable Nick Dixon, Mayor, City of Mont Belvieu, P.O. Box 1048, Mont Belvieu, TX 77580.	City Hall, 11607 Eagle Drive, Mont Belvieu, TX 77580.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	480122
Chambers	Unincorporated areas of Chambers County (19–06–3771P).	The Honorable Jimmy Sylvia, Chambers County Judge, P.O. Box 939, Anahuac, TX 77514.	Chambers County Road and Bridge Department, 201 Airport Road, Anahuac, TX 77514.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	480119
Comal	City of New Braunfels (20–06–1144P).	The Honorable Barron Casteel, Mayor, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 30, 2020	485493
Dallas	City of Carrollton (19–06–3556P).	Ms. Erin Rinehart, Manager, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006.	Engineering Department, 1945 East Jackson Road, Carrollton, TX 75006.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2020	480167
Denton	City of The Colony (19–06–3392P).	Mr. Troy Powell, Manager, City of The Colony, 6800 Main Street, The Colony, TX 75056.	Engineering Department, 6800 Main Street, The Colony, TX 75056.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	481581

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Denton	City of Roanoke (19–06–2882P).	The Honorable Scooter Gierisch, Jr., Mayor, City of Roanoke, 500 South Oak Street, Roanoke, TX 76262.	City Hall, 500 South Oak Street, Roanoke, TX 76262.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2020	480785
Ellis	City of Ennis (20–06–2306P).	The Honorable Angeline Juenemann, Mayor, City of Ennis, P.O. Box 220, Ennis, TX 75120.	Inspection Services Department, 108 West Knox Street, Ennis, TX 75119.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	480207
Ellis	City of Red Oak (20–06–0057P).	Mr. Todd Fuller, Manager, City of Red Oak, 200 Lakeview Parkway, Red Oak, TX 75154.	Engineering and Community Development Department, 411 West Red Oak Road, Red Oak, TX 75154.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	481650
Ellis	Unincorporated areas of Ellis County (20–06–0057P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	480798
Ellis	Unincorporated areas of Ellis County (20–06–2306P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	480798
Tarrant	City of Euless (20–06–0048P).	The Honorable Linda Martin, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039.	Planning and Engineering Department, 201 North Ector Drive, Euless, TX 76039.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	480593
Tarrant	City of Grapevine (19–06–3994P).	The Honorable William D. Tate, Mayor, City of Grapevine, P.O. Box 95104, Grapevine, TX 76099.	City Hall, 200 South Main Street, Grapevine, TX 76051.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2020	480598

[FR Doc. 2020–14891 Filed 7–9–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee management; Notice of open Federal Advisory Committee meeting.

SUMMARY: The Federal Emergency Management Agency's National Advisory Council (NAC) will meet virtually July 29–30, 2020. The meeting will be open to the public through virtual means.

DATES: The NAC will meet from 2 p.m. to 4 p.m. Eastern Standard Time (EST) on both Wednesday, July 29, and Thursday, July 30, 2020. Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held virtually. Anyone who wishes to participate must register with FEMA prior to the meeting by providing their name, telephone number, email address, title, and organization to the person listed in the **FOR FURTHER INFORMATION** caption below, by Friday, July 24, 2020.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC. The topic areas are indicated in **SUPPLEMENTARY INFORMATION** caption below. The full agenda and any related documents for this meeting will be available by Friday, July 24, 2020, by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** caption below. Written comments must be submitted and received by 5 p.m. EST on Friday, July 24, 2020, identified by Docket ID FEMA–2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (540) 504–2331. Please include a cover sheet addressing the fax to ATTN: Jasper Cooke.

Instructions: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

A public comment period will be held on Thursday, July 30, 2020, from 2 to 2:15 p.m. EST. All speakers must limit their comments to three minutes. Comments should be addressed to the NAC. Any comments not related to the agenda topics will not be considered by the NAC. To register to make remarks during the public comment period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** caption below by Friday, July 24, 2020. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Jasper Cooke, Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472–3184, telephone (202) 646–2700, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC website is http://www.fema.gov/national-advisory-council.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from State, local, Tribal, and territorial governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from State, local, Tribal, and

territorial governments, the private sector, and nongovernmental organizations.

Agenda: On Wednesday, July 29, 2020, the NAC will discuss potential recommendations and receive feedback from leadership on initial work products, as well as hear about strategic priorities from the FEMA leadership.

On Thursday, July 30, 2020, the NAC will engage with industry experts to receive feedback on initial work products and engage in discussions about recommendations for direction leading up to the next NAC meeting.

The full agenda and any related documents for this meeting will be available by Friday, July 24, 2020, by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** caption above.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14900 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2041]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Buckeye (20–09–1324P).	The Honorable Jackie A. Meck, Mayor, City of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Engineering Department, 530 East Monroe Avenue, Buckeye, AZ 85326.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	040039

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	City of Chandler (19–09–1713P).	The Honorable Kevin Hartke, Mayor, City of Chandler, 175 South Arizona Avenue, Chandler, AZ 85225.	Transportation & Development Department, 215 East Buffalo Street, Chandler, AZ 85225.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	040040
Maricopa	City of Glendale (20–09–1322P).	The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	040045
Maricopa	City of Peoria (20–09–1322P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	040050
Maricopa	City of Surprise (20–09–1326P).	The Honorable Skip Hall, Mayor, City of Surprise, 16000 North Civic Center Plaza, Surprise, AZ 85374.	Public Works Department, Engineering Development Services, 16000 North Civic Center Plaza, Surprise, AZ 85374.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	040053
Maricopa	Town of Fountain Hills (20–09–1325P).	The Honorable Ginny Dickey, Mayor, Town of Fountain Hills, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	Town Hall, 16705 East Avenue of the Fountains, Fountain Hills, AZ 85268.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2020	040135
Maricopa	Unincorporated Areas of Maricopa County (20–09–1322P).	The Honorable Clinton L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	040037
Yavapai	Town of Prescott Valley (20–09–0224P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 21, 2020	040121
California:						
Plumas	Unincorporated Areas of Plumas County (19–09–2233P).	The Honorable Kevin Goss, Chairman, Board of Supervisors, Plumas County, 520 Main Street, Room 309, Quincy, CA 95971.	Plumas County Courthouse, 520 Main Street, Quincy, CA 95971.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	060244
Riverside	City of Moreno Valley (20–09–0154P).	The Honorable Yxstian A. Gutierrez, Mayor, City of Moreno Valley, 14177 Frederick Street, Moreno Valley, CA 92553.	Public Works Department, 14177 Frederick Street, Moreno Valley, CA 92553.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	065074
Ventura	City of Thousand Oaks (19–09–1687P).	The Honorable Al Adam, Mayor, City of Thousand Oaks, 2100 Thousand Oaks Boulevard, Thousand Oaks, CA 91362.	City Hall, 2100 East Thousand Oaks Boulevard, Thousand Oaks, CA 91362.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	060422
Florida:						
Duval	City of Jacksonville (20–04–0139P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	City Hall, 117 West Duval Street, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	120077
Pasco	Unincorporated Areas of Pasco County (19–04–6976P).	Mr. Mike Moore, Chairman, Pasco County, Board of County Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Development Services Branch, 8731 Citizens Drive, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	120230
Illinois:						
Kane	City of Aurora (20–05–2946P).	The Honorable Richard C. Irvin, Mayor, City of Aurora, 44 East Downer Place, 3rd Floor, Aurora, IL 60505.	City Hall, Engineering Department, 44 East Downer Place, Aurora, IL 60505.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	170320

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Kane	Unincorporated Areas of Kane County (20–05–2947P).	The Honorable Christopher Lauzen, Chairman, Kane County Board, Kane County Government Center, Building A, 719 South Batavia Avenue, Geneva, IL 60134.	Kane County Government Center, Building A, Water Resources Department, 719 South Batavia Avenue, Geneva, IL 60134.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	170896
Lake	Village of Riverwoods (20-05-1123P).	The Honorable John W. Norris, Mayor, Village of Riverwoods, 300 Portwine Road, Riverwoods, IL 60015.	Village Hall, 300 Portwine Road, Riverwoods, IL 60015.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 17, 2020	170387
Idaho:						
Ada	City of Eagle (19–10–0717P).	The Honorable Jason Pierce, Mayor, City of Eagle, City Hall, 660 East Civic Lane, Eagle, ID 83616.	City Hall, 660 East Civic Lane, Eagle, ID 83616.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	160003
Ada	Unincorporated Areas of Ada County (19–10–0717P).	The Honorable Kendra Kenyon, Chair, Board of Ada County Commissioners Ada County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Ada County Courthouse, 200 West Front Street, Boise, ID 83702.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	160001
Allen	City of Fort Wayne (20–05–2000P).	The Honorable Tom Henry, Mayor, City of Fort Wayne, Citizens Square Building, 200 East Berry Street Suite 420, Fort Wayne, IN 46802.	Department of Planning Services, 200 East Berry Street, Suite 150, Fort Wayne, IN 46802.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	180003
Indiana:						
LaPorte	City of La Porte (19–05–4383P).	The Honorable Tom Dermody, Mayor, City of La Porte, 801 Michigan Avenue, LaPorte, IN 46350.	City Hall, 801 Michigan Avenue, LaPorte, IN 46350.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	180490
LaPorte	Unincorporated Areas of LaPorte County (19–05–4383P).	Ms. Sheila Matias, President, Commissioner, 555 Michigan Avenue Suite 202, LaPorte, IN 46350.	LaPorte County Plan Commission, County Government Complex, Suite 503A, 809 State Street, La Porte, IN 46350.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	180144
Scott	Unincorporated Areas of Scott County (19–05–2009P).	Mr. Robert Tobias, President, County Commissioner District 1, Scott County Courthouse Suite 130, 1 East McClain Avenue, Scottsburg, IN 47170.	Scott County Area Plan Commission, 1 East McClain Avenue, Suite G40, Scottsburg, IN 47170.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 16, 2020	180474
Michigan:						
Kent	City of Kentwood (19–05–5009P).	The Honorable Stephen Kepley, Mayor, City of Kentwood, P.O. Box 8848, Kentwood, MI 49518.	City Hall, 4900 Breton Avenue Southeast, Kentwood, MI 49508.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	260107
Wayne	Charter Township of Brownstown (19–05–2936P).	The Honorable Andrew Linko, Supervisor, Charter Township of Brownstown 21313 Telegraph Road, Brownstown, MI 48183.	Charter Township Offices, 21313 Telegraph Road, Brownstown, MI 48183.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	260218
Wayne	City of Taylor (19–05–2936P).	The Honorable Rick Sollars, Mayor, City of Taylor, Municipal Offices, 23555 Goddard Road, Taylor, MI 48180.	Department of Public Works, 25605 Northline Road, Taylor, MI 48180.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	260728
Nebraska:						
Hall	City of Grand Island (19–07–1260P).	The Honorable Roger Steele, Mayor, City of Grand Island, City Hall, 100 East 1st Street, Grand Island, NE 68801.	Regional Planning Department, 100 East 1st Street, Grand Island, NE 68801.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	310103

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Hall	Unincorporated Areas of Hall County (19–07–1260P).	The Honorable Pamela E. Lancaster, Chair, Hall County Board of County Commissioners Administration Building, 121 Street Pine Street, Grand Island, NE 68801.	Hall County Regional Planning Department, 100 East 1st Street, Grand Island, NE 68801.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	310100
Nevada:						
Clark	City of Mesquite (20–09–1320P).	The Honorable Allan Litman, Mayor, City of Mesquite, 10 East Mesquite Boulevard, Mesquite, NV 89027.	Office of The City Engineer, 10 East Mesquite Boulevard, Mesquite, NV 89027.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	320035
Nye	Unincorporated Areas of Nye County (20–09–1321P).	The Honorable John Koenig, Chairman, Board of Commissioners, Nye County, 2100 East Walt Williams Drive, Suite 100, Pahrump, NV 89048.	Nye County Department of Planning, 250 North Highway 160 Suite 1, Pahrump, NV 89060.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2020	320018
New Jersey:						
Union	Borough of Roselle (20–02–0602X).	The Honorable Christine Dansereau, Mayor, Borough of Roselle, Borough Hall, 210 Chestnut Street, Roselle, NJ 07203.	Borough Municipal Building, 210 Chestnut Street, Roselle, NJ 07203.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	340472
New York:						
Nassau	Town of North Hempstead (19–02–1366P).	The Honorable Judi Bosworth, Supervisor, Town of North Hempstead, Town Hall, 220 Plandome Road, Manhasset, NY 11030.	Town Hall, 220 Plandome Road, Manhasset, NY 11030.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 20, 2020	360482
Texas:						
Dallas	City of Dallas (19–06–3571P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Trinity Watershed Management Department, Flood Plain and Drainage Management, 320 East Jefferson Blvd. Room 307, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	480171
Dallas	City of Dallas (20–06–0582P).	The Honorable Eric Johnson, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	Trinity Watershed Management Department, Flood Plain and Drainage Management, 320 East Jefferson Blvd. Room 307, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	480171
Dallas	Town of Highland Park (19–06–3290P).	The Honorable Margo Goodwin, Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	Engineering Department, 4700 Drexel Drive, Highland Park, TX 75205.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	480178
Tarrant	City of Arlington (18–06–3756P).	The Honorable Jeff Williams, Mayor, City of Arlington, City Hall, P.O. Box 90231, Arlington, TX 76010.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	485454
Tarrant	City of Fort Worth (18–06–3756P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	480596
Washington:						
Clark	City of Vancouver (20–10–0406P).	The Honorable Anne McEnerny-Olge, Mayor, City of Vancouver, City Hall, 415 West 6th Street, Vancouver, WA 98660.	City Hall, 415 West 6th Street, Vacouver, WA 98660.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	530027
Mason	Unincorporated Areas of Mason County (20–10–0789P).	The Honorable Sharon Trask, Chair, Board of Commissioners, Mason County, 411 North 5th Street, Shelton, WA 98584.	Mason County Public Works, 100 West Public Works Drive, Shelton, WA 98584.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2020	530115
Wisconsin:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Brown	Unincorporated Areas of Brown County (19–05–3386P).	The Honorable Patrick Moynihan, Jr., Chair, County Board of Supervisors, Brown County, 305 East Walnut Street, Green Bay, WI 54305.	Brown County, Zoning Office, 305 East Walnut Street, Green Bay, WI 54305.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	550020
Milwaukee	City of West Allis (20–05–2969X).	The Honorable Dan Devine, Mayor, City of West Allis, 7525 West Greenfield Avenue, West Allis, WI 53214.	City Hall, 7525 West Greenfield Avenue, West Allis, WI 53214.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020	550285
Waukesha	City of Brookfield (20–05–1573P).	The Honorable Steven V. Ponto, Mayor, City of Brookfield, 2000 North Calhoun Road, Brookfield, WI 53005.	City Hall, 2000 North Calhoun Road, Brookfield, WI 53005.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 24, 2020	550478

[FR Doc. 2020–14892 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4543–DR; Docket ID FEMA–2020–0001]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4543–DR), dated May 8, 2020, and related determinations.

DATES: This amendment was issued June 26, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 8, 2020.

Gaston County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14927 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3525–EM; Docket ID FEMA–2020–0001]

Michigan; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Michigan (FEMA–3525–EM), dated May 21, 2020, and related determinations.

DATES: The declaration was issued May 21, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 21, 2020, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Michigan resulting from severe storms and flooding beginning on May 16, 2020, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Michigan.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, James K. Joseph, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Michigan have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for Midland County.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14923 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2042]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Talladega	Unincorporated areas of Talladega County (19–04–4279P).	The Honorable Kelvin Cunningham, Chairman, Talladega County Commission, P.O. Box 6170, Talladega, AL 35161.	Talladega County Highway Department, 500 Institute Lane, Talladega, AL 35161.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 16, 2020	010297
Colorado:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arapahoe	City of Aurora (20–08–0058P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	080002
Arapahoe	Unincorporated areas of Arapahoe County (20–08–0058P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County, Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	080011
Jefferson	Unincorporated areas of Jefferson County (20–08–0630P).	The Honorable Lesley Dahlkemper, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Suite 5550, Golden, CO 80419.	Jefferson County Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3550, Golden, CO 80419.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 9, 2020	080087
Connecticut:						
New Haven	Town of Guilford (20–01–0537P).	The Honorable Matthew T. Hoey, III, First Selectman, Town of Guilford Board of Selectmen, 31 Park Street, Guilford, CT 06437.	Engineering Department, 50 Boston Street, Guilford, CT 06437.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	090077
New Haven	Town of Guilford (20–01–0575P).	The Honorable Matthew T. Hoey, III, First Selectman, Town of Guilford Board of Selectmen, 31 Park Street, Guilford, CT 06437.	Engineering Department, 50 Boston Street, Guilford, CT 06437.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	090077
Florida:						
Collier	City of Marco Island (20–04–1872P).	Mr. Mike McNees, Manager, City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	Building Services Department, 50 Bald Eagle Drive, Marco Island, FL 34145.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15, 2020	120426
Collier	City of Naples (20–04–1989P).	The Honorable Teresa L. Heitmann, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Building Department, 295 Riverside Circle, Naples, FL 34102.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 22, 2020	125130
Monroe	Unincorporated areas of Monroe County (20–04–2206P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	125129
Monroe	Unincorporated areas of Monroe County (20–04–3627P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	125129
Monroe	Unincorporated areas of Monroe County (20–04–3628P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	125129
Monroe	Unincorporated areas of Monroe County (20–04–3629P).	The Honorable Heather Carruthers, Mayor, Monroe County Board of Commissioners, 500 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 1, 2020	125129
Osceola	City of St. Cloud (19–04–5088P).	Mr. William Sturgeon, Manager, City of St. Cloud, 1300 9th Street, St. Cloud, FL 34769.	Building Department, 1300 9th Street, St. Cloud, FL 34769.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	120191
Osceola	Unincorporated areas of Osceola County (19–04–5088P).	The Honorable Viviana Janer, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	120189

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Kentucky:						
Christian	City of Hopkinsville (19–04–5960P).	The Honorable Wendell Lynch, Mayor, City of Hopkinsville, 715 South Virginia Street, Hopkinsville, KY 42240.	Community and Development Services Department, 710 South Virginia Street, Hopkinsville, KY 42240.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 18, 2020	210055
Maine:						
Lincoln	Town of Boothbay Harbor (20–01–0236P).	Ms. Julia Latter, Manager, Town of Boothbay Harbor, 11 Howard Street, Boothbay Harbor, ME 04538.	Code Enforcement Department, 11 Howard Street, Boothbay Harbor, ME 04538.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 25, 2020	230213
York	Town of York (20–01–0642P).	The Honorable Todd A. Frederick, Chairman, Town of York Board of Selectmen, 186 York Street, York, ME 03909.	Planning Department, 186 York Street, York, ME 03909.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	230159
New Mexico:						
Dona Ana	City of Sunland Park (19–06–3737P).	The Honorable Javier Perea, Mayor, City of Sunland Park, 1000 McNutt Road, Suite A, Sunland Park, NM 88063.	Community Services Department, 950 McNutt Road, Sunland Park, NM 88063.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 14, 2020	350147
North Carolina:						
Wake	Town of Wake Forest (20–04–3617P).	The Honorable Vivian A. Jones, Mayor, Town of Wake Forest, 301 South Brooks Street, Wake Forest, NC 27587.	Engineering Department, 234 Friendship Chapel Road, Wake Forest, NC 27587.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 2, 2020	370244
South Carolina:						
Charleston	City of Isle of Palms (20–04–2572P).	The Honorable Jimmy Carroll, Mayor, City of Isle of Palms, 1207 Palm Boulevard, Isle of Palms, SC 29451.	Building and Planning Department, 1207 Palm Boulevard, Isle of Palms, SC 29451.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 19, 2020	455416
South Dakota:						
Lawrence	City of Spearfish (19–08–0882P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783.	Building and Development Department, 625 North 5th Street, Spearfish, SD 57783.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 16, 2020	460046
Texas:						
Collin	City of Frisco (20–06–0590P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 28, 2020	480134
Collin	City of McKinney (19–06–3345P).	Mr. Paul Grimes, Manager, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	Department of Engineering, 221 North Tennessee Street, McKinney, TX 75069.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	480135
Collin	Unincorporated areas of Collin County (19–06–3345P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 13, 2020	480130
Comal	City of New Braunfels (20–06–2307P).	The Honorable Barron Casteel, Mayor, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	485493
Comal	Unincorporated areas of Comal County (20–06–2307P).	The Honorable Sherman Krause, Comal County Judge, 100 Main Plaza, New Braunfels, TX 78130.	Comal County Engineering Department, 195 David Jonas Drive, New Braunfels, TX 78132.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 5, 2020	485463
Guadalupe	City of Cibolo (20–06–2304P).	The Honorable Stosh Boyle, Mayor, City of Cibolo, P.O. Box 826, Cibolo, TX 78108.	City Hall, 200 South Main Street, Cibolo, TX 78108.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 8, 2020	480267
Parker	City of Willow Park (20–06–0011P).	The Honorable Doyle Moss, Mayor, City of Willow Park, 516 Ranch House Road, Willow Park, TX 76087.	City Hall, 516 Ranch House Road, Willow Park, TX 76087.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 7, 2020	481164

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	City of Arlington (19–06–3156P).	The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, TX 76004.	City Hall, 101 West Abram Street, Arlington, TX 76010.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 17, 2020	485454
Utah:						
Washington	Unincorporated areas of Washington County (19–08–1063P).	The Honorable Victor Iverson, Chairman, Washington County Commission, 197 East Tabernacle Street, St. George, UT 84770.	Washington County Administration Building, 197 East Tabernacle Street, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	Oct. 15 2020	490224

[FR Doc. 2020–14893 Filed 7–9–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4538–DR; Docket ID FEMA–2020–0001]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4538–DR), dated April 23, 2020, and related determinations.

DATES: This amendment was issued June 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2020.

Issaquena, Marion, and Sharkey Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14926 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4533–DR; Docket ID FEMA–2020–0001]

Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alaska (FEMA–4533–DR), dated April 9, 2020, and related determinations.

DATES: This amendment was issued June 25, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alaska is hereby amended to include Individual Assistance limited to the Crisis Counseling Program for those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2020.

Individual Assistance limited to the Crisis Counseling Program for all areas in the State of Alaska (already designated for emergency protective measures [Category B] not authorized under other Federal statutes, including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14925 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4546–DR; Docket ID FEMA–2020–0001]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–4546–DR), dated May 21, 2020, and related determinations.

DATES: The declaration was issued May 21, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 21, 2020, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from severe storms and flooding during the period of February 5 to March 6, 2020, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alabama have been designated as adversely affected by this major disaster:

Butler, Chambers, Choctaw, Colbert, Covington, Crenshaw, Cullman, Dallas, Fayette, Greene, Lamar, Limestone, Macon, Marion, Perry, Randolph, Tuscaloosa, and Wilcox Counties for Public Assistance.

All areas within the State of Alabama are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14928 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2020–0027; OMB No. 1660–0144]

Agency Information Collection Activities: Proposed Collection; Comment Request; Individual & Community Preparedness Division (ICPD) Youth Preparedness Council (YPC) Application Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning this collection allowing potential candidates to apply for FEMA's Youth Preparedness Council.

DATES: Comments must be submitted on or before September 8, 2020.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0027. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and 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 read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gretchen Wesche, Youth Preparedness Lead, Individual and Community Preparedness Division, Federal Emergency Management Agency, *fema-prepare@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The FEMA Youth Preparedness Council (YPC) was formed to bring together youth leaders from across the country who are highly interested and engaged in advocating youth preparedness and making a difference in their communities. This collection meets the requirements of 6 U.S.C. Sec. 742, National Preparedness, and Presidential Policy Directive—8 (PPD–8) which emphasize the need for involvement from all sectors of society in preparing for and responding to threats and hazards.

Collection of Information

Title: Individual & Community Preparedness Division (ICPD) Youth Preparedness Council (YPC) Application Form.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0144.

FEMA Forms: FEMA Form 008–0–0–24. Title: Individual & Community Preparedness Division (ICPD) Youth Preparedness Council (YPC) Application Form.

Abstract: This application form is used to select interested council members based on dedication to public service, efforts in making a difference in their community, and potential for expanding their impact as a national advocate for youth preparedness.

Affected Public: Individuals or households, State, local or Tribal government.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 200.

Estimated Total Annual Burden Hours: 283.

Estimated Total Annual Respondent Cost: $2,997.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $72,796.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–14890 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–27–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3527–EM; Docket ID FEMA–2020–0001]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA–3527–EM), dated June 7, 2020, and related determinations.

DATES: The declaration was issued June 7, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 2020, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana resulting from Tropical Storm Cristobal beginning on June 5, 2020, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide Public Assistance Category B emergency protective measures, limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and Public Assistance Category B emergency protective measures, limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Long, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Louisiana have been designated as adversely affected by this declared emergency:

Public Assistance Category B emergency protective measures, limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support for the parishes of Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge, and West Feliciana.

Public Assistance Category B emergency protective measures, limited to direct Federal assistance for the parishes of Avoyelles, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Tammany, Tangipahoa, Tensas, Union, Vernon, Washington, Webster, West Carroll, and Winn.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14924 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3525–EM; Docket ID FEMA–2020–0001]

Michigan; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Michigan (FEMA–3525–EM), dated May 21, 2020, and related determinations.

DATES: This amendment was issued June 16, 2020.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective May 22, 2020.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–14922 Filed 7–9–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2020–N083; FXGO1664091HCC0–FF09D00000–190]

Hunting and Shooting Sports Conservation Council; Call for Nominations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Call for nominations; reopening.

SUMMARY: The Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service seek nominations for membership on the Hunting and Shooting Sports Conservation Council (Council). This is a reopening of the call for nominations published in the **Federal Register** on March 5, 2020. The Council reports to the Secretary of the Interior and the Secretary of Agriculture to provide recommendations regarding the establishment and implementation of conservation endeavors that benefit wildlife resources; encourage partnership among the public, sporting conservation organizations, and Federal, State, Tribal, and territorial governments; and benefit recreational hunting and recreational shooting sports.

DATES: The nomination period announced on March 5, 2020, at 85 FR 12940 is reopened. Nominations via email must be date stamped no later than July 27, 2020.

ADDRESSES: Please address nomination letters to Ms. Aurelia Skipwith, Director, U.S. Fish and Wildlife Service. You may email nominations to Douglas Hobbs, Designated Federal Officer, at *doug_hobbs@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Designated Federal Officer, at the email address in **ADDRESSES**, or by telephone at (703) 358–2336. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Director of the U.S. Fish and Wildlife Service seek nominations for membership on the Hunting and Shooting Sports Conservation Council (Council). On March 5, 2020, the original call for nominations published in the **Federal Register** (85 FR 12940), with a 30-day nomination period ending April 6, 2020. This notice provides additional time for nominations (see **DATES**, above). For more information on the Council's duties, member terms, vacancies to fill, the nomination method, and eligibility, see the March 5, 2020, notice (85 FR 12940).

Authority: 5 U.S.C. Appendix 2.

Barbara Wainman,

Assistant Director—External Affairs.

[FR Doc. 2020–14768 Filed 7–9–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

National Park Service

[NPS–WASO–ANRSS–30345; PPWONRADE2, PMP00EI05.YP0000]

Notice of Termination of the Environmental Impact Statement for a Grizzly Bear Restoration Plan, North Cascades Ecosystem, Washington

AGENCY: Fish and Wildlife Service and National Park Service, Interior.

ACTION: Notice of Termination.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS) have terminated the preparation of an Environmental Impact Statement (EIS) for a proposal to develop and implement a Grizzly Bear Restoration Plan for the North Cascades ecosystem, a portion of the species' historical range. The Agencies have discontinued the proposal.

DATES: This Notice takes effect on the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Denise Shultz, Public Information Officer, North Cascades National Park Service Complex at 360–392–7269, or Ann Froschauer, Public Affairs Supervisor, FWS Washington Fish and Wildlife Office at 360–753– 4370.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an EIS (NOI) was published in the **Federal Register** on February 19, 2015 (80 FR 8894), initiating a public scoping period. The NOI detailed the proposal and identified the FWS and NPS as joint lead Agencies for preparation of the EIS. The FWS and NPS released a Draft EIS for public review and comment in January 2017 (82 FR 4336; 82 FR 4416). The Agencies held a number of public meetings during the public review and comment period and participated in outreach activities with interested parties. The FWS and NPS provided an additional public review and comment period on the Draft EIS from July to October, 2019 (84 FR 36099) and held one public meeting during that time. The FWS and NPS have decided to discontinue the proposal to develop and implement a Grizzly Bear Restoration Plan for the North Cascades Ecosystem. Because the Agencies are no longer proposing to take an action, the EIS process has been terminated.

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–14894 Filed 7–9–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1387–1391 (Final) (Remand)]

Polyethylene Terephthalate Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the procedures it intends to follow to comply with the court-ordered remand of its final determinations in the antidumping duty investigations of polyethylene terephthalate resin (''PET resin'') from Brazil, Indonesia, Korea, Pakistan, and Taiwan. For further information concerning the conduct of these remand proceedings and rules of general application, consult the Commission's Rules of Practice and Procedure.

DATES: July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer ((202) 205–3193), Office of Investigations, or Brian Allen ((202) 205–3034), Office of General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (Error!

Hyperlink reference not valid.*https://www.usitc.gov*). The public record for Investigation Nos. 731–TA–1387–1391 (Final) may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— In October 2018, the Commission determined that an industry in the United States was not materially injured or threatened with material injury by reason of imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan that were sold in the United States at less than fair value. *Polyethylene Terephthalate Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan,* Inv. Nos. 731–TA–1387–1391 (Final), USITC Pub. 4835 (November 2018). Petitioners contested the Commission's determinations before the U.S. Court of International Trade (''CIT''). The CIT remanded for reconsideration of the Commission's analysis of price effects and impact. *DAK Americas LLC, Indorama Ventures USA, Inc., and Nan Ya Plastics Corporation, America* v. *United States,* Slip Op. 20–80 (Ct. Int'l Trade, June 4, 2020).

Participation in the remand proceedings.— Only those persons who were interested parties that participated in the investigations (*i.e.,* persons listed on the Commission Secretary's service list) and were also parties to the appeal may participate in the remand proceedings. Such persons need not file any additional appearances with the Commission to participate in the remand proceedings, unless they are adding new individuals to the list of persons entitled to receive business proprietary information (''BPI'') under administrative protective order. BPI referred to during the remand proceedings will be governed, as appropriate, by the administrative protective order issued in the investigations. The Secretary will maintain a service list containing the names and addresses of all persons or their representatives who are parties to the remand proceedings, and the Secretary will maintain a separate list of those authorized to receive BPI under the administrative protective order during the remand proceedings.

Written submissions.—The Commission is not reopening the record and will not accept the submission of new factual information for the record. The Commission will permit the parties to file comments concerning how the Commission could best comply with the Court's remand instructions.

The comments must be based solely on the information in the Commission's record. The Commission will reject submissions containing additional factual information or arguments pertaining to issues other than those on which the Court has remanded this matter. The deadline for filing comments is July 20, 2020. Comments must be limited to no more than twenty-five (25) double-spaced and single-sided pages of textual material, inclusive of attachments and exhibits.

Parties are advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission. All written submissions must conform to the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. The Commission's *Handbook on E-Filing,* available on the Commission's website at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, will not be accepted unless good cause is shown for accepting such submissions or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

By order of the Commission.

Issued: July 6, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–14850 Filed 7–9–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0071]

Agency Information Collection Activities; Proposed eCollection eComments Request; National Use-of-Force Data Collection: Extension of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation's (FBI's) Criminal Justice Information Services Division is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until August 10, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the FBI, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* National Use-of-Force Data Collection

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1110–0071. Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Federal, state, local, and tribal law enforcement agencies.

Abstract: The FBI has a long-standing tradition of collecting data and providing statistics concerning Law Enforcement Officers Killed and Assaulted (LEOKA) and justifiable homicides. To provide a better understanding of the incidents of use of force by law enforcement, the Uniform Crime Reporting (UCR) Program developed a new data collection for law enforcement agencies to provide information on incidents where use of force by a law enforcement officer has led to the death or serious bodily injury of a person, as well as when a law enforcement officer discharges a firearm at or in the direction of a person.

When a use-of-force incident occurs, federal, state, local, and tribal law enforcement agencies provide information to the data collection on characteristics of the incident, subjects of the use of force, and the officers who applied force in the incident. Agencies positively affirm, on a monthly basis, whether their agency did or did not have a use-of-force incident that resulted in a fatality, a serious bodily injury to a person, or a firearm discharge at or in the direction of a person. When no use-of-force incident occurs in a month, agencies submit a zero report. Enrollment information from agencies and state points of contact is collected when the agency or contact initiates participation in the data collection. Enrollment information is updated no less than annually to assist with managing this data.

The new data collection defines a law enforcement officer using the current LEOKA definition: ''All federal, state, county, and local law enforcement officers (such as municipal, county police officers, constables, state police, highway patrol, sheriffs, their deputies, federal law enforcement officers, marshals, special agents, etc.) who are sworn by their respective government authorities to uphold the law and to safeguard the rights, lives, and property of American citizens. They must have full arrest powers and be members of a public governmental law enforcement agency, paid from government funds set aside specifically for payment to sworn police law enforcement organized for the purposes of keeping order and for preventing and detecting crimes, and apprehending those responsible.''

The definition of ''serious bodily injury'' is based, in part, on Title 18 United States Code, Section 2246(4), to mean ''bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.'' These actions include the use of a firearm; an electronic control weapon (*e.g.,* Taser); an explosive device; pepper or OC (oleoresin capsicum) spray or other chemical agent; a baton; an impact projectile; a blunt instrument; hands-fists-feet; or canine.

(5) *A total number of respondents and the amount of time estimated for an average respondent to respond:* As of June 2020, a total of 6,837 agencies covering 439,936 law enforcement officers were enrolled in the National Use-of-Force Data Collection. The burden hours per incident are estimated to be 0.63 of an hour for completion, around 38 minutes per incident.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Burden estimates are based on sources from the FBI's UCR Program, the Bureau of Justice Statistics (BJS), and the Centers for Disease Control (CDC). The BJS recently estimated that approximately 1,400 fatalities attributed to a law enforcement use of force occur annually (Planty, et al., 2015, *Arrest-Related Deaths Program: Data Quality Profile, http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5260*). In addition, the CDC estimates the incidences of fatal and nonfatal injury—including those due to legal intervention—from emergency department data. In their study, *The real risks during deadly police shootouts: Accuracy of the naïve shooter,* Lewinski, et al., (2015) estimate law enforcement officers miss their target approximately 50 percent of the time at the firing range. This information was used to develop a simple estimate for the number of times officers discharge a firearm at or in the direction of a person but do not strike the individual. In addition, the UCR Program collects counts of the number of sworn and civilian law enforcement employees in the nation's law enforcement agencies.

The following table shows burden estimates based on previous estimation criteria and current National Use-of-Force Data Collection enrollment numbers.

ESTIMATED BURDEN FOR ALL LAW ENFORCEMENT AGENCIES IN ANNUAL COLLECTION

Timeframe	Reporting group	Approximate number of officers from participating agencies	Maximum per capita rate of use-of-force occurrence per officer	Minimum per capita rate of use-of-force occurrence per officer	Maximum estimated number of incidents	Minimum estimated number of incidents	Estimated burden hours per incident	Maximum estimate total number of burden hours	Minimum estimate total number of burden hours
Collection (Annual).	All agencies submitting data.	393,274	0.122	0.012	47,979	4,719	0.63	30,227	2,973

Based on previous estimation criteria and current enrollment numbers, the FBI is requesting 30,227 burden hours for the annual collection of this data.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 6, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–14842 Filed 7–9–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0027]

Addendum to the Memorandum of Understanding With the Department of Energy (August 28, 1992); Oak Ridge, Tennessee Properties

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This is a notice of an addendum to the interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) and the U.S. Department of Energy (DOE). The MOU establishes specific interagency procedures for the transfer of occupational safety and health coverage for privatized facilities, properties, and operations from DOE to OSHA and state agencies acting under state plans approved by OSHA.

DATES: The expansion of the scope of recognition becomes effective on July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Ms. Mikki Holmes, Acting Director, OSHA Office of Federal Agency Programs, Directorate of Enforcement Programs, U.S. Department of Labor, telephone: (202) 693–2110; email: *holmes.mikki@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE and OSHA have entered into two MOUs to address both current and former DOE government-owned or leased, contractor-operated (GOCO) facilities. The first MOU, entered into on August 10, 1992, delineates regulatory authority over the occupational safety and health of contractor employees at DOE GOCO facilities by recognizing that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201(f)), relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the Occupational Safety Health Act of 1970 (OSH Act) (29 U.S.C. 653(b)(1)) exempts from OSHA authority working conditions to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. The 1992 MOU acknowledges DOE's extensive program for the regulation of contractor health and safety, which requires contractor compliance with all OSHA standards along with additional DOE-prescribed requirements. The MOU sets forth an agreement that the provisions of the OSH Act do not apply to GOCO sites for which DOE has exercised authority to regulate occupational safety and health under the Atomic Energy Act.

As a result of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second MOU on July 25, 2000, to establish interagency procedures addressing regulatory authority for occupational safety and health at specified privatized facilities and operations on sites formerly controlled by DOE. The July 25, 2000, MOU covers facilities and operations on lands no longer controlled by DOE, which are not conducting activities for, or on behalf of, DOE; and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

II. Notice of Transfer

In an email dated May 1, 2020, DOE requested that OSHA or, as appropriate, the Tennessee Occupational Safety and Health Administration (TOSHA) accept occupational safety and health regulatory authority over employees at the East Tennessee Technology Park in Oak Ridge, Tennessee, one parcel of land pursuant to the MOU on Safety and Health Enforcement at Privatized Facilities and Operations dated July 25, 2000. Other facilities and properties at the East Tennessee Technology Park were transferred to TOSHA jurisdiction under this MOU by **Federal Register** notices 74 FR 120 (January 2, 2009); 74 FR 39977 (August 10, 2009); 76 FR 80408 (December 23, 2011); and 79 FR 29456 (May 22, 2014).

The parcel of land, located at the East Tennessee Technology Park in Oak Ridge, Tennessee, and transferred by deed to the Community Reuse Organization of East Tennessee (CROET), is the Land Parcel Powerhouse Area, Duct Island, K–1007–P1 Pond Area at the East Tennessee Technology Park (ETTP).

OSHA's Regional Office in Atlanta, Georgia, working with the OSHA Nashville Area Office and TOSHA, determined that TOSHA is willing to accept authority over the occupational safety and health of public-sector and private-sector employees at the parcel of land at the East Tennessee Technology Park in Oak Ridge, Tennessee, that was transferred by deed to CROET. In a letter from OSHA to DOE dated June 26, 2020, OSHA stated that TOSHA is satisfied with DOE's assurances that (1) there is no likelihood that any employee at facilities in the vicinity of the land parcel will be exposed to radiation levels that will be 25 millirems per year (mrem/yr) or more, and; (2) transfer of authority to TOSHA is free from regulatory gaps and does not diminish the safety and health protection of the employees.

Accordingly, TOSHA accepts and maintains health and safety regulatory authority over employees in the vicinity of the Land Parcel Powerhouse Area, Duct Island, K–1007–P1 Pond Area at the East Tennessee Technology Park (ETTP).

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. This **Federal Register** notice provides public notice and serves as an addendum to the 1992 OSHA/DOE MOU. Accordingly, the agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Health and Safety Act of 1970 (29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on June 30, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–14839 Filed 7–9–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: High-Wage Components of the Labor Value Content Requirements Under the USMCA

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, ''High-Wage Components of the

Labor Value Content Requirements under the USMCA.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 8, 2020.

ADDRESSES: You may submit comments identified by Control Number 1235–0032, by either one of the following methods: *Email: WHDPRAComments@dol.gov*; *Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION: I. *Background:* In accordance with section 210(b) of the United States-Mexico-Canada Agreement Implementation Act, the U.S. Department of Labor issued regulations necessary to administer the high-wage components of the labor value content requirements as set forth in section 202A of that Act (85 FR 39782, July 1, 2020). The Act implements the United States-Mexico-Canada Agreement (USMCA). Section 202A of the Act, codified at 19 U.S.C. 4532, in part implements Article 7 of the Automotive Appendix of the USMCA. The USMCA establishes labor value content (LVC) requirements for passenger vehicles, light trucks, and heavy trucks, pursuant to which an importer can only obtain preferential tariff treatment for a covered vehicle if the covered vehicle meets certain high-wage component requirements. The Act requires importers who claim preferential tariff treatment under the USMCA for goods imported into the United States from a USMCA Country, and vehicle producers whose goods are the subject of a claim for preferential tariff treatment under the USMCA, to make, keep, and, pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection records and supporting documents related to the LVC requirements. See 19 U.S.C. 1508(b)(4). The Act further grants the Secretary authority during the course of a verification to request any records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of those vehicles meets the high-wage components of the LVC requirements. See 19 U.S.C. 4532(e)(4)(B). The Act grants authority to the Secretary to issue regulations.

The Department issued the interim final rule to carry out the purposes of the USMCA. This interim final rule published in the **Federal Register** on July 1, 2020 (85 FR 39782). As part of OMB's consideration of the interim final rule, the Department submitted an emergency processing request for the PRA package associated with the interim final rule. Where OMB approves the collection of information on an emergency basis, the approval is time-limited and the agency must publish notice and comment on the collection to give the public opportunity to respond. Pursuant to 5 CFR 1320.13, OMB assigned control number 1235–0032 to this collection and approved the request on July 2, 2020 with an expiration of January 31, 2021.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the High-Wage Components of the Labor Value Content Requirements under the USMCA.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: High-Wage Components of the Labor Value Content Requirements under the USMCA.

OMB Control Number: 1235–0032.

Affected Public: Business or other for-profit.

Total Respondents: 9,455.

Total Annual Responses: 5,796,460.

Estimated Total Burden Hours: 205,911.

Estimated Time per Response: Varies with type of request (1.25–20 minutes):

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $.

Dated: July 6, 2020.

Amy DeBisschop,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2020–14845 Filed 7–9–20; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Generic Clearance To Conduct Pre-Testing of Surveys

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 6, 2020.

ADDRESSES: Send comments to: Dr. Connie Bodner, Director of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, or by email at *cbodner@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: For a copy of the documents contact: Dr. Matthew Birnbaum, Senior Evaluation Officer, Office of Digital and Information Strategy, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by telephone: 202–653–4760, or by email at *mbirnbaum@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: This is a new collection to conduct various procedures to test questionnaires and survey procedures to improve the quality and usability of information collection instruments. The Agency is especially interested in public comment addressing the following issues: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. A copy of the proposed information collection request can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

I. Background

The Institute of Museum and Library Services (IMLS) is the primary source of Federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

IMLS intends to request approval from the Office of Management and Budget (OMB) for a generic clearance that will allow IMLS to conduct a variety of data-gathering activities aimed at improving the quality and usability of information collection instruments associated with research and analysis activities, including but not limited to the Public Libraries Survey and the State Library Administrative Agencies Survey.

IMLS envisions using a variety of techniques including field tests, respondent debriefing questionnaires, cognitive interviews, and focus groups in order to identify questionnaire and procedural problems, suggest solutions, and measure the relative effectiveness of alternative solutions.

Following standard OMB requirements, IMLS will submit a change request to OMB for each data collection activity undertaken under this generic clearance. IMLS will provide OMB with the instruments and supporting materials describing the research project and specific pre-testing activities.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Agency: Institute of Museum and Library Services.

Title: Generic Clearance to Conduct Pre-Testing of Surveys.

OMB Number: 3137–XXXX.

Affected Public: The respondents will be identified at the time that each change request is submitted to OMB. Respondents will include State, Local, and Tribal governments.

Estimated Number of Respondents: 650.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 650.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden on Respondents: 650 hours.

Dated: July 6, 2020.

Kim Miller,

Senior Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2020–14794 Filed 7–9–20; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2020–0157]

Omaha Public Power District; Fort Calhoun Station, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request dated March 26, 2020, from the Omaha Public Power District (OPPD), for Fort Calhoun Station, Unit 1 (FCS), from the

requirement to investigate and report to the NRC when OPPD does not receive notification of receipt of a shipment, or part of a shipment, of low-level radioactive waste within 20 days after transfer from the FCS facility. OPPD requested that the time period for it to receive acknowledgement that the shipment has been received by the intended recipient be extended from 20 to 45 days to avoid an excessive administrative burden as operational experience indicates that such shipments may take more than 20 days to reach their destination.

DATES: The exemption was issued on June 30, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0157 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0157. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *The NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

FOR FURTHER INFORMATION CONTACT: Jack D. Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634, email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: July 6, 2020.

For the Nuclear Regulatory Commission.

Bruce Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

Nuclear Regulatory Commission

Docket No. 50–285

Omaha Public Power District

Fort Calhoun Station, Unit 1

Exemption From Certain Low-Level Waste Shipment Tracking Requirements of 10 CFR part 20, Appendix G, Section III.E

I. Background

Fort Calhoun Station, Unit 1 (FCS), is licensed to the Omaha Public Power District (OPPD) under title 10 of the *Code of Federal Regulations* (10 CFR) part 50 (renewed license no. DPR–40, docket no. 50–285). FCS is located in Washington County, Nebraska on the western shore of the Missouri River three miles south of the town of Blair, Nebraska and 20 miles north of Omaha, Nebraska. FCS employed a Combustion Engineering pressurized water reactor nuclear steam supply system licensed to generate 1,500 megawatts (thermal energy). The operating license for FCS was issued on August 9, 1973, and commercial operation commenced on September 26, 1973. The operating license was renewed on November 4, 2003. FCS permanently ceased operations on October 24, 2016, and on November 13, 2016, OPPD certified to the U.S. Nuclear Regulatory Commission (NRC) that all fuel had been permanently removed from the reactor vessel.

By letter dated March 30, 2017 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML17089A759), OPPD submitted the FCS Post-Shutdown Decommissioning Activities Report (PSDAR). A PSDAR is required to be submitted to the NRC by 10 CFR 50.82(a)(4)(i). The FCS PSDAR described the decommissioning approach that was selected by OPPD as the SAFSTOR method where the facility is placed in a safe and stable condition after shutdown. The facility is maintained in that state for approximately 50 years, allowing for levels of radioactivity to decrease through radioactive decay, followed by decontamination of the facility to levels that permit license termination.

By letter dated December 16, 2019 (ADAMS Accession No. ML19351E355), OPPD submitted a revised PSDAR describing a change of decommissioning strategy to the DECON method that would commence prompt decontamination and dismantlement of the facility primarily after all spent nuclear fuel is transferred to the onsite Independent Spent Fuel Storage Installation (ISFSI). By letter dated May 18, 2020 (ADAMS Accession No. ML20139A138), OPPD certified that all spent nuclear fuel assemblies had been permanently transferred out of the FCS spent fuel pool and placed in storage within the onsite ISFSI.

Inherent to the decommissioning process, large volumes of low-level radioactive waste are generated and require processing and/or disposal. FCS will transport low-level radioactive waste from the facility to locations such as the waste disposal facility operated by EnergySolutions, LLC. (ES) in Clive, Utah by truck or by mixed mode shipments, such as a combination of truck and rail. The decommissioning of FCS is scheduled to be complete by 2026.

II. Request/Action

By letter dated March 26, 2020 (ADAMS Accession No. ML20085H951), OPPD requested an exemption from 10 CFR part 20, appendix G, ''Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests,'' Section III.E. for transfers of low-level radioactive waste from the FCS facility. Section III.E requires that the shipper of any low-level radioactive waste to a licensed land disposal or processing facility must investigate and trace the shipment if the shipper has not received notification of the shipment's receipt by the disposal or processing facility within 20 days after transfer. In addition, Section III.E requires licensees to report such investigations to the NRC. Specifically, OPPD is requesting an exemption from the requirements in 10 CFR part 20, appendix G, Section III.E, under the provisions of 10 CFR 20.2301, ''Applications for exemptions,'' to extend the time period, for OPPD to receive notification that the shipment has been received, from 20 to 45 days after transfer for a rail or mixed mode shipment from FCS to the intended recipient, before having to investigate and report such shipments to the NRC.

Experience with waste shipments from FCS by ES indicate that the truck transportation time to the ES Clive Disposal Site can take longer than 20 days to complete. In January 2019, ES, under contract to OPPD, transported the original FCS reactor vessel head, as a specialized over-the-road trailer shipment, to the Clive Disposal Site.

The transport started on January 20, 2019 and arrived at the Clive Disposal Site on February 13, 2019. The total transit time between when the trailer was released from the FCS facility until verification of receipt of the trailer at the Clive Disposal Site was 32 days. This was investigated by ES on behalf of FCS and reported to the NRC in a letter, dated February 19, 2019 (ADAMS Accession No. ML20078L422). In October 2019, FCS started a shipment of one of FCS's original steam generators, again as a specialized over-the-road trailer shipment by ES, to the Clive Disposal Site. The transport started on October 24, 2019 and, at the time of the investigation, was estimated to arrive in Clive, Utah on December 8, 2019. The total estimated transit time between when the trailer was released from the FCS facility until verification of receipt of the trailer at the Clive Disposal Facility was 45 days. This was investigated by ES on behalf of FCS and reported to the NRC in a letter dated November 20, 2019 (ADAMS Accession No. ML19340A027).

III. Discussion

A. The Exemption Is Authorized by Law

The NRC's regulations in 10 CFR 20.2301 allow the Commission to grant exemptions from the requirements of the regulations in 10 CFR part 20 if it determines the exemption would be authorized by law and would not result in undue hazard to life or property. There are no provisions in the Atomic Energy Act of 1954, as amended (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the NRC concludes that there is no statutory prohibition on the issuance of the requested exemption and the NRC is authorized to grant the exemption by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

The purpose of 10 CFR part 20, appendix G, Section III.E is to require licensees to investigate, trace, and report radioactive shipments that have not reached their destination, as scheduled, for unknown reasons. Data on low-level radioactive waste shipments from FCS described above, found that shipments took longer than 20 days to reach the ES Clive Disposal Site in Clive, Utah once they left the FCS facility, but not longer that 45 days. This was not because they were lost, but simply a result of the complexity involved in shipping large components. In addition, the licensee notes that shipping times beyond 20 days have been encountered due to issues not specifically related to the transport of large components, such as rail cars containing LLW in switchyards waiting to be included in a complete train to the disposal facility. Based on the history of low-level radioactive waste shipments from FCS, the need to investigate, trace and report on shipments that take longer than 20 days is therefore inappropriate. As stated in the request for exemption, for rail shipments, FCS will utilize an electronic data tracking system interchange, or similar tracking system, that will allow for monitoring the progress of the shipments by the rail carrier on a daily basis in lieu of the 20 day requirement, and will initiate an investigation as provided for in Section III.E after 45 days.

Because of the oversight and monitoring of low-level radioactive waste shipments throughout the entire journey from FCS to a disposal or processing site noted above, it is unlikely that a shipment could be lost, misdirected, or diverted without the knowledge of the carrier or OPPD. Furthermore, by extending the elapsed time for receipt acknowledgment to 45 days before requiring investigations, tracing, and reporting, a reasonable upper limit on shipment duration is maintained if a breakdown of normal tracking systems were to occur. Consequently, the NRC finds that extending the receipt of notification period from 20 to 45 days after transfer of the low-level radioactive waste as described by OPPD in its March 26, 2020, letter would not result in an undue hazard to life or property.

C. The Exemption Is Subject to a Categorical Exclusion

With respect to compliance with Section 102(2) of the National Environmental Policy Act, 42 U.S.C. 4332(2) (NEPA), the NRC staff has determined that the proposed action, namely, the approval of the OPPD exemption request, is within the scope of the two categorical exclusions listed at 10 CFR 51.22(c)(25)(vi)(B) and 10 CFR 51.22(c)(25)(vi)(C). The proposed action presents (i) no significant hazards consideration, (ii) would not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) would not result in a significant increase in individual or cumulative public or occupational radiation exposure; (iv) has no significant construction impact; (v) does not present a significant increase in the potential for or consequences from radiological accidents; and (vi) requests an exemption that involves reporting requirements (10 CFR 51.22(c)(25)(vi)(B)) as well as inspection or surveillance requirements (10 CFR 51.22(c)(25)(vi)(C)). Therefore, no further analysis is required under NEPA.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption is authorized by law and will not result in undue hazard to life or property. Therefore, the Commission hereby grants OPPD an exemption from 10 CFR part 20, appendix G, Section III.E to extend the receipt of notification period from 20 days to 45 days after transfer for rail or mixed-mode shipments of low-level radioactive waste from the FCS facility to a licensed land disposal or processing facility.

Dated: June 30th, 2020.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2020–14827 Filed 7–9–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–194 and CP2020–219; MC2020–195 and CP2020–220]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 14, 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:

Table of Contents

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).:* MC2020–194 and CP2020–219; *Filing Title:* USPS Request to Add Priority Mail Contract 635 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 6, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 14, 2020.

2. *Docket No(s).:* MC2020–195 and CP2020–220; *Filing Title:* USPS Request to Add Priority Mail Contract 636 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 6, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* July 14, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–14903 Filed 7–9–20; 8:45 am]

BILLING CODE 7710–FW–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).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 22, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 629 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–182, CP2020–206.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–14735 Filed 7–9–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 23, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 630 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–183, CP2020–207.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–14736 Filed 7–9–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* July 10, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 153 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–188, CP2020–213.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–14733 Filed 7–9–20; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89220; File No. SR–NYSE–2020–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Price List

July 6, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 23, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes (the ''Russell Rebalance'').

Proposed Rule Change

The Exchange's Price List currently provides that, for purposes of determining transaction fees and credits based on quoting levels, average daily volume (''ADV''), and consolidated ADV (''CADV''), the Exchange may exclude shares traded any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to specify that the Exchange may also exclude from its quoting levels, ADV, and CADV calculations the date of the annual Russell Rebalance.

The Russell Rebalance, which typically occurs in June, is characterized by high trading volumes, much of which derive from market participants who are not generally as active entering the market to rebalance their holdings in-line with the Russell Rebalance.[4] The Exchange believes that the high trading volumes during the Russell Rebalance can significantly impact ADV, CADV and quoting calculations. The Exchange believes that excluding the date of the Russell Rebalance will mitigate the uncertainty faced by member organizations as to their quoting, ADV, and CADV levels and the corresponding rebate amounts during the month of the Russell Rebalance, thereby providing member organizations with an increased certainty as to that month's cost for trades executed on the Exchange. The Exchange further believes that removing this uncertainty will encourage member organizations to participate in trading on the Exchange during the remaining trading days in the month of the Russell Rebalance in a manner intended to be incented by the Exchange's Price List.

To effectuate this change, the Exchange proposes to add a clause to current footnote * following ''Transaction Fees.'' As proposed, the new clause would provide that the Exchange may exclude shares traded any day that ''is the date of the annual reconstitution of the Russell Investments Indexes.'' The proposed change is similar to, and consistent with, the rules of the Exchange's affiliates and other self-regulatory organizations.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly fragmented and competitive market in which competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Proposed Change Is Reasonable

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation of quoting levels, ADV, and CADV the date of the annual Russell Rebalance because it will provide member organizations with a greater level of certainty as to their level of rebates and fees for trading in the month of the Russell Rebalance. By eliminating a trading day that would almost certainly lower a member organization's ADV as a percentage of CADV, the Exchange believes that the proposal will make the majority of member organizations more likely to meet the minimum thresholds of higher

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See, e.g.,* Securities Exchange Act Release No. 69793 (July 18, 2013), 78 FR 37865, 37866 (July 24, 2013) (SR–BATS–2013–034) (excluding the Russell Reconstitution Day from the definition of ADV); Securities Exchange Act Release No. 72002 (April 23, 2014), 79 FR 24028, 24029 (April 29, 2014) (SR–EDGX–2014–10) (same).

[5] *See, e.g.,* NYSE Arca Equities Fees and Charges, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (''the date of the annual reconstitution of the Russell Investments Indexes does not count toward volume tiers''); NYSE National, Inc. Schedule of Fees and Rebates, available at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf* (''the Exchange may exclude shares traded any day that . . . is the date of the annual reconstitution of the Russell Investments Indexes'' for purposes of determining transaction fees and credits based on quoting levels, ADV, and CADV); Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/*(''The Exchange excludes from its calculation of ADAV and ADV shares added or removed on . . . the last Friday in June (the 'Russell Reconstitution Day')'').

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

tiers, which will provide additional incentive for member organizations to increase their participation on the Exchange and earn more favorable rates. As noted above, other self-regulatory organizations have adopted rules that are substantially similar to the change being proposed by the Exchange.[8]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because the exclusion would apply equally to all member organizations and market participants and to all volume tiers. Further, the Exchange believes that removing a single known day of atypical trading behavior would allow all member organizations to more predictably calculate the costs associated with their trading activity on the Exchange on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in revenues and expenses.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the exclusion would apply equally to all member organizations, to all market participants and to all volume tiers. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, as discussed above, the Exchange believes that removing a single known day of atypical trading behavior would allow all member organizations to more predictably calculate the credits and fees associated with their trading activity on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as noted above, by eliminating a trading day that would almost certainly result in lowering a member organization's ADV as a percentage of CADV, the Exchange believes that the proposal will benefit the majority of member organizations by making it more likely for them to meet the minimum thresholds of higher tiers, which will provide additional incentive for member organizations to increase their participation on the Exchange and earn more favorable rates. The Exchange believes that the proposal thus fosters competition by providing an additional incentive to member organizations to submit orders to the Exchange. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intramarket Competition. The proposed change is designed to eliminate a trading day that would almost certainly result in lowering a member organization's ADV as a percentage of CADV. The Exchange believes that the proposal would provide additional incentive for member organizations to increase their participation on the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. By providing member organizations with a greater level of certainty as to their level of rebates and costs for trading in the month of the Russell Rebalance, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging member organizations to their participation on the Exchange in order to earn more favorable rates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange

[8] *See* notes 4–5, *supra.*

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–54 and should be submitted on or before July 31, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14869 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension: Rule 206(4)–6, SEC File No. 270–513, OMB Control No. 3235–0571

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 206(4)–6'' under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) (''Advisers Act'') and the collection has been approved under OMB Control No. 3235–0571. The Commission adopted rule 206(4)–6 (17 CFR 275.206(4)–6), the proxy voting rule, to address an investment adviser's fiduciary obligation to clients who have given the adviser authority to vote their securities. Under the rule, an investment adviser that exercises voting authority over client securities is required to: (i) Adopt and implement policies and procedures that are reasonably designed to ensure that the adviser votes securities in the best interest of clients, including procedures to address any material conflict that may arise between the interest of the adviser and the client; (ii) disclose to clients how they may obtain information on how the adviser has voted with respect to their securities; and (iii) describe to clients the adviser's proxy voting policies and procedures and, on request, furnish a copy of the policies and procedures to the requesting client. The rule is designed to assure that advisers that vote proxies for their clients vote those proxies in their clients' best interest and provide clients with information about how their proxies were voted.

Rule 206(4)–6 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The collection is mandatory and responses to the disclosure requirement are not kept confidential.

The respondents are investment advisers registered with the Commission that vote proxies with respect to clients' securities. Advisory clients of these investment advisers use the information required by the rule to assess investment advisers' proxy voting policies and procedures and to monitor the advisers' performance of their proxy voting activities. The information required by Advisers Act rule 204–2, a recordkeeping rule, also is used by the Commission staff in its examination and oversight program. Without the information collected under the rules, advisory clients would not have information they need to assess the adviser's services and monitor the adviser's handling of their accounts, and the Commission would be less efficient and effective in its programs.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 12,265. It is estimated that each of these advisers is required to spend on average 10 hours annually documenting its proxy voting procedures under the requirements of the rule, for a total burden of 122,650 hours. We further estimate that on average, approximately 279 clients of each adviser would request copies of the underlying policies and procedures. We estimate that it would take these advisers 0.1 hours per client to deliver copies of the policies and procedures, for a total burden of 342,194 hours. Accordingly, we estimate that rule 206(4)-6 results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 464,844 hours.

Records related to an adviser's proxy voting policies and procedures and proxy voting history are separately required under the Advisers Act recordkeeping rule 204–2 (17 CFR 275.204–2). The standard retention period required for books and records under rule 204–2 is five years, in an easily accessible place, the first two years in an appropriate office of the investment adviser. OMB has previously approved the collection with this retention period. The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14753 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Asset Management Advisory Committee (''AMAC'') will hold a public meeting on Thursday, July 16, 2020 at 9:00 a.m.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 9:00 a.m. and will be open to the public by webcast on the Commission's website at *www.sec.gov.*

MATTER TO BE CONSIDERED: On June 18, 2020, the Commission issued notice of the meeting (Release No. 34–89087), indicating that the meeting is open to the public and inviting the public to submit written comments to AMAC. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The meeting will include a discussion of matters in the asset management industry relating to two topics: (1) Improving diversity and inclusion and (2) data and technology.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 8, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–15033 Filed 7–8–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 163, SEC File No. 270–556, OMB Control No. 3235–0619

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 163 (17 CFR 230.163) provides an exemption from Section 5(c) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately 0.24 burden hours per response to provide the information required under Rule 163 and that the information is filed by approximately 53 respondents for a total annual reporting burden of 13 hours. We estimate that 25% of 0.24 hours per response (0.06 hours) is prepared by the respondent for a total annual burden of 3 hours (0.06 hours per response × 53 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14752 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Regulations 14D and 14E (Schedule 14D–9) SEC File No. 270–114, OMB Control No. 3235–0102

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation 14D (17 CFR 240.14d–1—240.14d–11) and Regulation 14E (17 CFR 240.14e–1—240.14e–8) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. Schedule 14D–9 takes approximately 260.56 hours per response to prepare and is filed by approximately 169 companies annually. We estimate that 25% of the 260.56 hours per response (65.14 hours) is prepared by the company for an annual reporting burden of 11,009 hours (65.14 hours per response × 169 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14756 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 13e–3 (Schedule 13E–3) SEC File No. 270–001, OMB Control No. 3235–0007

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 13e–3 (17 CFR 240.13e–3) and Schedule 13E–3 (17 CFR 240.13e–100)—Rule 13e–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Schedule 13E–3 provides shareholders and the marketplace with material information concerning a going private transaction. The information collected permits verification of compliance with securities laws requirements and ensures the public availability and dissemination of the collected information. We estimate that Schedule 13E–3 is filed by approximately 77 issuers annually and it takes approximately 137.42 hours per response. We estimate that 25% of the 137.42 hours per response (34.36 hours) is prepared by the filer for a total annual reporting burden of 2,646 hours (34.36 hours per response × 77 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14762 Filed 7–9–20; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 506(e) of Regulation D Felons and Other Bad Actors Disclosure Statements SEC File No. 270–654, OMB Control No.3235–0704

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection[s] of information to the Office of Management and Budget for extension and approval.

Rule 506(e) (17 CFR 230.506(e)) of Regulation D under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the issuer to furnish to each purchaser, a reasonable time prior to sale, a description in writing of any matters that would have triggered disqualification under Rule 506(d)(1) of Regulation D, but occurred before September 23, 2013. The disclosures required by Rule 506(e) is not filed with the Commission, but serves as an important investor protection tool to inform investors of an issuer's and its covered persons, involvement in past ''bad actor'' disqualifying events such as pre-existing criminal convictions, court injunctions, disciplinary proceedings, and other sanctions enumerated in Rule 506(d). Without the mandatory written statement requirements set forth in Rule 506(e), purchasers may have the impression that all bad actors are disqualified from participation in Rule 506 offerings.

We estimate there are 19,908 respondents that will conduct a one-hour factual inquiry to determine whether the issuer and its covered persons have had pre-existing disqualifying events before September 23, 2013. Of those 19,908 respondents, we estimate that 220 respondents with disqualifying events will spend ten hours to prepare a disclosure statement describing the matters that would have triggered disqualification under 506(d)(1) of Regulation D, except that these disqualifying events occurred before September 23, 2013, the effective date of the Rule 506 amendments. An estimated 2,200 burden hours are attributed to the 220 respondents with disqualifying events in addition to the 19,908 burden hours associated with the one-hour factual inquiry. In sum, the total annual increase in paperwork burden for all affected respondents to comply with the Rule 506(e) disclosure statement is estimated to be approximately 22,108 hours of company personnel time.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14748 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89233; File No. SR–BOX–2020–26]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add Consolidated Audit Trail Rules to the List of Minor Rule Violations

July 6, 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 June 30, 2020, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add its CAT Compliance Rules to the list of minor rule violations in Rule 12140 (Imposition of Fines for Minor Rule Violations). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add the Exchange's CAT Compliance Rules to the list of minor rule violations in Rule 12140 (Imposition of Fines for Minor Rule Violations). This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[3] This proposal is also based upon the New York Stock Exchange, Inc. (''NYSE'') filing to amend NYSE Rule 9217 in order to add NYSE's corresponding CAT Compliance Rules to NYSE's list of rules that are eligible for minor rule violation plan treatment.[4]

Proposed Rule Change

The Exchange recently adopted the CAT Compliance Rules in the Rule 16000 Series in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule 16000 Series. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 12140 sets forth the list of rules under which an Options Participant, or person associated with or employed by an Options Participant may be subject to a fine. Rule 12140 permits the Exchange to impose a fine of up to $5,000 on any Options Participant, or person associated with or employed by an Options Participant for a minor violation of an eligible rule. The Exchange proposes to amend Rule 12140 to add the CAT Compliance Rules under Rule Series 16000 to the list of rules eligible for disposition pursuant to a minor fine under Rule 12140.[7]

The Exchange is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[8] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to the Exchange pursuant to the Rule 17d–2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. We expect that the other exchanges would be entering into a similar RSA.

In order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules under Rule Series 16000 under Rule 12140 and the Exchange's MRVP.

FINRA, in connection with its proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, has represented

[3] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013).

[4] *See* SR–NYSE–2020–51.

[5] *See* Securities Exchange Act Release No. 34–80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–BOX–2017–07).

[6] 17 CFR 242.613.

[7] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. The Exchange believes it is appropriate to have an identical maximum fine amount for eligible violations of the Rule 16000 Series to achieve harmony with FINRA and also to amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of the Rule 16000 Series in a regular disciplinary proceeding or Letter of Consent under the Rule 12000 Series as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 9–10, *infra.*

[8] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor rule fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory circular notifying its Options Participant organizations of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a Letter of Consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Rather, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules under Rule Series 16000 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding language that minor rule fines for violations of the CAT Compliance Rules under Rule Series 16000 shall not exceed $2,500 would further the goal of transparency and add clarity to the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendments to Rule 12140 are consistent with Section 6(b)(6) of the Act,[13] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of Rule Series 16000 pursuant to the Exchange's rules.

Finally, because existing BOX Rule 12140 provides procedural rights to a person fined under the Exchange's MRVP to contest the fine and permits a hearing on the matter, the Exchange believes that the proposal is consistent with Sections 6(b)(7) and 6(d)(1) of the Act,[14] by providing a fair procedure for the disciplining of Participants and persons associated with Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules under Rule Series 16000 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. As such, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. 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:

[9] *See* SR–FINRA–2020–013; *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[10] *See id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

[14] 15 U.S.C. 78f(b)(7) and (d)(1).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 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–BOX–2020–26 and should be submitted on or before July 31, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[18] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 12140 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[19] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[20] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[21] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [22] and Rule 19d–1(c)(2) thereunder,[23] that the proposed rule change (SR–BOX–2020–26) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14867 Filed 7–9–20; 8:45 am]

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[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[18] 17 CFR 240.19d–1(c)(2).

[19] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[20] *See supra* note 3.

[21] 15 U.S.C. 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 240.19d–1(c)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89219; File No. SR–NYSE–2020–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Its Waiver of the Application of Certain of the Shareholder Approval Requirements in Section 312.03 of the NYSE Listed Company Manual Through September 30, 2020 Subject to Certain Conditions

July 2, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 30, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through and including September 30, 2020 its waiver, subject to certain conditions, of the application of certain of the shareholder approval requirements set forth in Section 312.03 of the NYSE Listed Company Manual (''Manual''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to an earlier proposed rule change,[4] the Exchange waived through and including June 30, 2020, subject to certain conditions, certain of the shareholder approval requirements set forth in Section 312.03 of the Manual (the ''Waiver''). The Exchange now proposes to extend the Waiver through and including September 30, 2020.

The U.S. and global economies have experienced unprecedented disruption as a result of the ongoing spread of COVID–19, including severe limitations on companies' ability to operate their businesses, volatility in the U.S. and global equity markets, and disruption in the credit and capital markets. The Exchange implemented the Waiver because it believed that it was likely that many listed companies would have urgent liquidity needs during this crisis period due to lost revenues and maturing debt obligations. In those circumstances, the Exchange believed that listed companies would need to access additional capital that might not be available in the public equity or credit markets.

Since the implementation of the Waiver a number of listed companies have completed capital raising transactions that would not have been possible without the flexibility provided by the Waiver. While equity indices have recovered from much of the decline initially associated with the COVID–19 crisis, ongoing economic disruption and uncertainty associated with the pandemic have caused many listed companies to continue to face circumstances in which their businesses and revenues are severely curtailed. Such companies continue to experience difficulty in accessing liquidity from the public markets. Consequently, the Exchange believes it is appropriate to extend the application of the Waiver for an additional period through and including September 30, 2020, to provide more flexibility to listed companies that need to access capital in the current unusual economic conditions.

Section 312.03 of the Manual, which requires listed companies to acquire shareholder approval prior to certain kinds of equity issuances, imposes significant limitations on the ability of a listed company to engage in the sort of large private placement transaction described above. The most important limitations are as follows:

• *Issuance to a Related Party.*

Subject to an exception for early stage companies set forth therein, Section 312.03(b) of the Manual requires shareholder approval of any issuance to a director, officer or substantial security holder[5] of the company (each a ''Related Party'') or to an affiliate of a Related Party[6] if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either 1% of the number of shares of common stock or 1% of the voting power outstanding before the issuance. A limited exception permits cash sales to Related Parties and their affiliates that meet a market price test set forth in the rule (the ''Minimum Price'')[7] and that relate to no more than 5% of the company's outstanding common stock. However, this exception may only be used if the Related Party in question has Related Party status solely because it is a substantial security holder of the company.

• *Transactions of 20% of More.*

Section 312.03(c) of the Manual requires shareholder approval of any transaction relating to 20% or more of the company's outstanding common stock or 20% of the voting power outstanding before such issuance other than a public offering for cash. Section 312.03(c) includes an exception for transactions involving a cash sale of the company's securities that comply with the Minimum Price requirement and also meet the following definition of a ''bona fide private financing,'' as set forth in Section 312.04(g):

''Bona fide private financing'' refers to a sale in which either:

○ a registered broker-dealer purchases the securities from the issuer with a view to the private sale of such securities to one or more purchasers; or

○ the issuer sells the securities to multiple purchasers, and no one such purchaser, or group of related purchasers, acquires, or has the right to acquire upon exercise or conversion of the securities, more than five percent of the shares of the issuer's common stock or more than five percent of the issuer's voting power before the sale.''

The Exchange expects that it will continue to be the case that certain companies during the course of the ongoing unusual economic conditions will urgently need to obtain new capital by selling equity securities in private placements.

In many cases, such transactions may involve sales to existing investors in the

[4] *See* Securities Exchange Act Release No. 34–88572 (April 6, 2020); 85 FR 20323 (April 10, 2020) (SR–NYSE–2020–30).

[5] For purposes of Section 312.03(b), Section 312.04(e) provides that: ''An interest consisting of less than either five percent of the number of shares of common stock or five percent of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.''

[6] Under Section 312.03 of the Manual, a ''Related Party'' includes ''(1) a director, officer or substantial security holder of the company (each a ''Related Party''); (2) a subsidiary, affiliate or other closely-related person of a Related Party; or (3) any company or entity in which a Related Party has a substantial direct or indirect interest;''

[7] Section 312.04(i) defines the ''Minimum Price'' as follows: ''Minimum Price'' means a price that is the lower of: (i) The Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement.

Section 312.04(j) defines ''Official Closing Price'' as follows: ''Official Closing Price'' of the issuer's common stock means the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities. For example, if the transaction is signed after the close of the regular session at 4:00 p.m. Eastern Standard Time on a Tuesday, then Tuesday's official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close if the regular session on Tuesday, then Monday's official closing price is used.

company or their affiliates that would exceed the applicable 1% and 5% limits of Section 312.03(b). Given the ongoing economic disruption associated with the COVID–19 pandemic, the Exchange proposes to continue its partial waiver of the application of Section 312.03(b) for the period as of the date of this filing through and including September 30, 2020, with the Waiver specifically limited to transactions that involve the sale of the company's securities for cash at a price that meets the Minimum Price requirement as set forth in Section 312.04.[8] In addition, to qualify for the Waiver, a transaction must be reviewed and approved by the company's audit committee or a comparable committee comprised solely of independent directors.

This Waiver will continue to not be applicable to any transaction involving the stock or assets of another company where any director, officer or substantial security holder of the company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more (*i.e.,* a transaction which would require shareholder approval under NASDAQ Marketplace Rule 5635(a)). Specifically, the Waiver will continue to not be applicable to a sale of securities by a listed company to any person subject to the provisions of Section 312.03(b) in a transaction, or series of transactions, whose proceeds will be used to fund an acquisition of stock or assets of another company where such person has a direct or indirect interest in the company or assets to be acquired or in the consideration to be paid for such acquisition.

The effect of the extension of the Waiver would be to allow companies to sell their securities to Related Parties and other persons subject to Section 312.03(b)[9] without complying with the numerical limitations of that rule, as long as the sale is in a cash transaction that meets the Minimum Price requirement and also meets the other requirements noted above. As provided by Section 312.03(a), any transaction benefitting from the proposed waiver will still be subject to shareholder approval if required under any other applicable rule, including the equity compensation requirements of Section 303A.08 and the change of control requirements of Section 312.03(d).

Existing large investors are often the only willing providers of much-needed capital to companies undergoing difficulties and the Exchange believes that it is appropriate to increase companies' flexibility to access this source of capital for an additional limited period. The Exchange notes that, as a result of the extension of the Waiver, the Exchange's application of Section 312.03(b) will be consistent with the application of NASDAQ Marketplace Rule 5635(a)[10] to sales of a listed company's securities to related parties during the Waiver period.

Many private placement transactions under the current market conditions may also exceed the 20% threshold established by Section 312.03(c). Therefore, given the ongoing economic disruption associated with the COIVD–19 pandemic, the Exchange also proposes to continue for the period through and including September 30, 2020, for purposes of the bona fide financing exception to the 20% requirement, its waiver of the 5% limitation for any sale to an individual investor in a bona fide private financing pursuant to Section 312.03(c) and to permit companies to undertake a bona fide private financing during that period in which there is only a single purchaser. As provided by Section 312.03(a), any transaction benefitting from the Waiver will still be subject to shareholder approval if required under any other applicable rule, including the equity compensation requirements of Section 303A.08 and the change of control requirements of Section 312.03(d). Any transaction benefitting from the Waiver must be a sale of the company's securities for cash at a price that meets the Minimum Price requirement.

The effect of the proposed extension of the Waiver would be that a listed company would be exempt from the shareholder approval requirement of Section 312.03(c) in relation to a private placement transaction regardless of its size or the number of participating investors or the amount of securities purchased by any single investor, provided that the transaction is a sale of the company's securities for cash at a price that meets the Minimum Price requirement. If any purchaser in a transaction benefiting from this waiver is a Related Party or other person subject to Section 312.03(b), such transaction must be reviewed and approved by the company's audit committee or a comparable committee comprised solely of independent directors. The Exchange notes that, as a result of the proposed extension of the Waiver, the Exchange's application of Section 312.03(c) will continue to be consistent during the Waiver period with the application of NASDAQ Marketplace Rule 5635(c) with respect to private placements relating to 20% or more of a company's common stock or voting power outstanding before such transaction.[11]

The Exchange notes that these temporary emergency waivers would simply continue to provide NYSE listed companies with the flexibility on a temporary emergency basis to consummate transactions without shareholder approval that would not require shareholder approval under the rules of the NASDAQ Stock Market, as the specific limitations the Exchange is proposing to waive do not exist in the applicable NASDAQ rules.[12]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the public interest and the interests of investors, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a result of the economic disruption related to the ongoing spread of the COVID–19 virus, certain listed companies may experience urgent liquidity needs that they are unable to meet by raising funds in the public equity or credit markets. The proposed rule change is designed to provide temporary relief from certain of the NYSE's shareholder approval requirements in relation to stock issuances to provide companies with additional flexibility to raise funds by

[8] *See* supra note 7.

[9] *See* supra note 6.

[10] If a company is raising capital through a transaction, or series of transaction, via the waiver, they cannot use such capital to fund an acquisition.

[11] *See* supra note 10 which also applies to the waivers available under Section 312.03(c).

[12] *See* NASDAQ Marketplace Rule 5635, including specifically subsections (a) and (c) thereof.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

selling equity in private placement transactions during the current unusual economic conditions provided such transactions meet certain conditions, such as the Minimum Price as defined in Section 312.04(i). The proposed waivers are consistent with the protection of investors because any transaction benefiting from the waivers will not, in the Exchange's view, be dilutive to the company's existing shareholders as it will be subject to a minimum market price requirement and because the audit committee or a comparable committee comprised solely of independent directors will review and approve any transaction benefitting from a waiver that involves a Related Party or affiliates of a Related Party. In addition, as provided by Section 312.03(a), any transaction benefitting from the proposed waiver will still be subject to shareholder approval if required under any other applicable rule, including the equity compensation requirements of Section 303A.08 and the change of control requirements of Section 312.03(d). All companies listed on the Exchange would be eligible to take advantage of the proposed temporary waivers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide temporary relief from certain of the NYSE's shareholder approval requirements in relation to stock issuances to provide companies with additional flexibility to raise funds by selling equity in private placement transactions during the current unusual economic conditions. In addition, the proposed waivers will simply temporarily conform the treatment of transactions benefitting from the waivers to their treatment under the comparable NASDAQ rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6)(iii) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] 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 believes that the Waiver of the operative delay would be consistent with the protection of investors and the public interest because, in the Exchange's view, the economic disruption caused by the global spread of the COVID–19 virus may give rise to companies experiencing urgent liquidity needs which they may need to meet by undertaking transactions that would benefit from the proposed relief. In support of its request to waive the 30-day operative delay, the Exchange stated, among other things, its belief that the proposed Waiver does not give rise to any novel investor protection concerns, as the proposed rule change conforms the NYSE's shareholder approval requirements temporarily to those of NASDAQ and would not permit any transactions without shareholder approval that are not permitted on another exchange. In addition, the Exchange stated that all transactions utilizing the Waiver would have to satisfy the Minimum Price requirement contained in the rule and be reviewed and approved by the issuer's audit committee or comparable committee of the board comprised entirely of independent directors if any transactions benefitting from the Waiver involve a Related Party or affiliates of a Related Party, as described above.[21] Furthermore, the Exchange has stated that, as provided by Section 312.04(a) of the Manual, any transaction benefitting from the proposed Waiver will still be subject to shareholder approval if required under any other applicable rule, including the equity compensation requirements of Section 303A.08 of the Manual and the change of control requirements of Section 312.03(d) of the Manual. The Exchange also noted that the proposed Waiver is temporary in nature and will only be applied through and including September 30, 2020.

The Commission notes that the proposed rule change would provide a temporary waiver of certain shareholder approval requirements under certain conditions in light of current economic conditions due to COVID–19. As noted by NYSE, the Waiver is consistent with Nasdaq's shareholder approval rules and would not permit any transactions without shareholder approval that is not permitted on another exchange.[22] In addition, all transactions utilizing the Waiver would have to satisfy the Minimum Price requirement which is a market related price, as defined above.[23] Further, all transactions subject to the Waiver that involve Related Parties or affiliates of Related Parties would have to be approved by the listed company's audit committee or comparable committee of the board comprised entirely of independent directors. In addition, the Commission notes that the Waiver of the shareholder approval provisions only applies to the specific provisions in Sections 312.03(b) and (c) of the Manual discussed above and any transaction utilizing the Waiver would still be subject to all other shareholder approval requirements including, for example, the equity compensation requirements of Section 303A.08 and

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived the five business day notification requirement for this proposed rule change.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] The Commission notes that, as described in the purpose section above, all transactions utilizing the Waiver for purposes of Section 312.03(b) would be subject to review and approval by an audit committee or comparable body of independent directors. As to transactions utilizing the temporary Waiver under Section 312.03(c) all transactions involving Related Parties or other persons subject to Section 312.03(b), as described above, must be reviewed and approved by the company's audit committee or a comparable committee comprised solely of independent directors.

[22] In addition, as noted above, if a company is raising capital through a transaction, or series of transactions, via the Waiver, they cannot use such capital to fund an acquisition.

[23] *See supra* note 7.

the change of control requirements of Section 312.03(d). The Commission also notes that the proposal is a temporary measure designed to allow companies to raise necessary capital at market related prices without shareholder approval under the limited conditions discussed above in response to current, unusual economic conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protections of investors and the public interest. According, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–58 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–NYSE–2020–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–58 and should be submitted on or before July 31, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

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[24] For purposed only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89234; File No. SR–CboeBZX–2020–053]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the 2x Long VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) (''Trust Issued Receipts'')

July 6, 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 June 23, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') 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. On June 26, 2020, BZX filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the 2x Long VIX Futures ESTF, a series of VS Trust, under Rule 14.11(f)(4) (''Trust Issued Receipts'').

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

This Amendment No. 1 to SR–CboeBZX–2020–053 amends and replaces in its entirety the proposal as originally submitted on June 23, 2020. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade Shares of the 2x Long VIX Futures ETF (the ''Fund'') under Rule 14.11(f)(4), which governs the listing

and trading of Trust Issued Receipts [3] on the Exchange.[4]

The Fund will seek to provide a return that is 200% of the return of its benchmark index for a single day. As further described below, the benchmark index seeks to offer long exposure to market volatility through publicly traded futures markets. The benchmark for the Fund is the Long VIX Futures Index (the ''Index'' or ticker symbol LONGVOL).[5] The Index measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (''VIX'').[6]

The Fund will primarily invest in VIX futures contracts traded on the Cboe Futures Exchange, Inc. (''CFE'') (hereinafter referred to as ''VIX Futures Contracts'') based on components of the Index to pursue its investment objective. In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX Futures Contracts, Volatility Shares LLC (the ''Sponsor'') may cause the Fund to obtain exposure to the Index through Over-the-Counter (OTC) swaps referencing the Index or particular VIX Futures Contracts comprising the Index (hereinafter referred to as ''VIX Swap Agreements''). The Fund may also invest in VIX Swap Agreements if the market for a specific VIX Futures Contract experiences emergencies (*e.g.,* natural disaster, terrorist attack or an act of God) or disruptions (*e.g.,* a trading halt or a flash crash) or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX Futures Contracts (such as during periods of market volatility or illiquidity).

The Sponsor, a Delaware limited liability company, serves as the Sponsor of VS Trust (the ''Trust''). The Sponsor is a commodity pool operator.[7] Tidal ETF Services LLC serves as the administrator (the ''Administrator'') and U.S. Bank National Association serves as custodian of the Fund and its Shares. U.S. Bancorp Fund Services, LLC serves as the sub-administrator (the ''Sub-Administrator'') and transfer agent. Wilmington Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The VIX Swap Agreements in which the Fund may invest may be cleared or non-cleared. The Fund will collateralize its obligations with Cash and Cash Equivalents [8] consistent with the 1940 Act and interpretations thereunder.

The Fund will only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor will review approved counterparties using various factors, which may include the counterparty's reputation, the Sponsor's past experience with the counterparty and the price/market actions of debt of the counterparty.

The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with its counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund.

In addition to VIX Swap Agreements, if the Fund is unable to meet its investment objective through investments in VIX Futures Contracts, the Fund may also obtain exposure to the Index through listed VIX options contracts traded on the Cboe Exchange, Inc. (''Cboe'') (hereinafter referred to as ''VIX Options Contracts'').

The Fund may also invest in Cash and Cash Equivalents that may serve as collateral in the above referenced VIX Futures Contracts, VIX Swap Agreements, and VIX Option Contracts (collectively referred to as the ''VIX Derivative Products'').

If the Fund is successful in meeting its objective, its value (before fees and expenses) on a given day should gain approximately 200% of the return of its benchmark index for a single day. Conversely, its value (before fees and expenses) should lose approximately 200% of the return of its benchmark index for a single day when it declines. The Fund primarily acquires long exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate 200% of the return of the Index at the time of the net asset value (''NAV'') calculation of the Fund. However, as discussed above, in the event that the Fund is unable to meet its investment objective solely through the investment of VIX Futures Contracts, it may invest in VIX Swap Agreements or VIX Options Contracts. The Fund may also invest in Cash or Cash Equivalents that may serve as collateral to the Fund's investments in VIX Derivative Products.

The Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations

[3] Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[4] The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR–BZX–2012–044).

[5] The Index is sponsored by Cboe Global Indexes (the ''Index Sponsor''). The Index Sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer. The Index Sponsor has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

[6] The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

[7] The Fund expects to file a registration statement on Form S–1 under the Securities Act of 1933 in the very near future. The Fund will not be listed on the Exchange until such time as there is an effective registration statement for the Fund.

[8] For purposes of this proposal, the term ''Cash and Cash Equivalents'' shall have the definition provided in Exchange Rule 14.11(i)(4)(C)(iii), applicable to Managed Fund Shares.

with a view toward obtaining positive results under all market conditions. Rather, the Fund will seek to remain fully invested at all times in VIX Derivative Products (and Cash and Cash Equivalents as collateral) [9] that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction.

In seeking to achieve the Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with the Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Fund's investments in accordance with its investment objective.

VIX Futures Contracts

The Index is comprised of, and the value of the Fund will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current, or spot, VIX, as illustrated below.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). For example, a VIX Futures Contract purchased in March that expires in May, in effect, is a forward contract on what the level of the VIX, as a measure of 30-day implied volatility of the S&P 500, will be on the May expiration date. The forward volatility reading of the VIX may not correlate directly to the current volatility reading of the VIX because the implied volatility of the S&P 500 at a future expiration date may be different from the current implied volatility of the S&P 500. As a result, the Index and the Fund should be expected to perform very differently from the VIX or 200% of the VIX Index over all periods of time. To illustrate, on December 4, 2019, the VIX closed at a price of 14.8 and the price of the February 2020 VIX Futures Contracts expiring on February 19, 2020 was 18.125. In this example, the price of the VIX represented the 30-day implied, or ''spot,'' volatility (the volatility expected for the period from December 5, 2019 to January 5, 2020) of the S&P 500 and the February VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from February 19 to March 19, 2020) of the S&P 500.

Long VIX Futures Index

The Index is designed to express the daily performance of a theoretical portfolio of first- and second-month VIX Futures Contracts (the ''Index Components''), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. The Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in first- and second- month VIX Futures Contracts. While the Index does not correspond to the VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX rises and fall as the VIX falls. Further, as described above, because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the VIX.

Unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded exclusively on Cboe.

Calculation of the Index

The Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX Futures Contracts, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of approximately one month. The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (the ''Cboe VIX Monthly Futures Settlement Date''), and runs to the Tuesday prior to the subsequent month's Cboe VIX Monthly Futures Settlement Date.

The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. ET and at the close of trading on each Business Day [10] by Bloomberg and Reuters.

Purchases and Redemptions of Creation Units

The Fund will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof (''Creation Units''). A Creation Unit is a block of at least 10,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an authorized participant may place an order with the Sub-Administrator to create one or more Creation Units.[11] The total cash payment required to create each Creation Unit is the NAV of at least 10,000 Shares of the Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Sub-Administrator to redeem one or more Creation Units. The redemption proceeds from the Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Fund requested in the authorized participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

The NAV for the Fund's Shares will be calculated by the Sub-Administrator once each Business Day and will be disseminated daily to all market participants at the same time.[12] Pricing information for the Shares will be available on the Fund's website at *www.volatilityshares.com,* including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

[9] *Supra* note 8.

[10] A ''Business Day'' means any day other than a day when any of BZX, Cboe, CFE or other exchange material to the valuation or operation of the Fund, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Index is closed for regular trading.

[11] Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders.

[12] NAV means the total assets of the Fund including, but not limited to, all Cash and Cash Equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. The Fund's NAV is calculated at 4:00 p.m. ET.

The closing prices and settlement prices of the Index Components (*i.e.,* the first- and second-month VIX Futures Contracts) will also be readily available from the websites of CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component VIX Futures Contracts underlying the Index is available by subscription from Reuters and Bloomberg. Specifically, the level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:00 p.m. ET and at the close of trading on each Business Day by Bloomberg and Reuters.

The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The specific contract specifications of Index Components (*i.e.,* first-month and second-month VIX Futures Contracts) underlying the Index are also available on Bloomberg and Reuters.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

In addition, the Fund's website at *www.volatilityshares.com* will display the end of day closing Index level, and NAV per Share for the Fund. The Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Derivative Products, and characteristics of such instruments, as well as Cash and Cash Equivalents held in the portfolio of the Fund. This website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Fund of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants.

In addition, in order to provide updated information relating to the Fund for use by investors and market professionals, an updated Intraday Indicative Value (''IIV'') will be calculated. The IIV is an indicator of the value of the Fund's holdings, which include the VIX Derivative Products and Cash and Cash Equivalents less liabilities of the Fund at the time the IIV is disseminated. The IIV will be calculated and widely disseminated by one or more major market data vendors every 15 seconds throughout Regular Trading Hours.[13]

In addition, the IIV will be published on the Exchange's website and will be available through on-line information services such as Bloomberg and Reuters.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IIV also should not be viewed as a precise value of the Shares.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

Initial and Continued Listing

The Shares of the Fund will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). The Exchange represents that, for initial and continued listing, the Fund and the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Sponsor of the Shares that the NAV per Share for the Fund will be calculated daily and will be made available to all market participants at the same time.

[13] As defined in Rule 1.5(w), the term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. ET.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Trust Issued Receipts. All of the VIX Futures Contracts and VIX Options Contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[14] The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying listed instruments, including listed derivatives held by the Fund, with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the

[14] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.* The Exchange notes that not all components of the Fund's holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments, including listed derivatives, held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. All statements and representations made in this filing regarding the Index composition, description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference the Index, reference asset, and IIV, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the shares; [15] (4) how information regarding the IIV and the Fund's holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening [16] and After Hours Trading Sessions [17] when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

Further, the Exchange states that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged and inversed leveraged securities (which include the Shares) and options on such securities, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009), and 09–65 (November 2009) (collectively, ''FINRA Regulatory Notices''). Members that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, the Fund will seek to provide a return that is 200% of the return of its benchmark index for a single day. The Fund does not seek to achieve its primary investment objective over a period of time greater than a single day. The return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually will differ in amount and possibly even direction from the Fund's multiple times the return of the Fund's Benchmark for the same period. These differences can be significant.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Fund's registration statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [18] in general and Section 6(b)(5) of the Act [19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(f). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the Sponsor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Sponsor to the Trust shall erect and maintain a ''fire wall'' between the Sponsor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's portfolio. The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying VIX Futures Contracts and VIX Options Contracts via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange

[15] Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states ''[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

[16] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

[17] The After Hours Trading Session is from 4:00 p.m. to 8:00 p.m. ET.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Fund's holdings will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each Business Day, before commencement of trading in Shares during Regular Trading Hours, the Fund will disclose on its website the holdings that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Pricing information will be available on the Fund's website including: (1) The prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Exchange Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to 14.11(f)(4)(C)(ii), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation and last-sale information regarding VIX Futures Contracts and VIX Options Contracts will be available from the exchanges on which such instruments are traded. Quotation and last-sale information relating to VIX Options Contracts will also be available via the Options Price Reporting Authority. Quotation and last-sale information for VIX Swap Agreements will be available from nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements or from a broker-dealer who makes markets in such instruments. Quotation and last-sale information for VIX Swap Agreements will be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Pricing information regarding Cash Equivalents in which the Fund will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of 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 that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–053 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–2020–053. 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–2020–053 and should be submitted on or before July 31, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14868 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 425 SEC File No. 270–462, OMB Control No. 3235–0521

Notice is hereby given, that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. Approximately 7,160 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 1,790 annual burden hours (0.25 hours per response × 7,160 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14754 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89225; File No. SR–NASDAQ–2020–034]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rules 6130 and IM–6200–1

July 6, 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 June 25, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6130 (Nasdaq Kill Switch) and IM–6200–1 (Risk Settings) to provide Participants with additional optional settings.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes under Nasdaq Rule 6130 (Nasdaq Kill Switch) and IM–6200–1 (Risk Settings) are to provide Participants with additional optional settings in order to assist them in their efforts to manage their risk levels. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed pre-trade risk controls described below are meant to supplement, and not replace, the Participant's own internal systems, monitoring and procedures related to risk management. For clarification, the Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of a Participant's needs, nor are the controls designed to be the sole means of risk management, and using these controls will not necessarily meet a Participant's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3–5 under the Act[3] (''Rule 15c3–5'')). Use of the Exchange's Kill Switch or proposed risk setting in IM–6200–1(h) will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the Participant.[4]

Rule 6130(a) provides the definition of the Nasdaq Kill Switch, which is an optional tool offered at no charge that enables Participants to establish a pre-determined level of Net Notional Risk Exposure (''NNRE''), to receive notifications as the value of executed orders approaches the NNRE level, and to have order entry ports disabled and open orders administratively cancelled when the value of executed orders exceeds the NNRE level. Most order entry ports are assigned to one MPID. In the event that multiple MPIDs are assigned to one port, only the affected MPID is disabled from the port. The NNRE, although not explicitly defined,[5] accounts for the daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purpose of calculating NNRE, only executed orders are included.

The Exchange is renaming the NNRE by proposing to remove references to ''Net Notional Risk Exposure'' and to replace them with ''Gross Executed Risk Exposure''. This risk level refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Executed Risk Exposure, only executed orders are included. The Exchange is not changing the NNRE calculation under the proposed amendment. Rather, it will be renamed as the Gross Executed Risk Exposure. This risk setting is similar to Cboe BZX Exchange, Inc.'s (''BZX'') Interpretations and Policies .03(a)(1) of BZX Rule 11.13.

The Exchange is also proposing to add an additional risk setting titled ''Gross Notional Risk Exposure,'' which refers to a pre-established maximum daily dollar amount for buy and sell orders across all symbols, where both buy and sell orders are counted as positive values. For purposes of calculating Gross Notional Risk Exposure, unexecuted orders on the Exchange book and executed orders are included. This setting is similar to Interpretations and Policies .03(a)(2) of BZX Rule 11.13, except BZX excludes unexecuted orders and counts purchases as positive values and sales are counted negative values. Additionally, the Exchange's rule is similar to New York Stock Exchange LLC (''NYSE'') Rule 7.19(a)(5), except NYSE includes orders routed on arrival. While the current functionality would continue to be available, this additional proposed risk setting would allow a Participant to manage its risk more comprehensively, instead of relying solely on the NNRE functionality offered today. For purposes of Rule 6130, the Exchange proposes to use the term ''Participant'' as defined in Rule 4701(c).[6]

The Exchange also proposes to make a conforming change to Rule 6130(b) by removing ''Net Notional Risk Exposure'' and replacing it with ''Establishing and Adjusting Levels.'' The Exchange is also proposing to specify that a Participant's clearing member, as discussed below, may set the risk levels for each MPID individually. This action is similar to Interpretations and Policies .03(b)(1) of BZX Rule 11.13 and NYSE Rule 7.19(b)(3)(B), except unlike NYSE, the Exchange does not allow for setting risk levels at the sub-ID of an MPID. Additionally, the proposal allows for the clearing member, in addition to the Participant, to set and adjust the values before the beginning of a trading day as well as set and adjust them during the trading day. This is similar to Interpretations and Policies .03(b) of BZX Rule 11.13 and NYSE Rule 7.19(b)(3)(A).

The Exchange is proposing under Rule 6130(c) to allow clearing members, if designated pursuant to Rule 6130(d), to receive notifications when the total value of executed orders, and if applicable, unexecuted orders associated with an MPID exceeds 50, 75, 85, 90, and 95 percent of the applicable risk level values. This rule is similar to Interpretations and Policies .03(d) of BZX Rule 11.13 and NYSE Rule 7.19(b)(4).

A clearing member guarantees transactions executed on Nasdaq for members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. Because clearing members bear the risk on behalf of their Participant, the Exchange believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. Therefore, the Exchange proposes to make the proposed optional risk settings in Rule 6130 available to clearing members, if so authorized by the Participant.

Proposed Rule 6130(d) would allow for a Participant that does not self-clear to allocate responsibility for establishing and adjusting the risk levels to a clearing member that clears transactions on behalf of the Participant. A Participant may request to sign up for the Kill Switch optional setting by contacting Nasdaq Subscriber Services or by completing a Front End Request form.[7] In order to allocate responsibility to a clearing member, a Participant must provide the Exchange with authorization, either by providing Nasdaq Subscriber Services with written authorization or by requesting the appropriate user role and permission for the clearing member via the Front End Request form. The Participant may adjust the user role and permissions at any time. If a Participant chooses to designate responsibility to its clearing member, the Participant may view any risk levels established by the clearing member pursuant to proposed Rule 6130(d). Additionally, by allocating responsibility to its clearing member,

[3] 17 CFR 240.15c3–5.

[4] *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.*

[5] The Exchange is not changing the NNRE functionality under the proposed amendment. Rather, it is being renamed as the Gross Executed Risk Exposure.

[6] Pursuant to Nasdaq Rule 4701 (c), a ''Participant'' is defined as an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include: (1) ''Nasdaq ECNs,'' members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more System Securities; (2) ''Nasdaq Market Makers'' or ''Market Makers'', members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) ''Order Entry Firms,'' members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Rule 4623.

[7] The Front End Request form is available at *https://www.nasdaqtrader.com/EASP/TraderEASP.aspx?id=FrontEndForm.*

the Participant consents to the Exchange taking action as provided for in proposed Rule 6130(e). Even if a clearing member is designated, a Participant will continue to be notified by the Exchange of any action taken regarding its trading activity. By allowing Participants 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 Participants of the Exchange. A Participant may revoke responsibility allocated to its clearing member at any time by following the same process described above that is used to grant the clearing member authorization.

BZX and NYSE also provide similar designations to its clearing members pursuant to Interpretations and Policies .03(c) of BZX Rule 11.13 and NYSE Rule 7.19(b)(2). However, unlike NYSE, the Exchange does not allow for multiple risk level values to be in place at one time.

The Exchange also proposes to renumber current Rule 6130(d) as Rule 6130(e) and retitle it to more accurately describe the provision by removing ''Operation'' and replacing it with ''Breach Action and Reinstatement.'' Additionally, the Exchange is proposing to clarify that when a pre-established risk level is breached, the Kill Switch will be triggered. With the limited exceptions noted below the Kill Switch will operate at all times and on all orders when the Nasdaq System is open. When a risk level is breached, order entry for the breached MPID is disabled and all unexecuted orders are cancelled, with the exception of cancellations prohibited by Nasdaq Rules 4752, 4753 and 4754. The Kill Switch function will not cancel orders directed to a Nasdaq Cross during the period leading up to the Cross when order cancellation is prohibited (*i.e.* between 9:28 a.m. ET to the time of the Nasdaq Opening Cross; between 3:50 p.m. ET to the time of the Nasdaq Closing Cross). Either the Participant or the clearing member may contact the Exchange to request reactivation of the MPID before trading will be reauthorized.

As a reminder, pursuant to current Rule 6200, the Exchange will continue to share any Participant risk settings in the trading system that are specified in Rule 6130 and IM–6200–1 with the clearing member that clears transactions on behalf of the Participant even if the clearing member is not designated. Under current IM–6200–1, the Exchange offers certain risk settings applicable to a Participant on the Exchange. Proposed Rule IM–6200–1(h) would allow for a Participant to limit the maximum dollar amount that the Participant may associate with an order placed on the Exchange. This risk setting is similar to the risk control provided by NYSE pursuant to Rule 7.19(a)(3). When the Maximum Single Order Notional Check is enabled, if a Participant breaches this risk setting, the single order will be rejected by the system. The action taken is similar to NYSE Rule 7.19(c)(2).

The Exchange is also proposing to make the following non-substantive conforming changes:

- Capitalize the term ''Participant'' when referenced throughout the rule.
- Remove the term ''open orders'' and replace with ''unexecuted orders''.
- Remove all references to the acronym ''NNRE'' throughout the rule in conjunction with the removal of the reference to ''Net Notional Risk Exposure.''
- Renumber IM–6200–1 to conform to the addition of proposed Rule IM–6200–1(h).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes 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 functionality for a Participant to manage its risk exposure under Rule 6130 and IM–6200–1, while also providing a notification system under Rule 6130(c) that would help to ensure the Participant and its clearing member are aware of developing issues. In addition, the proposed amendments to Rule 6130 would provide clearing members, who have assumed certain risks of Participants, greater control over risk tolerance and exposure on behalf of their correspondent Participant, while helping to ensure that both Participant and its clearing member are aware of developing issues.

A clearing member guarantees transactions executed on Nasdaq for members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. The Exchange therefore believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of Participants with whom the Participants have entered into clearing arrangements 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 and aiding clearing members in complying with the Act.

In addition, the Exchange believes that the proposed amendments under Rule 6130 and IM–6200–1 are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed Gross Executed Risk Exposure and Gross Notional Risk Exposure settings are appropriate measures to serve as an additional tool for Participants and clearing members to assist them in identifying risk exposure by identifying when the Participant is reaching its maximum dollar amount for purchases and sales across all symbols. The Exchange also believes the proposed amendments will assist Participants and clearing members in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. Moreover, a Participant may revoke responsibility allocated to its clearing member at any time.

Further, the Exchange believes that the proposed amendments under Rule 6130 and IM–6200–1 will foster cooperation and coordination with persons facilitating transactions in securities because under Rule 6130(c), the Exchange will provide alerts when a Participant's trading activity reaches certain thresholds and under IM–6200–1, the Exchange will limit the Participant's maximum dollar amount placed on an order. As such, the Exchange may help clearing members monitor the risk levels of corresponding Participants.

Finally, the Exchange believes that the proposed rule changes do not unfairly discriminate among the Exchange's Participants because use of the risk settings under Rule 6130 and IM–6200–1(h) are optional and available

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

to all Participants, and not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by Participants who have opted to use the risk settings versus those who have not opted to use them.[10]

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. In fact, the Exchange believes that the proposal will have a positive effect on competition because, it would allow the Exchange to offer risk management functionality that is comparable to functionality being offered by other national securities exchanges.[11] Moreover, by providing Participants 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 Participants 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–NASDAQ–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–NASDAQ–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–NASDAQ–2020–034 and should be submitted on or before July 31, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14870 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

[10] All Exchange orders pass through a basic risk checks regardless of whether a Participant opts into a risk setting.

[11] *See* Securities Exchange Act Release Nos. 88904(May 19, 2020) 85 FR 31560 (May 26, 2020) (SR–NYSEArca-2020–43); 88776 (April 29, 2020) 85 FR 26768 (May 5, 2020) (SR–NYSE–2020–17) (Approval Order); 88599 (April 8, 2020) 85 FR 20793 (April 14, 2020) (SR-CboeBZX–2020–006) (Approval Order).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 10b–17, SEC File No. 270–427, OMB Control No. 3235–0476

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 10b–17 (17 CFR 240.10b–17), under the Securities Exchange Act of 1934 (15 U.S.C 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse

stock split; or (3) a rights or other subscription offering.

There are approximately 7,341 respondents per year. These respondents make a total of approximately 28,407 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is approximately 4,735 hours. The total internal labor cost of compliance for respondents associated with providing notice under Rule 10b–17 is approximately $348,412 per year.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14751 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

30 Day Notice—Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 482 SEC File No. 270–508, OMB Control No. 3235–0565

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Like most issuers of securities, when an investment company (''fund'') [1] offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act of 1933 (15 U.S.C. 77) (the ''Securities Act''). In recognition of the particular problems faced by funds that continually offer securities and wish to advertise their securities, the Commission has previously adopted advertising safe harbor rules. The most important of these is rule 482 (17 CFR 230.482) under the Securities Act, which, under certain circumstances, permits funds to advertise investment performance data, as well as other information. Rule 482 advertisements are deemed to be ''prospectuses'' under Section 10(b) of the Securities Act (15 U.S.C. 77j(b)).

Rule 482 contains certain requirements regarding the disclosure that funds are required to provide in qualifying advertisements. These requirements are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. For example, a fund is required to include disclosure advising investors to consider the fund's investment objectives, risks, charges and expenses, and other information described in the fund's prospectus, and highlighting the availability of the fund's prospectus and, if applicable, its summary prospectus. In addition, rule 482 advertisements that include performance data of open-end funds or insurance company separate accounts offering variable annuity contracts are required to include certain standardized performance information, information about any sales loads or other nonrecurring fees, and a legend warning that past performance does not guarantee future results. Such funds including performance information in rule 482 advertisements are also required to make available to investors month-end performance figures via website disclosure or by a toll-free telephone number, and to disclose the availability of the month-end performance data in the advertisement. The rule also sets forth requirements regarding the prominence of certain disclosures, requirements regarding advertisements that make tax representations, requirements regarding advertisements used prior to the effectiveness of the fund's registration statement, requirements regarding the timeliness of performance data, and certain required disclosures by money market funds.

Rule 482 advertisements must be filed with the Commission or, in the alternative, with the Financial Industry Regulatory Authority (''FINRA'').[2] This information collection differs from many other federal information collections that are primarily for the use and benefit of the collecting agency.

Rule 482 contains requirements that are intended to encourage the provision to investors of information that is balanced and informative, particularly in the area of investment performance. The Commission is concerned that in the absence of such provisions fund investors may be misled by deceptive rule 482 advertisements and may rely on less-than-adequate information when determining in which funds they should invest money. As a result, the Commission believes it is beneficial for funds to provide investors with balanced information in fund advertisements in order to allow investors to make better-informed decisions.

The Commission estimates that 41,265 [3] responses to rule 482 are filed annually by 2,877 investment companies offering approximately 12,476 portfolios, or approximately 3.3 responses per portfolio annually.[4] The burden associated with rule 482 is presently estimated to be 5.16 hours per response. The annual hourly burden is therefore approximately 212,927 hours.[5]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the

[1] ''Investment company'' refers to both investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'') (15 U.S.C. 80a–1 *et seq.*) and business development companies.

[2] *See* note to rule 482(h) under the Securities Act, which states that ''these advertisements, unless filed with [FINRA], are required to be filed in accordance with the requirements of § 230.497.'' See *also* rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), which provides that any sales material, including rule 482 advertisements, shall be deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act upon filing with FINRA.

[3] This estimated number of responses to rule 482 is composed of 41,003 responses filed with FINRA and 262 responses filed with the Commission in 2019.

[4] 41,265 responses ÷ 12,476 portfolios = 3.3 responses per portfolio.

[5] 41,265 responses × 5.16 hours per response = 212,927 hours.

costs of Commission rules and forms. The provision of information under rule 482 is necessary to obtain the benefits of the safe harbor offered by the rule. The information provided under rule 482 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: July 2, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14755 Filed 7–9–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, July 15, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 8, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–15032 Filed 7–8–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 40354, July 6, 2020

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, July 8, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, July 8, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: July 7, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–14989 Filed 7–8–20; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before August 10, 2020.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov*.

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: This revised information collection is submitted to SBA by lenders that are applying for participation in SBA's Community Advantage Pilot Program. SBA uses the information to evaluate the lenders eligibility and qualifications for participation in the pilot program.

Summary of Information Collection

Title: Community Advantage Lender Participation Application.

Description of Respondents: Lenders applying for participation in SBA's Community Advantage Pilot Program.

Form Number: 2301.

Annual Responses: 5.

Annual Burden: 40.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–14806 Filed 7–9–20; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36418]

Alabama & Gulf Coast Railway LLC—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company

Alabama & Gulf Coast Railway LLC (AGR), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of

temporary trackage rights, for overhead operations, by AGR over a 100-mile rail line (the Line) of The Kansas City Southern Railway Company (KCS) between KCS milepost 15.1 in Columbus, Miss., and KCS milepost 135.2 in Meridian, Miss., including yard trackage at KCS Meridian Yard at KCS milepost 135 as necessary to connect with the Meridian & Bigbee Railroad, L.L.C., pursuant to the terms of a temporary trackage rights agreement dated July 1, 2020 (Agreement).[1]

AGR states that an AGR train derailed and damaged a bridge two miles north of Aliceville, Ala., rendering the bridge inoperable. The purpose of the temporary trackage rights is to accommodate AGR's emergency detour operations over the Line while AGR's main line is repaired and the bridge is replaced. AGR states that it will cease use of the Line upon completion of the repairs and that the temporary trackage rights will expire no later than August 31, 2020.

AGR concurrently filed a petition for waiver of the 30-day period under 49 CFR 1180.4(g)(1) to allow the proposed temporary trackage rights to become effective immediately. By decision served July 2, 2020, the Board granted AGR's request. As a result, this exemption is now effective.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36418, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on ARG's representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to AGR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov*.

Decided: July 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2020–14786 Filed 7–9–20; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

TENNESSEE VALLEY AUTHORITY

Natural Resource Plan in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has decided to adopt the preferred alternative in its final supplemental environmental impact statement (SEIS) for the Natural Resource Plan (NRP). The TVA Board of Directors (Board) accepted the NRP and authorized TVA's Chief Executive Officer to implement the preferred alternative at its May 7, 2020, meeting. This alternative updates the NRP and will guide TVA's natural resource management over the next 20 years.

FOR FURTHER INFORMATION CONTACT: Matthew Higdon, NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11B–K, Knoxville, Tennessee 37902–1499. Telephone 865–632–8051. Email: *mshigdon@tva.gov.* Ben Bean, NRP Project Manager, Tennessee Valley Authority, 3941 Brashers Chapel Road, Guntersville, Alabama 35976. Telephone: 256–891–6611. Email: *bjbean@tva.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA; 18 CFR part 1318).

TVA is an agency and instrumentality of the United States, established by an act of Congress in 1933, to foster the social and economic welfare of the people of the Tennessee Valley region and to promote the proper use and conservation of the region's natural resources. TVA's threefold mission is to provide affordable and reliable power, promote sustainable economic development, and act as a steward of the Valley's natural resources. The lands managed by TVA in the name of the United States of America are some of the most important resources of the region. These lands include approximately 293,000 acres associated with the TVA reservoir system that are managed for the benefit of the public. Most of these lands remain undeveloped and are managed by TVA to provide natural resource conservation, recreation, and the protection of cultural resources.

In 2011, TVA completed its first NRP to guide its natural resource stewardship efforts. After considering alternative approaches to resource management, the Board adopted a Blended Management alternative as the NRP because it aligned best with TVA's Environmental Policy, focused on key programs that establish a baseline for future enhanced implementation efforts, and provided flexibility to use partnerships and other sources of funding to leverage programs to their full potential while working within resource and staff constraints (75 FR 57100, September 15, 2011). The 2011 NRP addressed TVA's management of programs and activities for six resource areas: Biological, cultural, and water resources; recreation; reservoir lands planning; and public engagement.

In the 2011 NRP, TVA committed to reviewing the NRP every five years and updating the plan as needed to ensure it remains relevant and current. In 2016, as part of the NRP review process, TVA staff reviewed the NRP and determined that a Blended Management approach continues to be the most appropriate and effective plan for managing the waters and public lands of the Tennessee River Valley. However, TVA determined that because the 2011 NRP did not encompass all of the resource stewardship programs managed by TVA, the NRP was not fully serving as the comprehensive strategic guide as was first envisioned. Based on this assessment, TVA determined that updating the NRP was the best path forward to address identified concerns. After developing the initial scope of changes needed, TVA initiated a NEPA review to supplement the 2011 Environmental Impact Statement.

Alternatives Considered

Consistent with the requirements of NEPA, TVA analyzed two alternatives in the NRP SEIS. Under the No Action

alternative (identified as Alternative A in the SEIS), TVA would not change the Blended Management approach outlined in the 2011 NRP to address management, programs, and activities for six resource areas.

Under its Proposed Action alternative (identified as Alternative B in the SEIS), TVA would continue implementing a Blended Management approach and update the NRP such that it would serve as a strategic document that addresses focus areas along with their programs, objectives, and anticipated benefits. Existing and proposed programs would be categorized into ten proposed focus areas, which represents an expansion of the NRP's focus from the original six resource areas to the ten focus areas that encompass the entire scope of TVA's natural resource stewardship efforts. The new focus areas in the updated NRP would address Section 26a Permits and Land Use Agreements; Public Land Protection; and Ecotourism. In addition, Nuisance and Invasive Species Management, which was addressed on a limited basis in the 2011 NRP, would be included in the updated NRP as the Nuisance and Invasive Species Management Focus Area. There are six resource areas in the 2011 NRP that would be carried forward to the updated NRP with changes to their names, programs, and/or activities: Reservoir Lands Planning; Land and Habitat Stewardship; Cultural Resource Management; Water Resources Stewardship; Recreation; and Public Outreach and Information. TVA would develop five-year action plans that guide implementation of the NRP. In the draft and final SEIS, TVA identified the Proposed Action alternative as its preferred alternative.

Public Involvement

On July 16, 2018, TVA published in the **Federal Register** a Notice of Intent (Notice) to conduct the environmental review of a proposed NRP update in accordance with NEPA and published information about the review and planning effort on the TVA web page (83 FR 32945, July 16, 2018). The Notice initiated a 30-day public scoping period, which concluded on August 20, 2018. TVA also issued a press release announcing that public input was being sought on the proposed update to the NRP and placed newspaper advertisements in 37 newspapers around the region to provide notice of the review, public scoping meetings, and to invite public comments. Media outlets across the region published or broadcast stories based on the release. TVA also notified approximately 250 individuals, organizations, and intergovernmental partners with an interest in the review or with prior involvement in TVA stewardship efforts.

TVA hosted four public scoping meetings at locations throughout the Tennessee Valley: Knoxville, Tennessee; Chattanooga, Tennessee; Muscle Shoals, Alabama; and Buchanan, Tennessee. The four public meetings were attended by a total of 66 people. TVA also hosted a public webinar to provide the public another opportunity to obtain information on the proposed update to the NRP; 28 people registered for the webinar.

On May 17, 2019, TVA issued the Draft NRP and Draft SEIS for public review and comment. The Environmental Protection Agency (EPA) published in the **Federal Register** a Notice of Availability on May 24, 2019, initiating a 45-day comment period (84 FR 24135, May 24, 2019). TVA provided notice to interested parties and published 37 newspaper advertisements around the region to notify the public of the release of the Draft NRP and Draft SEIS and that TVA would be hosting public open houses during the review period. In June 2019, TVA held four open houses to provide information and obtain public input on the proposed NRP updates. The open houses were held in Knoxville, Chattanooga, and Camden, Tennessee, and Muscle Shoals, Alabama. In addition, TVA hosted a webinar that included a presentation and question and answer session. During the 45-day public comment period, TVA received 19 submissions from the public, organizations, and state and Federal agencies.

After careful consideration of and response to all comments and refinement of the focus areas and their objectives and anticipated benefits, TVA issued the Final NRP and Final SEIS on February 14, 2020. A notice of availability for the Final NRP and Final SEIS was published in the **Federal Register** (85 FR 8585, February 14, 2020).

Throughout the NEPA process, TVA maintained a web page (*http://www.tva.gov/nrp*) to publish information and materials related to its proposal, including information about the NRP, meeting information, project updates, webinar presentations, relevant documents, and contact information.

Environmentally Preferred Alternative

TVA's Proposed Action, identified as Alternative B in the SEIS, is the environmentally preferred alternative. Under this alternative, the NRP would become a strategic document which includes focus area programs, objectives and anticipated benefits, and introduces four additional focus areas into the NRP. In addition, the five-year action plans provide a tactical approach to implement the specific activities associated with the ten focus areas' programs. This new framework would allow TVA to adapt more quickly to changes in interests, needs, and funding. Depending on the type and location of activities, there could be minor to moderate beneficial impacts on environmental resources on TVA lands. TVA also anticipates that the NRP's five-year action plans would likely result in more effective prioritization of future, site-specific projects that address environmental resources on TVA lands.

Comments on the Final SEIS

After publication of the Final SEIS, EPA provided comments to TVA in support of the proposed NRP and, in particular, TVA's intent to prepare annual updates of the five-year action plans. The EPA recommended that TVA continue to reevaluate the NRP as additional future programs become available and that the public remain involved in any NEPA document development for future changes to the NRP.

Errata

After publication of the Final SEIS, TVA found that there were minor differences between the depiction of the Land Use Planning Focus Area objectives in the main body of the NRP and the depictions included in the NRP's Executive Summary and the SEIS. The objectives described in the NRP Executive Summary correctly matched the SEIS, and TVA has updated the NRP accordingly. In addition, the title of one Public Land Protection Focus Area program in the main body of the NRP has been revised to match the title in the NRP Executive Summary and SEIS.

Decision

On May 7, 2020, the Board determined that updating the NRP as proposed and reviewed by TVA in the SEIS was in the best interest of TVA, and the Board accepted the proposed update and authorized its implementation by the TVA Chief Executive Officer. This decision was based on that alternative supporting a more strategic, flexible, and comprehensive approach to TVA's natural and cultural resource stewardship work and the corresponding benefits to stakeholders, customers, and the public.

Mitigation Measures

The natural and cultural resource management programs and activities associated with the NRP have been designed to result in minimal adverse environmental impacts during their implementation and to result in long-term beneficial impacts. During implementation of the NRP, TVA will continue to conduct site- or activity-specific environmental reviews of its actions as appropriate and will incorporate appropriate mitigation measures, including those identified through associated consultation processes, to address adverse impacts. In January 2020, TVA completed a programmatic agreement (PA) with the Advisory Council on Historic Preservation and seven State Historic Preservation Officers to address a suite of activities. In addition, 21 federally recognized Indian tribes were invited to be signatories to the agreement. The PA addresses TVA's compliance with Section 106 of the National Historic Preservation Act when implementing the various NRP activities.

David L. Bowling, Jr.

Vice President, River and Resources Stewardship.

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BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions and Amendments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On August 20, 2019, at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion. The additional duties on products in List 1, which is set out in Annex A of that action, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the action announced in the August 20 notice from 10 to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and make certain amendments to previously announced exclusions. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions in this notice apply as of September 1, 2019, the effective date of List 1 of the $300 billion action, and will extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler, Assistant General Counsel Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov*.

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 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), 85 FR 15244 (March 17, 2020), 85 FR 17936 (March 31, 2020), 85 FR 28693 (May 13, 2020), 85 FR 32098 (May 28, 2020), and 85 FR 35975 (June 12, 2020).

In a notice published on August 20, 2019, the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. 84 FR 43304 (August 20 notice). The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019, the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. *See* 84 FR 45821. On October 24, 2019, the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the $300 billion action from the additional duties. *See* 84 FR 57144 (October 24 notice). On December 18, 2019, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447. On January 22, 2020, the U.S. Trade Representative determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 to 7.5 percent. *See* 85 FR 3741.

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit subheading covered by the $300 billion action. Requestors also had to provide the ten-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product they purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.

• Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.

• Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objectives of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the $300 billion action no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 85 FR 13970. The U.S. Trade Representative granted additional exclusions in March, May, and June 2020. *See* 85 FR 15244, 85 FR 17936, 85 FR 28693, as modified by 85 FR 32098, and 85 FR 35975. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017*.

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the October 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in 61 specially prepared product descriptions, which together respond to 86 separate exclusion requests. In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the ten-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex. Paragraph B, subparagraphs (1)–(27) of the Annex contain technical corrections to address periodic revisions to the HTSUS subheadings in previously published exclusions.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

BILLING CODE 3290–F0–P

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.51 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.51	Articles the product of China, as provided for in U.S. note 20(ddd) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading"		

2. by inserting the following new U.S. note 20(ddd) to subchapter III of chapter 99 in numerical sequence:

"(ddd) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 Fed. Reg. 43304 (August 20, 2019), 84 Fed. Reg. 45821 (August 30, 2019), 84 Fed. Reg. 57144 (October 24, 2019) and 85 Fed. Reg. 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that, as provided in heading 9903.88.51, the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

1) Cynomolgus macaques (Macaca fascicularis) (also known as crab-eating macaques or long-tailed macaques) and rhesus macaques (Macaca mulatta), captive bred for research (described in statistical reporting number 0106.11.0000)
2) Feathers of a kind used for stuffing, of ducks or geese, not further worked than cleaned, disinfected or treated for preservation, the foregoing other than

feathers meeting both test standards 4 and 10.1 of Federal Standard 148a promulgated by the General Services Administration (described in statistical reporting number 0505.10.0060)

3) Baby bottle nipples of silicone plastics, whether or not presented with closure rings for attaching to bottles (described in statistical reporting number 3924.90.0500)

4) Compressive eye masks of blended cotton and spandex fabric, containing low-density polyethylene beads, of a kind used for mitigating migraine headaches or eyestrain (described in statistical reporting number 3924.90.5650)

5) Shower heads of plastics, designed to be fixed, hand-held, height-adjustable or combinations thereof, and parts of such shower heads (described in statistical reporting number 3924.90.5650)

6) A-Frame or sandwich board signs of plastics, which can be folded flat for storage and do not contain printed matter (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)

7) Brackets of plastics, suitable for mounting on a vertical surface, each measuring at least 90 mm but not more than 200 mm in height, at least 32 mm but not more than 80 mm in width and at least 64 mm but not more than 80 mm in depth (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)

8) Covers of plastics for battery compartments in combination weather sensors, each cover measuring not more than 90 mm in height by not more than 140 mm in width and valued over $0.60 but not over $0.70 per piece (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)

9) Tapered sound-dampening earplugs, each consisting of two plugs of foamed plastics connected by a plastic cord, each plug measuring not more than 3 cm in length and not more than 2 cm in diameter, presented with a carrying case of plastics measuring not more than 6.5 cm in length and not more than 4.5 cm in width (described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)

10) Wallpaper, other than described in subheading 4814.20.00, with floral, landscape, figure or abstract designs or solid backgrounds painted by hand, whether or not with applications of metal leaf (described in statistical reporting number 4814.90.0200)

11) Printed art and pictorial books, valued under $5 each, hardbound, each with silver foil cover and a depiction of the main character on the cover and silver foil and embossing on the dust jacket, with dimensions of at least 13.5 cm but not more than 14.5 cm in length by at least 21 cm but not more than 22 cm in height by at least 2 cm but not more than 3 cm in width and weighing at least

500 g but not more than 600 g (described in statistical reporting number 4901.99.0060)

12) Printed art and pictorial books, each valued at least $5 but not more than $17, each measuring at least 22 cm but not more than 39 cm in height and at least 14 cm but not more than 32 cm in width, weighing not more than 3 kg, with die-cut or tipped-in extra pages and bound with foil stamping or with silkscreen on the cover stock (described in statistical reporting number 4901.99.0065)

13) Dust covers of knitted polyester fabric, designed for bed mattresses and pillows (described in statistical reporting number 6302.10.0020)

14) Pillow covers, not knitted or crocheted, of woven fabrics in chief weight of cotton, with a thread count of at least 1,450/cm^2 but not more than 3,900/cm^2, each measuring at least 44 cm but not more than 57 cm in width and at least 62 cm but not more than 139 cm in length, incorporating a zippered opening (described in statistical reporting number 6304.92.0000)

15) Comforter shells of fabric in chief weight of polyester, each measuring at least 171 cm but not more than 202 cm in width and at least 227 cm but not more than 230 cm in length, weighing not more than 90 g/m^2, with an opening on one side (described in statistical reporting number 6307.90.9889)

16) Fabric shells for backrests in chief weight of polyester fabric (described in statistical reporting number 6307.90.9889)

17) Fabric shells for cushions in chief weight of polyester fiber, designed for use with seats of heading 9401 (other than seats for aircraft or motor vehicles) (described in statistical reporting number 6307.90.9889)

18) Shells for life jackets of manmade fibers (described in statistical reporting number 6307.90.9889)

19) Shells for pillows and comforters of microfiber fabric (described in statistical reporting number 6307.90.9889)

20) Athletic, recreational and sporting headgear comprising shells of polyvinyl chloride, polycarbonate plastic or acrylonitrile butadiene styrene, each with an inner liner of expanded polypropylene or expanded polystyrene, designed for use with bicycles (described in statistical reporting number 6506.10.6045)

21) Bright C1060 galvanized round wire, containing by weight 0.6 percent or more of carbon, measuring at least 0.034 mm but not more than 0.044 mm in diameter (described in statistical reporting number 7217.20.4530)

22) Bars and rods of high speed steel, not cold formed, of circular cross-section, in lengths of at least 10 cm but not more than 50 cm (described in statistical reporting number 7228.10.0010)

23) Seamless tubes, of circular cross-section, of 304L stainless steel, cold-rolled, with an external diameter of not more than 21.1 mm, with the thickness of the tube wall not more than 2.9 mm, each tube measuring at least 2,964 mm but not more than 6,350 mm in length (described in statistical reporting number 7304.41.6045)

24) Razors of stainless steel, each measuring at least 11 cm but not more than 13 cm in length, weighing not more than 100 g, having a single edge (described in statistical reporting number 8212.10.0000)
25) Sewing machines of the household type, each weighing not more than 22.5 kg, having a touch screen control, a sewing light, a presser foot lifter and an automatic needle threader (described in statistical reporting number 8452.10.0090)
26) Gasoline-powered earth-drilling power augers, each weighing not more than 16 kg, having a gasoline engine of a cylinder displacement not more than 55 cc and an output shaft connectable to an auger bit, whether or not presented with one or more auger bits (described in statistical reporting number 8467.89.5060)
27) Gasoline powered or propane-powered engines of a cylinder displacement not more than 80 cc, each machine including a fitted auger bit specially designed for cutting through ice covers of bodies of water (described in statistical reporting number 8467.89.5090)
28) Parts of hand-operated faucets, of copper, each weighing not more than 5 kg (described in statistical reporting number 8481.90.1000)
29) Parts of backflow preventer valves of iron or steel, including valve bodies (described in statistical reporting number 8481.90.3000)
30) Digital trail cameras able to capture and record still and moving images in visible light, each with an infrared sensor and lens, whether or not with light-emitting diode ("LED") lights, modem, antenna and control board, housed in a case of plastics, measuring not more than 16 cm in width, not more than 21 cm in length and not more than 13 cm in thickness (described in statistical reporting number 8525.80.4000)
31) Kits, each containing protective eyeglasses and ear protective devices (described in statistical reporting number 9004.90.0000)
32) Non-prescription spectacles, other than sunglasses (described in statistical reporting number 9004.90.0000)
33) Prism binoculars, other than for use with infrared light, comprising a plastic, aluminum or magnesium alloy body with a rubber jacket, with magnification ranging from at least 4X but not more than 22X and aperture ranging from at least 21 mm but not more than 56 mm (described in statistical reporting number 9005.10.0040)
34) Rotary microtomes (described in statistical reporting number 9027.90.2000)
35) Acoustic upright pianos, other than used, containing a case measuring less than 111.76 cm in height (described in statistical reporting number 9201.10.0011)
36) Acoustic upright pianos (other than used), each containing a case measuring 111.76 cm or more, but less than 121.92 cm in height (described in statistical reporting number 9201.10.0021)

37) Acoustic upright pianos (other than used), each containing a case measuring 121.92 cm or more but less than 129.54 in height (described in statistical reporting number 9201.10.0031)
38) Acoustic upright pianos (other than used), each containing a case measuring 129.54 cm or more in height (described in statistical reporting number 9201.10.0041)
39) Acoustic grand pianos (other than used), each containing a case measuring 152.4 cm or more but less than 167.64 cm in length (described in statistical reporting number 9201.20.0021)
40) Acoustic grand pianos (other than used), each containing a case measuring 167.64 cm or more but less than 180.34 cm in length (described in statistical reporting number 9201.20.0031)
41) Acoustic grand pianos (other than used), each containing a case measuring 180.34 cm or more but less than 195.58 cm in length (described in statistical reporting number 9201.20.0041)
42) Acoustic grand pianos (other than used), each containing a case measuring 195.58 cm or more in length (described in statistical reporting number 9201.20.0051)
43) Acoustic guitars, each with a soundboard measuring at least 2 mm but not over 4 mm in thickness, valued not over $100, excluding the value of the case (described in statistical reporting number 9202.90.2000)
44) Harp sharping levers of steel (described in statistical reporting number 9209.92.8000)
45) Parts of a kind used for adjusting motor vehicle seats, consisting of cables of steel in cable housings of plastics (described in statistical reporting number 9401.90.1085)
46) Parts of child safety seats incorporating springs (described in statistical reporting number 9401.90.1085)
47) Pillow shells of cotton, each filled with goose or duck down (described in statistical reporting number 9404.90.1000)
48) Quilted pillow shells of cotton (described in statistical reporting number 9404.90.1000)
49) Quilted pillow shells of man-made fibers (described in statistical reporting number 9404.90.2000)
50) Parts and accessories for the exercise machines of subheading 9506.91 (described in statistical reporting number 9506.91.0030)
51) Arrowheads of metal (described in statistical reporting number 9506.99.0520)
52) Spinning, spincast or baitcast fishing reels, valued over $8.45 each (described in statistical reporting number 9507.30.6000)
53) Paintings, drawings or pastels, each executed entirely by hand (the foregoing other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles), each measuring not more than 300 cm by not more than 2,000 cm (described in statistical reporting number 9701.10.0000)

54) Collages and similar decorative plaques, whether or not framed (described in statistical reporting number 9701.90.0000)
55) Original engravings, prints and lithographs, framed or not framed (described in statistical reporting number 9702.00.0000)
56) Original sculptures and statuary, in any material (described in statistical reporting number 9703.00.0000)
57) Postage stamps (described in statistical reporting number 9704.00.0000)
58) Collections and collectors' pieces of historical interest, the foregoing other than numismatic coins, archaeological pieces or ethnographic pieces (described in statistical reporting number 9705.00.0085)
59) Collectors' pieces of mineralogical interest (described in statistical reporting number 9705.00.0085)
60) Antique silverware of an age exceeding one hundred years (described in statistical reporting number 9706.00.0020)
61) Antique furniture of an age exceeding one hundred years (described in statistical reporting number 9706.00.0040)"

3. by amending the last sentence of the first paragraph of U.S. note 20(r):
   a. by deleting "or (5)" and by inserting "(5)" in lieu thereof; and
   b. by inserting "; or (6) heading 9903.88.51 and U.S. note 20(ddd) to subchapter III of chapter 99" after "U.S. note 20(bbb) to subchapter III of chapter 99".

4. by amending the article description of heading 9903.88.15:
   a. by deleting "9903.88.47 or" and by inserting "9903.88.47," in lieu thereof; and
   b. by inserting "or 9903.88.51" after "9903.88.49".

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. U.S. note 20(rr)(5) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "4818.90.0000" and inserting "4818.90.0000 prior to July 1, 2020; 4818.90.0020 or 4818.90.0080 effective July 1, 2020" in lieu thereof.
2. U.S. note 20 (uu)(1) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.

3. U.S. note 20 (uu)(2) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
4. U.S. note 20 (uu)(3) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9950 effective July 1, 2020)" in lieu thereof.
5. U.S. note 20 (uu)(4) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
6. U.S. note 20 (uu)(5) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
7. U.S. note 20 (uu)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
8. U.S. note 20 (uu)(7) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
9. U.S. note 20 (uu)(8) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.

10. U.S. note 20 (uu)(9) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9845, 6307.90.9850, 6307.90.9870, or 6307.90.9875 effective July 1, 2020)" in lieu thereof.
11. U.S. note 20 (uu)(10) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
12. U.S. note 20 (uu)(11) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
13. U.S. note 20 (uu)(12) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
14. U.S. note 20 (uu)(13) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
15. U.S. note 20 (uu)(14) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
16. U.S. note 20 (uu)(15) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9845, 6307.90.9850, or 6307.90.9870 effective July 1, 2020)" in lieu thereof.

17. U.S. note 20 (uu)(16) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
18. U.S. note 20 (uu)(17) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
19. U.S. note 20(ww)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
20. U.S. note 20(ww)(7) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
21. U.S. note 20(ww)(8) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
22. U.S. note 20(ww)(9) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
23. U.S. note 20(ww)(10) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.

24. U.S. note 20(ww)(11) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.
25. U.S. note 20(zz)(5) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
26. U.S. note 20(bbb)(6) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 3926.90.9990)" and inserting "(described in statistical reporting number 3926.90.9990 prior to July 1, 2020; described in statistical reporting number 3926.90.9985 effective July 1, 2020)" in lieu thereof.
27. U.S. note 20(bbb)(13) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "(described in statistical reporting number 6307.90.9889)" and inserting "(described in statistical reporting number 6307.90.9889 prior to July 1, 2020; described in statistical reporting number 6307.90.9891 effective July 1, 2020)" in lieu thereof.

[FR Doc. 2020–14916 Filed 7–9–20; 8:45 am]
BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0661]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules FAR 91 and FAR 107

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information required to process a request for a Minimum Equipment List (MEL) Letter of Authorization (LOA) in accordance with certain regulations prescribing general operating and flight rules. The information to be collected is necessary because a written request is required to obtain an MEL LOA. The information collected includes only those details essential to evaluate the request, approve the MEL, and issue the LOA.

DATES: Written comments should be submitted by September 8, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Dwayne C. Morris, 800 Independence Ave. SW, Washington, DC 20591.

By fax: 202–267–1078.

FOR FURTHER INFORMATION CONTACT: John Attebury by email at: *john.h.attebury@faa.gov;* phone: 281–443–5862.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules FAR 91 and FAR 107.

Form Numbers: None.

Type of Review: Renewal.

Background: A person who desires to operate an aircraft with inoperative instruments or equipment under the provisions of 14 CFR 91.213(a) must receive approval for their minimum equipment list and be issued an LOA to use that MEL. The person must submit the MEL for approval along with a written request for an LOA to the responsible Flight Standards office. The information collected includes only those details essential to evaluate the request, approve the MEL, and issue the LOA. This information includes the aircraft operator's name and address, the name and telephone number or email address of the person responsible for aircraft operations, aircraft make, model,

series, aircraft registration number, aircraft serial number, the proposed MEL, and nonessential equipment and furnishings list, if applicable.

The FAA currently issues MEL approvals under the provisions of § 91.213(a) through two methods: (1) D095 LOA and (2) D195 LOA. The FAA is simplifying § 91.213(a) MEL approvals by transitioning to one method of approval, LOA D195, and streamlining the application and approval process to reduce regulatory costs, burdens, and delays. While developing this new § 91.213(a) LOA policy, the FAA discovered that approval for information collection was inadvertently overlooked during the § 91.213 rulemaking process. We now seek to remedy that omission.

Respondents: Approximately 2,638 aircraft operators of U.S.-registered aircraft who desire to operate under 14 CFR 91.213(a).

Frequency: One time for the initial request for MEL approval and LOA issuance, and thereafter for MEL revision.

Estimated Average Burden per Response: 20 hours for initial approval; 4 hours for revision

Estimated Total Annual Burden: We estimate the average annual burden for the first 10 years will be 38,792 hours. Due to implementation of new MEL policy, we anticipate an annual burden of 55,392 hours for the first 5 years and 22,192 hours thereafter, resulting in a 10-year average of 38,792 hours per year. Our rationale follows:

The FAA Aerospace Forecast for Fiscal Years 2020–2040 projects the general aviation fleet to decline slightly, rounded up to an average of 0% change annually. Therefore, we will use the current average of 1308 part 91 MEL LOAs issued per year. Over the past 4 years, 81% of these LOAs were for initial MEL approval and 19% were for MEL revision. We estimate a 20 hour burden for an initial MEL request and a 4 hour burden for an MEL revision. This results in an annual burden of 22,192 hours.

$1{,}308 \times 81\% = 1{,}060$; $1{,}060 \times 20$ hours = 21,200 hours

$1{,}308 \times 19\% = 248$; 248×4 hours = 992 hours

21,200 hours + 992 hours = 22,192 hours

Additionally, there are 8,300 active D095 LOAs. The new FAA policy will phase out the use of D095 over five years. Holders of D095 LOAs who wish to operate under § 91.213(a) must request D195 LOA issuance. Therefore, on average, for the first 5 years, we anticipate an additional 1,660 MEL LOA requests. These would all be initial MEL requests and result in an additional 33,200 hours each year for the first 5 years.

$1{,}660 \times 20$ hours = 33,200 hours

Therefore, for the first 5 years, we anticipate an annual burden of 55,392 hours (22,192 + 33,200) and 22,192 hours thereafter, resulting in an average of 38,792 hours per year.

Issued in Washington, DC, on July 7, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–14952 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0066; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc., (Volkswagen) has determined that certain model year (MY) 2019 2020 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* Volkswagen filed a noncompliance report dated May 6, 2020, and later amended it on May 15, 2020. Volkswagen subsequently petitioned NHTSA on May 20, 2020, and later amended it on June 8, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Volkswagen's petition.

DATES: Send comments on or before August 10, 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 docket. 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: Volkswagen has determined that certain MY 2019 2020 Volkswagen and Audi motor vehicles do not fully comply with the requirements of paragraph S6(f)(3) of FMVSS No. 138, *Tire Pressure Monitoring Systems* (49 CFR 571.138). Volkswagen filed a

noncompliance report dated May 6, 2020, and later amended it on May 15, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen subsequently petitioned NHTSA on May 20, 2020, but amended it on June 8, 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 Volkswagen'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 299,043 of the following MY 2019–2020 Volkswagen and Audi motor vehicles manufactured between November 26, 2018, and February 19, 2020, are potentially involved:

- 2019–2020 Volkswagen Atlas
- 2020 Volkswagen Atlas Cross Sport
- 2019 Volkswagen Golf R
- 2019 Volkswagen Tiguan LWB
- 2019–2020 Volkswagen Jetta NF
- 2019–2020 Volkswagen Jetta GLI
- 2019 Volkswagen Golf Sportwagen A7
- 2019 Audi Q3
- 2019–2020 Volkswagen Golf GTI
- 2019 Volkswagen Golf Alltrack
- 2019–2020 Volkswagen Golf A7
- 2019–2020 Audi A3 Sedan
- 2019 Audi A3 Cabriolet

III. Noncompliance: Volkswagen explains that the noncompliance is that the subject vehicles are equipped with tire pressure monitoring systems (TPMS) that do not fully comply with the requirements set forth in paragraph S6(f)(3) of FMVSS No. 138. Specifically, when there is a simultaneous pressure loss on all four tires, in which pressure loss occurs at the same rate and time, the detection may not occur within the 20-minute timeframe specified in test procedure requirements.

IV. Rule Requirements: Paragraph S6(f)(3) of FMVSS No. 138 includes requirements relevant to this petition. The sum of the total cumulative drive time under paragraphs S6(f)(1) and (2) shall be the lesser of 20 minutes or the time at which the low tire pressure telltale illuminates.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, V. Summary of Volkswagen's Petition, are the views and arguments provided by Volkswagen. They have not been evaluated by the Agency and do not reflect the views of the Agency. Volkswagen 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, Volkswagen submitted the following reasoning:

1. A rapid tire pressure loss on one or more tires is accurately detected and the low tire pressure warning telltale will illuminate and warn the driver.

2. A pressure loss on fewer than four tires at the same time and rate will be detected, and the low tire pressure warning telltale will illuminate and warn the driver.

3. A simultaneous pressure loss on all four tires at the same rate will be detected and indicated to the driver, but not in the required 20 minutes. Internal tests have shown that in those tests where the pressure loss was not detected in 20 minutes, a warning to the driver was still shown in under 50 minutes. Volkswagen believes this behavior is not relevant for real world driving, as this particular diffusion scenario, involving all four tires at the same time and same rate, is very unlikely to happen in real world driving.

4. As of the production dates listed below, the condition has been corrected:

Volkswagen:

- 2019–2020 Volkswagen Golf vehicles, as of October 26, 2019;
- 2019 Volkswagen Golf Alltrack vehicles, as of October 26, 2019;
- 2019–2020 Volkswagen Golf GTI vehicles, as of October 26, 2019;
- 2019 Volkswagen Golf Sportwagen vehicles, as of August 28, 2019;
- 2019 Volkswagen Golf R vehicles, as of August 20, 2019;
- 2019–2020 Volkswagen Jetta vehicles, as of October 24, 2019;
- 2019–2020 Volkswagen Jetta GLI vehicles, as of October 24, 2019;
- 2019 Volkswagen Tiguan vehicles, as of August 18, 2019;
- 2019–2020 Volkswagen Atlas vehicles, as of February 20, 2020; and
- 2020 Volkswagen Atlas Cross Sport vehicles, as of July 25, 2019.

Audi:

- 2019–2020 Audi A3 vehicles, as of January 25, 2020;
- 2019 Audi A3 Cabriolet vehicles, as of July 13, 2019; and
- 2019 Audi Q3 vehicles, as of July 31, 2019.

5. The affected vehicles held at the factory have been corrected, and unsold units in dealer inventory will be corrected prior to sale.

6. Additionally, Volkswagen is not aware of any field or customer complaints related to this condition, nor has it been made aware of any accidents or injuries that have occurred as a result of this issue.

Volkswagen concluded by expressing its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition 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 Volkswagen 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 Volkswagen 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. 2020–14847 Filed 7–9–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of prompt payment interest rate; Contract Disputes Act.

SUMMARY: For the period beginning July 1, 2020, and ending on December 31, 2020, the prompt payment interest rate is 1⅛ per centum per annum.

DATES: The the prompt payment interest rate is applicable July 1, 2020, to December 31, 2020.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC

20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Senior Counsel, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2020, and ending on December 31, 2020, is 1⅛ per centum per annum.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2020–14763 Filed 7–9–20; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 12, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, August 12, 2020, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: July 2, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–14774 Filed 7–9–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 11, 2020.

FOR FURTHER INFORMATION CONTACT: Cedric Jeans at 1–888–912–1227 or 901–707–3935.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, August 11, 2020, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Cedric Jeans. For more information please contact Cedric Jeans at 1–888–912–1227 or 901–707–3935, or write TAP Office, 5333 Getwell Road, Memphis, TN 38118 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: July 2, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–14771 Filed 7–9–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, August 13, 2020, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website:

http://www.improveirs.org. The agenda will include various IRS issues.

Dated: July 2, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–14775 Filed 7–9–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 12, 2020.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Wednesday, August 12, 2020 at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: July 2, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–14773 Filed 7–9–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Information Collections for Claims Processing and Other Purposes Under the Terrorism Risk Insurance Program (Extension of Currently Approved Data Collections Under OMB No. 1505–0200 and Reinstatement of Lapsed Data Collection Under OMB No. 1505–0190)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and Request for Comments.

SUMMARY: The Secretary of the Treasury (Secretary) administers the Terrorism Risk Insurance Program (TRIP or Program), including the issuance of regulations and procedures regarding the Program. The Federal Insurance Office assists the Secretary in the administration of the Program. The Department of the Treasury (Treasury), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on (1) approved information collections that are due for extension by the Office of Management and Budget (OMB) (under OMB 1505–0200), relating to claims processing and other administrative matters under the Program; and (2) the reinstatement of an additional information collection previously approved by OMB (under OMB 1505–0190) that has lapsed, which Treasury also seeks to extend under OMB–1505–0200.

DATES: Written comments must be received not later than September 8, 2020.

ADDRESSES: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions are encouraged; however, comments may also be mailed to the Terrorism Risk Insurance Program, Room MT 1410, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

All comments, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. In general, Treasury will post all comments to *www.regulations.gov* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Treasury will also make such comments available for public inspection and copying in Treasury's Library, Freedman's Bank Building, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All visitors to the Treasury must be cleared by the Secret Service. This process requires that requests for appointments must be made a minimum of one business day before a visit.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (this is not a toll-free number), or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002, as amended (TRIA),[1] established the Terrorism Risk Insurance Program (TRIP or Program).[2] The Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an ''act of terrorism,'' as defined by TRIA. In order for the Program to make payments, the losses from an event must exceed certain thresholds and be in excess of participating insurer deductibles. Only ''acts of terrorism'' that have been certified as such by the Secretary (in consultation with the Attorney General and the Secretary of Homeland Security) are subject to the compensation provisions of the Program. In the event Treasury does make payments under the Program, it may be required, through surcharges imposed upon all commercial policyholders, to recoup some or all of any amounts expended.

Since the inception of the Program in 2002, Treasury has sought and obtained from the Office of Management and Budget (OMB) approvals for certain information collections that will be necessary if Treasury needs to process

[1] 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] *See* 31 CFR part 50.

claims for the Federal share of compensation, and potentially recoup amounts expended as required under TRIA.[3] Most of these information collections are managed through forms that have been developed by Treasury to permit participating insurers to demonstrate that they are entitled to payments for the Federal share of compensation. In some cases (as explained further in this Notice), the information collection is not subject to a specific form, but is based upon circumstances that may develop in the future, in the event the Program is triggered, or might be triggered, by the Secretary's certification of an act of terrorism.

In December 2019, the Terrorism Risk Insurance Program Reauthorization Act of 2019 extended the Program until December 31, 2027.[4] The recent reauthorization of the Program did not incorporate any changes that require revisions to current Program forms and collections, and Treasury seeks to extend these previously approved collections without change. No additional burdens are imposed by the renewal of the existing forms or collections, or in the reinstatement of the lapsed information collection, either in terms of the estimates of the number of insurers affected or time burdens for compliance.[5] None of the identified information will need to be reported unless there is a certified act of terrorism (including the information that an insurer seeking payment of the Federal share of compensation needs to provide), or in some cases where Treasury is considering certification of an act of terrorism. Treasury has designed the forms to identify elements that insurers already regularly collect in their ordinary course of business when handling insurance claims, which will minimize any burden associated with their completion.

Further information concerning each of these requirements is provided below.

II. Information Collections

A. Existing Information Collections Under OMB Number 1505–0200

Title: Terrorism Risk Insurance Program; Commercial Property and Casualty Insurers Submission for Federal Share of Compensation.

Abstract: This information collection addresses information that participating insurers must submit in support of their claims for payment of the Federal share of compensation. The forms identifying the information to be collected are as follows:

Treasury Form TRIP 01 (Notice of Deductible Erosion)
Treasury Form TRIP 02 (Certification of Loss (initial and supplementary))
Treasury Form TRIP 02A Schedule A (Declaration of Direct Earned Premium and Calculation of Insurer Deductible)
Treasury Form TRIP 02B Schedule B (Certification of Compliance with Section 103(b) of TRIA)
Treasury Form TRIP 02C Schedule C (Bordereau)

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 100.[6]

Estimated Average Time per Respondent:

Treasury Form TRIP 01: 1.0 hours × 1 response = 1 hours.

Treasury Form TRIP 02 (initial and supplementary): 1.5 hours × 6 responses = 9 hours.

Treasury Form TRIP 02A Schedule A: 6.5 hours × 1 response = 6.5 hours.

Treasury Form TRIP 02B Schedule B: 0.25 hours × 6 responses = 1.5 hours.

Treasury Form TRIP 02C Schedule C: 4 hours × 6 responses = 24 hours.

Estimated Total Annual Burden Hours: 4,200 hours.[7]

Title: Terrorism Risk Insurance Program; Litigation Management—Information Collection Regarding Proposed Settlements.

Abstract: This information collection addresses settlement approval requirements under the Program that were initially adopted by Treasury by regulation and subsequently incorporated by Congress within TRIA. For third-party claims that are in excess of certain thresholds, Treasury must provide advance approval of the settlement before it is finalized by the participating insurer. The information collection provides Treasury with the necessary information to evaluate claims subject to advance approval. The form identifying the information to be collected is as follows:

Treasury Form TRIP 03 (Notice of Proposed Settlement of Third Party Claim—Request for Approval).

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 100.

Estimated Average Time per Respondent: 4.0 hours.

Estimated Total Annual Burden Hours: 5,144 hours.[8]

Title: Recordkeeping Requirements for Insurers Compensated Under Terrorism Risk Insurance Program.

Abstract: This requirement is for the maintenance (recordkeeping) of an insurer's records that are relevant to claims for reimbursement by participating insurers and amounts paid by Treasury as the Federal share of compensation for insured losses. The recordkeeping is needed for Treasury to conduct investigations, confirmations, and audits, as required. 31 CFR 50.81(a) requires insurers to retain all records necessary to fully disclose material matters pertaining to insured losses. This record retention requirement is not subject to any common form or generalized reporting.

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Estimated Number of Respondents: 100.

Estimated Average Time per Respondent: 8.33 hours.[9]

Estimated Total Annual Burden Hours: 833 hours.

Title: Surcharge Records Maintenance

Abstract: This requirement is for the maintenance (recordkeeping) of an

[3] Annual collections of information and data, outside of the claims process, that are required under TRIA are addressed in a separate notice and comment process published elsewhere in this **Federal Register**.

[4] Public Law 116–94, 133 Stat. 2534.

[5] The burden estimates set forth below are the same estimates previously used by Treasury when seeking approval of these information collections.

[6] Although the number of insurers required to file claims will depend upon the size and nature of the event in question, Treasury has historically used a best estimate of 100 insurers that will have insured losses as a result of a certified act of terrorism that could lead to potential claims for payment of the Federal share of compensation under the Program.

[7] The burden estimate includes assumptions as to the number of times each form will need to be completed by an insurer making claims for the Federal share of compensation, as identified above, resulting in total hours for each of the 100 insurers of 42 hours.

[8] Based upon the assumptions that: (1) each of the 100 insurers will have 100 claims (or 10,000 in total), (2) that 1 in 7 claims will involve amounts above the approval threshold (or 1,429 claims), and (3) 90% of those claims will be settled, and thus trigger settlement approval reporting (1,286). This estimate of the number of claims that will require settlement approval reporting of 1,286, multiplied by the 4 hours estimated to complete the form, results in the total figure of 5,144 hours. The reporting burden on insurers has not changed, but the numbers have been corrected here due to a previous rounding error.

[9] This calculation includes assumptions as to the number of claims that will be received for which some marginal additional costs (estimated to be 5 minutes per claim) will be incurred by the affected insurer.

insurer's records that are relevant to any surcharges collected and remitted by insurers to Treasury. The recordkeeping is needed for Treasury to conduct investigations, confirmations, and audits, as required. 31 CFR 50.81(b) requires insurers to retain records pertaining to the collection of surcharges. This record retention requirement is not subject to any common form or generalized reporting.

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Estimated Number of Respondents: 2,000.

Estimated Average Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 8,000 hours.

Title: Recoupment Provisions of the Terrorism Risk Insurance Act (TRIA)

Abstract: Section 103(e) of TRIA extends authority to Treasury to conduct mandatory and discretionary recoupment (depending upon the circumstances presented) of federal payments made under the Program through policyholder surcharges. In order to determine the amount of recoupment that may be necessary, as well as implement any recoupment process that is required, Treasury may issue a data call for aggregate loss information. Accordingly, all insurers subject to TRIA will be required to create and maintain records concerning their direct written premium, surcharges, surcharge amounts collected, and surcharge amounts remitted to Treasury. The forms identifying the information to be collected are as follows:

Treasury Form TRIP 04A (Direct Written Premium and Monthly Surcharge Calculation)

Treasury Form TRIP 04B (Direct Written Premium and End of Year Calculation)

Treasury Form TRIP 05 (Data Call)

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 2,000 (TRIP 04A and TRIP 04B recoupment processing) and 200 (TRIP 05 data call)

Estimated Average Time per Respondent:

Treasury Forms TRIP 04A and TRIP 04B: 04A is 5 hours per month for 11 months, 04B is 5 hours during one month per year (combined, 60 hours per year).

Treasury Form TRIP 05: 5 hours.

Estimated Total Annual Burden Hours: 120,000 hours (TRIP 04A and TRIP 04B), and 1,000 hours (TRIP 05).

Title: Terrorism Risk Insurance Program; Cap on Annual Liability

Abstract: The Program is subject to a total annual cap of aggregate industry losses of $100 billion, and Treasury is directed under TRIA to advise Congress within 15 days of an ''act of terrorism'' whether estimated total losses are expected to exceed the cap.[10] In order to comply with the liability cap provisions of TRIA, Treasury may be required to conduct a data call for insured loss and deductible information to assess aggregate industry losses and determine if the $100 billion cap may be exceeded, as well as to determine and adjust the ''pro rata loss percentage'' to be applied against claim payments. The form identifying the information to be collected is as follows:

Treasury Form TRIP 05 (Terrorism Risk Insurance Program; Data Call)

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 200

Estimated Average Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 1,000 hours.

Title: Terrorism Risk Insurance Program; Certification Data Call

Abstract: In order for the Secretary to determine whether an event is subject to certification as an ''act of terrorism'' under TRIA and 31 CFR 50.62, Treasury may need to collect loss data and estimates from affected insurers in order to confirm that losses are above statutory thresholds. The information collection includes both actual loss data, as well as estimates that may be generated in the immediate aftermath of an event that do not constitute loss data but could inform the certification determination. The form identifying the information to be collected is:

Treasury Form TRIP 06 (Certification Data Call).[11]

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 20.

Estimated Average Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 300 hours.

Title: Terrorism Risk Insurance Program; Monthly Claims Report

Abstract: Treasury payments of the Federal share of compensation require that average industry losses reach a certain threshold even if the losses of a particular insurer are in excess of its deductible. Pursuant to 31 CFR 50.53, the monthly claims report provides for truncated monthly reporting of losses so that Treasury may evaluate loss experience as it develops, and make timely payments to insurers entitled to the Federal share of compensation. The report will enable payments to smaller insurers that cannot demonstrate, based upon their own losses, that the Program Trigger amount has been reached. The form identifying the information to be collected is as follows:

Treasury Form TRIP 07 (Monthly Claims Report)

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 100.

Estimated Average Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 9,600 hours.[12]

Title: Terrorism Risk Insurance Program; Commutations Under Final Netting Rule

Abstract: Under 31 CFR 50.76(b), the Secretary may set a final netting date, at which time all claims relating to an insured loss or act of terrorism become final. As part of a final netting determination, Treasury may require (or consider the request of a particular insurer for) a commutation of an insurer's future claims for the Federal share of compensation. This process could require the insurer to produce information justifying a final payment estimate, including supporting actuarial factors and methodology. This information collection is not subject to any common form or generalized reporting requirement, as it will necessarily be tailored to the circumstances presented by a particular

[10] TRIA § 103(e)(3).

[11] Although potentially available for the collection of information, the Certification Data Call will not need to be utilized if Treasury is able to confirm that statutory thresholds will, or will not, be met through other means. *See* 31 CFR 50.62(b).

[12] The burden estimate includes the assumption that the monthly report will need to be completed each month over a 48-month period as all claims are resolved. Each monthly report will take 2 hours during this 48-month period, resulting in 96 hours per each insurer, or 9,600 hours for all 100 insurers combined.

insurer, which will need to be determined at the time any particular commutation process takes place.

Type of Review: Extension of a currently approved data collection.

Current Expiration Date: September 30, 2020.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 15

Estimated Average Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 600 hours.

B. Reinstatement of Previously Approved Information Collection

Former OMB Number: 1505–0190.

Title: Terrorism Risk Insurance Program; Rebuttal of Controlling Influence Submissions

Abstract: Treasury has promulgated procedures at 31 CFR 50.7 for an insurer to follow in seeking to rebut a regulatory presumption of ''controlling influence'' over another insurer (which, because of the way in which the Program operates, would affect the amount of direct earned premium attributable to the insurer's deductible calculation). These procedures require insurers to provide Treasury necessary information to determine whether a ''controlling influence'' exists, and if it does, whether it has been rebutted. This information collection is not subject to any common form or generalized reporting requirement, as it will necessarily be tailored to the circumstances presented by the ''controlling influence'' issue presented by a particular insurer. No assurance of confidentiality is provided, although applicable exemptions under the Freedom of Information Act could apply, *e.g.,* to any confidential business or trade secret material submitted.

Type of Review: Reinstatement of a previously approved information collection.

Affected Public: Business/Financial Institutions.

Estimated Number of Respondents: 10.

Estimated Average Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 400 hours.

All of the forms and associated instructional materials are available for review on Treasury's website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/federal-share-claim-process.*

Request for Comments: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collections; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2020–14942 Filed 7–9–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program—Data Collection Forms (Extension of Currently Approved Data Collection Under OMB No. 1505–0257)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and Request for Comments.

SUMMARY: The Secretary of the Treasury (Secretary) administers the Terrorism Risk Insurance Program (TRIP or Program), including the issuance of regulations and procedures regarding the Program. The Federal Insurance Office (FIO) assists the Secretary in the administration of the Program. The Department of the Treasury (Treasury), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on approved information collections for annual data collection that are due for extension by the Office of Management and Budget (OMB) (under OMB 1505–0257). These forms will be used, beginning in calendar year 2021, in connection with both the federal and state annual data calls regarding terrorism risk insurance. State insurance regulators, through the National Association of Insurance Commissioners (NAIC), will separately seek comment from stakeholders on the state data call.

DATES: Submit comments on or before September 8, 2020.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail to the Federal Insurance Office, Attn: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delays, it is recommended that comments be submitted electronically. If submitting comments by mail, please submit an original version with two copies. Comments concerning the proposed data collection forms and collection process should be captioned with ''TRIP Data Call Form Comments.'' Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (not a toll-free number), or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, at (202) 622–3220 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002, as amended (TRIA),[1] established the Terrorism Risk Insurance Program (TRIP or Program).[2] Reauthorized through 2027, the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an ''act of terrorism,'' as defined by TRIA. The Act requires the Secretary to perform periodic analyses of certain matters concerning the Program. In order to assist the Secretary with this process, TRIA requires insurers to submit on an annual basis certain insurance data and information regarding their participation in the Program.[3]

[1] 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] *See* 31 CFR part 50.

[3] TRIA § 104(h).

Treasury began collecting data from insurers in 2016 on a voluntary basis,[4] and on a mandatory basis beginning in 2017.[5] In 2018, Treasury and state insurance regulators (which also collect information on terrorism risk insurance in separate data calls) agreed on joint reporting templates substantially similar to those used by Treasury in prior years. The forms that are currently approved for use, and which were utilized during the 2020 TRIP data call, expire effective September 30, 2020. Treasury seeks to continue to use the same forms for the next three-year period, without changes except for non-material modifications each year relating to the dates for which data is sought and the incorporation of relevant Program thresholds, and changes to the modeled loss question that is posed each year to estimate the potential impact upon the Program from hypothetical terrorism loss events.

Pursuant to TRIA, Treasury has evaluated whether publicly available sources can supply the information needed in the annual data call. Information relating to workers' compensation exposures is available from the workers' compensation rating bureaus, and Treasury will continue to coordinate with those entities to provide that information on behalf of participating insurers. Treasury has determined, however, that all other data components remain unavailable from other sources. Accordingly, Treasury will continue to request this remaining data and information directly from insurers. By continuing to collect information on a consolidated basis with state regulators, however, a significant reduction in overall data collection burdens for participating insurers is achieved.

II. Data Collection Process

Treasury expects the data collection process to remain the same while the proposed forms are in effect. Treasury again proposes to use four different data collection forms (*see* 31 CFR 50.51(c)), depending on the type of insurer involved. Insurers will fill out the form identified ''Insurer (Non-Small) Groups or Companies,'' unless the insurer meets the definition of a small insurer, captive insurer, or alien surplus lines insurer as set forth in 31 CFR 50.4. Such small insurers, captive insurers, and alien surplus lines insurers are required to complete separate tailored forms. Separate instructions providing guidance on each requested data element accompany each form. There are reporting thresholds that affect which form a particular insurer needs to complete, or whether the insurer is subject to reporting at all. Reporting insurers submit information to Treasury through a portal managed by a data aggregator retained by Treasury, as required by TRIA; state regulators require insurers to submit the same information for state purposes through a portal operated by New York State.

Treasury will issue a **Federal Register** Notice each year identifying when the data collection portal is open to receive submissions, identifying any non-material changes to the reporting forms and instructions, and providing further technical details respecting the reporting. To the extent Treasury determines to make any material changes to the existing data collection forms, it will provide public notice and opportunity to comment, incidental to an application for approval to OMB.

III. Request for Comments

Copies of the existing forms and associated explanatory materials are available for electronic review on the Treasury website at *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program/annual-data-collection.* Treasury is requesting public feedback on the content of these reporting forms. In particular, Treasury requests feedback on the Places of Worship worksheet, which is contained within each of the reporting forms. This worksheet was a new reporting requirement first instituted in 2020, in response to changes contained within the Terrorism Risk Insurance Program Reauthorization Act of 2019.[6] As a result, Treasury has not previously submitted this worksheet for public notice and comment. Treasury seeks any suggestions for how this Places of Worship worksheet might be improved, particularly based upon the experience of reporting insurers using it during the 2020 TRIP data call.

IV. Procedural Requirements

Paperwork Reduction Act. The collection of information contained in this notice will be submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Comments should be sent to Treasury in the form discussed in the **ADDRESSES** section of this notice. Comments on the collection of information should be received by September 8, 2020.

Comments are being sought with respect to the collection of information in the proposed annual TRIP data call. *Treasury specifically invites comments on:* (a) Whether the proposed collection is responsive to the statutory requirement; (b) the accuracy of the estimate of the burden of the collections of information (*see below*); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to use automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The information sought by Treasury comprises data elements that insurers currently collect or generate, although not necessarily grouped together the way in which insurers currently collect and evaluate the data. Based upon insurer submissions to the 2020 TRIP data call, Treasury estimates that for purposes of future annual TRIP data calls, approximately 100 Program participants will be required to submit the ''Insurer (Non-Small) Groups or Companies'' data collection form, 200 Program participants will be required to submit the ''Small Insurer'' form, 550 Program participants will be required to submit the ''Captive Insurer'' form, and 50 Program participants will be required to submit the ''Alien Surplus Lines Insurers'' form.

Treasury has previously analyzed the potential burdens associated with completing the annual TRIP data call forms. *See* 81 FR 95310, 95312 (December 27, 2016). That prior estimate, however, did not include the additional burden of completing the new Places of Worship worksheet, which Treasury estimates at approximately 10 additional hours for those insurers required to complete it. Treasury does not anticipate, however, that every reporting insurer will be required to complete the Places of Worship worksheet, since some may not provide insurance to Places of Worship.

Treasury expects each set of reporting templates to incur a different level of burden. Treasury now anticipates, once an additional weighted average charge is included to account for those insurers that will now need to complete the Places of Worship worksheet,[7] that

[4] 81 FR 11649 (March 4, 2016).

[5] A reporting exemption was extended to small insurers that wrote less than $10 million in TRIP-eligible lines premiums in 2016. *See* 81 FR 95310 (December 27, 2016); 82 FR 20420 (May 1, 2017).

[6] Public Law 116–94, 133 Stat. 2534.

[7] The additional weighted charge is based upon the preliminary results of the 2020 TRIP data call, in which the Places of Worship worksheet was used for the first time and provided information concerning the number of insurers that completed it. Since not all insurers complete the worksheet,

Continued

approximately 82 hours will be required on average to collect, process, and report the data for each non-small insurer; approximately 28 hours will be required to collect, process, and report data for each small insurer; approximately 51 hours will be required to collect, process, and report data for each captive insurer; and approximately 51 hours will be required to collect, process, and report data for each alien surplus lines insurer.

Assuming this breakdown, and when applied to the number of reporting insurers anticipated in light of prior experience, the estimated annual burden would be 44,400 hours ((100 non-small insurers × 82 hours) + (200 small insurers × 28 hours) + (550 captive insurers × 51 hours) + (50 alien surplus lines insurers × 51 hours)). At a blended, fully loaded hourly rate of $50.50,[8] the cost would be $2,242,200 across the industry as a whole, or $4,141 per each non-small insurer ($50.50 × 82 hours), $1,414 per each small insurer ($50.50 × 28 hours), $2,576 per each captive insurer ($50.50 × 51 hours), and $2,576 per each alien surplus lines insurer ($50.50 × 51 hours).

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2020–14943 Filed 7–9–20; 8:45 am]

BILLING CODE 4810–25–P

the full estimate of an additional 10 hours to complete the worksheet is weighted accordingly across the total number of responding insurers.

[8] Based on data from the Bureau of Labor Statistics, for *Insurance Carriers and Related Activities, https://www.bls.gov/iag/tgs/iag524.htm.* The average wage rate for all insurance employees was $37.52 in March 2020, and the total benefit compensation in the 4th Quarter of 2019 was 34.6%, which is a benefit multiplier of 1.346. Therefore, a fully-loaded wage rate for insurance employees is $50.50, or $37.52 × 1.346.

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection Activity Under OMB Review: Application for Supplemental Service-Disabled Veterans Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0539.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0539'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Application for Supplemental Service-Disabled Veterans Insurance, VA Forms 29–0188 and 29–0189.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188 and 29–0189 are used by eligible insureds to apply for Supplemental Service-Disabled Veterans Insurance. Collection of the required information is required to implement the provisions of Public Law 102–568 which expanded the insurance coverage available under 38 U.S.C. Section 1922.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR on March 30, 2020, pages 17620 and 17621.

Affected Public: Individuals and Households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 10,000.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–14821 Filed 7–9–20; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0833; FRL–10006–94–OAR]

RIN 2060–AU19

National Emission Standards for Hazardous Air Pollutants: Site Remediation Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Site Remediation source category regulated under national emission standards for hazardous air pollutants (NESHAP). The U.S. Environmental Protection Agency (EPA) is finalizing the proposed determination that risks due to emissions of air toxics from site remediation sources are acceptable and that no revision to the standards is required to provide an ample margin of safety to protect public health. Based on the results of our technology review, we are promulgating the proposed changes to the leak detection and repair (LDAR) program. In addition, the EPA is finalizing amendments to revise regulatory provisions pertaining to emissions during periods of startup, shutdown and malfunction (SSM), including finalizing work practice requirements for pressure relief devices (PRDs) and the 240-hour maintenance period for control devices on tanks. We are finalizing requirements for electronic submittal of semiannual reports and performance test results. Finally, we are making minor clarifications and corrections. The final revisions to the rule will increase the level of emissions control and environmental protection provided by the Site Remediation NESHAP.

DATES: This final rule is effective on July 10, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 10, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0833. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Eastern Standard Time (EST) Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Matthew Witosky, Sector Policies and Programs Division (E143–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2865; fax number: (919) 541–0516; and email address: *witosky.matthew@epa.gov.* For specific information regarding the risk modeling methodology, contact Matthew Woody, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1535; fax number: (919) 541–0840; and email address: *woody.matthew@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building (Mail Code 2227A), 1200 Pennsylvania Avenue NW, Washington DC 20460; telephone number: (202) 564–7042; and email address: *Mia.Marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACC American Chemistry Council
ADAF age-dependent adjustment factors
API American Petroleum Institute
APR amino and phenolic resins
ASTM American Society for Testing and Materials
CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CFR Code of Federal Regulations
CRA Congressional Review Act
EFH Exposure Factors Handbook
EPA Environmental Protection Agency
EtO ethylene oxide
HAP hazardous air pollutant(s)
HCl hydrochloric acid
NEI National Emissions Inventory
HHRAP Human Health Risk Assessment Protocol
HI hazard index
HQ hazard quotient
IARC International Agency for Research on Cancer
IBR incorporation by reference
ICR Information Collection Request
LDAR leak detection and repair
MACT maximum achievable control technology
MIR maximum individual risk
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OEHHA California Office of Environmental Health Hazard Assessment
OEL open-ended line
OMB Office of Management and Budget
PAH polycyclic aromatic hydrocarbon
PB–HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment
PCDDs polychlorinated dibenzodioxins
PCDFs polychlorinated dibenzofurans
POM polycyclic organic matter
ppm parts per million
ppmw parts per million by weight
PRD pressure relief device
REL reference exposure level
RFA Regulatory Flexibility Act
RMMU remediation material management unit
RTR residual risk and technology review
SAB Science Advisory Board
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act

Background information. On September 3, 2019, the EPA proposed revisions to the Site Remediation NESHAP based on our RTR. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the National Emission Standards for Hazardous Air Pollutant Emissions: Site Remediation Summary of Public Comments and Responses on Proposed Rule (84 FR 46138; September 3, 2019), Docket ID No. EPA–HQ–OAR–2018–0833. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category	NESHAP	NAICS code [1]
Industry	40 CFR part 63, subpart GGGGG	325211 325192 325188 32411 49311 49319 48611 42269 42271
Federal Government		Federal agency facilities that conduct Site Remediation activities.

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/siteremediation-national-emissionstandards-hazardous-air.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous.* This information includes an overview of the RTR program and links to project websites for the RTR source categories.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by September 8, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised

with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to, those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 84 FR 46138 (September 3, 2019).

B. What is the Site Remediation source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the final Site Remediation NESHAP at 68 FR 58172 (October 8, 2003). The NESHAP applies to ''remediation material.'' Site remediation means one or more activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material. Monitoring or measuring of contamination levels in media, whether by using wells, sampling, or other means, is not considered to be a Site Remediation. The rule applies only to active remedial operations at sites that are major sources with affected facilities subject to another MACT standard. The Site Remediation NESHAP applies to various types of affected sources including process vents, remediation material management units, and equipment leaks. The affected source for process vents is the entire group of process vents associated with the in-situ and ex-situ remediation processes used at the site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material. Examples of process vents for in-situ remediation processes include the discharge vents to the atmosphere used for soil vapor extraction and underground bioremediation processes. Examples of process vents for ex-situ remediation processes include vents for thermal desorption, bioremediation, and stripping processes (air or steam stripping). The affected source for remediation material management units is the entire group of tanks, surface impoundments, containers, oil-water separators, and transfer systems used for the Site Remediation activities involving clean-up of remediation material. The affected source for equipment leaks is the entire group of remediation equipment components (pumps, valves, etc.) that is intended to operate for 300 hours or more during a calendar year in remediation material service and that contains or contacts remediation material having a concentration of regulated HAP equal to or greater than 10 percent by weight.

The Site Remediation MACT standards include a combination of equipment standards, work practice standards, operational standards, and performance standards for each of the

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (DC Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

affected emission sources noted above. The source category covered by this MACT standard currently includes approximately 30 facilities.

C. What changes did we propose for the Site Remediation source category in our September 3, 2019, proposal?

On September 3, 2019, the EPA published proposed amendments in the **Federal Register** for the Site Remediation NESHAP, 40 CFR part 63, subpart GGGGG, that took into consideration the RTR analyses and also proposed other revisions. The proposed revisions included the following:

- Revisions to the equipment leak requirements to require the use of the leak detection thresholds of 40 CFR part 63, subpart UU for valves and pumps, rather than the thresholds of 40 CFR part 63, subpart TT;
- Revisions to requirements related to emissions during periods of SSM;
- The addition of requirements for electronic submittal of semiannual reports and performance tests;
- Removal of the 240-hour exemption from control requirements for planned routine maintenance of emissions control systems;
- Clarifications to the ''sealed'' requirement of the provisions for open-ended lines (OELs);
- Addition of work practice and monitoring requirements for PRDs; and
- Several minor clarifications and corrections.

D. What other actions did we take for the Site Remediation source category in our September 3, 2019, proposal?

Within the RTR proposal, the EPA separately solicited comment on ways in which the Site Remediation NESHAP could be amended with respect to facilities currently exempt under 40 CFR 63.7881(b)(2) and (3), under a scenario where the EPA removes the exemption. The exemption applies to facilities subject to federally-enforceable oversight under the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In particular, in light of comments received on our 2016 proposal to remove the exemption, the Agency sought additional comment regarding subcategorization or other methods of distinguishing among appropriate requirements for such sources. We explained our intention to use this opportunity to gather additional information in anticipation of addressing these issues through a separate action.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Site Remediation source category and amends the SR NESHAP based on those determinations. We are also finalizing other proposed changes to the NESHAP and other changes made in consideration of comments received during the public comment period for the proposed rulemaking. In the following subsections, we summarize the final amendments to the Site Remediation NESHAP.

We are not finalizing any changes at this time to the exemption from the Site Remediation NESHAP requirements available for federally-overseen Site Remediations under RCRA or CERCLA, pursuant to 40 CFR 63.7881(b)(2) and (3). The agency is continuing to review comments related to our solicitation on this issue in the RTR proposal, see 84 FR 46167–69 (September 3, 2019), and comments on the May 13, 2016, proposal regarding the exemption (81 FR 29812), and intends to address this issue in a separate action.

A. What are the final rule amendments based on the risk review for the Site Remediation source category?

For the Site Remediation source category, we have determined that the current NESHAP reduces risk to an acceptable level, provides an ample margin of safety to protect public health, and prevents adverse environmental effects. Therefore, as we proposed, it is not necessary to revise the NESHAP pursuant to CAA section 112(f).

B. What are the final rule amendments based on the technology review for the Site Remediation source category?

We have determined that there have been developments in practices, processes, and control technologies that warrant revisions to the Site Remediation NESHAP. Therefore, to satisfy the requirements of CAA section 112(d)(6), and as we proposed, we are revising the NESHAP to require facilities to use the leak detection thresholds of 40 CFR part 63, subpart UU for valves and pumps, rather than those of 40 CFR part 63, subpart TT. For other Site Remediation emissions sources, we have determined that, as we proposed, there are no viable developments in HAP emission reduction practices, processes, or control technologies to apply, considering the technical feasibility, estimated costs, and emission reductions of the options identified.

C. What are the final rule amendments pursuant to CAA section 112(d)(2) and (3) for the Site Remediation source category?

Consistent with the Court's ruling in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), we are finalizing the proposed requirements, with two minor modifications, for safety devices, bypasses and closure devices on pressure tanks, and PRDs to ensure a standard continuously applies during malfunctions that result in an emissions release directly to the atmosphere (*i.e.,* an actuation event). These final requirements include work practices that consist of conducting an analysis of the cause of a PRD actuation event and the implementation of corrective measures. In addition, we are finalizing the proposed criteria for what constitutes a deviation from the work practice requirements. We are also finalizing the proposed requirement that PRDs be monitored with a device or monitoring system that is capable of (1) identifying the pressure release; (2) recording the time and duration of each pressure release; and (3) notifying operators immediately that a pressure release is occurring. Finally, we are finalizing the proposed recordkeeping and reporting requirements associated with releases to the atmosphere from bypasses and PRDs.

In response to comments received on the proposed rule, we are making two modifications to the proposed requirements and one change to the estimate of costs associated with PRD monitoring. One modification is to exclude PRDs on containers from the PRD work practice standards and monitoring requirements, and the other modification is to clarify when a PRD is subject to LDAR requirements and when a PRD is subject to the PRD actuation event work practice requirements. We have also revised the economic analysis for the adoption of the proposed PRD monitoring requirements to reflect the purchase of monitoring equipment for some facilities rather than assuming all facilities already have adequate monitoring systems.

D. What are the final rule amendments addressing emissions during periods of SSM?

With one exception, we are finalizing changes to the Site Remediation NESHAP to eliminate the SSM exemption as proposed. Consistent with *Sierra Club* v. *EPA,* 551 F. 3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. Table 3 to Subpart GGGGG of Part 63 (General Provisions applicability

table) is being revised to change several references related to requirements that apply during periods of SSM. We also eliminated or revised certain recordkeeping and reporting requirements related to the eliminated SSM exemption. The EPA also made changes to the rule to remove or modify inappropriate, unnecessary, or redundant language in the absence of the SSM exemption. We determined that facilities in this source category can meet the applicable emission standards in the Site Remediation NESHAP at all times, including periods of startup and shutdown; therefore, the EPA determined that no additional standards are needed to address emissions during these periods.

In response to comments received on the proposed rule, the EPA is making a change to the 240-hour annual control system bypass allowance for planned routine maintenance of a closed vent system or control device. Rather than remove this allowance for all control systems, the final rule will retain the allowance with the addition of a work practice requirement for storage tank control devices and closed vent systems.

E. What other changes have been made to the NESHAP?

This rule also finalizes revisions to several other Site Remediation NESHAP requirements. We describe the revisions in the following paragraphs.

To increase the ease and efficiency of data submittal and data accessibility, we are finalizing, as proposed, a requirement that owners or operators of site remediation facilities submit electronic copies of required performance test reports, performance evaluation reports, and semi-annual compliance reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI).

As proposed, the EPA is not establishing emission standards for inorganic or metal HAP.

Based on comments received on the proposed provisions for OELs, we are not finalizing the proposed language in the Site Remediation NESHAP that OELs are ''sealed'' by a cap, blind flange, plug or second valve when instrument monitoring of the OEL conducted according to EPA Method 21 of 40 CFR part 60, appendix A indicates no readings of 500 parts per million (ppm) or greater. Since OELs are present at many facilities, additional consideration of the proposed change would be appropriate because there are multiple source categories that cross-reference the same equipment and operational requirements for OELs. We continue to believe it is important that the standard to seal the OEL includes a clear mechanism for a source to demonstrate compliance with that requirement. Therefore, the EPA intends to continue to evaluate appropriate means of compliance certainty for OELs, including the term ''sealed,'' and is not finalizing any revisions to the OEL standards applicable to Site Remediation in this action. The EPA emission estimates used in the risk modeling are based on reported emissions and we did not estimate HAP reductions from the proposed approach. For this reason, this decision not to finalize the OEL provisions does not alter our analysis of estimated emissions, risks, and decisions related to risk.

We are finalizing, as proposed, several miscellaneous minor changes to improve the clarity of the rule requirements.

F. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on July 10, 2020.

The compliance date for existing affected sources for the revised SSM requirements is 180 days after the effective date of the standard, January 6, 2021. The requirements for electronic reporting requirements, the revised routine maintenance provisions, the operating and pressure management requirements for PRDs, and the revised requirements regarding bypasses and closure devices on pressure tanks is 180 days after the effective date of the standard, January 6, 2021.

For electronic reporting, we have experience with similar industries shows that a time period of a minimum of 90 days, and more typically 180 days, is generally necessary to successfully complete the changes required to convert reporting mechanisms, including the installation of the necessary hardware and software, becoming familiar with the process of submitting performance test results electronically through the EPA's CEDRI, testing these new electronic submission capabilities, reliably employing electronic reporting, and converting the logistics of reporting processes to different time-reporting parameters.

We are finalizing the 180-day compliance date for the other requirements listed above for existing affected sources because we are finalizing changes to the requirements for SSM by removing the exemption from the requirements to meet a standard during SSM periods and by removing the requirement to develop and implement an SSM plan, as proposed. We have experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the standards during periods of SSM; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements.

The compliance date for existing affected sources to comply with the new PRD actuation work practice standard, including monitoring requirement and actuation event reporting requirements, under 40 CFR 63.7923 is 18 months from the effective date of the final amendment, January 10, 2022. This time period will allow Site Remediation facility owners and operators to research equipment and vendors, and to purchase, install, test, and properly operate any necessary equipment by the compliance date.

For equipment leaks, the compliance date for existing affected sources is 1 year from the effective date of the standards, July 10, 2021. This time period is necessary to allow existing affected sources that are currently complying with 40 CFR part 63, subpart TT, adequate time to modify their existing LDAR programs to comply with the revised standards for pumps and valves.

New affected sources must comply with all of the standards and requirements of the amended rule immediately upon the effective date of the final amendments, July 10, 2020, or upon startup, whichever is later.

IV. What is the rationale for our final decisions and amendments for the Site Remediation source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the comment summary and response document available in the docket (Docket ID No. EPA–HQ–OAR–2018–0833).

A. Residual Risk Review for the Site Remediation Source Category

1. What did we propose pursuant to CAA section 112(f) for the Site Remediation source category?

Pursuant to CAA section 112(f), we conducted a residual risk assessment for both affected sources and sources exempt from Site Remediation NESHAP requirements pursuant to 40 CFR 63.7881(b)(2) or (3) (*i.e.,* ''RCRA/CERCLA-exempt sources'') and presented the results of these assessments separately, along with our proposed decisions regarding risk acceptability and ample margin of safety for affected sources, in the September 3, 2019, RTR proposal (84 FR 46138).[2] The residual risk assessments for the Site Remediation source category included assessment of cancer risk, chronic noncancer risk, and acute noncancer risk due to inhalation exposure, as well as multipathway exposure risk and environmental risk. The results of the risk assessment for affected sources are presented briefly below in Table 2 of this preamble and in more detail in the residual risk document, *Residual Risk Assessment for the Site Remediation Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking. The results of the risk assessment for the RCRA/CERCLA-exempt sources are presented briefly below in Table 3 of this preamble and in more detail in the residual risk document, *Residual Risk Assessment for Exempt Sources in the Site Remediation Source Category in Support of the 2020 Risk and Technology Review Final Rule,* which is available in the docket for this rulemaking.

The results of the assessment for affected sources indicated that maximum inhalation cancer risk to the individual most exposed is 1-in-1 million based on actual and allowable emissions (actual emissions were assumed to equal allowable emissions), which is well below the presumptive limit of acceptability (*i.e.,* 100-in-1 million). The total estimated cancer incidence based on actual and allowable emission levels is 0.001 excess cancer case per year, or 1 case every 1,000 years. In addition, the maximum chronic noncancer target organ specific hazard index (TOSHI) due to inhalation exposures is less than 1. The evaluation of acute noncancer risk, which was conservative, showed a maximum hazard quotient (HQ) of 1 for all Site Remediation facilities. Based on the results of the screening analyses for human multipathway exposure to, and environmental impacts from HAP known to be persistent and bio-accumulative in the environment (PB–HAP), we also concluded that the risks to the individual most exposed through ingestion is below the level of concern and no ecological benchmarks are exceeded. The facility-wide cancer and noncancer risks were estimated based on the actual emissions from all emissions sources at site remediation facilities, including those not within the Site Remediation source category. For facility-wide emissions, the maximum lifetime individual cancer risk to the individual most exposed is 1,000-in-1 million from ethylene oxide (EtO) and the noncancer TOSHI is 5.

TABLE 2—SITE REMEDIATION INHALATION RISK ASSESSMENT RESULTS FOR AFFECTED SOURCES

Number of facilities [1]	Maximum individual cancer risk (in 1 million)	Estimated population at increased risk of cancer ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on Actual Emissions Level [2] [3]				
102	1	400	0.001	0.1	HQ_{REL} = 1 (arsenic compounds).
	Based on Whole Facility Emissions				
	1,000	2,300,000	0.5	5	

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

The results of the assessment for RCRA/CERCLA-exempt sources indicated that maximum inhalation cancer risk to the individual most exposed is 4-in-1 million based on actual emissions and allowable emissions (actual emissions were assumed to equal allowable emissions), which is well below the presumptive limit of acceptability (*i.e.,* 100-in-1 million). The total estimated cancer incidence based on actual and allowable emission levels is 0.001 excess cancer cases per year, or 1 case every 1,000 years. In addition, the maximum chronic noncancer TOSHI due to inhalation exposures is less than 1. The evaluation of acute noncancer risk, which was conservative, showed a maximum HQ less than 1 for all of these site remediation facilities. Based on the results of the screening analyses for human multipathway exposure to, and environmental impacts from, PB–HAP, we also concluded that the risks to the individual most exposed through ingestion is below the level of concern and no ecological benchmarks are exceeded. The facility-wide cancer and noncancer risks were estimated based on the actual emissions from all emissions sources at site remediation facilities, including those not within the Site Remediation source category. For facility-wide emissions, maximum lifetime individual cancer risk to the individual most exposed is 2,000-in-1 million from EtO and the noncancer TOSHI is 7.

[2] The risk assessment for exempt sources, while not characterized as a risk acceptability analysis, provides all of the necessary data in order to complete a risk acceptability determination.

TABLE 3—SITE REMEDIATION INHALATION RISK ASSESSMENT RESULTS FOR EXEMPT SOURCES

Number of facilities [1]	Maximum individual cancer risk (in 1 million)	Estimated population at increased risk of cancer ≥ 1-in-1 million	Estimated annual cancer incidence (cases per year)	Maximum chronic noncancer TOSHI	Maximum screening acute noncancer HQ
	Based on Actual Emissions Level [2 3]				
118	4	1,100	0.001	0.3	<1
	Based on Whole Facility Emissions				
	2,000	9,000,000	1	7	

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from exempt sources in the source category.
[3] Actual emissions equal allowable emissions; therefore, actual risks equal allowable risks.

We weighed all health risk factors for affected sources, including those shown in Table 2 of this preamble, in our risk acceptability determination and proposed that the residual risks from the Site Remediation source category are acceptable (84 FR 46157; September 3, 2019).

We then considered whether 40 CFR part 63, subpart GGGGG, provides an ample margin of safety to protect public health and prevents, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. In considering whether the standards should be tightened to provide an ample margin of safety to protect public health, we considered the same risk factors that we considered for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category.

In our ample margin of safety analysis, we identified three control options that could further reduce HAP emissions from the source category. These control options included requiring a higher emissions reduction efficiency for process vents, requiring more stringent leak definition thresholds for certain equipment as part of the currently required LDAR program, and requiring connector monitoring as part of the currently required LDAR program. For these control options, we proposed that the costs were not reasonable in light of the minimal risk reduction that would be achieved, and these additional HAP emissions controls are not necessary to provide an ample margin of safety to protect public health (84 FR 46158; September 3, 2019).

2. How did the risk review change for the Site Remediation source category?

We have not changed any aspect of the risk assessment since the September 2019 proposal for this source category.

3. What key comments did we receive on the risk review, and what are our responses?

Most of the commenters on the proposed risk review supported our risk acceptability and ample margin of safety determinations for the Site Remediation NESHAP. Some commenters requested that we make changes to our residual risk review approach. However, we evaluated the comments and determined that no changes to our risk assessment methods or conclusions are warranted. A complete summary of these comments and responses are in the comment summary and response document, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0833). The following is a summary of key comments we received regarding the risk review and our responses to those comments.

Comment: Several commenters agreed with the EPA's finding that risks from the source category are acceptable, additional emissions reductions are not needed to provide an ample margin of safety, and it is not necessary to set more stringent standards to prevent an adverse environmental effect. One of these commenters added that the risk assessment results show very low risk from the source category. However, another of these commenters asserted that even with the low risk shown, the EPA's risk analysis overstates risk due to the methodology the agency uses. This commenter said that the EPA's model plant approach combined with data gap filling for most of the modeled facilities results in a significant overestimation of HAP emissions. The commenter also said that the EPA's conservative assumption that the population breathes outdoor air at a fixed residential location for 70 years is an unrealistic assumption that needs to be modified. The commenter pointed out that the California's Office of Environmental Health Hazard Assessment (OEHHA) has revised their methodology for air toxics assessment to use a 30-year residential exposure to identify the maximum exposed individual for cancer risk assessment. Another of the commenters remarked that the EPA should not have used the 70-year exposure assumption for this source category, since Site Remediations typically do not last more than 20 years. The commenter stated that the EPA should have developed and used a factor representative of the typical life of a remediation activity, which would have likely shown even lower risk for the source category. One commenter also asserted that the acute multiplier of 10 used to estimate hourly emissions from annual emissions is not based on Site Remediation data and is a standard EPA multiplier that is overly conservative.

Response: The EPA relied on our standardized factor of 70 years for our exposure factor.[3] In this way the EPA has taken a health-protective, or conservative, approach in estimating risks and has found that the risks are acceptable and that the existing standards provide an ample margin of safety to protect public health. Therefore, no additional regulation was proposed based on risk for the category. For this reason, there is no utility in refining the inputs to the risk assessment to further lower the risk estimates.

Comment: One commenter stated that the EPA only assessed EtO emissions and risks in the facility-wide risk part of

[3] U.S. EPA. *Exposure Factors Handbook,* 2011 Edition (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F, 2011.

its analysis, where the EPA finds risks of 1,000to 2,000-in-1 million. The commenter stated that the EPA failed to justify ignoring EtO emissions and resulting health risks from the Site Remediation source category itself. The commenter asserted that the EPA ignored these emissions because the six facilities it had data from did not show EtO emissions, and the EPA believes EtO is unlikely to be emitted during a Site Remediation due to its rapid decomposition. In contrast, the commenter submitted that the monograph on EtO published by the International Agency for Research on Cancer (IARC) suggests EtO has an atmospheric half-life of 211 days. The commenter noted that the IARC monograph goes on to state that data suggest neither rain nor absorption into aqueous aerosols remove EtO from the atmosphere. The commenter stated that the EPA has not provided sound rationale for ignoring evidence of EtO emissions for this source category, and the EPA statements on EtO's rapid decomposition in the environment are not supported by credible scientific findings. The commenter claimed that the EPA is relying on an American Chemistry Council (ACC) study that is not available to the public in the online docket, undermining the Agency's findings and violating the CAA's public notice-and-comment requirements. The commenter explained that the referenced ACC study relies upon a conceptual model that applied various data parameters to determine potential adverse ecological risks and does not provide information with respect to human health risks. The commenter contended that the EPA may not rely on its underlying memorandum and this cited study as the basis to not assess health risk from EtO emissions from Site Remediations. The commenter said the EPA has not shown, based on facts in the record, that there are no emissions and no health risks from this chemical. The commenter also claimed that the EPA's proposal that these emissions are unlikely to be emitted from the source category does not make sense if EtO is emitted from other operations at the sites. The commenter asserted that by refusing to assess the EtO-based risk for this source category, the EPA has failed to satisfy the CAA's requirement to assess and reduce such risk.

Response: The data submitted by the commenter does not give the Agency reason to change our position that EtO is unlikely to be a site remediation pollutant. The half-life of a pollutant in the air is irrelevant to whether EtO is a pollutant likely to be encountered in Site Remediation material. The EPA stands by our assertion that EtO is highly unlikely to persist in remediation material that would be subject to Site Remediation NESHAP, (*e.g.,* soil, water, sediment). This assertion is further evidenced by the lack of any reported EtO emissions in the EPA's National Emissions Inventory (NEI) from site remediation operations. The commenter provided no data to contradict this assertion.

The EPA further disagrees that the sources cited by the commenter do not provide sound rationale for removing EtO as a site remediation pollutant. The EPA included two articles from peer-reviewed scientific journals in the docket for the proposed rule to substantiate its conclusion regarding EtO.[4] The properties of EtO cited in the proposal preamble were taken from these articles. In one article, the fate of EtO in the environment was estimated using the EPI (Estimation Program Interface) Suite™ of modeling programs.[5] [6] The individual estimation programs and/or their underlying predictive methods and equations used within EPI Suite™ have been described in numerous peer-reviewed technical journals. In addition, EPI Suite™ has undergone detailed review by a panel of the EPA's independent Science Advisory Board (SAB), and its September 2007 report can be downloaded. The EPA disagrees that the ACC study cited by the commenter is not in the docket. While the document is not available for direct download from the docket due to its copyright protection, it can be viewed in the EPA Docket Center and is also available from other sources in the public domain.

Comment: One commenter asserted that the EPA's benchmarks for the level of health risk that is considered acceptable are an outdated policy that does not reflect subsequent scientific breakthroughs and public perceptions of acceptable environmental health risks. The commenter disagreed with the EPA's policy that a cancer risk of 100-in-1 million is presumed to be either safe or acceptable, that for acute risks an HQ less than 1 is always acceptable, and that an HQ greater than 1 can be deemed acceptable without reasoned explanation. The commenter stated that the EPA's acceptability benchmarks are based on a 1988 study of people's tolerance for various types of health risk, known as the Survey of Societal Risk.[7] The commenter remarked that the EPA has failed to revisit or update this policy over the decades, even though scientists have made breakthroughs on early-life exposure and children's vulnerability; biomonitoring and other data on adult body burdens of chemicals; the vulnerability of overburdened communities, including socioeconomic disparities; and ways to analyze and control the impacts of pollutants on human health. The commenter listed 17 ''landmark'' actions from the EPA, other regulatory agencies, and scientific bodies relating to environmental health effects and human susceptibility that have occurred since 1990, which the commenter states make the current EPA policy outdated. The commenter asserted that the EPA acceptability benchmark policy needs to be reformed in the face of increasing evidence that challenges the assumption of a safe or acceptable level of HAP exposure.

Response: The EPA considers this comment outside the scope of the risk review for the Site Remediation source category. As the commenter notes, this level of acceptable risk was determined based on the EPA's prior analysis of general perception of relative risk (see Benzene NESHAP, 54 FR 38046). The task of re-determining the public's general concern for the level of acceptable risk falls outside the scope of an individual risk review.

However, our discussion in the proposal preamble addresses the commenter's concern (See 84 FR 46143; September 3, 2019)—though providing this explanation is not intended to reopen our approach. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP, where the EPA explained that ''[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR [maximum individual risk] figure be considered, but also incidence, the presence of noncancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the

[4] See Docket ID Item Nos. EPA–HQ–OAR–2018–0833–0021 and EPA–HQ–OAR–2018–0833–0022.

[5] Staples, C.A., & Gulledge, W. (2006). An environmental fate, exposure and risk assessment of ethylene oxide from diffuse emissions. *Chemosphere, 65*(4), 691–698. doi: *10.1016/j.chemosphere.2006.01.047.*

[6] EPI Suite™ website: *https://www.epa.gov/tsca-screening-tools/epi-suitetm-estimation-program-interface.*

[7] Survey of Risks, Benzene Rule Legacy Docket ID No. OAQPS 79–3, Part I, Docket Item X–B–1 (cited at National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants, 53 FR 28496, 28512/3–13/3 (July 28, 1988)).

general public. These factors can then be weighed in each individual case. This approach complies with the Vinyl Chloride mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health.' '' (54 FR at 38057; September 14, 1989.)

The EPA subsequently adopted this approach in its residual risk determinations and the Court upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

Comment: One commenter claimed that the EPA did not assess whether the health risk and emissions reductions of the rule provide an ample margin of safety. The commenter stated that the EPA only considered the cost and feasibility of available control measures from its technology review, did not consider facility-wide risks, and ignored exempt sources in its ample margin of safety decision. The commenter cited the Court decision, *Sierra Club* v. *EPA,* 895 F.3d 1 (D.C. Cir. 2018) to support their comment. Additionally, the commenter said the EPA did not provide the underlying data it used to reach its facility-wide risk determinations.

Response: The EPA disagrees with the comment. The risk assessment demonstrated that health risks due to air emissions from site remediation sources are acceptable and after considering available control options and all available risk information, the EPA concluded that the current standards provide an ample margin of safety to protect public health. The commenter misconstrues the analysis at pages 46157–58 of the proposal. The EPA had already made a determination, consistent with the methodology of the Benzene NESHAP, that the risk posed by emissions from the affected sources in the Site Remediation source category is acceptable. See 84 FR 46157 (September 3, 2019), section C.1 ''risk acceptability.'' The EPA proceeds to look at potential measures that could further reduce risk in the ample margin of safety determination, and in that context, has consistently historically considered multiple factors, including control technology cost, cost effectiveness, feasibility, and the magnitude of risk and potential risk reduction, as well as uncertainties. See *NRDC* v. *EPA,* 529 F.3d 1077, 1080–83 (D.C. Cir. 2008) (upholding as reasonable the EPA's interpretation that CAA section 112(f)(2)(A) does not mandate establishing emission standards to reduce cancer risks below 1-in-1 million and recognizing that CAA section 112(f)(2) incorporates the EPA's approach in the Benzene NESHAP).

The Court decision cited by the commenter,[8] *Sierra Club* v. *EPA,* 895 F.3d 1 (D.C. Cir. 2018), addressed the basis for setting a health-based emission limit based on a health threshold in lieu of a technology-based standard for hydrochloric acid (HCl) under section 112(d)(4) of the CAA, not making a determination under section 112(f)(2) of the CAA.

The EPA did not contemplate an ample margin of safety analysis for RCRA/CERCLA-exempt sources because they are not subject to the emissions standards in the rule. The ample margin of safety portion of a CAA section 112(f) analysis necessarily entails an evaluation of control options. For the EPA to undertake an ample margin of safety analysis for the exempt sources, a final determination would first be needed to eliminate the exemption and evaluate control options. We have not yet concluded how these sources should be regulated under the Site Remediation NESHAP. While we requested comment on issues related to eliminating the exemption, we are not acting on the exemption in this RTR process. As noted in our separate request for comment on the exempt status of such facilities in the RTR proposal, the EPA continues to analyze the effect of removing the exemption in terms of designing appropriate regulatory provisions should the exemption be removed.

The EPA considered facility-wide risks and determined that Site Remediation emissions are not driving those risks. The risk at two facilities where facility-wide risk was greater than 100-in-1 million was driven by EtO, which, as explained at proposal, to the EPA's knowledge, is not emitted from Site Remediation activities. Also, as noted in the proposal, the EPA is separately addressing EtO emissions in response to the results of the latest National Air Toxics Assessment released in August 2018, which identified the chemical as a potential concern in several areas across the country.

The EPA disagrees that we did not provide the data for our whole-facility analysis. The data files were placed in the docket for public review upon publication (see Docket ID Item No. EPA–HQ–OAR–2018–0833–0037).

4. What is the rationale for our final approach and final decisions for the risk review?

As explained in our proposal, the EPA sets standards under CAA section 112(f)(2) using ''a two-step standard setting approach, with an analytical first step to determine an 'acceptable risk' that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand'' (see 54 FR 38045; September 14, 1989). We weigh all health risk measures and factors in our risk acceptability determination, including the cancer MIR, cancer incidence, the maximum noncancer TOSHI, the maximum acute noncancer HQ, the extent and distribution of cancer and noncancer risks in the exposed population, and the risk estimation uncertainties.

In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health ''in consideration of all health information, including the number of persons at risk levels higher than approximately 1-in-1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.'' [9] The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health or determine that the standards being reviewed provide an ample margin of safety without any revisions. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rule, we determined that the risks from the Site Remediation source category are acceptable, and the current standards provide an ample margin of safety to

[8] See the comment letter in Docket ID Item No.EPA–HQ–2018–0833–0069, p 45.

[9] 54 FR 38045, September 14, 1989.

protect public health and prevent an adverse environmental effect. Therefore, we are not revising 40 CFR part 63, subpart GGGGG to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and we are readopting the existing standards under CAA section 112(f)(2).[10]

B. Technology Review for the Site Remediation Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Site Remediation source category?

Pursuant to CAA section 112(d)(6), we conducted a technology review, which focused on identifying and evaluating developments in practices, processes, and control technologies for the emission sources in the Site Remediation source category. At proposal, we identified developments in practices, processes, or control technologies for process vents and equipment leaks.

For process vents, one potential control technology was identified at proposal, use of a regenerative thermal oxidizer, which could increase the emissions capture and control efficiency from 95 percent to 98 percent for those process vents that are currently controlled with a carbon adsorption system or other device achieving 95-percent control. We estimated the HAP emissions reduction beyond the current control requirements could range between 0.09 and 0.18 tpy for the source category, and the estimated costs would be $1 million to $2 million per ton of HAP emission reduction.

For equipment leaks, we identified the more stringent leak definitions of 40 CFR part 63, subpart UU over those of 40 CFR part 63, subpart TT as a development in practices, processes, or control technologies at proposal. Two options were identified: Option 1—requiring the use of the leak detection thresholds of 40 CFR part 63, subpart UU, for valves and pumps; Option 2—requiring the use of the leak detection thresholds of 40 CFR part 63, subpart UU for valves and pumps and also requiring connector monitoring under 40 CFR part 63, subpart UU. For Option 1, we estimated an additional HAP emission reduction of up to 4.7 tpy and estimated the costs would be $2,000 per ton of HAP emission reduction. For Option 2, we estimated the HAP emission reduction incremental to Option 1 would be approximately 5 tpy and the incremental cost effectiveness between Option 1 and Option 2 would be $35,000 per ton of HAP emission reduction.

Based on the costs and the emission reductions that would be achieved with the identified developments, we proposed to revise the MACT standard pursuant to CAA section 112(d)(6) to require facilities to use the leak detection thresholds of 40 CFR part 63, subpart UU, for valves and pumps, without the subpart UU requirements for connectors in gas/vapor service and in light liquid service. We proposed that it was not necessary to revise the MACT standards pursuant to CAA section 112(d)(6) to require 98-percent control for process vents, based on the use of a regenerative thermal oxidizer. More information concerning our technology review can be found in the memorandum titled *CAA section 112(d)(6) Technology Review for the Site Remediation Source Category,* which is available in the docket for this action and in the preamble to the proposed rule (84 FR 46160 and 46161; September 3, 2019).

2. How did the technology review change for the Site Remediation source category?

The technology review has not changed from proposal to this final action. As explained below, the comments received were generally supportive of the revisions to the equipment leak requirements to require the use of the leak detection thresholds of 40 CFR part 63, subpart UU, for valves and pumps, to not require connector monitoring for equipment leaks, and to not require changes to the NESHAP for process vents.

3. What key comments did we receive on the technology review, and what are our responses?

Most of the commenters on the proposed technology review supported our proposed revised standards for equipment leaks and our determination that revised standards for process vents are not necessary for the Site Remediation NESHAP. One commenter requested that we consider additional elements in our technology review, including incorporating exempt sources in our analysis of the cost effectiveness of connector monitoring, considering leakless equipment in our review of the equipment leak standards, and considering a different threshold for cost effectiveness. A complete summary of these and other comments and responses are in the comment summary and response document, available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0833). The following is a summary of key comments we received regarding the technology review and our responses to those comments.

Comment: One commenter asserted that the EPA must evaluate developments in practices, processes, and control technologies to reduce inorganic HAP and HAP metal emissions and must revise its existing standards by setting limits that reflect the use of these practices, processes, and control technologies. As emissions standards in the Site Remediation NESHAP currently do not apply to these HAP, the commenter noted that the EPA did not include these HAP in its technology review. The commenter stated that the EPA must set emission standards for each HAP that a source category emits and then must also determine whether developments in pollution control make it ''necessary'' to revise the emission standards.

Response: We acknowledge that the Site Remediation NESHAP does not contain emissions standards for metal HAP and inorganic HAP. However, the EPA's duty under CAA section 112(d)(6) is to review the standards promulgated under CAA section 112(d)(2) and to evaluate any developments in practices, processes, and control technologies to determine whether it is necessary to revise the existing standards.

The EPA's decision to consider regulation of these pollutants in this rulemaking is not governed by or mandated by CAA section 112(d)(6). That provision requires the EPA to review and revise, as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section. We do not agree with the commenter's assertion that the EPA must establish new standards for unregulated emission points or pollutants as part of a technology review of the existing standards. The EPA reads CAA section 112(d)(6) as a limited provision requiring the Agency to, at least every 8 years, review the emission standards already promulgated in the NESHAP and to revise those standards as necessary, taking into account developments in practices, processes, and control technologies. Nothing in CAA section 112(d)(6) directs the Agency to develop new emission standards to address HAP or emission points for which standards were not previously promulgated as part of or in conjunction with the mandatory 8-year technology review.

[10] The Court upheld this approach to CAA section 112(f)(2) in *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008): ''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.''

When the EPA establishes standards for previously unregulated emissions, we would establish the standards under one of the provisions that govern initial standard setting—CAA sections 112(d)(2) and (3) or, if the prerequisites are met, CAA section 112(d)(4) or CAA section 112(h). Establishing emissions standards under these provisions of the CAA involves a different analytical approach from reviewing emissions standards under CAA section 112(d)(6).

While we did not consider establishing standards for these HAP under CAA section 112(d)(6), we did investigate these HAP to determine whether standards should be established under CAA section 112(d)(2) or (3). In our review of the data for affected sources, we found that metal HAP are not emitted. Therefore, standards are not required for these pollutants (see 84 FR 46161; September 3, 2019) and our discussion of this issue in section D.1.a of this document.) This analysis satisfies the investigation into these pollutants that the EPA said it intended to undertake for these HAP in response to Sierra Club's petition for reconsideration of the initial NESHAP rulemaking.[11] For inorganic HAP, based on the EPA's analysis of the available emissions data for affected sources, only one Site Remediation operation emitted any inorganic HAP. The one inorganic HAP emitted by this Site Remediation is asbestos, and asbestos emissions are already regulated by another NESHAP (as discussed in more detail below). Therefore, we determined it was not necessary to evaluate these emissions further or to establish standards under CAA sections 112(d)(2) or (3) for these emissions.

Comment: One commenter stated that the EPA should do more than it proposed for regulating equipment leaks because there have been additional developments in equipment, such as leakless or low-emission valves and zero-emissions technologies, and the commenter asserts that these technologies should be required. The commenter also remarked that the EPA's rationale for not requiring connector monitoring is flawed, in that it did not account for emissions reductions from the facilities exempt from the rule under the RCRA/CERCLA exemption. The commenter opined that since these facilities have not had to comply with the existing Site Remediation standards, it is likely there would be greater emissions reductions from these facilities, which would result in an improvement in the cost effectiveness of the measure. The commenter also mentioned that considering cost on a per ton basis for all emitted HAP does not make sense when the pollutants have vastly varying toxicities. The commenter further stated that the EPA does not explain why it believes an incremental cost of $35,000 per ton of HAP reduced is an unreasonable cost.

Response: First, we disagree that leakless valves and low-emissions technologies should have been included in the technology review. These and similar types of equipment were available and accounted for when the original NESHAP was promulgated, and, therefore, they are not ''developments'' in technology.[12] The commenter has not identified ''developments'' in relation to this technology, such as a significant decrease in cost or a change in applicability to the Site Remediation source category. Next, in determining the impacts from any control options, we include only the emissions and reductions that would actually be expected to occur as a result of the implementation of that control option. In this case, since some facilities are exempt from emissions control requirements, the impacts are based on the emissions reductions and costs of implementation at the facilities that would be required to comply with the regulations. If the currently exempt facilities become subject to emissions control requirements in the future, we will reassess the impacts of potential control options at that time.

The EPA disagrees that, for this action, an analysis that relies on a cost-per-ton basis ''does not make sense'' when different HAP have different toxicities. We note that when assessing the cost effectiveness of more stringent standards under consideration, we have discretion to express emission reductions that would result from such standards in any reasonable format, such as costs per ton of emissions reduced. In this case, as explained at proposal, the risk for the Site Remediation source category was low, using both the quantity and toxicity of emitted pollutants to arrive at this conclusion. The EPA also adds that a cost-per-ton basis may not be the only economic consideration when deliberating on whether to adopt controls. The EPA also looks, where appropriate, at the broader economic impact a given control technique may have on the category of sources when deciding whether to adopt a given standard.

With respect to the role of cost in our decisions under the technology review, we note that courts have not required the EPA to demonstrate that a technology is ''cost-prohibitive'' in order not to require adopting a new technology under CAA section 112(d)(6); a simple finding that a control is not cost effective is enough. See *Association of Battery Recyclers, et al.* v. *EPA, et al.,* 716 F.3d 667, 673–74 (DC Cir. 2015) (approving the EPA's consideration of cost as a factor in its section 7412(d)(6) decision-making and EPA's reliance on cost effectiveness as a factor in its standard-setting). The EPA declined to include connectors in our decision to lower the definition of the leak threshold, based on the fact that, relative to a limited impact on emissions, the addition of connectors would have increased the cost of the LDAR program by more than an order of magnitude from the option chosen (*i.e.,* lower leak thresholds for pumps and valves).

4. What is the rationale for our final approach for the technology review?

Based on our analysis for equipment leaks, we have determined the costs of Option 1 are reasonable, given the level of HAP emissions reduction that would be achieved with this control option. We do not believe the costs of Option 2 are reasonable, given the level of HAP emissions reduction Option 2 would achieve relative to a much higher incremental cost- per-ton above Option 1. Therefore, as a result of the technology review, pursuant to CAA section 112(d)(6), we are finalizing our proposed determination to revise the Site Remediation NESHAP to require existing and new affected sources to comply with the 40 CFR part 63, subpart UU leak detection thresholds for pumps and valves rather than leak thresholds of 40 CFR part 63, subpart TT, for those components.

For the reasons discussed above and in the preamble to the proposed rule, we have determined that it is not necessary, pursuant to CAA section 112(d)(6), to revise the Site Remediation NESHAP to require additional HAP emission controls for process vents or any other equipment or processes at Site Remediation facilities.

[11] *See* Letter from Janet McCabe to James Pew (March 25, 2015) (Docket ID Item No. EPA–HQ–OAR–2018–0833–0012) (granting reconsideration of 68 FR 58172 (October 8, 2003)).

[12] U.S. EPA. *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Site Remediation (40 CFR part 63, subpart GGGGG)—Background Information for Promulgated Standards.* Office of Air Quality Planning and Standards. Research Triangle Park, NC. August 2003. pp. 44–45.

C. CAA Sections 112(d)(2) and (3) Amendments

1. What did we propose pursuant to CAA sections 112(d)(2) and (3) for the Site Remediation source category?

We proposed to add a work practice standard pursuant to CAA section 112(h)(2)(B), in conjunction with CAA sections 112(d)(2) and (3), for PRDs. PRDs are valves, rupture disks, or other equipment designed to remain closed during normal operation but that ''actuate'' (*e.g.,* the valve seat opens or a rupture disk ruptures) in the event of an overpressure in the system caused by operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that results in immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage. The current Site Remediation NESHAP follows the EPA's previous practice of exempting SSM events from otherwise applicable emission standards. Consequently, with emissions releases from a PRD release actuation event treated as a type of malfunction, the Site Remediation NESHAP did not restrict emissions releases to the atmosphere from a PRD actuation event (*i.e.,* PRD releases were exempt from the otherwise applicable emission standards). In *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the Court determined SSM exemptions in CAA section 112 standards violate the CAA.

To ensure a standard continuously applies during malfunctions that result in emissions from a PRD actuation event, we proposed work practices and other provisions for PRDs and bypass lines on closed vent systems. We explained that a work practice standard is warranted under CAA section 112(h) because the application of measurement technology to this class of sources is not practicable due to technological and economic limitations. See 84 FR 46153 (September 3, 2019). Modeling the work practice standard on the Petroleum Refinery Sector RTR (80 FR 75178; December 1, 2015), we proposed to add work practice requirements that consist of conducting an analysis of the cause of a PRD actuation event and the implementation of corrective measures for PRDs that emit directly to the atmosphere. In addition, we proposed criteria for what constitutes a deviation from the work practice requirements. For PRDs that vent emissions from actuation events directly to the atmosphere, we proposed it would be a deviation of the work practice standard for a single PRD to have two releases within a 3-year period due to the same cause; for a single PRD to have three releases within a 3-year period for any reason; and for any PRD to have a release for which the cause was determined to be operator error or poor maintenance. We also proposed that ''force majeure'' events, which we proposed to define as events resulting from natural disasters, acts of war or terrorism, or external power curtailment beyond the facility's control (as demonstrated to the satisfaction of the EPA Administrator), would not be included when counting the number of releases. We proposed that certain PRDs would not be subject to the work practice requirements due to their low potential to emit substantial quantities of HAP. These PRDs included the following: (1) PRDs designed and operated to route all pressure releases through a closed vent system to a drain system, fuel gas system, process or control device; (2) PRDs in heavy liquid service; (3) PRDs that are designed solely to release due to liquid thermal expansion; and (4) pilot-operated and balanced bellows PRDs if the primary release valve associated with the PRD is vented through a control system.

To ensure compliance with these provisions, we also proposed that facilities subject to the Site Remediation NESHAP monitor PRDs in remediation material service that release to the atmosphere by using a device or system that is capable of identifying and recording the time and duration of each actuation event and notifying operators immediately that a pressure release is occurring. We further proposed to require owners or operators to keep records and report any actuation event and the amount of HAP released to the atmosphere with the next periodic report. In addition, to add clarity to these provisions, we proposed to add definitions for ''bypass,'' ''force majeure event,'' ''pressure release,'' and ''pressure relief device or valve'' to 40 CFR part 63, subpart GGGGG. We also proposed to remove the definition of ''safety device'' and the provisions related to safety devices from 40 CFR part 63, subpart GGGGG, which would overlap with and be redundant of parts of the proposed definition of ''pressure relief device or valve'' and the provisions related to these devices.

For purposes of estimating the costs of the proposed requirement to monitor HAP releases to the atmosphere from PRDs, we assumed that operators would already have monitoring systems capable of identifying and recording the time and duration of each pressure release.

In the proposed rule, we removed the exemption from emissions standards for periods of SSM in accordance with a decision of the Court, *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied,* 130 S. Ct. 1735 (U.S. 2010). This decision stated that the EPA must provide standards that are in place at all times, even during periods of SSM. The EPA has interpreted this to include provisions exempting sources from otherwise applicable standards during maintenance periods. Thus, we also proposed to remove the provision at 40 CFR 63.7925(b)(1) that allowed a control device to be bypassed for up to 240 hours per year for the performance of planned routine maintenance of the closed vent system or control device (*i.e.,* 240-hour routine maintenance exemption). As a result, the emissions limits, including those for tanks, in the proposed revised Site Remediation NESHAP would apply at all times.

2. How did the proposed amendments pursuant to CAA sections 112(d)(2) and (3) change for the Site Remediation source category?

We have made two revisions to the proposed work practice and associated monitoring requirements and also revised the estimate of costs associated with PRD monitoring. The revisions to the proposed work practice and monitoring requirements include adding PRDs to the list of Site Remediation equipment in 40 CFR 63.7882 to help clarify when a PRD is subject to equipment leak requirements and when it is subject to the PRD actuation event work practice requirements. We are also revising the proposed PRD provisions to exclude PRDs on ''containers'' (as defined at 40 CFR 63.7957) from the PRD work practice standards and monitoring requirements. Additionally, we have revised the economic analysis for the adoption of the proposed PRD monitoring requirements to reflect the purchase of monitoring equipment for some facilities rather than assuming all facilities already have adequate monitoring systems.

3. What key comments did we receive on the proposed amendments pursuant to CAA sections 112(d)(2) and (3), and what are our responses?

Comment: Several commenters recommended that the EPA amend 40 CFR 63.7923(d) to include an exemption for PRDs on mobile equipment, similar to the exemption in the Petroleum Refineries NESHAP in 40 CFR 63.648(j)(5)(vi). One of these commenters extended this recommendation to portable containers, similar to the exemption in the Off-Site Waste and Recovery Operations (OSWRO) NESHAP. This commenter is concerned that the EPA has not

evaluated the HAP emissions that may be associated with PRDs on portable equipment, noting that containers are generally already subject to separate MACT requirements which would address their emissions. The commenter also remarked that since facilities generally do not own tank trucks and other transport vehicles, and they are not dedicated to the facility, it would be impractical and overly broad to impose monitoring requirements on them. Further, the commenter is concerned that potential monitoring requirements would be technically infeasible to implement on containers due to the wide range of containers and their transitory nature. Specifically, the commenter noted that containers can vary drastically in size from site to site and cover a variety of cylinders, drums, tote-tanks, cargo tanks, isotainers, railcars, over-the-road tanker vehicles, etc. The commenter also remarked that the time they are kept on site depends highly on facility-specific operational activities and can range anywhere from a few days to a few weeks or months. Combined, the commenter said these factors make it incredibly difficult, if not impossible, to appropriately design and effectively implement a continuous monitoring system for each container's PRD.

One commenter also recommended that the EPA include an exemption for PRDs that do not have the potential to emit 72 pounds (lbs)/day or more of volatile organic compounds (VOC) based on the valve diameter, the set release pressure, and the equipment contents, similar to the exemption in the Petroleum Refineries NESHAP in 40 CFR 63.648(j)(5)(v). The commenter stated that the EPA's logic for that exemption, which is that it was consistent with the treatment of miscellaneous process vents and consistent with the two California rules (Bay Area and South Coast) that served as the MACT floor for the Petroleum Refineries NESHAP, also applies to this rule.

Response: The EPA agrees that an exception would be appropriate for moveable equipment, such as trucks with containers, or tanks, train cars, and similar moveable equipment that may be brought to a Site Remediation for short durations. The EPA agrees that such equipment may not be under the control of the affected facility and/or that altering such equipment to meet the monitoring requirements for PRDs is impractical. The EPA has, therefore, added an exception for ''containers,'' as that term is defined at 40 CFR 63.7957, which encompasses movable equipment such as trucks, train cars, or barges. The EPA has followed the model of the OSWRO NESHAP in this regard. See 83 FR 3986 (January 29, 2018).

The EPA disagrees that it is appropriate to exempt PRDs that do not have the potential to emit 72 lbs./day or more of VOC based on the valve diameter from the PRD work practice. The commenter suggests the provisions should be adopted because the exemption is also found in the Petroleum Refineries NESHAP in 40 CFR 63.648(j)(5)(v). The exemption to which the commenter refers is refinery-specific and applies to ''Group 1 process vents,'' as defined in the Petroleum Refineries NESHAP.[13] The commenter did not provide information as to why an exemption for Refinery Group 1 process vents should be applied to remediation material management units (RMMUs). RMMUs are subject to Site Remediation NESHAP standards according to the criteria in 40 CFR 63.7881(c)(1), 40 CFR 63.7882(a)(2) and 40 CFR 63.7886(d). The differences in these emission points is reflected in the definition of the Refinery Group 1 process vent in contrast to the applicability criteria for RMMUs. The EPA does not find these two sets of units sufficiently similar to warrant applying this provision to RMMUs, given the wide variety of RMMUs that may be found subject to the Site Remediation NESHAP. The commenter also provided no context as to why 72 lbs./day is appropriate, given the different emission potential that determines affected facility status of the units on which the PRDs are found in Site Remediation. The 72 lbs./day provision for Petroleum Refineries NESHAP was set based on CAA section 112(d)(2) (*i.e.,* a MACT floor for petroleum refineries). The EPA does not have, and the commenter did not provide, data to support either a 72 lbs./day exemption or other value to apply as an exemption threshold for the Site Remediation source category. However, certain applicability criteria that the EPA finds appropriate to apply in the context of PRD activations in the site remediation context are identified at 40 CFR 63.7923(d).

Comment: One commenter expressed opposition to what the commenter referred to as ''three exemptions'' included in the proposed work practice standards for PRDs, asserting that the work practice standards must apply at all times. According to the commenter, a provision that allows sources to exceed the emissions standards two or three times every 3 years essentially allows non-continuous compliance with the CAA, which is inconsistent with the Court precedent. Regarding force majeure events, the commenter stated that this provision is an exemption that simply provides new semantics for the rejected malfunction exemption and is equally unlawful. The commenter further explains that the concept of force majeure is from contracts law and does not fit with compliance with federal law. The commenter asserts that injecting contractual principles or negotiating regulations with a regulated party runs directly counter to the statutory test in which compliance is non-negotiable. According to the commenter, the EPA does not have the discretion to promulgate an exemption that allows EPA to decide what is a violation, or not, at a future time, as the Court has the authority to decide whether a violation has occurred warranting a penalty. This exemption, the commenter claims, places the burden on the government or citizen enforcer to prove both that excess emissions have occurred and that they did not occur during a force majeure event. The commenter also states that the exemption for PRDs with low potential to emit is unlawful because the CAA directs the EPA to establish limits that apply on a continuous basis for each HAP a source emits, regardless of the amount emitted. The commenter adds that it should be easy for PRDs to comply with the limits if they truly have low emissions.

Response: The EPA disagrees with the commenter that the proposed work practice is not a standard applicable to the affected source at all times. Under CAA section 112(h), work practices are a form of emissions standard applicable to affected units. Actuation events from PRDs that vent to the atmosphere are irregular in time, duration, amount, cause, and effect. Attempts to capture such emissions may be potentially dangerous to workers, the public, and the environment. The EPA's work practice standards require a series of preventive measures [14] and the use of diagnostic tools to prevent recurrence of such events, coupled with a clearly defined basis for enforcement action when there is a failure to prevent actuation event recurrence under the

[13] Group 1 miscellaneous process vent means a miscellaneous process vent for which the total organic HAP concentration is greater than or equal to 20 parts per million by volume, and the total VOC emissions are greater than or equal to 33 kilograms per day for existing sources and 6.8 kilograms per day for new sources at the outlet of the final recovery device (if any) and prior to any control device and prior to discharge to the atmosphere.

[14] See 84 FR 46153 (September 3, 2019) for a discussion of requirements under 40 CFR part 68, Chemical Accident Prevention Provisions for PRDs.

defined circumstances. This work practice standard represents the practice employed by the best performing sources and is the MACT floor. The MACT floor is not merely after-the-fact recordkeeping requirements to document PRD actuation events without penalty. The PRDs at affected facilities are subject to continuous monitoring, and, in addition to other potential bases for finding a violation as described in 40 CFR 63.7923(f), each PRD actuation is a violation if the cause is poor maintenance or operator error.

The EPA disagrees with the comments regarding force majeure events. Force majeure events, which result in pressure release actuation events, must be accounted for under 40 CFR 63.7923(c). The definition of force majeure narrows the scope of such events to natural disasters; acts of war or terrorism; loss of a utility external to the Site Remediation unit (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the Site Remediation affected source that impacts the Site Remediation affected source's ability to operate. Therefore, a force majeure event would never be due to operator error or poor maintenance (see 40 CFR 63.7923(f)(1)) and must be absolutely beyond the power or ability of the source to prevent. We believe that the narrow scope of force majeure is such that a second event, from a single pressure relief device in a 3-year period would be highly unlikely to be due to the same force majeure event for the same equipment. (See 40 CFR 63.7923(f)(2)). Similarly, we believe that it is highly unlikely that in a 3-year period, three force majeure events of any type would occur for the same equipment. Finally, the source must satisfy the Administrator that the event was beyond the control of the owner or operator, because the decision to accept the claim of force majeure is solely within the discretion of the Administrator. Thus, the force majeure provisions are an intrinsic part of the work practice standard and are not as the commenter maintains an exemption from that standard.

The EPA disagrees with the comments regarding the exemption for certain types of PRDs identified in 40 CFR 63.7923(e). We modeled the applicability of the PRD provisions after the Petroleum Refinery rule, 40 CFR part 63, subpart CC. That ''beyond-the-floor'' analysis determined that it was not cost effective to include control of these PRDs as part of the work practice standard for PRDs, and we do not have information to conclude that this analysis would be any different for Site Remediation sources. However, these PRDs may be regulated under other provisions of the MACT. We note that, if the PRD is on any equipment subject to the equipment leaks requirements at 40 CFR 63.7920–7922, then the PRD is also subject to those same requirements, and owners and operators are still required to monitor the PRD after the release to verify the device is operating with an instrument reading of less than 500 ppm. Such PRDs are subject to repair requirements if a leak is found.

Comment: Several commenters requested clarification that the PRDs covered by the work practices are only those associated with the Site Remediation equipment leaks affected sources (*i.e.,* only PRDs that are in service for 300 or more hours per year and that contain or contact remediation material having a concentration of total HAP listed in Table 1 equal to or greater than 10 percent by weight).

Response: The EPA did not intend for the PRD actuation work practice requirements to only apply to PRDs in contact with remediation material with HAP content (for those HAPs listed in Table 1 to subpart GGGGG) equal to or greater than 10 percent by weight and that are in service for 300 hours per year or more. The PRD work practice also applies to PRDs protecting any affected units subject to this subpart (with the exception of containers), including RMMUs under 40 CFR 63.7882(a)(2). Thus, PRDs are subject to the PRD work practice if they are protecting process vents, tanks, surface impoundments, separators, transfer systems, or closed-vent systems and control devices—regardless of whether such units meet the 40 CFR 63.7882(a)(3) thresholds for equipment leak requirements. Note that PRDs are not subject to the work practice standard if they are on containers as defined at 40 CFR 63.7957, which are subject to the requirements of 40 CFR 63.7900–7903. The PRD standards must work in conjunction with the emission limits for all such affected units to ensure that a standard applies at all times, including during malfunction periods. The exemption suggested by the commenter would leave PRD actuation events from certain affected units subject to no standards during malfunctions. Certain RMMUs (40 CFR 63.7886) may be exempt from control requirements based on the criteria in 40 CFR 63.7886(d). A PRD protecting equipment found to be exempt under 40 CFR 63.7886(d) would likewise be exempt from PRD standards, because the unit the PRD is protecting is not subject to control requirements.

The commenter is correct that a PRD as a member of the set of equipment subject to 40 CFR 63.7882(a)(3) would not be subject to LDAR requirements for ''equipment leaks'' if the PRD ''at rest'' (meaning not in actuation) meets either of the criteria in 40 CFR 63.7882(a)(3), that is, either: (1) The HAP content of the remediation material is less than 10 percent by weight; or (2) the equipment in question is used less than 300 hours per year. The applicable requirements to ensure a PRD has been repaired or re-sets properly after actuation are found in 40 CFR 63.7923(a)(1) and (2). The corresponding recordkeeping for such PRDs that are exempt from LDAR while at rest but subject to PRD work practices in activation are found at 40 CFR 63.7950(b)(11).

Comment: Several commenters remarked that the EPA should have provided a burden estimate for certain requirements. One commenter pointed out that the EPA did not include a burden estimate for implementation and reporting for the new PRD work practice requirements and submittal of the PRD Notice of Compliance Status. Several commenters stated that the EPA has assumed that sources have a system already in place that is capable of identifying and recording the time and duration of each pressure release from a PRD and of notifying operators that a pressure release is occurring, and remarked that sources actually often do not have systems like this in place unless they are required by regulation; therefore, there will be a cost to implement this proposed requirement. One commenter noted that one company has five PRDs that vent to the atmosphere potentially subject to the proposed requirements, and that none of these currently have monitors in place. The commenter also said that some facilities with PRD monitors are not set up to communicate with the control room or are not capable of determining the duration of a release. One commenter estimated that the cost to install a new monitoring system will be approximately $15,000 per PRD.

One commenter expressed that the EPA has not included time for facilities to develop procedures to estimate and report the amount of excess emissions when a deviation from the new requirements of 40 CFR 63.7951(b) occurs or to develop procedures for the new deviation recordkeeping requirements at 40 CFR 63.7952.

Response: The EPA disagrees that it failed to provide an estimate at proposal as to the cost and burdens associated with the work practice standard. However, we have adjusted that estimate as discussed below, and we

have appropriately estimated the costs and burdens associated with implementation and reporting for the PRD work practice standard. At proposal, we assumed that any facility subject to the proposed PRD requirements would likely experience one PRD actuation event every 3 years, which would require an analysis of the event's cause. The EPA estimated an additional cost to implement the analysis of PRD actuation events for affected facilities that was reflected in the burden estimate at proposal. Upon consideration of the comment regarding the PRD Notification of Compliance Status, we have made a description of the PRD monitoring system part of the semiannual compliance report. It may have been unclear at proposal whether this one-time notification would be part of the submittal of the next semiannual report, for which we already have estimated a burden to complete. We have clarified that this notification is submitted with the semiannual compliance report. The description of the monitoring system must be updated in subsequent reports only if changes are made. With respect to monitoring, the EPA has revised our burden estimate to include the cost of additional monitoring for sources that do not already have adequate monitoring for PRDs. We have estimated that half of the affected facilities must acquire between 1 and 5 monitors to meet the new requirement, at an estimated annualized cost of $30,000 for the entire source category. For more information regarding the revised PRD monitoring burden estimate, see the memorandum, *Pressure Relief Device Monitoring Impacts for the Site Remediation Source Category,* available in the docket for this action.

Regarding deviation recordkeeping and reporting, we are providing additional time to develop emissions estimation and reporting procedures. The compliance date for existing affected sources for the revised SSM requirements other than General Provisions, 40 CFR 63.6(e) and (f)(1), is 180 days after the effective date of the standard. The requirements for electronic reporting requirements, the revised routine maintenance provisions, the operating and pressure management requirements for PRDs, and the revised requirements regarding bypasses and closure devices on pressure tanks is 180 days after the effective date of the standard.

4. What is the rationale for our final approach for the amendments pursuant to CAA sections 112(d)(2) and (3)?

To ensure a standard continuously applies during malfunctions that result in emissions from a PRD actuation event, we proposed work practices and other provisions for PRDs and bypass lines on closed vent systems. Based on comments received on the proposed provisions, we have revised the proposed work practice and associated monitoring requirements for PRDs. For the reasons provided in the responses to comments above, we have revised the proposed PRD provisions to exclude PRDs on containers from the PRD work practice standards and monitoring requirements and added language to 40 CFR 63.7882 to help clarify when a PRD is subject to equipment leak requirements and when it is subject to the PRD actuation event work practice requirements. Additionally, based on information provided by commenters, we have revised the economic analysis for the adoption of the proposed PRD monitoring requirements to reflect the purchase of monitoring equipment for some facilities rather than assuming all facilities already have adequate monitoring systems.

D. Other Issues and Changes Made to the Site Remediation NESHAP

1. Standards for Inorganic and Metal HAP Emissions

a. What did we propose for inorganic and metal HAP emissions?

In the May 13, 2016, proposal on reconsideration, the EPA stated that it would consider the issue of regulating metals and inorganic HAP emissions during the risk review (81 FR 29824). In the September 3, 2019, proposal, the EPA proposed to not set standards for metals and inorganic HAP from Site Remediation sources subject to the Site Remediation NESHAP because the Agency did not have data indicating that site remediation sources subject to the rule emit these pollutants. The EPA requested data demonstrating whether or not any affected Site Remediation sources emit inorganic or metal HAP.

b. How did the decision regarding inorganic and metal HAP emissions change since proposal?

In this final action, we have not made any changes to the proposed decision related to inorganic HAP and metal emissions standards.

c. What key comments did we receive regarding inorganic and metal HAP, and what are our responses?

Comment: One commenter observed that of over 200 Site Remediations in the country, the EPA found data for only six facilities. The commenter claimed that the EPA has nearly complete ignorance about actual Site Remediation emissions due to a failure by the EPA to collect the necessary data and asserts that claiming a lack of data without adequate enquiry does not excuse the Agency from the requirements of the CAA to set emission standards for each HAP a source category emits. The commenter added that data for the source category, including exempt facilities, clearly shows that Site Remediations do emit specific and substantial quantities of inorganic and metal HAP, citing EPA's residual risk assessments in the docket at proposal. In contrast, several other commenters observed that the risk assessment and the EPA's data for this source category do not demonstrate that inorganic HAP and HAP metals are emitted from affected facilities and agree with the EPA's decision not to set standards for these pollutants. Two of these commenters also note that metals are the HAP driving risks; however, this is an assumption of the model plant approach employed in conducting the risk assessment. The commenters stated that these HAP are likely not emitted, and the actual risks are likely much lower than the EPA estimates.

Response: The NEI is the basis for establishing emission profiles for the Site Remediation source category and many EPA residual RTRs performed or are in progress within the Agency. The NEI is a comprehensive national database operated by the regulated community, state agencies, and the EPA to have data available for research and analysis, public information, and rulemaking. In the case of the Site Remediation RTR, to perform the risk assessment, the EPA used data submissions from approximately 220 facilities (102 affected facilities and 118 exempt facilities) that submitted over 55,000 records of pollutant emissions for over 4,000 emission units at the entire facilities (*i.e.,* not just units subject to the Site Remediation NESHAP). The NEI provides the best information available to the EPA regarding emissions from the Site Remediation source category.

Of the affected sources, the EPA did not find any affected facilities that reported Site Remediation emissions of metals and found only one facility that emitted any other inorganic HAP, which

was asbestos. Upon further investigation of the asbestos emissions at this facility, the EPA discovered that the Site Remediation at this facility is subject to other rules applicable to asbestos cleanups, including 40 CFR part 61, subpart M, the Asbestos NESHAP. The EPA has determined that since the asbestos emissions are already regulated by another NESHAP in this instance, it is not necessary to regulate those emissions separately in the Site Remediation NESHAP.

The EPA disagrees with the commenter's assertion that exempt facilities emit substantial quantities of inorganic HAP and metals. The emissions reported in the NEI for exempt facilities shows a total of 0.04 tpy of HAP metal emissions, all of which are from one facility, and 1.3 tpy of other inorganic HAP emissions, with 97 percent of these emissions from one facility. Thus, while some exempt facilities emit limited quantities of metal and inorganic HAP, the nature of Site Remediations, which are highly site-specific and vary widely in remediation materials treated, treatment methods and equipment, and emissions, does not suggest that emissions of metal and inorganic HAP are common in Site Remediations, are emitted in large quantities, or would be expected from affected facilities. Therefore, without further evidence to support the existence of metal or inorganic HAP emission from affected facilities, the EPA has determined it is not necessary to develop emissions standards for these pollutants for this source category.

We agree with commenters that the risk assessment, which used a model approach to attribute emissions to the Site Remediation portion of a facility where the NEI did not include Site Remediation emissions, likely overstates the emissions of some HAP from the Site Remediation portions of the facilities. Where this is true, risk from those HAP would be overstated in the risk assessment results.

As we stated at proposal, to address the limited data on Site Remediation emissions for these 96 facilities, the EPA developed a model plant approach for its risk assessment. A model plant approach is commonly used in other EPA actions. The EPA developed a profile of Site Remediation emissions for each facility by applying an emissions factor based on emissions from the entire facility, including its non-category emissions from primary processes. Some of these non-category emission sources emit metal and inorganic HAP, thus leading to an attribution of a fraction of those emissions at a facility to the Site Remediation category by virtue of the use of the emissions factor. Thus, the model plant data used for modeling risk reflect metal and inorganic emissions solely because they are emitted by *non-category* sources elsewhere in the facility. The tables in Residual Risk Assessment for Facilities Exempt from the Site Remediation Source Category in Support of the Risk and Technology Review 2019 Proposed Rule (see Docket ID Item No. EPA–HQ–OAR–2018–0833–0028, p. 37–43) cited by the commenter do not specifically distinguish which compounds cited by the commenter are facility-wide non-category emissions adapted to the model plant and therefore not actual emissions from site remediation activity, from those pollutants emitted by site remediation activity. With the exception of HCl, the compounds cited by the commenter are facility-wide non-category emissions, and not emitted by site remediation activity. See section IV. A.3 of this preamble for our discussion on HCl. The commenter's assertion that data for the source category shows that site remediations emit specific and substantial quantities of inorganic and metal HAP is not actually supported by the data cited by the commenter.

d. What is the rationale for our final decision regarding inorganic and metal HAP?

For the reasons provided above and in the preamble for the proposed rule, we are finalizing the proposed decision to not set standards for metals and inorganic HAP from Site Remediation sources.

2. SSM

a. What did we propose for SSM?

We proposed amendments to the Site Remediation NESHAP to remove or revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times.

b. How did the amendments regarding SSM change since proposal?

For SSM, the Site Remediation NESHAP at 40 CFR 63.7925(b)(1) allows a facility to bypass control devices for up to 240 hours per year to perform planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the control device is shut down. To ensure that emissions standards apply at all times, we proposed to revise 40 CFR 63.7925(b)(1) to require the control device to be operating whenever gases or vapors containing HAP are vented through the closed-vent system to the control device. Based on comments received regarding these requirements, we have revised these proposed requirements as they apply to storage tanks. The revised requirements will allow a facility to bypass control devices on storage tanks for up to 240 hours per year to perform planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the control device is shut down, and they are restricted from filling the tank for those 240 hours. More information concerning SSM is in the preamble to the proposed rule (84 FR 46161; September 3, 2019). We also are clarifying the compliance dates for changes in the SSM provisions. See section III.F of this preamble for compliance dates.

c. What key comments did we receive regarding SSM, and what are our responses?

We received several comments regarding SSM. We received one comment that HAP concentrations may be higher in remediation material at the startup of remediation activities, one comment that the removal of the SSM exemption is not necessary to be consistent with the *Sierra Club vs. EPA* decision, and one comment generally supporting the proposed SSM revisions. One commenter generally supported the revisions but opposed what they characterized as ''exemptions'' provided for PRDs during process malfunctions. Other commenters disagreed with the proposed changes related to periods of planned routine maintenance in 40 CFR 63.7925(b)(1) as they would affect tanks. Our responses to these comments can be found in the Response to Comments document in the docket. In addition to comments on SSM, we also received comment on the topic of periods for planned routine maintenance. A summary of these comments and our response is below.

Comment: Several commenters requested that the EPA retain an allowance for maintenance of control devices for tanks and add the work practice to the Site Remediation NESHAP that was finalized in the Amino and Phenolic Resins (APR) NESHAP RTR Reconsideration in October 2018. The commenters explained that this work practice allows closed vent systems on tanks to be bypassed for up to 240 hours per year for routine maintenance but prohibits sources from increasing the level of material in the tank during that time to minimize emissions by ensuring no working losses occur. Another commenter requested that the EPA

retain the current routine maintenance provision that allows all closed-vent system or control devices to be bypassed for up to 240 hours per year to perform routine maintenance. This commenter stated that the EPA has not provided any justification or analysis of the costs or emissions impact associated with the proposed change.

Response: In the proposed rule, we removed the exemption from emissions standards for periods of SSM in accordance with a decision of the Court, *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). This decision stated that the EPA must provide standards that are in place at all times, even during periods of SSM. Thus, we also removed the provision at 40 CFR 63.7925(b)(1) that allowed a control device to be bypassed for up to 240 hours per year for the performance of planned routine maintenance of the closed vent system or control device (*i.e.,* 240-hour routine maintenance exemption). As a result, the emissions limits, including those for tanks, in the proposed revised Site Remediation NESHAP would apply at all times.

While emissions from most equipment can be eliminated completely during routine maintenance of a control device, simply by not operating the process during those times, the same is not true for a tank. For a fixed roof tank complying with the NESHAP by routing emissions through a closed vent system to a control device, the stored material in the tank will continue to emit volatile compounds when the control device is not operating. The only ways for these tanks to avoid such emissions are to empty and degas the tank prior to the maintenance activity. It is possible that emptying and degassing a tank could result in greater emissions than would result from emissions from the tank during a 240-hour period. At proposal, we did not consider this emissions potential. Taking this factor into account, we decided to examine whether separate MACT standards should be established for periods of planned routine maintenance of the emission control system for the vent on a fixed roof tank at a new or existing source.

We began our examination by reviewing the title V permits for each facility subject to the Site Remediation NESHAP. In this review, we searched for facilities that had tanks subject to the emissions standards of the Site Remediation NESHAP and for any permit requirements pertaining to periods of routine maintenance of a control device for a tank. From this review, several facilities were found to have tanks subject to the Site Remediation NESHAP emission standards. While the current provisions of the Site Remediation NESHAP minimize emissions by limiting the duration of the bypass of a control device for planned routine maintenance to 240 hours per year, no additional permit conditions were found for these facilities for periods of time when the tank control device was not operating. We also reviewed other NESHAP to examine the requirements that apply to similar tanks. From the review of these NESHAP, we found that the Hazardous Organic NESHAP (HON) and several other NESHAP, including, but not limited to, those for Group I Polymers and Resins, Group IV Polymers and Resins, OSWRO, Pharmaceuticals Production, and Pesticide Active Ingredient Production with similar vapor pressure and threshold capacities have provisions that minimize HAP emissions during periods of planned routine maintenance. These provisions minimize HAP emissions by limiting the duration of planned routine maintenance to 240 hours per year. The Pharmaceuticals Production and Pesticide Active Ingredient Production NESHAP also allow a facility to request an extension of up to an additional 120 hours per year on the condition that no material is added to the tank during such requested extension period. The Amino and Phenolic Resins NESHAP includes the 240-hour provision described above and also prohibits sources from increasing the level of material in tanks during that time to minimize emissions. With these provisions, fixed roof tanks' emissions are limited to breathing losses, and the tanks do not need to be emptied and degassed to perform routine maintenance. Based on our review of these permits and NESHAP, we have determined that the MACT floor level of control for fixed roof tank vents at existing Site Remediation sources is the minimization of emissions by limiting the duration of planned routine maintenance periods in which the control device may be bypassed to 240 hours per year. Also based on this review, we identified one above-the-floor option, which is to add a work practice to prohibit the addition of material to the tank during the planned routine maintenance period when the tank control device is bypassed.[15]

We evaluated the impacts of the identified beyond-the-floor control option. We estimate that there are one to 10 facilities in the category that would need to control one or more tanks during periods when the primary emission control system is undergoing planned routine maintenance. We have assumed an equal distribution of one to five tanks at 10 facilities, for a total of 30 tanks in the source category. To comply with the work practice of not adding material to the tank during planned routine maintenance periods when the tank control device is bypassed, we anticipate no additional equipment would be needed and no additional costs would be incurred. We estimate this option would reduce emissions by up 76 lbs./year per tank and 2,280 lbs./year (1.1 tpy) for the source category (*i.e.,* 30 tanks).

Based on our analysis, the identified beyond-the-floor option is reasonable, given the level of HAP emissions reduction that would be achieved with this work practice and the absence of additional costs. Accordingly, we are revising the Site Remediation MACT standards to allow owners or operators of fixed roof vessels at new and existing affected Site Remediation facilities to perform planned routine maintenance of the emission control system for up to 240 hours per year, provided there are no working losses from the tank during that time.

This work practice standard is being established in accordance with CAA section 112(h). We note that the tank requirements in this rule were originally promulgated as CAA section 112(h) standards, which established two control options. One option is for the installation of a floating roof pursuant to 40 CFR part 63, subpart WW. This option is a combination of design, equipment, work practice, and operational standards. The other option is to install a conveyance system (pursuant to 40 CFR part 63, subpart DD) and route the emissions to a control device that achieves a 95-percent reduction in HAP emissions or that achieves a specific outlet HAP concentration. This second option is a combination of design standards, equipment standards, operational standards, and a percent reduction or outlet concentration. See the preamble to the original rulemaking for 40 CFR part 63, subpart GGGGG at 67 FR 49398 (July 30, 2002). The work practice requirement added in this action also fulfills the purposes of section 112(h)(1) of the CAA, which calls on the Administrator to include requirements in work practice standards sufficient to assure the proper operation and

[15] *Impacts Associated with the Routine Maintenance Provisions for Storage Tanks in the Site Remediation Source Category.* Memorandum from Lesley Stobert, SC&A, to Matt Witosky, available in the docket for this action, Docket ID No. EPA HQ–OAR–2018–0833.

maintenance of the design or equipment. The added work practice standard allows for the planned routine maintenance of the control device and minimizes emissions during such periods of planned routine maintenance, consistent with the requirements of CAA section 112(h)(1) by eliminating working losses during planned routine maintenance of the control device. For breathing losses, we have determined that it is not practicable due to technological and economic limitations, to measure these emissions during periods of planned routine maintenance to establish a numeric limit based upon the best performing sources. The breathing losses during the planned routine maintenance of the control system are highly dependent on the volume of the vapor space and the weather conditions during that time. Specialized flow meters (such as mass flow meters) would likely be needed in order to accurately measure any flow during these variable, no-to-low flow conditions. Measurement costs for these times would be economically impracticable, particularly in light of the small quantity of emissions. In addition, we are not aware of any measurement of breathing loss HAP emissions from a fixed roof storage vessel in the field.

d. What is the rationale for our final amendments regarding SSM?

With one exception, we are finalizing the provisions for periods of SSM provisions as proposed. The SSM-related provision regarding planned routine maintenance of control systems for storage tanks has been revised since proposal based on consideration of comments received during the public comment period. As explained in the comment response above in section 2.c, we reviewed available Site Remediation permits and the conditions of other NESHAP with similar provisions, and we determined that it is appropriate to adopt a work practice standard to allow owners or operators of fixed roof vessels at new and existing affected Site Remediation facilities to perform planned routine maintenance of the emission control system for up to 240 hours per year, provided there are no working losses from the tank during that time.

3. Electronic Reporting

a. What did we propose for electronic reporting?

As stated in the preamble to the proposed rule, to facilitate the demonstration and determination of compliance and simplify data entry, the EPA proposed to require owners and operators of Site Remediation facilities to submit electronic copies of required performance test reports, performance evaluation reports, and semi-annual compliance reports through the EPA's CDX using CEDRI. The EPA identified at proposal two broad circumstances in which electronic reporting extensions may be provided. These situations include outages of the EPA's CDX or CEDRI and force majeure events.

Additionally, for semi-annual summary compliance reports, the proposed rule required that owners and operators use a spreadsheet template to submit information to CEDRI. The EPA provided a draft version of the template for this report in the docket for the proposed rulemaking and requested comment on the content, layout, and overall design of the template.

b. How did the amendments regarding electronic reporting change since proposal?

Regarding electronic reporting, the proposed requirements to submit electronic copies of required performance test reports, performance evaluation reports, and semi-annual compliance reports have not changed. However, we have made a few corrections and clarifications to the draft spreadsheet template provided at proposal for use in submitting semi-annual summary compliance reports to CEDRI.

c. What key comments did we receive regarding electronic reporting, and what are our responses?

Comment: One commenter supported the EPA's proposal for electronic reporting but does not support the proposed reporting exemption provisions, which the commenter noted the EPA describes as ''extensions,'' for CEDRI outages or force majeure events. The commenter stated that the provisions do not set a new firm deadline to submit the required report or a deadline to request an extension of the reporting deadline, and the EPA must set a deadline, such as 10 days. The commenter asserted that this leads to a broad and vague mechanism by which a facility could evade reporting and compliance with the emissions standards. The commenter stated that by not including a new deadline, the provision does not provide for an extension, but rather provides an exemption from the reporting requirements and potentially from meeting the emissions standards. Additionally, the commenter remarked that the EPA did not provide a reasoned basis for this provision, and it appears there is no evidence that either type of event has caused any problems with electronic reporting in the past.

Response: The EPA notes that there is no exception or exemption to reporting, only a method for requesting an extension of the reporting deadline. There is no predetermined timeframe for the length of extension that can be granted, as this is something best determined by the Administrator when reviewing the circumstances surrounding the request. Different circumstances may require a different length of extension for electronic reporting. For example, a tropical storm may delay electronic reporting for a day, but a Hurricane Katrina scale event may delay electronic reporting much longer, especially if the facility has no power, and, as such, the owner or operator has no ability to access electronically stored data or submit reports electronically. The Administrator will be the most knowledgeable on the events leading to the request for extension and will assess whether an extension is appropriate, and, if so, on a reasonable length. The Administrator may even request that the report be sent in hardcopy until electronic reporting can be resumed. While no new fixed duration deadline is set, the regulation does require that the report be submitted electronically as soon as possible after the outage is resolved or after the force majeure event occurs. For these reasons, the EPA is not adding a firm deadline for reporting when the Administrator accepts a claim of force majeure or EPA system outage and instead leaves the deadline for the extension to the discretion of the Administrator.

d. What is the rationale for our final amendments regarding electronic reporting?

We are finalizing the proposed provisions regarding electronic reporting, however, the final spreadsheet template to be used in submitting semi-annual summary compliance reports to CEDRI has been revised based on comments received during the public comment period.

4. Open-Ended Valves and Lines

a. What did we propose for OELs?

We proposed to add a paragraph to 40 CFR 63.7920(b) to clarify what ''seal the open end'' means for OELs under the Site Remediation NESHAP. This clarification was intended to reduce uncertainty for the owner or operator as to whether compliance is being achieved. The proposed clarification explained that, for the purpose of

complying with the requirements of 40 CFR 63.1014(b)(1) of 40 CFR part 63, subpart TT or 40 CFR 63.1033(b)(1) of subpart UU, as applicable, Site Remediation OELs are ''sealed'' by the cap, blind flange, plug or second valve when instrument monitoring of the OELs conducted according to EPA Method 21 of 40 CFR part 60, appendix A indicates no readings of 500 ppm or greater.

We also proposed that OELs that are in an emergency shutdown system, and which are designed to open automatically, be equipped with either a flow indicator or a seal or locking device since 40 CFR part 63, subparts TT and UU exempt these OELs from the requirements to be equipped with a cap, blind flange, plug, or second valve that seals the open end. Additionally, we proposed recordkeeping and reporting requirements for these OELs.

b. How did the amendments regarding OELs change since proposal?

The EPA is not finalizing the proposed provisions related to OELs. These requirements include those of proposed 40 CFR 63.7920(b)(3)(i) that were intended to clarify what ''seal the open end'' means for OELs; the proposed requirements of 40 CFR 63.7920(b)(3)(ii), which specified that certain OELS in an emergency shutdown system be equipped with either a flow indicator or a seal or locking device; and the related proposed recordkeeping and reporting requirements for these OELs.

c. What key comments did we receive regarding OELs, and what are our responses?

Comment: Several commenters asserted that the proposal to amend the rule to clarify that open-ended valves and lines are only sealed if an EPA Method 21 instrument reading is less than 500 ppm is inconsistent with other equipment leak rulemakings under 40 CFR parts 60 and 63. The commenters oppose the EPA's proposal to clarify what ''seal the open end'' means for open-ended valves and lines, with one commenter noting that with the low pressure piping in Site Remediation equipment, leaks from caps or plugs are minimal, and the existing requirements are sufficient. Another commenter stated that this proposed change would add new, costly, and burdensome work practice requirements, which are not discussed in the preamble or the docket. The commenters also claimed that this clarification calls for demonstrating <500 ppm leakage by monitoring, without changing the requirement to have the open-ended line capped or plugged and without specifying any specific monitoring requirements. Further, one commenter remarked that the requirement to cap OELs was never an emissions standard but has always been considered a work practice in the form of an equipment standard. By establishing this equipment standard, the commenter said the EPA expressly rejected the idea that a capped open-ended line should be treated as a potentially leaking component that should be subject to an LDAR-like periodic leak detection requirement. The commenter remarked that imposing an emissions standard would transform the work practice into a numeric emissions limitation. Commenters also stated that by claiming this change is only a clarification of current requirements, the EPA has attempted to bypass the need to cite a CAA authorization for this change to the standard or meet the process requirements associated with such a change, including providing emission reduction, cost, and burden estimates in the record. These commenters asserted that the EPA must show that imposing a new 500 ppm emissions limit is justified, including an assessment of costs and an explanation of how the costs are reasonable in light of the expected emissions reductions. In additional remarks on the topic, some commenters noted that proposed monitoring of OELs was not finalized for 40 CFR part 60, subparts VV or VVa due to the low-cost effectiveness of the requirements in relation to VOC emissions, which would likely have been even less cost effective when considering only HAP. In addition, one commenter provided historical information regarding OELs in which the EPA did not require LDAR and only require equipment standards for subpart VV and subpart H of part 63 (the HON rule). Several commenters stated that if additional OEL requirements can be shown to be justified, the requirements should take a traditional equipment leak approach in which monitoring is performed and that a reading above a certain level, such as 500 ppm, is an action level for repair rather than a violation. One commenter added that in this approach, a missing OEL cap or plug would not be a deviation unless a reading determines that a leak above the defined threshold is occurring.

Some commenters added that this ''clarification'' in the Site Remediation NESHAP would appear to be a clarification to all equipment leak rules and permits containing similar language. The commenters noted that this proposal does not notify other industries subject to 40 CFR part 63, subparts TT and UU of this change. In order to impose this new standard, one commenter stated that the EPA should identify the CAA authority for this action, propose amendments to all rules referencing 40 CFR subparts TT and UU (or propose amendments to subparts TT and UU, instead) and provide cost burden and emission impact estimates for this change for all impacted rules.

Response: The EPA disagrees that the proposal changed the current requirements, which consist of an equipment standard to equip the OEL with a cap, blind flange, plug, or second valve and an operational standard that the open end is ''sealed'' by that equipment at all times, except during operations requiring process fluid flow or during maintenance. See 40 CFR 63.1014(b)(1) and 40 CFR 63.1033(b)(1). As stated in the preamble to the proposed rule (see 84 FR 46165; September 3, 2019), the purpose of the proposed definition for ''sealed'' was intended to provide compliance certainty with the codified operational requirement that the OEL is ''sealed'' for the Site Remediation source category. However, upon review of these comments, the EPA agrees that additional consideration of the proposed change would be appropriate because there are multiple source categories that cross-reference the same equipment and operational requirements for OELs. We continue to believe that it is important that the standard to seal the OEL includes a clear mechanism for a source to demonstrate compliance with that requirement. Therefore, the EPA intends to continue to evaluate appropriate means of compliance certainty for OELs, including the term ''sealed,'' and is not finalizing any revisions to the OEL standards applicable to Site Remediation in this action. In the meantime, both the equipment standard that the OEL is equipped with a cap, blind flange, plug, or second valve, and the operational standard requiring that this equipment seal the open end of the valve or line, continue to apply.

d. What is the rationale for our final decision regarding OELs?

Considering comments received during the public comment period, the EPA is not finalizing the proposed provisions for OELs. These proposed provisions were intended to clarify what ''seal the open end'' means for OELs, would have required certain OELS in an emergency shutdown system to be equipped with a flow indicator or a seal or locking device, and would have

required related recordkeeping and reporting requirements for these OELs.

Since OELs are present at many facilities, additional consideration of the proposed change is appropriate because there are multiple source categories that cross-reference the same equipment and operational requirements for OELs. We continue to believe it is important that the standard to seal the OEL includes a clear mechanism for a source to demonstrate compliance with that requirement. Therefore, the EPA intends to continue to evaluate appropriate means of compliance certainty for OELs, including the term ''sealed,'' and is not finalizing any revisions to the OEL standards applicable to Site Remediation in this action.

The EPA emission estimates are based on reported emissions, and we did not estimate HAP reductions from the proposed approach that we are not finalizing. For this reason, the decision to not finalize the OEL provisions has no impact on estimated emissions, risks, or decisions related to risk.

5. Technical Corrections

a. What technical corrections did we propose?

We proposed several miscellaneous minor changes to improve the clarity of the Site Remediation NESHAP requirements. These proposed changes included:

- Adding citations in 40 CFR 63.14 to 40 CFR 63.7944 for the two following consensus standards: American Petroleum Institute (API) Publication 2517, Evaporative Loss From External Floating-Roof Tanks, and American Society for Testing and Materials (ASTM) Method D2879–83.
- Correcting citation errors. These include correcting the reference in 40 CFR 63.7942 to be 40 CFR 63.7(a)(3) rather than 40 CFR 63.7(3); correcting the reference in 40 CFR 63.7941 to be 40 CFR 7890(b) rather than 40 CFR 63.7980(a)(1)(i); and correcting the references in 40 CFR 63.7901(a) and (b)(1), and 40 CFR 63.7903(a) and (b) to be 40 CFR 63.7900 rather than 40 CFR 63.7990.

b. How did the technical corrections change since proposal?

We have not made any changes to the proposed technical corrections. However, we have added other technical corrections to the final rule. These include the following:

- The reporting requirement in 40 CFR 63.7951(b)(10)(i) did not specify which information should be reported with respect to a leak found under the PRD provisions. The EPA has specified that sources should report the number of times that a leak is detected during the reporting period.
- The reporting requirement in 40 CFR 63.7951(b)(10)(ii) was revised to clarify that the source is required to include a notation that the required monitoring was performed.
- The reporting requirement in 40 CFR 63.7951(b)(10)(iii)(B) was revised to require that the source report total HAP, rather than each HAP, to be consistent with the provisions in 40 CFR 63.7923(d).
- The reference to the requirement to submit a Notification of Compliance Status in 40 CFR 63.7951 at proposal has been revised for clarity.

c. What is the rationale for our final technical corrections?

These corrections have been made to correct errors, provide consistency of terms and add clarity to the rule.

e. Other Comments

Comment: A commenter recommended modifying 40 CFR 63.7885(b)(2) to address systems with process vents that are associated with gaseous systems, noting that the current regulation only provides a parts per million by weight (ppmw) value.

Response: In 40 CFR 63.7882, process vents are defined as the entire group of process vents associated with the in-situ and ex-situ remediation processes used at the site to remove, destroy, degrade, transform, or immobilize hazardous substances in the remediation material subject to remediation, which would include process vents associated with gaseous systems. The standard in 40 CFR 63.7885(b)(2), average volatile organic hazardous air pollutants (VOHAP) concentration of the material, is on a mass-weighted basis, ppmw. This concentration is determined by collection and analysis of a sample by one of the methods listed in 40 CFR 63.694(b)(2)(ii). These methods determine, on a mass-weighted basis, the average VOHAP concentration in ppmw. As the methods to determine the average VOHAP concentration are in terms of mass, it is appropriate for the applicability provisions for process vents to be in the same terms. Therefore, we have not modified the requirements of 40 CFR 63.7885(b)(2).

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

We estimate that there are approximately 63 major source Site Remediation facilities. Based on available permit information, 33 facilities are expected to be subject to a limited set of the rule requirements under 40 CFR 63.7881(c) due to the low annual quantity of HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed during the Site Remediations conducted at the facilities. These facilities are only required to prepare and maintain written documentation to support the determination that the total annual quantity of the HAP contained in the remediation material excavated, extracted, pumped, or otherwise removed at the facility is less than 1 megagram per year. They are not subject to any other emissions limits, work practices, monitoring, reporting, or recordkeeping requirements. While new Site Remediations are likely to be conducted in the future, we are currently not aware of any specific new Site Remediation facilities that will be subject to the Site Remediation NESHAP.

B. What are the air quality impacts?

For equipment leaks, we are revising the equipment leak thresholds for pumps and valves for facilities complying with 40 CFR part 63, subpart TT. We estimate the HAP emission reduction for this change to be approximately 4.7 tpy. We anticipate a reduction of up to 1.1 tpy of HAP emissions from the revised requirements for planned routine maintenance, which eliminate the routine maintenance exemption for all affected units, and, for storage tank emissions control systems only, provide a work practice standard. We do not anticipate any HAP emission reduction from the requirement to electronically report the results of emissions testing. For the revisions to the MACT standards establishing a work practice standard for actuation of PRDs in remediation material service, we were not able to quantify the possible emission reductions, so none are included in our assessment of air quality impacts. Therefore, the total HAP emission reductions for the final rule revisions for the Site Remediation source category are estimated to be 5.8 tpy.

C. What are the cost impacts?

For equipment leaks, we are revising the equipment leak thresholds for pumps and valves for facilities complying with 40 CFR part 63, subpart TT. We estimate the nationwide capital costs to be $26,000 and the annual costs to be $10,000. We do not anticipate any quantifiable capital or annual costs for our requirements to electronically report the results of emissions testing. For the

requirements to monitor PRDs, we estimate the nationwide capital costs to be $162,000 and the annual costs to be $29,500. For PRDs, we are also requiring facilities to conduct analyses of the causes of PRD pressure release actuation events and to implement corrective measures. We estimate the nationwide annualized costs for the analysis of actuation events to be $13,000. This cost represents the estimated labor hours we anticipate would be required to determine the cause of a typical actuation event and to implement any corrective measure suggested by the analysis of the cause. We estimate an increase in reporting and recordkeeping associated with the requirements for equipment leaks and PRDs of approximately $7,000 per year nationwide. Therefore, the total capital costs for the regulatory changes being finalized in this action for the Site Remediation source category are approximately $188,000, and the total annualized costs are approximately $60,000.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule. The total capital costs associated with this rule are estimated to be approximately $188,000, and the estimated annualized cost is approximately $60,000. We expect these costs to be borne by 30 facilities, with an average annualized cost of approximately $2,000 per facility per year. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

E. What are the benefits?

We have estimated that this action will achieve HAP emissions reductions of 5.8 tpy. The revised standards will result in reductions in the actual and MACT-allowable emissions of HAP and may reduce the actual and potential cancer risks and noncancer health effects due to emissions of HAP from this source category, as discussed in the proposal preamble (See 84 FR 46158; September 3, 2019). We have not quantified the monetary benefits associated with these reductions; however, these avoided emissions will result in improvements in air quality and reduced negative health effects associated with exposure to air pollution from these emissions.

F. What analysis of environmental justice did we conduct?

The EPA is making environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has established policies regarding the integration of environmental justice into the Agency's rulemaking efforts, including recommendations for the consideration and conduct of analyses to evaluate potential environmental justice concerns during the development of a rule.

Following these recommendations, to gain a better understanding of the source category and near source populations, the EPA conducted a demographic analysis for Site Remediation facilities to identify any overrepresentation of minority, low income, or indigenous populations. This analysis only gives an indication of the prevalence of sub-populations that may be exposed to air pollution from the sources; it does not identify the demographic characteristics of the most affected individuals or communities, nor does it quantify the level of risk faced by those individuals or communities. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low income, or indigenous populations. Additionally, the final changes to the NESHAP increase the level of environmental protection for all affected populations by reducing emissions from equipment leaks and from storage tanks during periods of planned routine maintenance of emissions control systems, and these revisions do not cause any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income, or indigenous populations. Further details concerning the demographic analysis are presented in the memorandum titled, *Risk and Technology Review—Analysis of Demographic Factors For Populations Living Near Site Remediation Source Category Operations,* a copy of which is available in the docket for this action.

G. What analysis of children's environmental health did we conduct?

As part of the health and risk assessments, as well as the demographic analysis conducted for this action, risks to infants and children were assessed. These analyses are documented in the *Residual Risk Assessment for the Site Remediation Source Category in Support of the March 2020 Risk and Technology Review Final Rul*e and the *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Site Remediation Source Category Operations* documents and are available in the docket for this action.

The results of the demographic analysis show that the average percentage of children 17 years and younger in close proximity to Site Remediation facilities is approximately the same as the percentage of the national population in this age group. Consistent with the EPA's Policy on Evaluating Health Risks to Children, we conducted inhalation and multipathway risk assessments for the Site Remediation source category, considering risk to infants and children.[16] Children are exposed to chemicals emitted to the atmosphere via two primary routes: either directly via inhalation, or indirectly via ingestion or dermal contact with various media that have been contaminated with the emitted chemicals. The EPA considers the possibility that children might be more sensitive than adults to toxic chemicals, including chemical carcinogens. For our inhalation risk assessment, several carcinogens emitted by facilities in this source category have a mutagenic mode of action. For these compounds, we applied the age-dependent adjustment factors (ADAF) described in the EPA's *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens.*[17] This adjustment has the effect of increasing the estimated lifetime risks for these pollutants by a factor of 1.6. For one group of these chemicals with a mutagenic mode of action, polycyclic organic matter (POM), only a small fraction of the total emissions were reported as individual compounds. The EPA expresses

[16] *Policy on Evaluating Health Risks to Children,* U.S. Environmental Protection Agency, Washington, DC. May 2014. Available at *http://www2.epa.gov/sites/production/files/2014-05/documents/1995_childrens_health_policy_statement.pdf.*

[17] *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens.* Risk Assessment Forum, U.S. Environmental Protection Agency, Washington, DC. EPA/630/R–03/003F. March 2005. Available at *http://www.epa.gov/raf/publications/pdfs/childrens_supplement_final.pdf.*

carcinogenic potency of POM relative to the carcinogenic potency of benzo[a]pyrene, based on evidence that carcinogenic POM has the same mutagenic mode of action as does benzo[a]pyrene. The EPA's Science Policy Council recommends applying the ADAF to all carcinogenic compounds for which risk estimates are based on potency relative to benzo[a]pyrene. Accordingly, we have applied the ADAF to the benzo[a]pyrene-equivalent mass portion of all POM mixtures. For our multipathway screening assessment (*i.e.,* ingestion), we assessed risks for adults and various age groups of children. Children's exposures are expected to differ from exposures of adults due to differences in body weights, ingestion rates, dietary preferences and other factors. It is important, therefore, to evaluate the contribution of exposures during childhood to total lifetime risk using appropriate exposure factor values, applying ADAF as appropriate. The EPA developed a health protective exposure scenario whereby the receptor, at various lifestages, receives ingestion exposure via both the farm food chain and the fish ingestion pathways. The analysis revealed that fish ingestion is the dominant exposure pathway across all age groups for several pollutants, including POM. For POM, the farm food chain also is a major route of exposure, with beef and dairy contributing significantly to the lifetime average daily dose. Preliminary calculations of estimated dermal exposure and risk from these pollutants showed that the dermal exposure route is not a significant risk pathway relative to ingestion exposures. Based on the analyses described above, the EPA has determined that the changes to this rule, which will reduce emissions of HAP by over 5 tpy, will lead to reduced risk to children and infants.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2062.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information requirements in this rulemaking are based on the notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These notifications, reports, and records are essential in determining compliance, and are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

Respondents/affected entities: Unlike a specific industry sector or type of business, the respondents potentially affected by this ICR cannot be easily or definitively identified. Potentially, the Site Remediation rule may be applicable to any type of business or facility at which a Site Remediation is conducted to clean up media contaminated with organic HAP when the remediation activities are performed, the authority under which the remediation activities are performed, and the magnitude of the HAP in the remediation material meets the applicability criteria specified in the rule. A Site Remediation that is subject to this rule potentially may be conducted at any type of privately-owned or government-owned facility at which contamination has occurred due to past events or current activities at the facility. For Site Remediation performed at sites where the facility has been abandoned and there is no owner, a government agency may have responsibility for the cleanup.

Respondent's obligation to respond: Mandatory (42 U.S.C. 7414).

Estimated number of respondents: 30 total for the source category. These facilities are already respondents and no facilities are expected to become respondents as a result of this action.

Frequency of response: Semiannual.

Total estimated burden: 19,700 total hours (per year) for the source category, of which 310 hours are estimated as a result of this action. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The total estimated cost of the rule is $1.55 million (per year) for the source category. This includes $288,000 total annualized capital or operation and maintenance costs. We estimate that $188,000 of the $288,000 in total annualized capital or operation and maintenance costs is a result of this action. Recordkeeping and reporting costs of approximately $20,000 estimated as a result of this action are included in the $1.55 million in total costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are chemical and refining companies. The Agency has determined that two small entities, representing approximately 7 percent of the total number of entities subject to the rule, may experience an impact of less than 0.1 percent of revenues. Details of this analysis are presented in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0833).

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial

direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). There are no Site Remediation facilities that are owned or operated by tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the *Residual Risk Assessment for the Site Remediation Source Category in Support of the 2020 Risk and Technology Review Final Rule* document, which is available in the docket for this action, and are discussed in sections III.A and IV.A of this preamble.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51

This action involves technical standards. The EPA is formalizing the incorporation of two technical standards that were included in the October 2003 rule for which the EPA had previously not formally requested the Office of the Federal Register to include in 40 CFR 63.14 with a reference back to the sections in 40 CFR part 63, subpart GGGGG. These two standards were already incorporated in 40 CFR 63.14 and were formally requested for other rules. These standards are API Publication 2517, ''Evaporative Loss from External Floating-Roof Tanks,'' Third Edition, February 1989, and ASTM D2879–83, ''Standard Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope.'' Sources subject to the Site Remediation NESHAP must determine the average total VOHAP concentration of a remediation material using either direct measurement or by knowledge of the material. These methods may be used to determine the average VOHAP concentration of remediation material. These analyses are used to determine control requirements for compliance with applicable standards. While the API Publication 2517 is used to determine emissions from floating roof tanks, an important component in determining these emissions is the vapor pressure of the material stored in the tank. Therefore, this publication includes widely used methods for determining the maximum true vapor pressure of HAP in liquids stored at ambient temperature and is available to the public for purchase from the reseller IHS Markit Standards Store through their website at *https://global.ihs.com/*. The ASTM D2879–83 method is also used to determine the maximum true vapor pressure of HAP in liquids stored at ambient temperature, and it is available to the public for free viewing online in the Reading Room section on ASTM's website at *https://www.astm.org/READINGLIBRARY/*. Hardcopies and printable versions are also available for purchase from ASTM. Additional information can be found at *http://www.api.org/* and *https://www.astm.org/Standard/standardsandpublications.html.*

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994) because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income, or indigenous populations. The results of the demographic analysis completed by the EPA are presented in the memorandum titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Site Remediation Source Category Operations,* which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2018–0833) and are discussed in section V.F of this preamble.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR part 63 as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.14 is amended by revising paragraphs (c)(1) and (h)(31) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(c) * * *

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition, February 1989, IBR approved for §§ 63.111, 63.1402, 63.2406 and 63.7944.

Note 1 to paragraph (c)(1): API Publication 2517 available through reseller HIS Markit at *https://global.ihs.com/*

* * * * *

(h) * * *

(31) ASTM D2879–83, Standard Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, Approved November 28, 1983, IBR approved for §§ 63.111, 63.1402, 63.2406, 63.7944, and 63.12005.

* * * * *

Subpart GGGGG—National Emission Standards for Hazardous Air Pollutants: Site Remediation

■ 3. Section 63.7882 is amended by revising paragraph (a) introductory text

and adding paragraph (a)(4) to read as follows:

§ 63.7882 What site remediation sources at my facility does this subpart affect?

(a) This subpart applies to each new, reconstructed, or existing affected source for your Site Remediation as designated by paragraphs (a)(1) through (4) of this section.

* * * * *

(4) *Pressure relief devices.* The affected source is any pressure relief device in remediation material service, as defined in § 63.7957. Pressure relief devices meeting the specifications of paragraph (a)(3) of this section are also part of an equipment leaks affected source.

* * * * *

■ 4. Section 63.7883 is amended by revising paragraphs (a), (b) introductory text, (c) introductory text, and (d) introductory text and adding paragraph (f) to read as follows:

§ 63.7883 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than October 9, 2006, except as provided in paragraph (f) of this section.

(b) If you have a new affected source that manages remediation material other than a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (b)(1) or (2) of this section, as applicable to your affected source, except as provided in paragraph (f) of this section.

* * * * *

(c) If you have a new affected source that manages remediation material that is a radioactive mixed waste as defined in § 63.7957, then you must meet the compliance date specified in paragraph (c)(1) or (2) of this section, as applicable to your affected source, except as provided in paragraph (f) of this section.

* * * * *

(d) If your facility is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP as defined in § 63.2, then you must meet the compliance dates specified in paragraphs (d)(1) and (2) of this section, except as provided in paragraph (f) of this section.

* * * * *

(f) If the affected source's initial startup date is on or before September 3, 2019, you must comply with the requirements specified in paragraphs (f)(1) through (5) of this section by the dates specified in those paragraphs. If the affected source's initial startup date is after September 3, 2019, you must comply with all of the applicable requirements of this subpart upon initial startup or July 10, 2020, whichever is later.

(1) You must comply with the equipment leak requirements of § 63.7920(b)(3), (d), and (e) on or before July 10, 2021.

(2) You must comply with the pressure relief device requirements of § 63.7923(a) on or before January 6, 2021.

(3) You must comply with the pressure relief device requirements of § 63.7923(b) through (f) on or before January 10, 2022.

(4) You must comply with the pressure tank closure device reporting and recordkeeping requirements of §§ 63.7951(b)(11) and 63.7952(a)(7) on or before January 6, 2021.

(5) You must comply with the electronic reporting requirements of § 63.7951(e) through (h) on or before January 6, 2021.

■ 5. Section 63.7895 is amended by revising paragraph (c) to read as follows:

§ 63.7895 What emissions limitations and work practice standards must I meet for tanks?

* * * * *

(c) If you use Tank Level 1 controls, you must install and operate a fixed roof according to the requirements in § 63.902, with the exceptions specified in paragraphs (c)(1) and (2) of this section. As an alternative to using this fixed roof, you may choose to use one of Tank Level 2 controls in paragraph (d) of this section.

(1) Where § 63.902(c)(2) provides an exception for a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere, for any source for the purposes of this subpart, only a conservation vent is eligible for the exception after January 6, 2021. If your initial startup date is after September 3, 2019, the exception for a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device does not apply, with the exception of a conservation vent, for the purposes of this subpart after July 10, 2020.

(2) The provisions of § 63.902(c)(3) do not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; for any source the provisions of § 63.902(c)(3) do not apply for the purposes of this subpart after January 6, 2021.

* * * * *

■ 6. Section 63.7896 is amended by revising paragraphs (c)(1) and (3) and (f)(1) to read as follows:

§ 63.7896 How do I demonstrate initial compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(c) * * *

(1) Each tank using Tank Level 1 controls is equipped with a fixed roof and closure devices according to the requirements in § 63.902(b) and (c), with the exceptions specified in § 63.7895(c)(1) and (2), and you have records documenting the design.

* * * * *

(3) You will operate the fixed roof and closure devices according to the requirements in § 63.902, with the exceptions specified in § 63.7895(c)(1) and (2).

* * * * *

(f) * * *

(1) Each tank is equipped with a fixed roof and closure devices according to the requirements in § 63.685(g), with the exceptions specified in § 63.7895(c)(1) and (2), and you have records documenting the design.

* * * * *

■ 7. Section 63.7898 is amended by revising paragraph (c)(1) to read as follows:

§ 63.7898 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for tanks?

* * * * *

(c) * * *

(1) Operating and maintaining the fixed roof and closure devices according to the requirements in § 63.902(c), with the exceptions specified in § 63.7895(c)(1) and (2).

* * * * *

■ 8. Section 63.7900 is amended by revising paragraphs (b)(1) through (3), (c), and (d) to read as follows:

§ 63.7900 What emissions limitations and work practice standards must I meet for containers?

* * * * *

(b) * * *

(1) If the design capacity of your container is less than or equal to 0.46 m^3, then you must use controls according to the standards for Container Level 1 controls as specified in § 63.922. As an alternative, you may choose to use controls according to either of the standards for Container Level 2 controls as specified in § 63.923. § 63.922(d)(4)

and (5) do not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.922(d)(4) and (5) do not apply for the purposes of this subpart for any source after January 6, 2021.

(2) If the design capacity of your container is greater than 0.46 m3, then you must use controls according to the standards for Container Level 2 controls as specified in § 63.923 except as provided for in paragraph (b)(3) of this section. § 63.923(d)(4) and (5) do not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.923(d)(4) and (5) do not apply for the purposes of this subpart for any source after January 6, 2021.

(3) As an alternative to meeting the standards in paragraph (b)(2) of this section for containers with a capacity greater than 0.46 m3, if you determine that either of the conditions in paragraph (b)(3)(i) or (ii) apply to the remediation material placed in your container, then you may use controls according to the standards for Container Level 1 controls as specified in § 63.922. § 63.922(d)(4) and (5) do not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.922(d)(4) and (5) do not apply for the purposes of this subpart for any source after January 6, 2021.

* * * * *

(c) At times when a container having a design capacity greater than 0.1 m3 is used for treatment of a remediation material by a waste stabilization process as defined in § 63.7957, you must control air emissions from the container during the process whenever the remediation material in the container is exposed to the atmosphere according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device. § 63.924(d) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.924(d) does not apply for the purposes of this subpart for any source after January 6, 2021.

(d) As an alternative to meeting the requirements in paragraph (b) of this section, you may choose to use controls on your container according to the standards for Container Level 3 controls as specified in § 63.924. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device. § 63.924(d) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.924(d) does not apply for the purposes of this subpart for any source after January 6, 2021.

* * * * *

■ 9. Section 63.7901 is amended by revising paragraphs (a), (b)(1), (c)(2), and (d)(3) to read as follows:

§ 63.7901 How do I demonstrate initial compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate initial compliance with the emissions limitations and work practice standards in § 63.7900 that apply to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section, as applicable to your containers.

(b) * * *

(1) You have determined the applicable container control levels specified in § 63.7900 for the containers to be used for your Site Remediation.

* * * * *

(c) * * *

(2) You will operate each container cover and closure device according to the requirements in § 63.922(d), with the exceptions specified in § 63.7900(b)(1).

(d) * * *

(3) You will operate and maintain the container covers and closure devices according to the requirements in § 63.923(d), with the exceptions specified in § 63.7900(b)(2).

* * * * *

■ 10. Section 63.7903 is amended by revising paragraphs (a), (b) introductory text, (c)(1), and (d)(2) to read as follows:

§ 63.7903 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for containers?

(a) You must demonstrate continuous compliance with the emissions limitations and work practice standards in § 63.7900 applicable to your affected containers by meeting the requirements in paragraphs (b) through (e) of this section.

(b) You must demonstrate continuous compliance with the requirement to determine the applicable container control level specified in § 63.7900(b) for each affected tank by meeting the requirements in paragraphs (b)(1) through (3) of this section.

* * * * *

(c) * * *

(1) Operating and maintaining covers for each container according to the requirements in § 63.922(d), with the exceptions specified in § 63.7900(b)(1).

* * * * *

(d) * * *

(2) Operating and maintaining container covers according to the requirements in § 63.923(d), with the exceptions specified in § 63.7900(b)(2).

* * * * *

■ 11. Section 63.7905 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 63.7905 What emissions limitations or work practice standards must I meet for surface impoundments?

* * * * *

(b) * * *

(1) Install and operate a floating membrane cover according to the requirements in § 63.942. § 63.942(c)(2) and (3) do not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.942(c)(2) and (3) do not apply for the purposes of this subpart for any source after January 6, 2021; or

(2) Install and operate a cover vented through a closed vent system to a control device according to the requirements in § 63.943. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device. § 63.943(c)(2) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.943(c)(2) does not apply for the purposes of this subpart for any source after January 6, 2021.

* * * * *

■ 12. Section 63.7906 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

§ 63.7906 How do I demonstrate initial compliance with the emissions limitations or work practice standards for surface impoundments?

* * * * *

(b) * * *

(2) You will operate the cover and closure devices according to the requirements in § 63.942(c), with the exceptions specified in § 63.7905(b)(1).

* * * * *

(c) * * *

(2) You will operate the cover and closure devices according to the requirements in § 63.943(c), with the exceptions specified in § 63.7905(b)(2).

* * * * *

■ 13. Section 63.7908 is amended by revising paragraphs (b)(1) and (c)(1) to read as follows:

§ 63.7908 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for surface impoundments?

* * * * *

(b) * * *

(1) Operating and maintaining the floating membrane cover and closure devices according to the requirements in § 63.942(c), with the exceptions specified in § 63.7905(b)(1).

* * * * *

(c) * * *

(1) Operating and maintaining the floating membrane cover and closure devices according to the requirements in § 63.943(c), with the exceptions specified in § 63.7905(b)(2).

* * * * *

■ 14. Section 63.7910 is amended by revising paragraphs (b)(1) through (3) to read as follows:

§ 63.7910 What emissions limitations and work practice standards must I meet for separators?

* * * * *

(b) * * *

(1) Install and operate a floating roof according to the requirements in § 63.1043. For portions of the separator where it is infeasible to install and operate a floating roof, such as over a weir mechanism, you must comply with the requirements specified in paragraph (b)(2) of this section. § 63.1043(c)(2) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.1043(c)(2) does not apply for the purposes of this subpart for any source after January 6, 2021.

(2) Install and operate a fixed roof vented through a closed vent system to a control device according to the requirements in § 63.1044. You must meet the emissions limitations and work practice standards in § 63.7925 that apply to your closed vent system and control device. § 63.1044(c)(2) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.1044(c)(2) does not apply for the purposes of this subpart for any source after January 6, 2021.

(3) Install and operate a pressurized separator according to the requirements in § 63.1045. § 63.1045(b)(3)(i) does not apply for the purposes of this subpart if your initial startup date is after September 3, 2019; § 63.1045(b)(3)(i) does not apply for the purposes of this subpart for any source after January 6, 2021.

* * * * *

■ 15. Section 63.7911 is amended by revising paragraphs (b)(2), (c)(2), and (d)(2) to read as follows:

§ 63.7911 How do I demonstrate initial compliance with the emissions limitations and work practice standards for separators?

* * * * *

(b) * * *

(2) You will operate the floating roof and closure devices according to the requirements in § 63.1043(c), with the exceptions specified in § 63.7910(b)(1).

(c) * * *

(2) You will operate the fixed roof and its closure devices according to the requirements in § 63.1042(c). § 63.1042(c)(3) does not apply for the purposes of this subpart if your initial date is after September 3, 2019; § 63.1042(c)(3) does not apply for the purposes of this subpart for any source after January 6, 2021.

* * * * *

(d) * * *

(2) You will operate the pressurized separator as a closed system according to the requirements in § 63.1045(b)(3), with the exceptions specified in § 63.7910(b)(3).

■ 16. Section 63.7912 is amended by revising paragraph (c) to read as follows:

§ 63.7912 What are my inspection and monitoring requirements for separators?

* * * * *

(c) If you use a pressurized separator that operates as a closed system according to § 63.7910(b)(3), you must visually inspect each pressurized separator and closure devices for defects at least annually to ensure they are operating according to the design requirements in § 63.1045(b), with the exceptions specified in § 63.7910(b)(3).

■ 17. Section 63.7913 is amended by revising paragraphs (c)(1) and (d)(1) to read as follows:

§ 63.7913 How do I demonstrate continuous compliance with the emissions limitations and work practice standards for separators?

* * * * *

(c) * * *

(1) Operating and maintaining the fixed roof and its closure devices according to the requirements in § 63.1042, with the exceptions specified in § 63.7911(c)(2).

* * * * *

(d) * * *

(1) Operating the pressurized separator at all times according to the requirements in § 63.1045, with the exceptions specified in § 63.7910(b)(3).

* * * * *

■ 18. Revise the undesignated center heading for §§ 63.7920 through 63.7922 to read as follows:

Equipment Leaks and Pressure Relief Devices

■ 19. Section 63.7920 is amended by:
■ a. Revising paragraph (b)(1);
■ b. Adding paragraph (b)(3);
■ c. Redesignating paragraph (d) as paragraph (f); and
■ d. Adding new paragraph (d) and paragraph (e).

The additions and revisions read as follows:

§ 63.7920 What emissions limitations and work practice standards must I meet for equipment leaks?

* * * * *

(b) * * *

(1) Control equipment leaks according to all applicable requirements under 40 CFR part 63, subpart TT—National Emission Standards for Equipment Leaks—Control Level 1, with the differences noted in paragraph (b)(3) of this section for the purposes of this subpart; or

* * * * *

(3)(i) For the purpose of complying with the requirements of § 63.1006(b)(2), the instrument reading that defines a leak is 500 parts per million or greater.

(ii) For the purpose of complying with the requirements of § 63.1007(b)(2), the instrument reading that defines a leak is 5,000 parts per million or greater for pumps handling polymerizing monomers; 2,000 parts per million or greater for pumps in food/medical service; and 1,000 parts per million or greater for all other pumps.

* * * * *

(d) For the purposes of this subpart, the requirements of § 63.7920(e) of this subpart apply rather than those of § 63.1030 or of § 63.1011, as applicable, for pressure relief devices in gas and vapor service. The requirements of § 63.7920(e) of this subpart apply rather than those of § 63.1029 or of § 63.1010, as applicable, for pressure relief devices in liquid service.

(e) Operate each pressure relief device under normal operating conditions, as indicated by an instrument reading of less than 500 ppm above the background level as detected by the method specified in § 63.1004(b) or § 63.1023(b), as applicable.

* * * * *

■ 20. Section 63.7923 is added before the undesignated center heading ''Closed Vent Systems and Control Devices'' to read as follows:

§ 63.7923 What monitoring and work practice standards must I meet for pressure relief devices?

(a) For each pressure relief device in remediation material service, you must

comply with either paragraph (a)(1) or (2) of this section following a pressure release actuation event, as applicable.

(1) If the pressure relief device does not consist of or include a rupture disk, return the pressure relief device to the normal operating conditions specified in § 63.7920(e) as soon as practicable and conduct instrument monitoring by the method specified in § 63.1004(b) or § 63.1023(b), as applicable, no later than 5 calendar days after the pressure release device returns to remediation material service following a pressure release actuation event, except as provided in § 63.1024(d) or of § 63.1005(c), as applicable.

(2) If the pressure relief device consists of or includes a rupture disk, except as provided in § 63.1024(d) or § 63.1005(c), as applicable, install a replacement disk as soon as practicable but no later than 5 calendar days after the pressure release actuation event.

(b) Except for the pressure relief devices described in paragraph (e) of this section, you must comply with the requirements of paragraphs (c) and (d) of this section for each pressure relief device in remediation material service.

(c) Equip each pressure relief device in remediation material service with a device(s) or use a monitoring system sufficient to indicate a pressure release to the atmosphere. The device or monitoring system may be either specific to the pressure release device itself or may be associated with the process system or piping. Examples of these types of devices or monitoring systems include, but are not limited to, a rupture disk indicator, magnetic sensor, motion detector on the pressure relief valve stem, flow monitor, pressure monitor, or parametric monitoring system. The device(s) or monitoring systems must be capable of meeting the requirements specified in paragraphs (c)(1) through (3) of this section.

(1) Identifying the pressure release;

(2) Recording the time and duration of each pressure release; and

(3) Notifying operators immediately that a pressure release is occurring.

(d) If any pressure relief device in remediation material service releases directly to the atmosphere as a result of a pressure release actuation event, follow the requirements of paragraphs (d)(1) through (6) of this section.

(1) Calculate the quantity of HAP listed in Table 1 of this subpart released during each pressure release actuation event. Calculations may be based on data from the pressure relief device monitoring alone or in combination with process parameter monitoring data and process knowledge.

(2) Determine the total number of pressure release actuation events that occurred during the calendar year for each pressure relief device.

(3) Determine the total number of pressure release actuation events for each pressure relief device for which the analysis conducted as required by paragraph (d)(4) of this section concluded that the pressure release was due to a force majeure event, as defined in § 63.7957.

(4) Complete an analysis to determine the source, nature and cause of each pressure release actuation event as soon as practicable, but no later than 45 days after a pressure release actuation event.

(5) Identify corrective measures to prevent future such pressure release actuation events as soon as practicable, but no later than 45 days after a pressure release actuation event.

(6) Implement the corrective measure(s) identified as required by paragraph (d)(5) of this section within 45 days of the pressure release actuation event or as soon thereafter as practicable. For corrective measures that cannot be fully implemented within 45 days following the pressure release actuation event, you must record the corrective measure(s) completed to date, and, for measure(s) not already completed, a schedule for implementation, including proposed commencement and completion dates, no later than 45 days following the pressure release actuation event.

(e) The pressure relief devices listed in paragraphs (e)(1) through (6) are not subject to the requirements in paragraph (c) or (d) of this section.

(1) Pressure relief devices designed and operated to route all pressure releases through a closed vent system to a drain system meeting the requirements of §§ 63.7915–63.7918, or to a fuel gas system, process or control device meeting the requirements of §§ 63.7925 through 63.7928.

(2) Pressure relief devices in heavy liquid service, as defined in § 63.1001 or § 63.1020, as applicable.

(3) Thermal expansion relief valves.

(4) Pilot-operated pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, to the fuel gas system, or to a drain system.

(5) Balanced bellows pressure relief devices where the primary release valve is routed through a closed vent system to a control device or back into the process, to the fuel gas system, or to a drain system.

(6) Pressure relief devices on containers, as defined in § 63.7957.

(f) Except for the pressure relief devices described in paragraph (e) of this section, it is a violation of the requirements of paragraphs (c) and (d) of this section for any pressure relief device in remediation material service to release directly to the atmosphere as a result of a pressure release actuation event(s) described in paragraphs (f)(1) through (3) of this section.

(1) Any pressure release actuation event for which the cause of the event determined as required by paragraph (d)(4) of this section was determined to be operator error or poor maintenance.

(2) A second pressure release actuation event, not including force majeure events, from a single pressure relief device in a 3 calendar-year period for the same cause for the same equipment.

(3) A third pressure release actuation event, not including force majeure events, from a single pressure relief device in a 3 calendar-year period for any reason.

■ 21. Section 63.7925 is amended by revising paragraph (b) to read as follows:

§ 63.7925 What emissions limitations and work practice standards must I meet for closed vent systems and control devices?

* * * * *

(b) You must comply with paragraph (b)(2) of this section, and paragraph (b)(1) of this section does not apply, if your initial startup date is after September 3, 2019. If your initial startup date was on or before September 3, 2019, you must comply with paragraph (b)(1) or (2) of this section until January 7, 2021, and after that date, you must comply with paragraph (b)(2) of this section, and paragraph (b)(1) of this section does not apply.

(1) Whenever gases or vapors containing HAP are vented through the closed-vent system to the control device, the control device must be operating except at those times listed in either paragraph (b)(1)(i) or (ii) of this section.

(i) The control device may be bypassed for the purpose of performing planned routine maintenance of the closed-vent system or control device in situations when the routine maintenance cannot be performed during periods that the emission point vented to the control device is shutdown. On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance must not exceed 240 hours per each calendar year.

(ii) The control device may be bypassed for the purpose of correcting a malfunction of the closed-vent system or control device. You must perform the

adjustments or repairs necessary to correct the malfunction as soon as practicable after the malfunction is detected.

(2) Whenever gases or vapors containing HAP are vented through the closed-vent system to the control device, the control device must be operating, except that the control device on a tank may be bypassed for the purpose of performing planned routine maintenance of the control device. When the tank control device is bypassed, the owner or operator must comply with paragraphs (b)(2)(i) through (iii) of this section.

(i) The control device may only be bypassed when the planned routine maintenance cannot be performed during periods that tank emissions are vented to the control device.

(ii) On an annual basis, the total time that the closed-vent system or control device is bypassed to perform routine maintenance must not exceed 240 hours per each calendar year.

(iii) The level of material in the tank must not be increased during periods that the closed-vent system or control device is bypassed to perform planned routine maintenance.

* * * * *

■ 22. Section 63.7935 is amended by:
■ a. Revising paragraphs (a) through (c), (e), and (f);
■ b. Adding paragraphs (g)(4) and (5); and
■ c. Revising paragraphs (h)(1) through (3) to read as follows:

§ 63.7935 What are my general requirements for complying with this subpart?

(a) If your initial startup was on or before September 3, 2019, you must be in compliance with the emissions limitations (including operating limits) and the work practice standards in this subpart at all times, except, until January 6, 2021, during periods of startup, shutdown, and malfunction. If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources, after January 6, 2021, you must be in compliance with the emission limitations (including operating limits) and the work practice standards in this subpart at all times.

(b) If your initial startup was on or before September 3, 2019, then until January 6, 2021, you must operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, at all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

(c) If your initial startup date was on or before September 3, 2019, then until January 6, 2021, you must develop a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3), and a SSMP is not required after January 6, 2021. No SSMP is required for any source for which the initial startup date is after September 3, 2019.

* * * * *

(e) You must report each instance in which you did not meet each emissions limitation and each operating limit that applies to you. You must also report each instance in which you did not meet the requirements for work practice standards that apply to you. These instances are deviations from the emissions limitations and work practice standards in this subpart. These deviations must be reported according to the requirements in § 63.7951.

(f) If your initial start date was on or before September 3, 2019, consistent with §§ 63.6(e) and 63.7(e)(1), then until January 6, 2021, deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1). We will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e). If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, you must be in compliance with the emission limitations in this subpart at all times (unless a longer timeframe for compliance is expressly provided in this subpart), and we will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.7935(a) and (b).

* * * * *

(g) * * *

(4) Continuous monitoring system (CMS) operation and maintenance requirements in accordance with § 63.7945.

(5) CMS data collection in accordance with § 63.7946.

(h) * * *

(1) If your initial startup was on or before September 3, 2019, then until January 6, 2021, you must address ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8). If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, you must address ongoing O&M procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), (c)(4)(ii), and (c)(7) and (8).

(2) If your initial startup was on or before September 3, 2019, then until January 6, 2021, you must address ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d). If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, you must address ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d) except for the requirements related to startup, shutdown, and malfunction plans referenced in § 63.8(d)(3). The owner or operator shall keep these written procedures on record for the life of the affected source or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, the owner or operator shall keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

(3) If your initial startup was on or before September 3, 2019, then until January 6, 2021, you must address ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i). If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, you must address ongoing recordkeeping and reporting

procedures in accordance with the general requirements of § 63.10(c)(1) through (14), (e)(1), and (e)(2)(i).

* * * * *

■ 23. Section 63.7941 is amended by revising paragraphs (b)(2) and (b)(4) introductory text to read as follows:

§ 63.7941 How do I conduct a performance test, design evaluation, or other type of initial compliance demonstration?

* * * * *

(b) * * *

(2) If your initial startup date was on or before September 3, 2019, then until January 6, 2021, you must conduct each performance test under representative conditions according to the requirements in § 63.7(e)(1). If your initial startup date is after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, you must conduct each performance test under conditions representative of normal operations. You may not conduct performance tests during periods of startup, shutdown, or malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(4) Follow the procedures in paragraphs (b)(4)(i) through (iii) of this section to determine compliance with the facility-wide total organic mass emissions rate in § 63.7890(b).

* * * * *

■ 24. Section 63.7942 is revised to read as follows:

§ 63.7942 When must I conduct subsequent performance tests?

For non-flare control devices, you must conduct performance tests at any time the EPA requires you to according to § 63.7(a)(3).

■ 25. Section 63.7943 is amended by revising paragraph (d) to read as follows:

§ 63.7943 How do I determine the average VOHAP concentration of my remediation material?

* * * * *

(d) In the event that you and we disagree on a determination using knowledge of the average total VOHAP concentration for a remediation material, then the results from a determination of VOHAP concentration using direct measurement by EPA Method 305 in 40 CFR part 60, appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or require that you perform this determination using direct measurement.

■ 26. Section 63.7944 is amended:

■ a. In paragraph (b)(2)(ii), immediately before the end semicolon, by adding ''(incorporated by reference, see § 63.14)'';

■ b. In paragraph (b)(2)(iv), by removing the words ''Method 2879–83'' and adding in their place ''D2879–83 (incorporated by reference, see § 63.14)''; and

■ c. Revising paragraph (d).

The revision reads as follows:

§ 63.7944 How do I determine the maximum HAP vapor pressure of my remediation material?

* * * * *

(d) In the event that you and us disagree on a determination using knowledge of the maximum HAP vapor pressure of the remediation material, then the results from a determination of maximum HAP vapor pressure using direct measurement by EPA Method 25E in 40 CFR part 60, appendix A, as specified in paragraph (b) of this section, will be used to determine compliance with the applicable requirements of this subpart. We may perform or require that you perform this determination using direct measurement.

■ 27. Section 63.7945 is amended by adding paragraph (d) to read as follows:

§ 63.7945 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(d) Failure to meet the requirements of paragraphs (a)(1) through (4) of this section is a deviation and must be reported according to the requirements in § 63.7951(b)(7).

■ 28. Section 63.7951 is amended by:

■ a. Adding paragraphs (a)(6) and (7);

■ b. Revising paragraphs (b)(4), (b)(7) introductory text, (b)(7)(ii), (b)(8) introductory text, and (b)(8)(i), (iv), and (vi),

■ d. Adding paragraphs (b)(10) and (11);

■ e. Revising paragraph (c); and

■ d. Adding paragraphs (e) through (h).

The additions and revisions read as follows:

§ 63.7951 What reports must I submit and when?

(a) * * *

(6) For pressure relief devices in remediation material service subject to the requirements of § 63.7923, submit a description of the device or monitoring system to be implemented, including the pressure relief devices and process parameters to be monitored, and a description of the alarms or other methods by which operators will be notified of a pressure release. If your initial startup date was on or before September 3, 2019, then this information must be submitted with the next semi-annual periodic compliance report. If your initial startup date is after September 3, 2019, this information must be submitted in the first periodic compliance report. The information must be updated in subsequent reports if changes are made.

(7) Semi-annual compliance reports must be submitted according to paragraph (f) of this section.

(b) * * *

(4) If your initial startup date was on or before September 3, 2019, then until January 6, 2021, if you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i). If your initial startup date is after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, an SSMP and the information in § 63.10(d)(5)(i) is not required.

* * * * *

(7) For each deviation from an emissions limitation (including an operating limit) that occurs at an affected source for which you are not using a continuous monitoring system (including a CPMS or CEMS) to comply with an emissions limitation or work practice standard required in this subpart, the compliance report must contain the information specified in paragraphs (b)(1) through (3) and (b)(7)(i) and (ii) of this section.

* * * * *

(ii) Information on the number of deviations. For each deviation, include the date, time, and duration, a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, the actions taken to minimize emissions, the cause of the deviation (including unknown cause), as applicable, and the corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(8) For each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an affected source

where you are using a continuous monitoring system (including a CPMS or CEMS) to comply with the emissions limitations or work practice standard in this subpart, you must include the information specified in paragraphs (b)(1) through (3) and (b)(8)(i) through (xi) of this section.

(i) Information on the number of deviations. For each deviation, include the date, time, and duration, a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, the actions taken to minimize emissions, the cause of the deviation (including unknown cause), as applicable, and the corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(iv) For each deviation caused when the daily average value of a monitored operating parameter is less than the minimum operating parameter limit (or, if applicable, greater than the maximum operating parameter limit), the report must include the daily average values of the monitored parameter, the applicable operating parameter limit, and the date and duration of the period that the deviation occurred. For each deviation caused by lack of monitoring data, the report must include the date and duration of period when the monitoring data were not collected and the reason why the data were not collected.

* * * * *

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and unknown causes.

* * * * *

(10) For pressure relief devices in remediation material service, compliance reports must include the information specified in paragraphs (b)(10)(i) through (iii) of this section.

(i) For pressure relief devices in remediation material service subject to § 63.7920(e), report the number of occurrences of an instrument reading of 500 ppm above the background level or greater, if detected more than 5 days after a pressure release.

(ii) For pressure relief devices in remediation service subject to § 63.7923(c), report confirmation, yes or no, that the monitoring required to show compliance was conducted during the reporting period.

(iii) For pressure relief devices in remediation material service subject to § 63.7923(d), report each pressure release to the atmosphere, including the following information:

(A) The date, time, and duration of the pressure release actuation event.

(B) An estimate of the mass quantity of total HAP listed in Table 1 of this subpart emitted during the pressure release actuation event and the method used for determining this quantity.

(C) The source, nature and cause of the pressure release actuation event.

(D) The actions taken to prevent this pressure release actuation event.

(E) The measures implemented during the reporting period to prevent future such pressure release actuation events, and, if applicable, the implementation schedule for planned corrective actions to be implemented subsequent to the reporting period.

(11) Pressure tank closure device or bypass deviation information. Compliance reports must include the information specified in paragraph (b)(11)(iv) of this section when any of the conditions in paragraphs (b)(11)(i) through (iii) of this section are met.

(i) Any pressure tank closure device, as specified in specified in § 63.7895(d)(4), has released to the atmosphere.

(ii) Any closed vent system that includes bypass devices that could divert a vent a stream away from the control device and into the atmosphere, as specified in § 63.7927(a)(2), has released directly to the atmosphere.

(iii) Any open-ended valve or line in an emergency shutdown system which is designed to open automatically in the event of a process upset, as specified in § 63.1014(c) or § 63.1033(c), has released directly to the atmosphere.

(iv) The compliance report must include the information specified in paragraphs (b)(11)(iv)(A) through (E) of this section.

(A) The source, nature and cause of the release.

(B) The date, time and duration of the discharge.

(C) An estimate of the quantity of total HAP listed in Table 1 of this subpart emitted during the release and the method used for determining this quantity.

(D) The actions taken to prevent this release.

(E) The measures adopted to prevent future such releases.

(c) *Immediate startup, shutdown, and malfunction report.* If your initial startup was on or before September 3, 2019, then until January 6, 2021, if you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your SSMP, you must submit an immediate startup, shutdown and malfunction report according to the requirements of § 63.10(d)(5)(ii). If your initial startup date is after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, an immediate startup, shutdown, and malfunction report is not required.

* * * * *

(e) *Performance Test and CMS Performance Evaluation Reports.* Within 60 days after the date of completing each performance test or continuous monitoring system (CMS) performance evaluation (as defined in § 63.2) required by this subpart, the owner or operator must submit the results of the performance test or performance evaluation according to the manner specified by either paragraph (e)(1) or (2) of this section.

(1) *Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test.* Submit the results of the performance test or the performance evaluation of CMS measuring relative accuracy test audit (RATA) pollutants to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test or the performance evaluation of CMS measuring RATA pollutants by methods that are not supported by the ERT must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. The results of the performance test or the performance evaluation of CMS measuring RATA pollutants by methods that are not supported by the ERT, must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(f) *Submitting reports electronically.* If you are required to submit reports following the procedure specified in

this paragraph, you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's CDX (*https://cdx.epa.gov/*). You must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(g) *Claims of EPA system outage.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(h) *Claims of force majeure.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majuere, you must meet the requirements outlined in paragraphs (h)(1) through (5) of this section.

(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 29. Section 63.7952 is amended by:
■ a. Revising paragraph (a)(2);
■ b. Redesignating paragraphs (a)(3) and (4) as paragraphs (a)(9) and (10);
■ c. Adding new paragraph (a)(3) and paragraphs (a)(4) through (8) and (e).

The revision and additions read as follows:

§ 63.7952 What records must I keep?

(a) * * *

(2) If your initial startup date is on or before September 3, 2019, you must continue to keep any records specified in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) If your initial startup was after September 3, 2019, then as of July 10, 2020, and for all sources after January 6, 2021, for each deviation from an emissions limitation (including an operating limit) or work practice standard occurring at an affected source, you must record information on the number of deviations. For each deviation, include the date, time, and duration, a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, a description of the method used to estimate the emissions, the actions taken to minimize emissions, the cause of the deviation (including unknown cause), as applicable, and the corrective actions taken to return the affected unit to its normal or usual manner of operation.

(4) For pressure relief devices in remediation material service, keep records of the information specified in paragraphs (a)(4)(i) through (iii) of this section, as applicable.

(i) A list of identification numbers for pressure relief devices that are not subject to the requirements of § 63.7923(c) and (d) under the provisions of § 63.7923(e).

(ii) A list of identification numbers for pressure relief devices subject to the requirements of § 63.7923(a), (c), and (d) that do not consist of or include a rupture disk.

(iii) A list of identification numbers for pressure relief devices subject to the requirements of § 63.7923(a), (c), and (d) equipped with rupture disks.

(5) For pressure relief devices in remediation material service subject to § 63.7923(d), keep records of each pressure release event to the atmosphere as specified in paragraphs (a)(5)(i) through (viii) of this section.

(i)The date, time, and duration of the pressure release event.

(ii) The dates and results of the EPA Method 21 of 40 CFR part 60, appendix A, monitoring following a pressure release event, if applicable. The results of each monitoring event shall include the measured background level and the maximum instrument reading measured at each pressure relief device.

(iii) The dates replacement rupture disks were installed following a pressure release event, if applicable.

(iv) An estimate of the mass quantity of total HAP listed in Table 1 of this subpart emitted during the pressure release event and the method used for determining this quantity.

(v) The source, nature and cause of the pressure release event, including an identification of the affected pressure relief device(s) and a statement noting whether the event resulted from the same cause(s) identified following a previous pressure release event.

(vi) The corrective measures identified to prevent future such pressure release events, or an explanation of why corrective measures are not necessary.

(vii) The actions taken to prevent this pressure release event.

(viii) Records of the corrective measures implemented, including a description of the corrective measure(s) completed within the first 45 days following a pressure release event, and, if applicable, the implementation schedule for planned corrective measures to be implemented subsequent to the first 45 days following the pressure release event, including proposed commencement and completion dates. (6) Records of the number of pressure release events during each calendar year and the number of those events for which the cause was determined to be a force majeure event. Keep these records for the current calendar year and the past 5 calendar years.

(7)(i) For pressure tank closure devices, as specified in § 63.7895(d)(4), keep records of each release to the atmosphere, including the information specified in paragraphs (a)(7)(iii)(A) through (G) of this section.

(ii) For each closed vent system that includes bypass devices that could divert a stream away from the control device and into the atmosphere, as specified in § 63.7927(a)(2), and each open-ended valve or line in an emergency shutdown system which is designed to open automatically in the event of a process upset, as specified in § 63.1014(c) or § 63.1033(c), keep records of each release to the atmosphere, including the information specified in paragraphs (a)(7)(iii)(A) though (G) of this section.

(iii)(A) The source, nature, and cause of the release.

(B) The date, time, and duration of the release.

(C) An estimate of the quantity of HAP listed in Table 1 of this subpart emitted during the release and the calculations used for determining this quantity.

(D) The actions taken to prevent this release.

(E) The measures adopted to prevent future such release.

(F) Hourly records of whether the bypass flow indicator specified under § 63.7927(a)(2)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(G) Where a seal mechanism is used to comply with § 63.7927(a)(2)(ii), hourly records of flow are not required. In such cases, you must record that the monthly visual inspection of the seals or closure mechanism has been done and record the duration of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has broken.

(8) A record of the fluid level at the beginning and end of each maintenance period during which the tank is subject to § 63.7925(b)(3).

* * * * *

(e) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

30. Section 63.7956 is amended by adding paragraph (c)(5) to read as follows:

* * * * *

(c) * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 31. Section 63.7957 is amended by:

■ a. Adding in alphabetical order a definition for ''Bypass'';

■ b. Revising the definition of ''Deviation'';

■ c. Adding in alphabetical order definitions for ''Force majeure'', ''Pressure release actuation event'', and ''Pressure relief device or valve'';

■ d. Revising the definition of ''Process vent''; and

■ e. Removing the definition of ''Safety device''.

The additions and revisions read as follows:

§ 63.7957 What definitions apply to this subpart?

* * * * *

Bypass means diverting a process vent or closed vent system stream to the atmosphere such that it does not first pass through an emission control device.

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation, (including any operating limit), or work practice standard in this subpart regardless of whether or not such failure is permitted by this subpart.

* * * * *

Force majeure event means a release of HAP directly to the atmosphere from a pressure relief device that is demonstrated to the satisfaction of the Administrator to result from an event beyond the owner or operator's control, such as natural disasters; acts of war or terrorism; loss of a utility external to the Site Remediation unit (*e.g.,* external power curtailment), excluding power curtailment due to an interruptible service agreement; and fire or explosion originating at a near or adjoining facility outside of the Site Remediation affected source that impacts the Site Remediation affected source's ability to operate.

* * * * *

Pressure release actuation event means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. This release can be one release or a series of releases over a short time period.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are

actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

* * * * *

Process vent means any open-ended pipe, stack, duct, or other opening intended to allow the passage of gases, vapors, or fumes to the atmosphere and this passage is caused by mechanical means (such as compressors, vacuum-producing systems or fans) or by process-related means (such as volatilization produced by heating). For the purposes of this subpart, a process vent is neither a pressure relief device (as defined in this section) nor a stack, duct or other opening used to exhaust combustion products from a boiler, furnace, heater, incinerator, or other combustion device.

* * * * *

■ 32. Table 3 to subpart GGGGG of part 63 is revised to read as follows:

Table 3 to Subpart GGGGG of Part 63—Applicability of General Provisions to Subpart GGGGG

As stated in § 63.7940, you must comply with the applicable General Provisions requirements according to the following table:

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.1	Applicability	Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities	Prohibited Activities; Compliance date; Circumvention, Severability	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date. For 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance		No, see § 63.7935(b).
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		No, see § 63.7935(c).
§ 63.6(f)(1)	Compliance Except During SSM		No, see § 63.7935(b).
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)	Opacity/Visible Emissions (VE) Standards.	Requirements for opacity and visible emissions limits	No. No opacity standards.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with final rule.	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for Conducting Initial Performance Testing and Other Compliance Demonstrations. Must conduct 180 days after first subject to final rule.	Yes.
§ 63.7(a)(3)	CAA Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with: Test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions. Cannot conduct performance tests during SSM. Not a violation to exceed standard during SSM.	No, see § 63.7941(b)(2).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least one hour each. Compliance is based on arithmetic mean of three runs. Conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis	Must include raw data in performance test report. Must submit performance test data 60 days after end of test with the Notification of Compliance Status. Keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of part 60 apply	Yes.
§ 63.8(a)(3)	[Reserved]		

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.8(a)(4)	Monitoring with Flares	Unless your rule says otherwise, the requirements for flares in 63.11 apply.	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. If more than one monitoring system on an emissions point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Monitoring System Operation	Operate and maintain system as specified in § 63.6(e)(1)	No, see § 63.7935(b).
§ 63.8(c)(1)(ii)	Monitoring System Repair	Keep part for routine repairs available	Yes.
§ 63.8(c)(1)(iii)	Monitoring System SSM Plan	Develop an SSM Plan for the monitoring system	No, see § 63.7935(h)(1).
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emissions and parameter measurements. Must verify operational status before or at performance test.	Yes.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	No.
§ 63.8(c)(4)(i)–(ii)	Continuous Monitoring System (CMS) Requirements.	COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period. CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes. However, COMS are not applicable. Requirements for CPMS are listed in §§ 63.7900 and 63.7913.
§ 63.8(c)(5)	COMS Minimum Procedures	COMS minimum procedures	No.
§ 63.8(c)(6)	CMS Requirements	Zero and High level calibration check requirements	Yes. However requirements for CPMS are addressed in § 63.7927.
§ 63.8(c)(7)–(8)	CMS Requirements	Out-of-control periods, including reporting	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc. Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	Procedures for Administrator to approve alternative monitoring	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	No.
§ 63.8(g)(1)–(4)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points. CEMS 1-hour averages computed over at least four equally spaced data points.	Yes. However, COMS are not applicable. Requirements for CPMS are addressed in §§ 63.7900 and 63.7913.
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No.
§ 63.9(a)	Notification Requirements	Applicability and State Delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications.	Submit notification 120 days after effective date. Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of startup. Contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed BACT/LAER	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation. Notification using COMS data. Notification that exceeded criterion for relative accuracy.	Yes. However, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status	Contents. Due 60 days after end of performance test or other initial compliance demonstration, except for opacity/VE, which are due 30 days after. When to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension. When to submit to Federal vs. State authority. Procedures for owners of more than 1 source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements. Keep all records readily available. Keep for 5 years.	Yes.
§ 63.10(b)(2)(i) and (ii)	Records related to SSM	Exceedance of emission limit during startup, shutdown or malfunction.	No, for new sources for which initial startup is after September 3, 2019. Yes, for all other affected sources before January 7, 2021, and No thereafter.
§ 63.10(b)(2)(iii)	Maintenance Records	Maintenance on air pollution control equipment.	Yes.
§ 63.10(b)(2)(iv) and (v)	Records related to SSM	Actions during SSM.	No, for new sources for which initial startup is after September 3, 2019. Yes, for all other affected sources before January 7, 2021, and No thereafter.
§ 63.10(b)(2)(vi) and (x-xi)	CMS Records	Malfunctions, inoperative, out-of-control. Calibration checks. Adjustments, maintenance.	Yes.

Citation	Subject	Brief description	Applies to subpart GGGGG
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with emissions limitations. Performance test, performance evaluation, and visible emissions observation results. Measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test	No.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)	Records	Additional Records for CMS	No.
§ 63.10(d)(1)	General Reporting Requirements	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Contents and submission	No, see § 63.7951(b)(4).
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit Written copy of performance evaluation Three copies of COMS performance evaluation.	Yes. However, COMS are not applicable.
§ 63.10(e)(3)	Reports	Excess Emissions Reports	No.
§ 63.10(e)(3)(i–iii)	Reports	Schedule for reporting excess emissions and parameter monitor exceedance (now defined as deviations).	No.
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedance (now defined as deviations). Provision to request semiannual reporting after compliance for one year. Submit report by 30th day following end of quarter or calendar half. If there has not been an exceedance or excess emissions (now defined as deviations), report contents is a statement that there have been no deviations.	No.
§ 63.10(e)(3)(iv–v)	Excess Emissions Reports	Must submit report containing all of the information in §§ 63.10(c)(5–13) and 63.8(c)(7–8).	No.
§ 63.10(e)(3)(vi–viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMSs (now called deviations). Requires all of the information in §§ 63.10(c)(5–13) and 63.8(c)(7–8).	No.
§ 63.10(e)(4)	Reporting COMS data	Must submit COMS data with performance test data	No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Control and work practice requirements.	Requirements for flares and alternative work practice for equipment leaks.	Yes.
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent	Yes, only applicable to those reports not required to be submitted electronically.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1026
Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition; Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2020–0020]

RIN 3170–AA98

Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for ''qualified mortgages'' (QMs) obtain certain protections from liability. One category of QMs is the General QM loan category. For General QM loans, the ratio of the consumer's total monthly debt to total monthly income (DTI ratio) must not exceed 43 percent. In this notice of proposed rulemaking, the Bureau proposes certain amendments to the General QM loan definition in Regulation Z. Among other things, the Bureau proposes to remove the General QM loan definition's 43 percent DTI limit and replace it with a price-based threshold. Another category of QMs is loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (government-sponsored enterprises, or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA). The GSEs are currently under Federal conservatorship. The Bureau established this category of QMs (Temporary GSE QM loans) as a temporary measure that is set to expire no later than January 10, 2021 or when the GSEs exit conservatorship. In a separate proposal released simultaneously with this proposal, the Bureau proposes to extend the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition in Regulation Z (or when the GSEs cease to operate under the conservatorship of the FHFA, if that happens earlier). In this present proposed rule, the Bureau proposes the amendments to the General QM loan definition that are referenced in that separate proposal. The Bureau's objective with these proposals is to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition and to ensure access to responsible, affordable mortgage credit upon its expiration.

DATES: Comments must be received on or before September 8, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0020 or RIN 3170–AA98, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-ATRQM-GeneralQM@cfpb.gov.* Include Docket No. CFPB–2020–0020 or RIN 3170–AA98 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—General QM Amendments, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the Bureau's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Benjamin Cady or Waeiz Syed, Counsels, or Sarita Frattaroli, David Friend, Joan Kayagil, Mark Morelli, Amanda Quester, Alexa Reimelt, Marta Tanenhaus, Priscilla Walton-Fein, or Steven Wrone, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Ability-to-Repay/Qualified Mortgage Rule (ATR/QM Rule or Rule) requires a creditor to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan according to its terms. Loans that meet the Rule's requirements for qualified mortgages (QMs) obtain certain protections from liability. The Rule defines several categories of QMs.

One QM category defined in the Rule is the General QM loan category. General QM loans must comply with the Rule's prohibitions on certain loan features, its points-and-fees limits, and its underwriting requirements. For General QM loans, the ratio of the consumer's total monthly debt to total monthly income (DTI) ratio must not exceed 43 percent. The Rule requires that creditors must calculate, consider, and verify debt and income for purposes of determining the consumer's DTI ratio using the standards contained in appendix Q of Regulation Z.

A second, temporary category of QM loans defined in the Rule consists of mortgages that (1) comply with the same loan-feature prohibitions and points-and-fees limits as General QM loans and (2) are eligible to be purchased or guaranteed by the GSEs while under the conservatorship of the FHFA. This proposal refers to these loans as Temporary GSE QM loans, and the provision that created this loan category is commonly known as the GSE Patch. Unlike for General QM loans, the Rule does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the consumer's DTI ratio exceeds 43 percent, so long as the loan is eligible to be purchased or guaranteed by either of the GSEs. In addition, for Temporary GSE QM loans, the Rule does not require creditors to use appendix Q to determine the consumer's income, debt, or DTI ratio.

Under the Rule, the Temporary GSE QM loan definition expires with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first. The GSEs are currently in conservatorship. Despite the Bureau's expectations when the Rule was published in 2013, Temporary GSE QM loan originations continue to represent a large and persistent share of the residential mortgage loan market. A significant number of Temporary GSE

QM loans would not qualify as General QM loans under the current regulations after the Temporary GSE QM loan definition expires. These loans would not qualify as General QM loans either because the consumer's DTI ratio is above 43 percent or because the creditor's method of documenting and verifying income or debt does not comply with appendix Q. Although alternative loan options, including some other types of QM loans, would still be available to many consumers who could not qualify for General QM loans, the Bureau's analysis of available data indicates that many loans that are currently Temporary GSE QM loans would cost materially more for consumers and many would not be made at all.

In a separate proposal (Extension Proposal) released simultaneously with this proposal, the Bureau proposes to extend the Temporary GSE QM loan definition to expire upon the effective date of final amendments to the General QM loan definition or when the GSEs exit conservatorship, whichever comes first. In this proposal, the Bureau proposes the amendments to the General QM loan definition that are referenced in the Extension Proposal.

The Bureau is issuing this proposal to amend the General QM loan definition because it is concerned that retaining the existing General QM loan definition with the 43 percent DTI limit after the Temporary GSE QM loan definition expires would significantly reduce the size of QM and could significantly reduce access to responsible, affordable credit. The Bureau is proposing a price-based General QM loan definition to replace the DTI-based approach because it preliminarily concludes that a loan's price, as measured by comparing a loan's annual percentage rate (APR) to the average prime offer rate (APOR) for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

Under the proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set. The proposal would provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. The proposal would retain the existing product-feature and underwriting requirements and limits on points and fees. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider the consumer's income or assets, debt obligations, and DTI ratio or residual income and verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. The proposal would remove appendix Q. To prevent uncertainty that may result from appendix Q's removal, the proposal would clarify the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

The Bureau is proposing a price-based approach to replace the specific DTI limit because it is concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. In particular, the Bureau is concerned that conditioning QM status on a specific DTI limit may impair access to responsible, affordable credit for some consumers for whom it might be appropriate to presume ability to repay for their loans at consummation. For the reasons set forth below, the Bureau preliminarily concludes that a price-based General QM loan definition is appropriate because a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

In addition, although the Bureau is proposing to remove the 43 percent DTI limit and adopt a price-based approach for the General QM loan definition, the Bureau requests comment on certain alternative approaches that would retain a DTI limit but would raise it above the current limit of 43 percent and provide a more flexible set of standards for verifying debt and income in place of appendix Q.

The Bureau proposes that the effective date of a final rule relating to this proposal would be six months after publication in the **Federal Register**. The revised regulations would apply to covered transactions for which creditors receive an application on or after this effective date. The Bureau tentatively determines that a six-month period between **Federal Register** publication of a final rule and the final rule's effective date would give creditors enough time to bring their systems into compliance with the revised regulations. The Bureau does not intend to issue a final rule amending the General QM loan definition early enough for it to take effect before April 1, 2021. The Bureau requests comment on this proposed effective date. The Bureau specifically seeks comment on whether there is a day of the week or time of month that would most facilitate implementation of the proposed changes.

II. Background

A. Dodd-Frank Act Amendments to the Truth in Lending Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Truth in Lending Act (TILA) to establish, among other things, ability-to-repay (ATR) requirements in connection with the origination of most residential mortgage loans.[1] The amendments were intended ''to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.'' [2] As amended, TILA prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that the consumer has a reasonable ability to repay the loan.[3]

TILA identifies the factors a creditor must consider in making a reasonable and good faith assessment of a consumer's ability to repay. These factors are the consumer's credit history, current and expected income, current obligations, DTI ratio or residual income after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, sections 1411–12, 1414, 124 Stat. 1376 (2010); 15 U.S.C. 1639c.

[2] 15 U.S.C. 1639b(a)(2).

[3] 15 U.S.C. 1639c(a)(1). TILA section 103 defines ''residential mortgage loan'' to mean, with some exceptions including open-end credit plans, ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling.'' 15 U.S.C. 1602(dd)(5). TILA section 129C also exempts certain residential mortgage loans from the ATR requirements. *See, e.g.,* 15 U.S.C. 1639c(a)(8) (exempting reverse mortgages and temporary or bridge loans with a term of 12 months or less).

resources other than equity in the dwelling or real property that secures repayment of the loan.[4] A creditor, however, may not be certain whether its ATR determination is reasonable in a particular case, and it risks liability if a court or an agency, including the Bureau, later concludes that the ATR determination was not reasonable.

TILA addresses this uncertainty by defining a category of loans—called QMs—for which a creditor ''may presume that the loan has met'' the ATR requirements.[5] The statute generally defines a QM to mean any residential mortgage loan for which:

- There is no negative amortization, interest-only payments, or balloon payments;
- The loan term does not exceed 30 years;
- The total points and fees generally do not exceed 3 percent of the loan amount;
- The income and assets relied upon for repayment are verified and documented;
- The underwriting uses a monthly payment based on the maximum rate during the first five years, uses a payment schedule that fully amortizes the loan over the loan term, and takes into account all mortgage-related obligations; and
- The loan complies with any guidelines or regulations established by the Bureau relating to the ratio of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt.[6]

B. The Ability-to-Repay/Qualified Mortgage Rule

In January 2013, the Bureau issued a final rule amending Regulation Z to implement TILA's ATR requirements (January 2013 Final Rule).[7] The January 2013 Final Rule became effective on January 10, 2014, and the Bureau amended it several times through 2016.[8] This proposal refers to the January 2013 Final Rule and later amendments to it collectively as the Ability-to-Repay/Qualified Mortgage Rule, the ATR/QM Rule, or the Rule. The ATR/QM Rule implements the statutory ATR provisions discussed above and defines several categories of QM loans.[9]

1. General QM Loans

One category of QM loans defined by the Rule consists of ''General QM loans.'' [10] A loan is a General QM loan if:

- The loan does not have negative-amortization, interest-only, or balloon-payment features, a term that exceeds 30 years, or points and fees that exceed specified limits; [11]
- The creditor underwrites the loan based on a fully amortizing schedule using the maximum rate permitted during the first five years; [12]
- The creditor considers and verifies the consumer's income and debt obligations in accordance with appendix Q; [13] and
- The consumer's DTI ratio is no more than 43 percent, determined in accordance with appendix Q.[14]

Appendix Q contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. The standards in appendix Q were adapted from guidelines maintained by the Federal Housing Administration (FHA) of HUD when the January 2013 Final Rule was issued.[15] Appendix Q addresses how to determine a consumer's employment-related income (*e.g.,* income from wages, commissions, and retirement plans); non-employment related income (*e.g.,* income from alimony and child support payments, investments, and property rentals); and liabilities, including recurring and contingent liabilities and projected obligations.[16]

2. Temporary GSE QM Loans

A second, temporary category of QM loans defined by the Rule, Temporary GSE QM loans, consists of mortgages that (1) comply with the Rule's prohibitions on certain loan features, its underwriting requirements, and its limitations on points and fees; [17] and (2) are eligible to be purchased or guaranteed by either GSE while under the conservatorship of the FHFA.[18] Unlike for General QM loans, Regulation Z does not prescribe a DTI limit for Temporary GSE QM loans. Thus, a loan can qualify as a Temporary GSE QM loan even if the DTI ratio exceeds 43 percent, as long as the DTI ratio meets the applicable GSE's DTI requirements and other underwriting criteria. In addition, income and debt for such loans, and DTI ratios, generally are verified and calculated using GSE standards, rather than appendix Q. The Temporary GSE QM loan category—also known as the GSE Patch—is scheduled to expire with respect to each GSE when that GSE exits conservatorship or on January 10, 2021, whichever comes first.[19]

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[4] 15 U.S.C. 1639c(a)(3).

[5] 15 U.S.C. 1639c(b)(1).

[6] 15 U.S.C. 1639c(b)(2)(A).

[7] 78 FR 6408 (Jan. 30, 2013).

[8] *See* 78 FR 35429 (June 12, 2013); 78 FR 44686 (July 24, 2013); 78 FR 60382 (Oct. 1, 2013); 79 FR 65300 (Nov. 3, 2014); 80 FR 59944 (Oct. 2, 2015); 81 FR 16074 (Mar. 25, 2016).

[9] 12 CFR 1026.43(c), (e).

[10] The QM definition is related to the definition of Qualified Residential Mortgage (QRM). Section 15G of the Securities Exchange Act of 1934, added by section 941(b) of the Dodd-Frank Act, generally requires the securitizer of asset-backed securities (ABS) to retain not less than five percent of the credit risk of the assets collateralizing the ABS. 15 U.S.C. 78o–11. Six Federal agencies (not including the Bureau) are tasked with implementing this requirement. Those agencies are the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Securities and Exchange Commission, the FHFA, and the U.S. Department of Housing and Urban Development (HUD) (collectively, the QRM agencies). Section 15G of the Securities Exchange Act of 1934 provides that the credit risk retention requirements shall not apply to an issuance of ABS if all of the assets that collateralize the ABS are QRMs. *See* 15 U.S.C. 78o–11(c)(1)(C)(iii), (4)(A) and (B). Section 15G requires the QRM agencies to jointly define what constitutes a QRM, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. *See* 15 U.S.C. 78o–11(e)(4). Section 15G also provides that the definition of a QRM shall be ''no broader than'' the definition of a ''qualified mortgage,'' as the term is defined under TILA section 129C(b)(2), as amended by the Dodd-Frank Act, and regulations adopted thereunder. 15 U.S.C. 78o–11(e)(4)(C). In 2014, the QRM agencies issued a final rule adopting the risk retention requirements. 79 FR 77601 (Dec. 24, 2014). The final rule aligns the QRM definition with the QM definition defined by the Bureau in the ATR/QM Rule, effectively exempting securities comprised of loans that meet the QM definition from the risk retention requirement. The final rule also requires the agencies to review the definition of QRM no later than four years after the effective date of the final risk retention rules. In 2019, the QRM agencies initiated a review of certain provisions of the risk retention rule, including the QRM definition. 84 FR 70073 (Dec. 20, 2019). Among other things, the review allows the QRM agencies to consider the QRM definition in light of any changes to the QM definition adopted by the Bureau.

[11] 12 CFR 1026.43(e)(2)(i)–(iii).

[12] 12 CFR 1026.43(e)(2)(iv).

[13] 12 CFR 1026.43(e)(2)(v).

[14] 12 CFR 1026.43(e)(2)(vi).

[15] 78 FR 6408, 6527–28 (Jan. 30, 2013) (noting that appendix Q incorporates, with certain modifications, the definitions and standards in HUD Handbook 4155.1, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four-Unit Mortgage Loans).

[16] 12 CFR 1026, appendix Q.

[17] 12 CFR 1026.43(e)(2)(i) through (iii).

[18] 12 CFR 1026.43(e)(4).

[19] 12 CFR 1026.43(e)(4)(iii)(B). The ATR/QM Rule created several additional categories of QM loans. The first additional category consisted of mortgages eligible to be insured or guaranteed (as applicable) by HUD (FHA loans), the U.S. Department of Veterans Affairs (VA loans), the U.S. Department of Agriculture (USDA loans), and the Rural Housing Service (RHS loans). 12 CFR 1026.43(e)(4)(ii)(B)-(E). This temporary category of QM loans no longer exists because the relevant Federal agencies have since issued their own QM rules. *See, e.g.,* 24 CFR 203.19 (HUD rule). Other categories of QM loans provide more flexible standards for certain loans originated by certain small creditors. 12 CFR 1026.43(e)(5), (f); *cf.* 12 CFR 1026.43(e)(6) (applicable only to covered transactions for which the application was received before April 1, 2016).

In the January 2013 Final Rule, the Bureau explained why it created the Temporary GSE QM loan category. The Bureau observed that it did not believe that a 43 percent DTI ratio ''represents the outer boundary of responsible lending'' and acknowledged that historically, and even after the financial crisis, over 20 percent of mortgages exceeded that threshold.[20] The Bureau believed, however, that, as DTI ratios increase, ''the general ability-to-repay procedures, rather than the qualified mortgage framework, is better suited for consideration of all relevant factors that go to a consumer's ability to repay a mortgage loan'' and that ''[o]ver the long term . . . there will be a robust and sizable market for prudent loans beyond the 43 percent threshold even without the benefit of the presumption of compliance that applies to qualified mortgages.'' [21]

At the same time, the Bureau noted that the mortgage market was especially fragile following the financial crisis, and GSE-eligible loans and federally insured or guaranteed loans made up a significant majority of the market.[22] The Bureau believed that it was appropriate to consider for a period of time that GSE-eligible loans were originated with an appropriate assessment of the consumer's ability to repay and therefore warranted being treated as QMs.[23] The Bureau believed in 2013 that this temporary category of QM loans would, in the near term, help to ensure access to responsible, affordable credit for consumers with DTI ratios above 43 percent, as well as facilitate compliance by creditors by promoting the use of widely recognized, federally related underwriting standards.[24]

In making the Temporary GSE QM loan definition temporary, the Bureau sought to ''provide an adequate period for economic, market, and regulatory conditions to stabilize'' and ''a reasonable transition period to the general qualified mortgage definition.'' [25] The Bureau believed that the Temporary GSE QM loan definition would benefit consumers by preserving access to credit while the mortgage industry adjusted to the ATR/QM Rule.[26] The Bureau also explained that it structured the Temporary GSE QM loan definition to cover loans eligible to be purchased or guaranteed by either of the GSEs—regardless of whether the loans are actually purchased or guaranteed—to leave room for non-GSE private investors to return to the market and secure the same legal protections as the GSEs.[27] The Bureau believed that, as the market recovered, the GSEs and the Federal agencies would be able to reduce their market presence, the percentage of Temporary GSE QM loans would decrease, and the market would shift toward General QM loans and non-QM loans above a 43 percent DTI ratio.[28] The Bureau's view was that a shift towards non-QM loans could be supported by the non-GSE private market—*i.e.,* by institutions holding such loans in portfolio, selling them in whole, or securitizing them in a rejuvenated private-label securities (PLS) market. The Bureau noted that, pursuant to its statutory obligations under the Dodd-Frank Act, it would assess the impact of the ATR/QM Rule five years after the Rule's effective date, and the assessment would provide an opportunity to analyze the Temporary GSE QM loan definition.[29]

3. Presumption of Compliance for QM Loans

In the January 2013 Final Rule, the Bureau considered whether QM loans should receive a conclusive presumption (*i.e.,* a safe harbor) or a rebuttable presumption of compliance with the ATR requirements. The Bureau concluded that the statute is ambiguous as to whether a creditor originating a QM loan receives a safe harbor or a rebuttable presumption that it has complied with the ATR requirements.[30] The Bureau noted that its analysis of the statutory construction and policy implications demonstrated that there are sound reasons for adopting either interpretation.[31] The Bureau concluded that the statutory language does not mandate either interpretation and that the presumptions should be tailored to promote the policy goals of the statute.[32] The Bureau ultimately interpreted the statute to provide for a rebuttable presumption of compliance with the ATR requirements but used its adjustment authority to establish a conclusive presumption of compliance for loans that are not ''higher priced.'' [33]

Under the Rule, a creditor that makes a QM loan is protected from liability presumptively or conclusively, depending on whether the loan is ''higher priced.'' The Rule generally defines a ''higher-priced'' loan to mean a first-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 1.5 or more percentage points; or a subordinate-lien mortgage with an APR that exceeded APOR for a comparable transaction as of the date the interest rate was set by 3.5 or more percentage points.[34] A creditor that makes a QM loan that is not ''higher priced'' is entitled to a conclusive presumption that it has complied with the Rule—*i.e.,* the creditor receives a safe harbor from liability.[35] A creditor that makes a loan that meets the standards for a QM loan but is ''higher priced'' is entitled to a rebuttable presumption that it has complied with the Rule.[36]

The Bureau explained in the January 2013 Final Rule why it was adopting different presumptions of compliance based on the pricing of QMs.[37] The Bureau noted that the line it was drawing is one that has long been recognized as a rule of thumb to separate prime loans from subprime loans.[38] The Bureau noted that loan pricing is calibrated to the risk of the loan and that the historical performance of prime and subprime loans indicates greater risk for subprime loans.[39] The Bureau also noted that consumers taking out subprime loans tend to be less sophisticated and have fewer options and that the most abuses prior to the financial crisis occurred in the subprime market.[40] The Bureau concluded that these factors warrant imposing heightened standards for higher-priced loans.[41] For prime loans, however, the Bureau found that lower rates are indicative of ability to repay and noted that prime loans have performed significantly better than subprime loans.[42] The Bureau concluded that if a loan met the product and underwriting requirements for QM and was not a higher-priced loan, there are sufficient grounds for concluding that the creditor satisfied the ATR requirements.[43] The Bureau noted that the conclusive presumption may reduce uncertainty and litigation risk and may promote enhanced competition in the prime

[20] 78 FR 6408, 6527 (Jan. 30, 2013).
[21] *Id.* at 6527–28.
[22] *Id.* at 6533–34.
[23] *Id.* at 6534.
[24] *Id.* at 6533.
[25] *Id.* at 6534.
[26] *Id.* at 6536.
[27] *Id.* at 6534.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 6511.
[31] *Id.* at 6507.
[32] *Id.* at 6511.
[33] *Id.* at 6514.
[34] 12 CFR 1026.43(b)(4).
[35] 12 CFR 1026.43(e)(1)(i).
[36] 12 CFR 1026.43(e)(1)(ii).
[37] 78 FR 6408 at 6506, 6510–14.
[38] *Id.* at 6408.
[39] *Id.* at 6511.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*

market.[44] The Bureau also noted that the litigation risk for rebuttable presumption QMs likely would be quite modest and would have a limited impact on access to credit.[45]

The Bureau also noted in the January 2013 Final Rule that policymakers have long relied on pricing to determine which loans should be subject to additional regulatory requirements.[46] That history of reliance on pricing continues to provide support for a price-based approach to the General QM loan definition. For example, in 1994 Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA) as part of the Riegle Community Development and Regulatory Improvement Act of 1994.[47] HOEPA was enacted as an amendment to TILA to address abusive practices in refinancing and home-equity mortgage loans with high interest rates or high fees.[48] The statute applied generally to closed-end mortgage credit but excluded purchase money mortgage loans and reverse mortgages. Coverage was triggered if a loan's APR exceeded comparable Treasury securities by specified thresholds for particular loan types, or if points and fees exceeded eight percent of the total loan amount or a dollar threshold.[49] For high-cost loans meeting either of those thresholds, HOEPA required creditors to provide special pre-closing disclosures, restricted prepayment penalties and certain other loan terms, and regulated various creditor practices, such as extending credit without regard to a consumer's ability to repay the loan. HOEPA also created special substantive protections for high-cost mortgages, such as prohibiting a creditor from engaging in a pattern or practice of extending a high-cost mortgage to a consumer based on the consumer's collateral without regard to the consumer's repayment ability, including the consumer's current and expected income, current obligations, and employment.[50] The Board implemented the HOEPA amendments at §§ 226.31, 226.32, and 226.33 [51] of Regulation Z.[52]

In 2001, the Board issued rules expanding HOEPA's protections to more loans by revising the APR threshold for first-lien mortgage loans and revising the ATR provisions to provide for a presumption of a violation of the rule if the creditor engages in a pattern or practice of making high-cost mortgages without verifying and documenting the consumer's repayment ability.

In 2008, the Board exercised its authority under HOEPA to extend certain consumer protections concerning a consumer's ability to repay and prepayment penalties to a new category of ''higher-priced mortgage loans'' (HPMLs) [53] with APRs that are lower than those prescribed for high-cost loans but that nevertheless exceed the APOR by prescribed amounts. This new category of loans was designed to include subprime credit, including subprime purchase money mortgage loans. Specifically, the Board exercised its authority to revise HOEPA's restrictions on high-cost loans based on a conclusion that the revisions were necessary to prevent unfair and deceptive acts or practices in connection with mortgage loans.[54] The Board concluded that a prohibition on making individual loans without regard for repayment ability was necessary to ensure a remedy for consumers who are given unaffordable loans and to deter irresponsible lending, which injures individual consumers. The 2008 HOEPA Final Rule provided a presumption of compliance with the higher-priced mortgage ability-to-repay requirements if the creditor follows certain procedures regarding underwriting the loan payment, assessing the DTI ratio or residual income, and limiting the features of the loan, in addition to following certain procedures mandated for all creditors.[55] However, the 2008 HOEPA Final Rule made clear that even if the creditor follows the required and optional criteria, the creditor obtained a presumption (not a safe harbor) of compliance with the repayment ability requirement. The consumer therefore could still rebut or overcome that presumption by showing that, despite following the required and optional procedures, the creditor nonetheless disregarded the consumer's ability the loan.

C. The Bureau's Assessment of the Ability-to-Repay/Qualified Mortgage Rule

Section 1022(d) of the Dodd-Frank Act requires the Bureau to assess each of its significant rules and orders and to publish a report of each assessment within five years of the effective date of the rule or order.[56] In June 2017, the Bureau published a request for information in connection with its assessment of the ATR/QM Rule (Assessment RFI).[57] These comments are summarized in general terms in part III below.

In January 2019, the Bureau published its ATR/QM Rule Assessment Report.[58] The Report included findings about the effects of the ATR/QM Rule on the mortgage market generally, as well as specific findings about Temporary GSE QM loan originations.

The Report found that loans with higher DTI levels have been associated with higher levels of ''early delinquency'' (*i.e.,* delinquency within two years of origination), which can serve as a proxy for measuring consumer repayment ability at consummation across a wide pool of loans.[59] The Report also found that the Rule did not eliminate access to credit for high-DTI consumers—*i.e.,* consumers with DTI ratios above 43 percent—who qualify for loans eligible for purchase or guarantee by either of the GSEs, that is, Temporary GSE QM loans.[60] On the other hand, based on application-level data obtained from nine large lenders, the Report found that the Rule eliminated between 63 and 70 percent of high-DTI home purchase

[44] *Id.*

[45] *Id.* at 6511–12.

[46] *Id.* at 6413–14, 6510–11.

[47] Riegle Community Development and Regulatory Improvement Act, Public Law 103–325, 108 Stat. 2160 (1994).

[48] As originally enacted, HOEPA defined a class of ''high-cost mortgages,'' which were generally closed-end home-equity loans (excluding home-purchase loans) with APRs or total points and fees exceeding prescribed thresholds. Mortgages covered by HOEPA have been referred to as ''HOEPA loans,'' ''Section 32 loans,'' or ''high-cost mortgages.''

[49] The Dodd-Frank Act adjusted the baseline for the APR comparison, lowered the points-and-fees threshold, and added a prepayment trigger.

[50] TILA section 129(h); 15 U.S.C. 1639(h). In addition to the disclosures and limitations specified in the statute, HOEPA expanded the Board's rulemaking authority, among other things, to prohibit acts or practices the Board found to be unfair and deceptive in connection with mortgage loans.

[51] Subsequently renumbered as sections 1026.31, 1026.32, and 1026.33 of Regulation Z.

[52] *See* 60 FR 15463 (Mar. 24, 1995).

[53] Under the Board's 2008 HOEPA Final Rule, a higher-priced mortgage loan is a consumer credit transaction secured by the consumer's principal dwelling with an APR that exceeds APOR for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for loans secured by a first lien on the dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on the dwelling. 73 FR 44522 (July 30, 2008) (2008 HOEPA Final Rule). The definition of a ''higher-priced mortgage loan'' includes practically all ''high-cost mortgages'' because the latter transactions are determined by higher loan pricing threshold tests. *See* 12 CFR 226.35(a)(1).

[54] 73 FR 44522 (July 30, 2008).

[55] *See* 12 CFR 1026.34(a)(4)(iii), (iv).

[56] 12 U.S.C. 5512(d).

[57] 82 FR 25246 (June 1, 2017).

[58] *See generally* Bureau of Consumer Fin. Prot., *Ability to Repay and Qualified Mortgage Assessment Report* (Jan. 2019) (Assessment Report), *https://files.consumerfinance.gov/f/documents/cfpb_ability-to-repay-qualified-mortgage_assessment-report.pdf.*

[59] *See, e.g., id.* at 83–84, 100–05.

[60] *See, e.g., id.* at 10, 194–96.

loans that were not Temporary GSE QM loans.[61]

One main finding about Temporary GSE QM loans was that such loans continued to represent a ''large and persistent'' share of originations in the conforming segment of the mortgage market.[62] As discussed, the GSEs' share of the conventional, conforming purchase-mortgage market was large before the ATR/QM Rule, and the Assessment found a small increase in that share since the Rule's effective date, reaching 71 percent in 2017.[63] The Assessment Report noted that, at least for loans intended for sale in the secondary market, creditors generally offer a Temporary GSE QM loan even when a General QM loan could be originated.[64]

The continued prevalence of Temporary GSE QM loan originations is contrary to the Bureau's expectation at the time it issued the ATR/QM Rule in 2013.[65] The Assessment Report discussed several possible reasons for the continued prevalence of Temporary GSE QM loan originations. The Report first highlighted commenters' concerns with the perceived lack of clarity in appendix Q and found that such concerns ''may have contributed to investors'—and at least derivatively, creditors'—preference'' for Temporary GSE QM loans instead of originating loans under the General QM loan definition.[66] In addition, the Bureau has not revised appendix Q since 2013, while other standards for calculating and verifying debt and income have been updated more frequently.[67] ANPR commenters also expressed concern with appendix Q and stated that the Temporary GSE QM loan definition has benefited creditors and consumers by enabling creditors to originate QMs without having to use appendix Q.

The Assessment Report noted that a second possible reason for the continued prevalence of Temporary GSE QM loans is that the GSEs were able to accommodate the demand for mortgages above the General QM loan definition's DTI limit of 43 percent as the DTI ratio distribution in the market shifted upward.[68] According to the Assessment Report, in the years since the ATR/QM Rule took effect, house prices have increased and consumers hold more mortgage and other debt (including student loan debt), all of which have caused the DTI ratio distribution to shift upward.[69] The Assessment Report noted that the share of GSE home purchase loans with DTI ratios above 43 percent has increased since the ATR/QM Rule took effect in 2014.[70] The available data suggest that such high-DTI lending has declined in the non-GSE market relative to the GSE market.[71] The non-GSE market has constricted even with respect to highly qualified consumers; those with higher incomes and higher credit scores are representing a greater share of denials.[72]

The Assessment Report found that a third possible reason for the persistence of Temporary GSE QM loans is the structure of the secondary market.[73] If creditors adhere to the GSEs' guidelines, they gain access to a robust, highly liquid secondary market.[74] In contrast, while private market securitizations have grown somewhat in recent years, their volume is still a fraction of their pre-crisis levels.[75] There were less than $20 billion in new origination PLS issuances in 2017, compared with $1 trillion in 2005,[76] and only 21 percent of new origination PLS issuances in 2017 were non-QM issuances.[77] To the extent that private securitizations have occurred since the ATR/QM Rule took effect in 2014, the majority of new origination PLS issuances have consisted of prime jumbo loans made to consumers with strong credit characteristics, and these securities have a low share of non-QM loans.[78] The Assessment Report notes that the Temporary GSE QM loan definition may itself be inhibiting the growth of the non-QM market.[79] However, the Report also notes that it is possible that this market might not exist even with a narrower Temporary GSE QM loan definition, if consumers were unwilling to pay the premium charged to cover the potential litigation risk associated with non-QMs, which do not have a presumption of compliance with the ATR requirements, or if creditors were unwilling or lack the funding to make the loans.[80]

The Bureau expects that each of these features of the mortgage market that concentrate lending within the Temporary GSE QM loan definition will largely persist through the current January 10, 2021 sunset date.

D. Effects of the COVID–19 Pandemic on Mortgage Markets

The COVID–19 pandemic has had a significant effect on the U.S. economy. Economic activity has contracted, some businesses have partially or completely closed, and millions of workers have become unemployed. The pandemic has also affected mortgage markets and has resulted in a contraction of mortgage credit availability for many consumers, including those that would be dependent on the non-QM market for financing. The pandemic's impact on both the secondary market for new originations and on the servicing of existing mortgages has contributed to this contraction, as described below.

1. Secondary Market Impacts and Implications for Mortgage Origination Markets

The economic disruptions associated with the COVID–19 pandemic have restricted the flow of credit in the U.S. economy, including the mortgage market. During periods of economic distress, many investors seek to purchase safer instruments and as tensions and uncertainty rose in mid-March of 2020, investors moved rapidly towards cash and government securities.[81] Indeed, the yield on the 10-year Treasury note, which moves in the opposite direction as the note's price, declined while mortgage rates increased between February 2020 and March 2020.[82] This widening spread was exacerbated by a large supply of mortgage-backed securities (MBS) entering the market, as investors in MBS sold large portfolios of agency MBS.[83] As a result, in March of 2020, the lack of investor demand to purchase mortgages made it difficult for creditors to originate loans, as many creditors rely on the ability to profitably sell loans in

[61] *See, e.g., id.* at 10–11, 117, 131–47.

[62] *Id.* at 188. Because the Temporary GSE QM loan definition generally affects only loans that conform to the GSEs' guidelines, the Assessment Report's discussion of the Temporary GSE QM loan definition focused on the conforming segment of the market, not on non-conforming (*e.g.,* jumbo) loans.

[63] *Id.* at 191.

[64] *Id.* at 192.

[65] *Id.* at 13, 190, 238.

[66] *Id.* at 193.

[67] *Id.* at 193–94.

[68] *Id.* at 194.

[69] *Id.*

[70] *Id.* at 194–95.

[71] *Id.* at 119–20.

[72] *Id.* at 153.

[73] *Id.* at 196.

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.* at 197.

[78] *Id.* at 196.

[79] *Id.* at 205.

[80] *Id.*

[81] *The Quarterly CARES Act Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 116th Cong. 2–3 (2020) (statement of Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System).

[82] Laurie Goodman *et al.,* Urban Institute, *Housing Finance at a Glance, Monthly Chartbook,* (Mar. 26, 2020), *https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2020.*

[83] Agency MBS are backed by loans guaranteed by Fannie Mae, Freddie Mac, and the Government National Mortgage Association (Ginnie Mae).

the secondary market to generate the liquidity to originate new loans. This resulted in mortgages becoming more expensive for both homebuyers and homeowners looking to refinance.

On March 15, 2020, the Board announced that it would increase its holdings of agency MBS by at least $200 billion.[84] On March 23, 2020, the Board announced that it would remove this limit and purchase agency MBS ''in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy.'' [85] The Board took these actions to stabilize the secondary market and support the continued flow of mortgage credit. With these purchases, market conditions have improved substantially, and the Board has since slowed its pace of purchases.[86] This has helped to stabilize mortgage rates, resulting in a decline in mortgage rates since the Board's intervention.

Non-agency MBS [87] are generally perceived by investors as riskier than agency MBS, and non-QM lending has declined as a result. Issuance of non-agency MBS declined by 8.2 percent in the first quarter of 2020, with nearly all the transactions completed in January and February, before the COVID–19 pandemic began to affect the economy significantly.[88] Nearly all major non-QM creditors ceased making loans in March and April. In May of 2020, issuers of non-agency MBS began to test the market with deals collateralized by non-QM loans largely originated prior to the crisis. Moreover, several non-QM creditors—which largely depend on the ability to sell loans in the secondary market in order to fund new loans—have begun to resume originations, albeit with a tighter credit box.[89] Prime jumbo financing dropped nearly 22 percent in the first quarter of 2020. Banks increased interest rates and narrowed the product offering to consumers with pristine credit profiles, as these loans must be held on portfolio when the secondary market for non-agency MBS contracts.[90]

2. Servicing Market Impacts and Implications for Origination Markets

Anticipating that a number of homeowners would struggle to pay their mortgages due to the pandemic and related economic impacts, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) in March 2020. The CARES Act provides additional protections for borrowers whose mortgages are purchased or securitized by a GSE and certain federally-backed mortgages.[91] The CARES Act mandates a 60-day foreclosure moratorium for such mortgages. The CARES Act also allows borrowers to request up to 180 days of forbearance due to a COVID–19-related financial hardship, with an option to extend the forbearance period for an additional 180 days.

Following the passage of the CARES Act, some mortgage servicers remain obligated to make some principal and interest payments to investors in GSE and Ginnie Mae securities, even if consumers are not making payments.[92] Servicers also remain obligated to make escrowed real estate tax and insurance payments to local taxing authorities and insurance companies. Significant liquidity is needed to fulfill servicer obligations to security holders. While servicers are required to hold liquid reserves to cover anticipated advances, significantly higher-than-expected forbearance rates over an extended period of time may lead to liquidity shortages particularly among many non-bank servicers. According to a weekly survey from the Mortgage Bankers Association, from March 2, 2020 to June 7, 2020, the total number of loans in forbearance grew from 0.25 percent to 8.55 percent, with Ginnie Mae loans having the largest growth from 0.19 percent to 11.83 percent.[93]

To address the anticipated liquidity shortage, on April 10, 2020, Ginnie Mae released guidance on a Pass-Through Assistance Program whereby Ginnie Mae will provide financial assistance at a fixed interest rate to servicers facing a principal and interest shortfall as a last resort. On April 7, 2020, Ginnie Mae also announced approval of a servicing advance financing facility, whereby mortgage servicing rights are securitized and sold to private investors. This change may alleviate some of the liquidity pressures that may cause a servicer to draw on the Pass-Through Assistance Program.

Because many mortgage servicers also originate the loans they service, many creditors have responded to the risk of elevated forbearances and higher-than-expected monthly advances by imposing additional underwriting standards for new originations. These new underwriting standards include more stringent requirements for non-QM, jumbo, and government loans.[94] For example, one major bank announced on April 13, 2020, that it would require prospective home purchasers to have a minimum 700 FICO score and 20 percent down payment. By lending only to consumers with high credit scores, lower DTI ratios, or significant liquid reserves, creditors are managing their risk by reducing the likelihood that a newly-originated loan will require a forbearance plan.

Moreover, several large warehouse providers—*i.e.,* creditors that provide financing to mortgage originators and servicers—have restricted the ability of non-banks to fund loans on their warehouse line by prohibiting the funding of loans to consumers with lower credit scores. These types of restrictions mitigate the warehouse lender's exposure in the event a non-bank fails or is unable to sell the loan prior to the consumer requesting a forbearance.[95]

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[84] Press Release, Bd. of Governors of the Fed. Reserve Sys., *Federal Reserve issues FOMC statement* (Mar. 15, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200315a.htm.*

[85] Press Release, Bd. of Governors of the Fed. Reserve Sys., *Federal Reserve announces extensive new measures to support the economy* (Mar. 23, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm.*

[86] *The Quarterly CARES Act Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs,* 116th Cong. 3 (2020) (statement of Jerome H. Powell, Chairman, Board of Governors of the Federal Reserve System).

[87] Non-agency MBS are not backed by loans guaranteed by Fannie Mae, Freddie Mac or the Ginnie Mae. This includes securities collateralized by non-QM loans.

[88] Brandon Ivey, *Non-Agency MBS Issuance Slowed in First Quarter* (2020), *https://www.insidemortgagefinance.com/articles/217623-non-agency-mbs-issuance-slowed-in-first-quarter.*

[89] Brandon Ivey, *Non-Agency Mortgage Securitization Opening Up After Pause* (2020), *https://www.insidemortgagefinance.com/articles/218034-non-agency-mortgage-securitization-opening-up-after-pause.*

[90] Brandon Ivey, *Jumbo Originations Drop Nearly 22% in First Quarter* (2020) *https://www.insidemortgagefinance.com/articles/218028-jumbo-originations-drop-nearly-22-in-first-quarter.*

[91] Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136 (2020). (Includes loans backed by HUD, the U.S. Department of the Agriculture, the U.S. Department of Veterans Affairs (VA), Fannie Mae, and Freddie Mac).

[92] The GSEs typically repurchase loans out of the trust after they fall 120 days delinquent, after which the servicer is no longer required to advance principal and interest, but Ginnie Mae requires servicers to advance principal and interest until the default is resolved. On April 21, 2020, the FHFA confirmed that servicers of GSE loans will only be required to advance four months of mortgage payments, regardless of whether the GSEs repurchase the loans from the trust after 120 days of delinquency.

[93] Press Release, Mortgage Banker Association, *Share of Mortgage Loans in Forbearance Increases to 8.55%,* (June 15, 2020), *https://www.mba.org/2020-press-releases/june/share-of-mortgage-loans-in-forbearance-increases-to-855.*

[94] Maria Volkova, *FHA/VA Lenders Raise Credit Score Requirements* (2020), *https://www.insidemortgagefinance.com/articles/217636-fhava-lenders-raise-fico-credit-score-requirements.*

[95] On April 22, 2020, the FHFA announced the GSEs would be permitted to purchase certain loans whereby the borrower requested a forbearance prior

As of mid-June, historically low interest rates combined with a leveling off in forbearance rates have resulted in an increase in refinance activity that has been primarily concentrated in the agency sector, helping to mitigate some of the servicing liquidity concerns. However, it is unclear how quickly non-banks will return to the non-QM market even after the mortgage market in general recovers.

III. The Rulemaking Process

The Bureau has solicited and received substantial public and stakeholder input on issues related to this proposed rule. In addition to the Bureau's discussions with and communications from industry stakeholders, consumer advocates, other Federal agencies,[96] and members of Congress, the Bureau issued requests for information (RFIs) in 2017 and 2018 and in July 2019 issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The input from these RFIs and from the ANPR is briefly summarized below.

A. The Requests for Information

In June 2017, the Bureau published a request for information in connection with the Assessment Report (Assessment RFI).[97] In response to the Assessment RFI, the Bureau received approximately 480 comments from creditors, industry groups, consumer advocacy groups, and individuals.[98] The comments addressed a variety of topics, including the General QM loan definition and the 43 percent DTI limit; perceived problems with, and potential changes and alternatives to, appendix Q; and how the Bureau should address the expiration of the Temporary GSE QM loan definition. The comments expressed a range of ideas for addressing the expiration of the Temporary GSE QM loan definition, from making the definition permanent, to applying the definition to other mortgage products, to extending it for various periods of time, or some combination of those suggestions. Other comments stated that the Temporary GSE QM loan definition should be eliminated or permitted to expire.

Beginning in January 2018, the Bureau issued a general call for evidence seeking comment on its enforcement, supervision, rulemaking, market monitoring, and financial education activities.[99] As part of the call for evidence, the Bureau published requests for information relating to, among other things, the Bureau's rulemaking process,[100] the Bureau's adopted regulations and new rulemaking authorities,[101] and the Bureau's inherited regulations and inherited rulemaking authorities.[102] In response to the call for evidence, the Bureau received comments on the ATR/QM Rule from stakeholders, including consumer advocacy groups and industry groups. The comments addressed a variety of topics, including the General QM loan definition, appendix Q, and the Temporary GSE QM loan definition. The comments also raised concerns about, among other things, the risks of allowing the Temporary GSE QM loan definition to expire without any changes to the General QM loan definition or appendix Q. The concerns raised in these comments were similar to those raised in response to the Assessment RFI, discussed above.

B. The Advance Notice of Proposed Rulemaking

On July 25, 2019, the Bureau issued an advance notice of proposed rulemaking regarding the ATR/QM Rule (ANPR). The ANPR stated the Bureau's tentative plans to allow the Temporary GSE QM loan definition to expire in January 2021 or after a short extension, if necessary, to facilitate a smooth and orderly transition away from the Temporary GSE QM loan definition. The Bureau also stated that it was considering whether to propose revisions to the General QM loan definition in light of the potential expiration of the Temporary GSE QM loan definition and requested comments on several topics related to the General QM loan definition. These topics included: (1) Whether and how the Bureau should revise the DTI limit in the General QM loan definition; (2) whether the Bureau should supplement or replace the DTI limit with another method for directly measuring a consumer's personal finances; (3) whether the Bureau should revise appendix Q or replace it with other standards for calculating and verifying a consumer's debt and income; and (4) whether, instead of a DTI limit, the Bureau should adopt standards that do not directly measure a consumer's personal finances.[103] The Bureau requested comment on how much time industry would need to change its practices in response to any changes the Bureau makes to the General QM loan definition.[104] The Bureau received 85 comments on the ANPR from businesses in the mortgage industry (including creditors), consumer advocacy groups, elected officials, individuals, and research centers.

1. Direct Measures of a Consumer's Personal Finances

Commenters largely supported moving away from using the 43 percent DTI limit as a stand-alone General QM underwriting criterion. While a few commenters supported maintaining the current General QM loan definition's 43 percent DTI limit as a stand-alone criterion along with clarifying revisions to appendix Q, the large majority of commenters—representing the mortgage industry, consumer advocacy groups, and research centers—supported either eliminating a DTI limit, replacing it with other methods of measuring a consumer's ability to repay, such as cash flow underwriting or residual income, or supplementing it with additional compensating factors. These commenters asserted that, as a stand-alone factor, DTI has limited predictiveness of a consumer's ability to repay and has an adverse impact on responsible access to credit for low-to-moderate income and minority homeowners.

Many commenters suggested the Bureau consider replacing DTI with an alternative measure of a consumer's ability to repay, such as residual income or cash flow underwriting. While some commenters indicated these alternative measures are more accurate predictors of ability to repay, others suggested the Bureau conduct additional studies of these alternative measures and the effectiveness of existing standards, such as the VA's residual income test.

Other commenters suggested the Bureau promulgate a General QM loan definition that allows certain compensating factors to supplement a specific DTI limit. Under this approach, the rule would set a specific DTI limit (*e.g.,* 43 percent) but would permit loans with higher DTI ratios to be originated as QMs if the creditor determined that

to the sale of the loan for a limited period of time and at a higher cost.

[96] The Bureau has consulted with agencies including the FHFA, the Board, FHA, the FDIC, the OCC, the Federal Trade Commission, the National Credit Union Administration, and the Department of the Treasury.

[97] 82 FR 25246 (June 1, 2017).

[98] *See* Assessment Report, *supra* note 58, appendix B (summarizing comments received in response to the Assessment RFI).

[99] *See* Bureau of Consumer Fin. Prot., Call for Evidence, *https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/archive-closed/call-for-evidence* (last updated Apr. 17, 2018).

[100] 83 FR 10437 (Mar. 9, 2018).

[101] 83 FR 12286 (Mar. 21, 2018).

[102] 83 FR 12881 (Mar. 26, 2018).

[103] 84 FR 37155, 37155, 37160–62 (July 31, 2019).

[104] The Bureau stated that if the amount of time industry would need to change its practices in response to the rule depends on how the Bureau revises the General QM loan definition, the Bureau requested time estimates based on alternative possible definitions.

certain compensating factors were present. Commenters identified several potential compensating factors, including cash reserves or past payment performance history. Advocates for this approach pointed to the GSEs' underwriting standards, which permit loans with DTI ratios between 43 and 50 percent if compensating factors are present, as evidence that higher DTI loans with appropriate consideration of compensating factors can result in affordable loans. Some of the commenters suggested the current General QM loan definition's 43 percent DTI limit could be responsibly increased. Some commenters recommended that the Bureau incorporate compensating factors into the General QM loan definition but also adopt an overall DTI limit above which loans could not be originated as General QMs, regardless of any compensating factors. Under this approach, similar to the GSEs' current underwriting standards, creditors could originate loans under the General QM loan definition with DTI ratios under a certain threshold (*e.g.,* 43 percent) without compensating factors, could originate loans under the General QM loan definition with DTI ratios between that threshold and a higher threshold (*e.g.,* 50 percent) if the creditor identifies certain compensating factors, but could not originate loans under the General QM loan definition with DTI ratios above the higher threshold.

The Bureau also solicited comment on whether the rule should retain appendix Q as the standard for calculating and verifying debt and income if the rule retains a direct measure of a consumer's personal finances for General QM. Nearly all commenters agreed that appendix Q in its existing form is insufficient—specifically, that the requirements lack clarity in certain areas, which leaves creditors uncertain of the QM status of their loans. Commenters also criticized appendix Q for being overly prescriptive and outdated in other areas and therefore lacking the flexibility to adapt to changing market conditions. Proponents of eliminating the DTI limit entirely stated that appendix Q could be eliminated without replacement and that the Bureau could instead publish supervisory guidance or best practices to assist creditors in satisfying the ATR requirements. Other commenters suggested that the rule supplement appendix Q or replace it with reasonable alternatives that allow for more flexibility, such as the GSE or FHA standards for verifying income and debt. Although most commenters advocated for elimination of appendix Q, the commenters that advocated for retaining appendix Q generally suggested the Bureau should revise appendix Q to modernize the standards and ease industry compliance.

2. Alternatives to Direct Measures of a Consumer's Personal Finances

Many commenters argued that there are alternatives that are more predictive of loan performance and a consumer's ability to repay than stand-alone direct measures of a consumer's personal finances such as DTI or residual income. Most commenters noting these alternatives advocated for eliminating the DTI limit entirely and suggested that loan product features and loan pricing should serve as the primary factors that determine a loan's QM status. Commenters that opposed incorporating alternatives to direct measures of a consumer's personal finances into the General QM loan definition generally argued that a creditor's ATR determination is separate and distinct from a creditor's decision on whether to originate a loan. For example, they argued that because creditors consider factors unrelated to ability to repay in determining their cumulative loss exposure—such as the amount of equity in a property—creditors can originate loans that may not be affordable for consumers in the long-term. Commenters cited asset-based lending prior to the crisis, when some creditors originated unaffordable loans with the intention of refinancing the loan prior to default or otherwise believed they were protected from loss in the event of default due to the consumer's equity in the property. Commenters critical of price-based approaches to the General QM loan definition also stated that loan pricing includes a wide variety of factors unrelated to credit quality, such as the value of the mortgage servicing rights. These commenters also raised concerns about the pro-cyclical nature of loan pricing. They argued that mortgage interest rate spreads tend to contract during economic expansions, such that a price-based approach to the General QM loan definition could grant QM status to loans that exceed consumers' ability to repay and increase housing prices. In contrast, they claimed that mortgage interest rate spreads tend to expand during economic contractions, inhibiting access to credit. Commenters critical of price-based approaches also raised concerns that these approaches are vulnerable to lender manipulation.

Most commenters that advocated for removing the DTI limit entirely from the General QM loan definition suggested the existing General QM protections are sufficient—including the prohibited product features, the points-and-fees cap, and the ATR requirements to consider and verify a consumer's debt, income or assets, DTI, or residual income. They argued that the rule should continue to rely on the interest rate spread between the APR and the APOR to distinguish those QM loans eligible for a safe harbor from those eligible for a rebuttable presumption of compliance. Proponents of this approach argued that creditors use a wide variety of factors in the lending decision and consumers with higher-risk lending attributes receive higher interest rates to compensate creditors and investors for the added risk. Accordingly, these commenters argued that the APR spread above the benchmark APOR is more predictive of the general creditworthiness of a loan and a consumer's ability to repay than stand-alone measures such as DTI. While some commenters suggested that the rule should retain the existing price threshold separating safe harbor QM loans from rebuttable presumption QM loans, which is 1.5 percentage points above APOR for most loans, others suggested that it would be appropriate to increase the threshold. Other commenters suggested there could be an additional pricing threshold, above which loans would be designated as non-QM.

Commenters also provided input on the distinction between a safe harbor presumption of compliance and a rebuttable presumption of compliance with the ATR requirements. While commenters offered different views about whether 1.5 percentage points over APOR is appropriate for distinguishing between safe harbor and rebuttable presumption QMs, or if it should be increased, most commenters advocated for maintaining a safe harbor. However, several consumer advocacy groups suggested all QM loans should be subject to a rebuttable presumption of compliance. Several commenters noted that the 1.5 percentage point over APOR threshold would disproportionately prevent smaller loans and loans for manufactured housing from being originated as QMs. They noted that creditors typically charge more to recover fixed costs on small loans than on larger loans with equivalent risk attributes.

Some commenters advocated for an approach whereby the QM determination would be based primarily on the likelihood of default or loss given default as determined by an underwriting model. One commenter recommended that QM status be

determined by expected default rates in stressed economic conditions, given certain origination characteristics. Other commenters suggested a Bureau-approved automated underwriting model could determine a loan's QM status. Proponents of these approaches argued that an underwriting model would reflect a more holistic consideration of relevant factors but remove the risk that creditors misprice or underprice loans due to competitive pressures. While many commenters acknowledged the operational complexity associated with the Bureau developing and maintaining an automated underwriting model, they argued that this approach would provide creditors with the certainty of a loan's QM status while most accurately assessing the consumer's ability to sustain the mortgage payment.

Commenters also argued that consumer performance over an extended period should be considered sufficient evidence that the creditor adequately assessed a consumer's ability to repay at origination. They recommended that a loan that is originated as a non-QM or rebuttable presumption QM loan should be eligible to ''season'' into a QM safe harbor loan if the consumer makes timely payments for a pre-determined length of time. Commenters pointed to the GSE representation and warranty framework as precedent for this concept and argued that a creditor's legal exposure to the ATR requirement should also sunset accordingly. However, several commenters opposed allowing loans to season into QMs. They argued that a period of successful repayment is insufficient to presume conclusively that the creditor reasonably determined ability to repay at origination, that creditors would engage in gaming to minimize defaults during the seasoning period, and that seasoning would inappropriately prevent consumers from raising lack of ability to repay as a defense to foreclosure.

The Bureau is considering adding a seasoning approach to the ATR/QM Rule. A seasoning approach would create an alternative pathway to QM safe harbor status for certain mortgages if the consumer has consistently made timely payments for a specified period of time. The Bureau in the near future will issue a separate proposal that addresses adding such an approach to the ATR/QM Rule.

3. Other Temporary GSE QM Loan Issues

As discussed in the ANPR, absent any changes, the Temporary GSE QM loan definition will remain in effect until January 10, 2021 or the date the GSEs exit conservatorship, whichever occurs first. The Bureau sought comment on whether a short extension would be necessary to minimize market disruption and to potentially facilitate an orderly transition to a new General QM loan definition. While some industry and consumer advocates commented that the Temporary GSE QM loan definition should be made permanent, many commenters supported its expiration following a short extension to revise the General QM loan definition. Industry commenters stated that the length of time to implement a new General QM loan definition would largely be determined by the scale and complexity of the revisions to the General QM loan definition. Commenters supporting the price-based approach indicated that a relatively short implementation period likely would be necessary, given the approach would largely be a simplification of the existing General QM construct. Other commenters suggested linking the date of the Temporary GSE QM loan definition expiration to a period following the publication date of the final General QM rule, such as one year. As noted above, the Bureau is issuing a separate NPRM to address the timing of the expiration of the Temporary GSE QM Loan definition.

IV. Legal Authority

The Bureau is proposing to amend Regulation Z pursuant to its authority under TILA and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The Dodd-Frank Act defines the term ''consumer financial protection function'' to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [105] Title X of the Dodd-Frank Act (including section 1061), along with TILA and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[106]

A. TILA

TILA section 105(a). Section 105(a) of TILA directs the Bureau to prescribe regulations to carry out the purposes of TILA and states that such regulations may contain such additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[107] A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' [108] Additionally, a purpose of TILA sections 129B and 129C is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.[109] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its rulemaking, adjustment, and exception authority under TILA section 105(a).

TILA section 129C(b)(2)(A). TILA section 129C(b)(2)(A)(vi) provides the Bureau with authority to establish guidelines or regulations relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).[110] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(2)(A)(vi).

TILA section 129C(b)(3)A), (B)(i). TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C; or are necessary and appropriate to effectuate the purposes of

[105] 12 U.S.C. 5581(a)(1)(A).

[106] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act), Dodd-Frank Act section 1002(12)(O), 12 U.S.C. 5481(12)(O) (defining ''enumerated consumer laws'' to include TILA).

[107] 15 U.S.C. 1604(a).

[108] 15 U.S.C. 1601(a).

[109] 15 U.S.C. 1639b(a)(2).

[110] 15 U.S.C. 1639c(b)(2)(A).

TILA sections 129B and 129C, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.[111] In addition, TILA section 129C(b)(3)(A) directs the Bureau to prescribe regulations to carry out the purposes of section 129C.[112] As discussed in the section-by-section analysis below, the Bureau is proposing to issue certain provisions of this proposed rule pursuant to its authority under TILA section 129C(b)(3)(B)(i).

B. Dodd-Frank Act

Dodd-Frank Act section 1022(b). Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[113] TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is proposing to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

V. Why the Bureau Is Issuing This Proposal

The Bureau is issuing this proposal to amend the General QM loan definition because it is concerned that retaining the existing General QM loan definition with the 43 percent DTI limit after the Temporary GSE QM loan definition expires would significantly reduce the size of QM and could significantly reduce access to responsible, affordable credit. The Bureau is proposing a price-based General QM loan definition to replace the DTI-based approach because it preliminarily concludes that a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

Under the proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set. The proposal would provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. The proposal would retain the existing product-feature and underwriting requirements and limits on points and fees. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, the proposal would require that the creditor consider and verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. The proposal would remove appendix Q. To prevent uncertainty that may result from appendix Q's removal, the proposal would clarify the requirements to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. The proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set (or by less than 3.5 percentage points for subordinate-lien transactions).

The Bureau is proposing a price-based approach to replace the specific DTI limit because it is concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. In particular, the Bureau is concerned that conditioning QM status on a specific DTI limit may impair access to credit for some consumers for whom it might be appropriate to presume ability to repay for their loans at consummation. For the reasons set forth below, the Bureau preliminarily concludes that a price-based General QM loan definition is appropriate because a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

A. Overview of the General QM Loan Definition DTI Limit

As discussed above, TILA section 129C(b)(2) defines QM by limiting certain loan terms and features. The statute generally prohibits a QM from permitting an increase of the principal balance on the loan (negative amortization), interest-only payments, most balloon payments, a term greater than 30 years, and points and fees that exceed a specified threshold. In addition, the statute incorporates limited underwriting criteria that overlap with some elements of the general ATR standard, including prohibiting ''no-doc'' loans where the creditor does not verify income or assets. TILA does not require DTI ratios to be included in the definition of a QM. Rather, the statute authorizes, but does not require, the Bureau to establish additional criteria relating to monthly DTI ratios, or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the consumer and other factors the Bureau determines relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i).

The Board's 2011 ATR/QM Proposal. In the 2011 ATR/QM Proposal, the Board proposed two alternative approaches to the General QM loan definition to implement the statutory QM requirements.[114] The proposed alternatives differed in the extent to which, in addition to the statutory QM requirements, they included factors from the ATR standard, including consideration of the consumer's monthly DTI ratio.

Alternative 1 under the Board's proposal would have included only the statutory QM requirements and would not have incorporated the consumer's DTI ratio, residual income, or other factors from the general ATR standard.[115] Among the reasons the Board cited in support of proposed Alternative 1 was a concern that DTI ratios (and residual income) are not objective and would not provide certainty that a loan is in fact a QM.[116] The Board also cited data showing that a consumer's DTI ratio generally does not have a significant predictive power of loan performance, once the effects of credit history, loan type, and loan-to-value (LTV) ratio are considered.[117] The Board was also concerned that the benefit of including DTI ratio (or residual income) requirements in the definition of QM may not outweigh the risk of reduced credit availability for certain consumers who may not meet widely accepted DTI ratio standards but may have other compensating factors, such as sufficient residual income or other resources, to be able to reasonably afford the mortgage.[118] Proposed Alternative 1 would have provided creditors with a safe harbor to establish compliance with the ATR requirements.

Proposed Alternative 2 would have included the statutory QM requirements

[111] 15 U.S.C. 1639c(b)(3)(B)(i).

[112] 15 U.S.C. 1639c(b)(3)(A).

[113] 12 U.S.C. 5512(b)(1).

[114] 76 FR 27390, 27453 (May 11, 2011).

[115] *Id.* at 27453.

[116] *Id.* at 27454.

[117] *Id.*

[118] *Id.*

and additional factors from the general ATR standard, including a requirement to consider and verify the consumer's DTI ratio or residual income.[119] The Board expressed concern that, absent a DTI ratio or residual income requirement, a creditor could originate a QM without considering the effect of the new loan payment on the consumer's overall financial picture.[120] The Board did not propose a specific limit for the DTI ratio in the QM definition as part of Alternative 2.[121] The Board cited several reasons for not proposing a specific DTI limit. First, the Board was concerned that setting a specific DTI ratio threshold could limit credit availability without providing adequate off-setting benefits.[122] Second, outreach conducted by the Board revealed a range of underwriting guidelines for DTI ratios based on product type, whether creditors used manual or automated underwriting, and special considerations for high- and low-income consumers.[123] The Board was concerned that setting a specific limit would require addressing the operational issues related to the calculation of the DTI ratio, including defining debt and income.[124] The Board was also concerned that a specific limit would require tolerance provisions to account for mistakes made in calculating the DTI ratio.[125] At the same time, the Board recognized that creditors and consumers may benefit from a higher degree of certainty surrounding the QM definition.[126] Therefore, the Board solicited comment on whether and how it should prescribe a specific limit for the DTI ratio or residual income for the QM definition.[127] The Board's Alternative 2 would have provided a rebuttable presumption of compliance with the ATR requirements.

The Bureau's January 2013 Final Rule. The Bureau's January 2013 Final Rule included the statutory QM factors and additional factors from the general ATR standard in the General QM loan definition in § 1026.43(e)(2). However, instead of incorporating the approach to DTI from the ATR standard, which requires a creditor to consider the consumer's DTI ratio or residual income, the Bureau prescribed for the General QM loan definition a specific DTI limit of 43 percent in § 1026.43(e)(2)(vi). In adopting this approach, the Bureau explained that it believed the QM criteria should include a standard for evaluating the consumer's ability to repay, in addition to the product feature restrictions and other requirements that are specified in TILA.[128] The Bureau stated that the TILA ATR/QM provisions are fundamentally about assuring that the mortgage loan that consumers receive is affordable, and that the protection from liability afforded to QMs would not be reasonable if the creditor made the loan without considering and verifying certain core aspects of the consumer's financial picture.[129]

With respect to DTI, the Bureau noted that DTI ratios are widely used for evaluating a consumer's ability to repay over time because, as the available data showed, DTI ratio correlates with loan performance as measured by delinquency rate.[130] The January 2013 Final Rule noted that, at a basic level, the lower the DTI ratio, the greater the consumer's ability to pay back a mortgage loan.[131] The Bureau believed this relationship between the DTI ratio and the consumer's ability to repay applied both under conditions as they exist at consummation, as well as under future changed circumstances, such as increases in payments for adjustable-rate mortgages (ARMs), future reductions in income, and unanticipated expenses and new debts.[132] The Bureau's findings regarding DTI ratios relied primarily on analysis of the FHFA's Historical Loan Performance (HLP) dataset, data provided by FHA, and data provided by commenters.[133] The Bureau believed these data indicated that DTI ratios correlate with loan performance, as measured by delinquency rate (where delinquency is defined as being over 60 days late), in any credit cycle.[134] Within a typical range of DTI ratios creditors use in underwriting (*e.g.,* under 32 percent DTI to 46 percent DTI), the Bureau noted that generally, there is a gradual increase in delinquency with higher DTI ratio.[135] The Bureau also noted that DTI ratios are widely used as an important part of the underwriting processes for both governmental programs and private lenders.[136]

To provide certainty for creditors regarding the loan's QM status, the January 2013 Final Rule contained a specific DTI limit of 43 percent as part of the General QM loan definition. The Bureau stated that a specific DTI limit also provides certainty to assignees and investors in the secondary market, which the Bureau believed would help reduce concerns regarding legal risk and promote credit availability.[137] The Bureau noted that numerous commenters had highlighted the value of providing objective requirements determined based on information contained in loan files.[138] To that end, the Bureau provided definitions of debt and income for purposes of the General QM loan definition in appendix Q, to address concerns that creditors may not have adequate certainty about whether a particular loan satisfies the requirements of the General QM loan definition.[139]

The Bureau selected 43 percent as the DTI limit for the General QM loan definition because, based on analysis of data available at the time and comments, the Bureau believed that the 43 percent limit would advance TILA's goals of creditors not extending credit that consumers cannot repay while still preserving consumers' access to credit.[140] The Bureau acknowledged that there is no specific threshold that separates affordable from unaffordable mortgages; rather, there is a gradual increase in delinquency rates as DTI ratios increase.[141] Additionally, the Bureau noted that a 43 percent DTI ratio was within the range used by many creditors, generally comported with industry standards and practices for prudent underwriting, and was the threshold used by FHA as its general boundary at the time the Bureau issued the January 2013 Final Rule.[142] The Bureau noted concerns about setting a higher DTI limit, including concerns that it could allow QM status for mortgages for which there is not a sound reason to presume that the creditor had a reasonable belief in the consumer's ability to repay.[143] The Bureau was especially concerned about this in the context of QMs that receive a safe harbor from the ATR requirements.[144]

[119] *Id.*
[120] *Id.* at 27455.
[121] *Id.* at 27460.
[122] *Id.*
[123] *Id.* at 27461.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] 78 FR 6408, 6516 (Jan. 30, 2013).
[129] *Id.* at 6516.
[130] *Id.* at 6526–27.
[131] *Id.* at 6526.
[132] *Id.* at 6526–27.
[133] *Id.* at 6527.
[134] *Id.*
[135] *Id.* (citing 77 FR 33120, 33122–23 (June 5, 2012) (Table 2: Ever 60+ Delinquency Rates, summarizing the HLP dataset by volume of loans and percentage that were ever 60 days or more delinquent, tabulated by the total DTI on the loans and year of origination)).
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Id.*
[143] *Id.* at 6528.
[144] *Id.*

The Bureau was also concerned that a higher DTI limit would result in a QM boundary that substantially covered the entire mortgage market. If that were the case, creditors might be unwilling to make non-QM loans, and the Bureau was concerned that the QM rule would define the limit of credit availability.[145] The Bureau also suggested that a higher DTI limit might require a corresponding weakening of the strength of the presumption of compliance, which the Bureau believed would largely defeat the point of adopting a higher DTI limit.[146]

Despite the Bureau's inclusion of a specific DTI limit in the General QM loan definition, the Bureau also acknowledged concerns about the requirement. The Bureau acknowledged that the Board, in issuing the 2011 ATR/QM Proposal, found that DTI ratios may not have significant predictive power, once the effects of credit history, loan type, and LTV ratio are considered.[147] Similarly, the Bureau noted that some commenters responding to the 2011 ATR/QM Proposal suggested that the Bureau should include compensating factors in addition to a specific DTI ratio threshold due to concerns about restricting access to credit.[148] The Bureau acknowledged that a standard that takes into account multiple factors may produce more accurate ability-to-repay determinations, at least in specific cases, but was concerned that incorporating a multi-factor test or compensating factors into the QM definition would undermine the certainty for creditors and the secondary market of whether loans were eligible for QM status.[149] The Bureau also acknowledged arguments that residual income—generally defined as the monthly income that remains after a consumer pays all personal debts and obligations, including the prospective mortgage—may be a better measure of repayment ability.[150] However, the Bureau noted that it lacked sufficient data to mandate a bright-line rule based on residual income.[151] The Bureau anticipated further study of the issue as part of the five-year assessment of the rule.[152]

The Bureau acknowledged in the January 2013 Final Rule that the 43 percent DTI limit in the General QM loan definition could restrict access to credit given market conditions at the time the rule was issued. Among other things, the Bureau expressed concern that, as the mortgage market recovered from the financial crisis, there would be a limited non-QM market, which, in conjunction with the 43 percent DTI limit, could impair access to credit for consumers with DTI ratios over 43 percent.[153] To preserve access to credit for such consumers while the market recovered, the Bureau adopted the Temporary GSE QM loan definition, which did not include a specific DTI limit. As discussed below, the Temporary GSE QM loan definition continues to play a significant role in ensuring access to credit for consumers.

B. Considerations Related to the General QM Loan Definition DTI Limit

The Bureau's own experience and the feedback it has received from stakeholders since issuing the January 2013 Final Rule suggest that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. While the Bureau acknowledges that DTI ratios generally correlate with loan performance, as the Bureau found in the January 2013 Final Rule and as shown in recent Bureau analysis described below, the Bureau also notes that a consumer's DTI ratio is only one way to measure financial capacity and is not a holistic measure of the consumer's ability to repay.

In particular, the Bureau is concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may deny QM status for loans to some consumers for whom it might be appropriate to presume ability to repay at consummation, and that denying QM status to such loans risks denying consumers access to responsible, affordable credit. Numerous stakeholders, including commenters responding to the ANPR, have argued that the current approach to DTI ratios as part of the General QM loan definition is not appropriate because it creates problems for some consumers' ability to access credit when their DTI ratio is above a bright-line threshold. These access to credit concerns are especially acute for lower-income and minority consumers.

The Bureau acknowledges that the current approach to DTI ratios under the General QM loan definition may also stifle innovation in underwriting because it focuses on a single metric, with strict verification rules. The current approach to DTI ratios under the General QM loan definition may constrain new approaches to assessing repayment ability, including the use of technology as part of the underwriting process. Such innovations include certain new uses of cash flow data and analytics to underwrite mortgage applicants. This emerging technology has the potential to accurately assess consumers' ability to repay using, for example, bank account data that can identify the source and frequency of recurring deposits and payments and identify remaining disposable income. Identifying the remaining disposable income could be a method of assessing the consumer's residual income and could potentially satisfy a requirement to consider either DTI or residual income, absent a specific DTI limit. This innovation could potentially expand access to responsible, affordable mortgage credit, particularly for applicants with non-traditional income and limited credit history. The potential negative effect of the rule on innovation in underwriting may be heightened while the market is largely concentrated in the QM lending space and may limit access to credit for some consumers with DTI ratios above 43 percent.

The Bureau's 2019 ATR/QM Assessment Report highlights the tradeoffs of conditioning the General QM loan definition on a DTI limit. The Assessment Report included specific findings about the General QM loan definition's DTI limit, including certain findings related to DTI ratios as probative of a consumer's ability to repay. The Assessment Report found that loans with higher DTI ratios have been associated with higher levels of ''early delinquency'' (*i.e.,* delinquency within two years of origination), which, as explained below, may serve as a proxy for measuring whether a consumer had a reasonable ability to repay at the time the loan was consummated.[154] For example, the Assessment Report notes that for all periods and samples studied, a positive relationship between DTI ratios and early delinquency is present and economically meaningful.[155] The Assessment Report states that higher DTI ratios independently increase expected early delinquency, regardless of other underwriting criteria.[156]

At the same time, findings from the Assessment Report indicate that the specific 43 percent DTI limit in the

[145] *Id.*

[146] *Id.*

[147] *Id.* at 6527.

[148] *Id.*

[149] *Id.*

[150] *Id.* at 6528.

[151] *Id.*

[152] *Id.*

[153] *Id.* at 6533.

[154] *See* Assessment Report, *supra* note 58, at 83–84, 100–05.

[155] Assessment Report at 104–05.

[156] *Id.* at 105.

current rule has restricted access to credit, particularly in the absence of a robust non-QM market. The report found that, for high-DTI consumers—*i.e.,* consumers with DTI ratios above 43 percent—who qualify for loans eligible for purchase or guarantee by the GSEs, the Rule has not decreased access to credit.[157] However, the Assessment Report attributes the fact that the 43 percent DTI limit has not reduced access to credit for such consumers to the existence of the Temporary GSE QM loan definition. The findings in the Assessment Report indicate that there would be some reduction in access to credit for high-DTI consumers when the Temporary GSE QM loan definition expires, absent changes to the General QM loan definition. For example, based on application-level data obtained from nine large lenders, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of non-GSE eligible, high-DTI home purchase loans.[158] The Bureau is concerned about a similar effect for loans with DTI ratios above 43 percent when the Temporary GSE QM loan definition expires. The Bureau acknowledges that the Assessment Report's finding, without other information, does not prove or disprove the effectiveness of the DTI limit in achieving the purposes of the January 2013 Final Rule in ensuring consumers' ability to repay the loan. If the denied applicants in fact lacked the ability to repay, then the reduction in approval rates is an appropriate consequence of the Rule. However, if the denied applicants did have the ability to repay, then these data suggest an unintended consequence of the Rule. This possibility is supported by the fact that other findings in the Assessment Report suggest that applicants for high-DTI ratio, non-GSE eligible loans are being denied, even though other compensating factors indicate that some of them may have the ability to repay their loans.[159]

The current state of the non-QM market heightens the access to credit concerns related to the specific 43 percent DTI limit, particularly if such conditions persist after the expiration of the Temporary GSE QM loan definition. The Bureau stated in the January 2013 Final Rule that it believed mortgages that could be responsibly originated with DTI ratios that exceed 43 percent, which historically includes over 20 percent of mortgages, would be made under the general ATR standard.[160] However, the Assessment Report found that a robust market for non-QM loans above the 43 percent DTI limit has not materialized as the Bureau had predicted. Therefore, there is limited capacity in the non-QM market to provide access to credit after the expiration of the Temporary GSE QM loan definition.[161] As described above, the non-QM market has been further reduced by the recent economic disruptions associated with the COVID–19 pandemic, with most mortgage credit now available in the QM lending space. The Bureau acknowledges that the slow development of the non-QM market, and the recent economic disruptions associated with the COVID–19 pandemic that may significantly hinder its development in the near term, may further reduce access to credit outside the QM space.

The Bureau also has particular concerns about the effects of the appendix Q definitions of debt and income on access to credit. The Bureau intended for appendix Q to provide creditors with certainty about the DTI ratio calculation to foster compliance with the General QM loan definition. However, based on extensive stakeholder feedback and its own experience, the Bureau recognizes that appendix Q's definitions of debt and income are rigid and difficult to apply and do not provide the level of compliance certainty that the Bureau anticipated. Stakeholders have reported that these concerns are particularly acute for transactions involving self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams. The standards in appendix Q could negatively impact access to credit for these consumers, particularly after expiration of the Temporary GSE QM loan definition. The Assessment Report also noted concerns with the perceived lack of clarity in appendix Q and found that such concerns ''may have contributed to investors'—and at least derivatively, creditors'—preference'' for Temporary GSE QM loans.[162] Appendix Q, unlike other standards for calculating and verifying debt and income, has not been revised since 2013.[163] The current definitions of debt and income in appendix Q have proven to be complex in practice, and, as discussed below, the Bureau has concerns about other potential approaches to defining debt and income in connection with conditioning QM status on a specific DTI limit.

At the time of the January 2013 Final Rule, the Bureau sought to provide a period for economic, market, and regulatory conditions to stabilize and for a reasonable transition period to the General QM loan definition and non-QM loans above a 43 percent DTI ratio. However, contrary to the Bureau's expectations, lending largely has remained in the Temporary GSE QM loan space, and a robust and sizable market to support non-QM lending has not yet emerged.[164] As noted above, the Bureau acknowledges that the recent economic disruptions associated with the COVID–19 pandemic may further hinder development of the non-QM market, at least in the near term. The Bureau expects that a significant number of Temporary GSE QM loans would not qualify as General QM loans under the current rule after the Temporary GSE QM loan definition expires, either because they have DTI ratios above 43 percent or because their method of documenting and verifying income or debt is incompatible with appendix Q. Although alternative loan options would still be available to many consumers after expiration of the Temporary GSE QM loan definition, the Bureau anticipates that, with respect to loans that are currently Temporary GSE QM loans and would not otherwise qualify as General QM loans under the current definition, some would cost materially more for consumers and some would not be made at all.

Specifically, the Bureau's Dodd-Frank Act 1022(b) Analysis, below, estimates that, as a result of the General QM loan definition's 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—would be affected by the expiration of the Temporary GSE QM loan definition.[165] An additional, smaller number of loans that currently qualify as Temporary GSE QM loans may not fall within the General QM loan definition after expiration of the Temporary GSE QM loan definition because the method used for verifying income or debt would not comply with

[157] *See, e.g., id.* at 10, 194–96.

[158] *See, e.g., id.* at 10–11, 117, 131–47.

[159] *See, e.g.,* Assessment Report *supra* note 58, at 150, 153, Table 20. Table 20 illustrates how the pool of denied non-GSE eligible high-DTI applicants has changed between 2013 and 2014. After the introduction of the Rule, the pool of denied applicants contains more consumers with higher incomes, higher FICO scores, and higher down payments.

[160] 78 FR 6408, 6527 (Jan. 30, 2013).

[161] Assessment Report, *supra* note 58, at 198.

[162] *Id.* at 193.

[163] *Id.* at 193–94.

[164] *Id.* at 198.

[165] Dodd-Frank Act section 1022(b) (analysis cites the Bureau's prior estimate of affected loans in the ANPR); *see* 84 FR 37155, 37159 (July 31, 2019).

appendix Q.[166] The Temporary GSE QM loan definition is currently set to expire upon the earlier of January 10, 2021 or when GSE conservatorship ends, and the Bureau believes that many loans currently originated under the Temporary GSE QM loan definition may cost materially more or may not be made at all, absent changes to the General QM loan definition. After the Temporary GSE QM loan definition expires, the Bureau expects that many consumers with DTI ratios above 43 percent who would have received a Temporary GSE QM loan would instead obtain FHA-insured loans since FHA currently insures loans with DTI ratios up to 57 percent.[167] The number of loans that move to FHA would depend on FHA's willingness and ability to insure such loans, whether FHA continues to treat all loans that it insures as QMs under its own QM rule, and how many loans that would have been originated as Temporary GSE QM loans with DTI ratios above 43 percent exceed FHA's loan-amount limit.[168] For example, the Bureau estimates that, in 2018, 11 percent of Temporary GSE QM loans with DTI ratios above 43 percent exceeded FHA's loan-amount limit.[169] Thus, the Bureau considers that at most 89 percent of loans that would have been Temporary GSE QM loans with DTI ratios above 43 percent could move to FHA.[170] The Bureau expects that loans that are originated as FHA loans instead of under the Temporary GSE QM loan definition generally would cost materially more for many consumers.[171] The Bureau expects that some consumers offered FHA loans may choose not to take out a mortgage because of these higher costs.

It is also possible that some consumers with DTI ratios above 43 percent would be able to obtain loans in the private market.[172] The ANPR noted that the number of loans absorbed by the private market would likely depend, in part, on whether actors in the private market are willing to assume the legal or credit risk associated with funding—as non-QM loans or small-creditor portfolio QM loans—loans that would have been Temporary GSE QM loans (with DTI ratios above 43 percent) [173] and, if so, whether actors in the private market would offer more competitive pricing or terms.[174] For example, the Bureau estimates that 55 percent of loans that would have been Temporary GSE QM loans (with DTI ratios above 43 percent) in 2018 had credit scores at or above 680 and LTV ratios at or below 80 percent—credit characteristics traditionally considered attractive to actors in the private market.[175] The ANPR also noted that there are certain built-in costs to FHA loans—namely, mortgage insurance premiums—which could be a basis for competition, and that depository institutions in recent years have shied away from originating and servicing FHA loans due to the obligations and risks associated with such loans.[176] At the same time, the Assessment Report found there has been limited momentum toward a greater role for private market non-QM loans. It is uncertain how great this role will be in the future,[177] particularly in the short term due to the economic effects of the COVID–19 pandemic. Finally, the ANPR noted that some consumers with DTI ratios above 43 percent who would have sought Temporary GSE QM loans may adapt to changing options and make different choices, such as adjusting their borrowing to result in a lower DTI ratio.[178] However, some consumers who would have sought Temporary GSE QM loans (with DTI ratios above 43 percent) may not obtain loans at all.[179] For example, based on application-level data obtained from nine large lenders, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of non-GSE eligible, high-DTI home purchase loans.[180]

In the separate Extension Proposal, the Bureau is proposing to replace the January 10, 2021 sunset date with a provision that would amend the Temporary GSE QM loan definition so that it would expire upon the earlier of the effective date of final amendments to the General QM loan definition, or when GSE conservatorship ends.[181] The Bureau is issuing that separate proposal to ensure that responsible, affordable credit remains available to consumers who may be affected if the Temporary GSE QM loan definition expires before amendments to the General QM loan definition take effect.

C. Why the Bureau Is Proposing a Price-Based QM Definition To Replace the General QM Loan Definition DTI Limit

Given the significant issues associated with the 43 percent DTI limit, the Bureau is proposing to remove that requirement from the General QM loan definition in § 1026.43(e)(2)(vi) and replace it with a requirement based on the price of the loan. Specifically, in addition to the statutory product features and underwriting restrictions that apply under the current rule, a loan would meet the General QM loan definition only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set. The proposal would provide higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. Although the proposal would remove the 43 percent DTI limit from the General QM loan definition, it would require that the creditor: (1) Consider the consumer's income or assets, debt obligations, alimony, and child support, and monthly DTI ratio or residual income, and (2) verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support. The proposal would remove appendix Q but would clarify the requirements to consider and verify a consumer's

[166] *Id.* at 37159 n.58.

[167] In fiscal year 2019, approximately 57 percent of FHA-insured purchase mortgages had a DTI ratio above 43 percent. U.S. Dep't of Hous. & Urban Dev., *Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2019,* at 33 using data from App. B Tabl. B9 (Nov. 14, 2018), *https://www.hud.gov/sites/dfiles/Housing/documents/2019FHAAnnualReportMMIFund.pdf.*

[168] 84 FR 37155, 37159 (July 31, 2019).

[169] *Id.* In 2018, FHA's county-level maximum loan limits ranged from $294,515 to $679,650 in the continental United States. *See* U.S. Dep't of Hous. & Urban Dev., *FHA Mortgage Limits, https://entp.hud.gov/idapp/html/hicostlook.cfm* (last visited June 21, 2020).

[170] 84 FR 37155, 37159 (July 31, 2019).

[171] Interest rates and insurance premiums on FHA loans generally feature less risk-based pricing than conventional loans, charging more similar rates and premiums to all consumers. As a result, they are likely to cost more than conventional loans for consumers with stronger credit scores and larger down payments. Consistent with this pricing differential, consumers with higher credit scores and larger down payments chose FHA loans relatively rarely in 2018 HMDA data on mortgage originations. *See* Bureau of Consumer Fin. Prot., *Introducing New and Revised Data Points in HMDA,* August 2019, *https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.*

[172] 84 FR 37155, 37159 (July 31, 2019).

[173] *See* 12 CFR 1026.43(e)(5) (extending QM status to certain portfolio loans originated by certain small creditors). In addition, section 101 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018), amended TILA to add a safe harbor for small creditor portfolio loans. *See* 15 U.S.C. 1639c(b)(2)(F).

[174] 84 FR 37155, 37159 (July 31, 2019).

[175] *Id.*

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *Id.*

[180] *See* Assessment Report *supra* note 58, at 10–11, 117, 131–47.

[181] As the Bureau notes in the separate Extension Proposal, the Bureau does not intend for the effective date of final amendments to the General QM loan definition to be prior to April 1, 2021. Thus, the Bureau does not intend for the Temporary GSE QM loan definition to expire prior to April 1, 2021.

income, assets, debt obligations, alimony, and child support, to help prevent compliance uncertainty that could otherwise result from the removal of appendix Q. Consistent with the current rule, the proposal would preserve the current threshold separating safe harbor from rebuttable presumption QMs, under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set.[182]

The Bureau acknowledges there is significant debate over whether loan pricing, a consumer's DTI ratio, or another direct or indirect measure of a consumer's personal finances is a better predictor of loan performance, particularly when analyzed across various points in the economic cycle.[183] Some commenters responding to the ANPR advocated for retaining a DTI requirement as part of the General QM loan definition, arguing that it is a strong indicator of a consumer's ability to repay. Other commenters suggested a range of options to replace the current DTI requirement in the General QM loan definition, including by prescribing a residual income test; allowing compensating factors (such as LTV ratios and credit scores) in conjunction with a DTI ratio; and defining QM by reference to widely used underwriting standards. In seeking comments on this proposal, the Bureau is not determining whether DTI ratios, a loan's price, or some other measure is the best predictor of loan performance. As discussed below, analysis provided by stakeholders and the Bureau's own analysis show that pricing is strongly correlated with loan performance, based on early delinquency rates, across a variety of loans and economic conditions. However, the Bureau acknowledges that DTI is also predictive of loan performance and that other direct and indirect measures of consumer finances may also be predictive of loan performance. The Bureau does not make a finding here on whether or to what extent one measure clearly outperforms others in predicting loan performance. Rather, the Bureau has weighed several policy considerations in selecting an approach for the proposal based on the purposes of the ATR/QM provisions of TILA.

In particular, the Bureau has balanced considerations related to ensuring consumers' ability to repay and maintaining access to credit in deciding to seek comment on replacing the current 43 percent DTI limit with a price-based approach. The Bureau continues to view the statute as fundamentally about assuring that consumers receive mortgage credit that they are able to repay. However, the Bureau is also concerned about maintaining access to responsible, affordable mortgage credit. The Bureau is concerned that the current General QM loan definition, with a 43 percent DTI limit, would result in a significant reduction in the scope of QM and could reduce access to responsible, affordable mortgage credit after the Temporary GSE QM loan definition expires. The lack of a robust non-QM market enhances those concerns. Although the Bureau noted in the January 2013 Final Rule that it expected access to credit outside of the QM lending space to develop over time, the Assessment Report found that a robust and sizable market to support non-QM lending has not emerged since the Rule took effect.[184] The Bureau also acknowledges that the non-QM market has been further reduced by the recent economic disruptions associated with the COVID–19 pandemic, with most mortgage credit now available in the QM lending space. Although it remains possible that, over time, a substantial market for non-QM loans will emerge, that market has developed slowly, and the recent economic disruptions associated with the COVID–19 pandemic may significantly hinder its development, at least in the near term.

With respect to ability to repay, the Bureau has focused on analysis of early delinquency rates to evaluate whether a loan's price, as measured by the spread of APR over APOR (herein referred to as the loan's rate spread), may be an appropriate measure of whether a loan should be presumed to comply with the ATR provisions. Because the affordability of a given mortgage will vary from consumer to consumer based upon a range of factors, there is no single recognized metric, or set of metrics, that can directly measure whether the terms of mortgage loans are reasonably within consumers' ability to repay.[185] As such, consistent with the Bureau's prior analyses in the Assessment Report, the Bureau uses early distress as a proxy for the lack of the consumer's ability to repay at consummation across a wide pool of loans. Consistent with the Assessment Report, for the analyses of early delinquency rates below, the Bureau measures early distress as whether a consumer was ever 60 or more days past due within the first 2 years after origination (referred to herein as the early delinquency rate).[186] The Bureau's analysis focuses on early delinquency rates to capture consumers' difficulties in making payments soon after consummation of the loan (*i.e.,* within the first 2 years), even if these delinquencies do not lead to consumers potentially losing their homes (*i.e.,* 60 or more days past due, as opposed to 90 or more days or in foreclosure), as early difficulties in making payments indicates higher likelihood that the consumer may have lacked ability to repay at consummation. As in the Assessment Report, the Bureau assumes that the average early delinquency rate across a wide pool of mortgages—whether safe harbor QM, rebuttable presumption QM, or non-QM—is probative of whether such loans are reasonably within consumers' repayment ability, and that the dependence of these early delinquency rates on the defining characteristics of such loans is probative of how those characteristics may influence repayment ability. The Bureau acknowledges that alternative measures of delinquency, including those used in analyses submitted as comments on the ANPR, may also be probative of repayment ability.

The Bureau has reviewed the available evidence to assess whether rate spreads can distinguish loans that are likely to have low early delinquency rates—and thus may be presumed to reasonably reflect the consumer's ability to repay—from loans that are likely to have higher rates of delinquency—for which it would not be appropriate to presume the consumer's ability to repay. The Bureau's own analysis and recent

[182] The current rule provides a higher safe harbor threshold of 3.5 percentage points over APOR for small creditor portfolio QMs and balloon-payment QMs made by certain small creditors pursuant to § 1026.43(e)(5), (e)(6) and (f). *See* § 1026.43(b)(4). This proposal would not alter those thresholds.

[183] *See, e.g.,* Norbert Michel, *The Best Housing Finance Reform Options for the Trump Administration,* Forbes (July 15, 2019), *https://www.forbes.com/sites/norbertmichel/2019/07/15/the-best-housing-finance-reform-options-for-the-trump-administration/#4f5640de7d3f;* Eric Kaplan *et al.,* Milken Institute, *A Blueprint for Administrative Reform of the Housing Finance System,* at 17 (Jan. 2019), *https://assets1b.milkeninstitute.org/assets/Publication/Viewpoint/PDF/Blueprint-Admin-Reform-HF-System-1.7.2019-v2.pdf* (suggesting that the Bureau both (1) expand the 43 percent DTI limit to 45 percent to move market share of higher-DTI loans from the GSEs and FHA to the non-agency market, and (2) establish a residual income test to protect against the risk of higher DTI loans); Morris Davis *et al., A Quarter Century of Mortgage Risk* (FHFA, Working Paper 19–02, 2019), *https://www.fhfa.gov/PolicyProgramsResearch/Research/Pages/wp1902.aspx* (examining various loan characteristics and a summary measure of risk—the stressed default rate—for predictiveness of loan performance).

[184] Assessment Report, *supra* note 58, at 198.

[185] *Id.* at 83.

[186] *Id.*

analyses published in response to the Bureau's ANPR and RFIs provide strong evidence of increasing early delinquency rates with higher rate spreads across a range of datasets, time periods, loan types, measures of rate spread, and measures of delinquency. The Bureau's delinquency analysis uses data from the National Mortgage Database (NMDB),[187] including a matched sample of NMDB and HMDA loans.[188] As described below, analysis of these datasets shows that early delinquency rates rise with rate spread.

Table 1 shows early delinquency rates for 2002–2008 first-lien purchase originations in the NMDB, with loans categorized according to their approximate rate spread. The Bureau analyzed 2002 through 2008 origination years because the relatively fixed private mortgage insurance (PMI) pricing during these years allows for reliable approximation of this important component of rate spreads.[189] The sample is restricted to loans without product features that would make them non-QM under the current rule. Table 1 shows that early delinquency rates increase consistently with rate spreads, from a low of 2 percent among loans with rate spreads below or near zero, up to 14 percent for loans with rate spreads of 2.25 percentage points or more over APOR.[190] The Bureau notes that this sample includes loans originated during the peak of the housing boom and delinquencies that occurred during the ensuing recession, contributing to the high overall levels of early delinquency.

TABLE 1—2002–2008 ORIGINATIONS, EARLY DELINQUENCY RATE BY RATE SPREAD

Rate spread (interest rate + PMI approximation—PMMS[191]) in percentage points	Early delinquency rate (percent)
< 0	2
0–0.24	2
0.25–0.49	4
0.50–0.74	5
0.75–0.99	6
1.00–1.24	8
1.25–1.49	10
1.50–1.74	12
1.75–1.99	13
2.00–2.24	14
2.25 and above	14

Analysis of additional data, as reflected in Table 2, also shows early delinquency rates rising with rate spread. Table 2 shows early delinquency statistics for 2018 NMDB first-lien purchase originations that have been matched to 2018 HMDA data, enabling the Bureau to use actual rate spreads over APOR rather than approximated rate spreads in its analysis.[192] As with the data reflected in Table 1, loans with product features that would make them non-QM under the current rule are excluded from Table 2. However, only delinquencies occurring through December 2019 are observed in Table 2, meaning most loans are not observed for a full two years after origination. This more recent sample provides insight into early delinquency rates under post-crisis lending standards, and for an origination cohort that had not undergone (as of December 2019) a large economic downturn. The 2018 data are divided into wider bins (as compared to Table 1) to ensure enough loans per bin. As with Table 1, Table 2 shows that early delinquency rates increase consistently with rate spreads, from a low of 0.2 percent for loans with rate spreads near APOR or below APOR, up to 4.2 percent for loans with rate spreads of 2 percentage points or more over APOR.[193]

TABLE 2—2018 ORIGINATIONS, EARLY DELINQUENCY RATE BY RATE SPREAD

Rate spread over APOR in percentage points	Early delinquency rate (as of Dec. 2019) (percent)
< 0	0.2
0–0.49	0.2
0.50–0.99	0.6
1.00–1.49	1.7
1.50–1.99	2.7
2.00 and above	4.2

Given the specific DTI limit under the current rule, the Bureau also analyzed the relationship between DTI ratios and early delinquency for the same samples of loans in Tables 3 and 4. The Bureau's analyses show that early delinquency rates increase consistently with DTI ratio in both samples. In the 2002–2008 sample, early delinquency rates increase from a low of 3 percent among loans with DTI ratios at or below 25 percent, up to 9 percent for loans with DTI ratios between 61 and 70 percent.[194] In the 2018 sample, early delinquency rates increase from 0.4 percent among loans with DTI ratios at or below 25 percent, up to 0.9 percent among loans with DTI ratios between 44 and 50.[195] The difference in early delinquency rates between loans with the highest and lowest DTI ratios is smaller than the difference in early delinquency rates between the highest and lowest rate spreads during both periods. For these samples and bins of rate spread and DTI ratios, this pattern is consistent with a stronger correlation between rate spread and early delinquency than between DTI ratios and early delinquency.

[187] *See* Bureau of Consumer Fin. Prot., Sources and Uses of Data at the Bureau of Consumer Financial Protection, at 55–56 (Sept. 2018), *https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf.* (The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a five percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data.)

[188] HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C, 12 CFR part 1003. *See* Bureau of Consumer Fin. Prot., *Mortgage data (HMDA), https://www.consumerfinance.gov/data-research/hmda/.* HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data are housed here to help show whether lenders are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. The public data are modified to protect applicant and borrower privacy.

[189] *See* Neil Bhutta and Benjamin J. Keys, *Eyes Wide Shut? The Moral Hazard of Mortgage Insurers during the Housing Boom,* NBER Working Paper No. 24844, *https://www.nber.org/papers/w24844.pdf.* APOR is approximated with weekly Freddie Mac Primary Mortgage Market Survey (PMMS) data, retrieved from Fed. Reserve Bank of St. Louis, Fed. Reserve Econ. Data,; *https://fred.stlouisfed.org/,* March 4, 2020. Each loan's APR is approximated by the sum of the interest rate in the NMDB data and an assumed PMI payment of 0.32, 0.52, or 0.78 percentage points for loans with LTVs above 80 but at or below 85, above 85 but at or below 90, and above 90, respectively. These PMI are based on standard industry rates during this time period. The 30-year Fixed Rate PMMS average is used for fixed-rate loans with terms over 15 years, and 15-year Fixed Rate PMMS is used for loans with terms of 15 years or less. The 5/1-year Adjustable-Rate PMMS average is used (for available years) for ARMs with a first interest rate reset occurring 5 or more years after origination, while the 1-year adjustable-rate PMMS average is used for all other ARMs.

[190] Loans with rate spreads of 2.25 percentage points or more are grouped in Tables 1 and 5 to ensure sufficient sample size for reliable analysis of the 2002–2008 data. This grouping ensures that all cells shown in Table 5 contain at least 500 loans.

[191] Freddie Mac's PMMS is the source of data underlying APOR rate for most mortgages. See *supra* note 189 for additional details.

[192] Where possible, the FHFA provided an anonymized match of HMDA loan identifiers for 2018 NMDB originations, allowing the Bureau to analyze more detailed HMDA loan characteristics (*e.g.,* rate spread over APOR) for approximately half of 2018 NMDB originations.

[193] Loans with rate spreads of 2 percentage points or more are grouped in Tables 2 and 6 to ensure sufficient sample size for reliable analysis of the 2018 data. This grouping ensures that all cells shown in Table 6 contain at least 500 loans.

[194] Fewer than 0.7 percent of loans have reported DTI ratios over 70 percent in the 2002–2008 data. These loans are excluded from Tables 3 and 5 due to reliability concerns and to ensure that all cells shown in Table 5 contain at least 500 loans.

[195] Fewer than 0.5 percent of loans have reported DTI ratios over 50 percent in the 2018 data. These loans are excluded from Tables 4 and 6 due to reliability concerns and to ensure that all cells shown in Table 6 contain at least 500 loans.

TABLE 3—2002–2008 ORIGINATIONS, EARLY DELINQUENCY RATE BY DTI RATIO (PERCENTAGE)

DTI	Early delinquency rate
0–20	3
21–25	3
26–30	4
31–35	5
36–40	6
41–43	6
44–45	7
46–48	7
49–50	8
51–60	8
61–70	9

TABLE 4—2018 ORIGINATIONS, EARLY DELINQUENCY RATE BY DTI

DTI	Early delinquency rate (as of Dec. 2019) (percent)
0–25	0.4
26–35	0.5
36–43	0.7
44–48	0.9
49–50	0.9

To further analyze the strengths of DTI ratios and pricing in predicting early delinquency rates, Tables 5 and 6 show the early delinquency rates of these same samples categorized according to both their DTI ratios and their rate spreads. Table 5 shows early delinquency rates for 2002–2008 first-lien purchase originations in the NMDB, with loans categorized according to both their DTI ratio and their approximate rate spread. For loans within a given DTI ratio range, those with higher rate spreads consistently had higher early delinquency rates. Loans with low rate spreads had relatively low early delinquency rates even at high DTI ratio levels, as seen in the 2 percent early delinquency rate for loans priced below APOR but with DTI ratios of 46 to 48 percent, 51 to 60 percent, and 61 to 70 percent. However, the highest early delinquency rates occurred for loans with high rate spreads and high DTI ratios, reaching 26 percent for loans priced 2 to 2.24 percentage points above APOR with DTI ratios of 61 to 70 percent. Across DTI bins, loans priced 2 percentage points or more above APOR had early delinquency much higher than loans priced below APOR.

TABLE 5—2002–2008 ORIGINATIONS, EARLY DELINQUENCY RATE BY RATE SPREAD AND DTI RATIO

Rate spread (interest rate + PMI approx.—PMMS) in percentage points	DTI 0–20 (%)	DTI 21–25 (%)	DTI 26–30 (%)	DTI 31–35 (%)	DTI 36–40 (%)	DTI 41–43 (%)	DTI 44–45 (%)	DTI 46–48 (%)	DTI 49–50 (%)	DTI 51–60 (%)	DTI 61–70 (%)
<0	2	1	1	2	2	2	2	2	3	2	2
0–0.24	2	2	2	2	2	3	3	3	3	3	3
0.25–0.49	3	3	3	3	4	5	4	5	5	5	5
0.50–0.74	4	4	4	4	5	6	6	6	7	7	7
0.75–0.99	4	5	5	6	6	7	7	7	8	8	10
1.00–1.24	6	6	6	7	7	9	9	9	10	11	13
1.25–1.49	6	7	8	8	10	11	12	12	12	14	15
1.50–1.74	7	8	9	10	13	13	15	14	16	15	20
1.75–1.99	7	8	10	12	14	15	16	16	16	18	22
2.00–2.24	6	10	10	12	15	15	17	19	18	20	26
2.25 and above	7	9	10	13	15	16	16	18	19	20	25

Similarly, Table 6 shows average early delinquency statistics, with loans categorized according to both DTI and rate spread, for the sample of 2018 NMDB first-lien purchase originations that have been matched to 2018 HMDA data.[196] For Table 6, the higher early delinquency rate for loans with higher rate spreads over APOR matches the pattern shown in the data from Table 5. Overall early delinquency rates are substantially lower, reflecting the importance of economic conditions in the likelihood of delinquency for any given consumer. However, the 2018 loans priced 2 percentage points or more above APOR also had early delinquency rates much higher than loans priced below APOR.

TABLE 6—2018 ORIGINATIONS, EARLY DELINQUENCY RATE BY RATE SPREAD AND DTI RATIO

Rate spread over APOR in percentage points	DTI 0–25 (%)	DTI 26–35 (%)	DTI 36–43 (%)	DTI 44–50 (%)
< 0	0.1	0.1	0.2	0.3
0–0.49	0.2	0.1	0.3	0.3
0.50–0.99	0.1	0.4	0.8	0.8
1.00–1.49	1.0	1.4	1.5	2.3
1.50–1.99	.....	3.2	2.5	2.3
2.00 and above	.....	4.4	3.9	4.2

The Bureau notes that the high relative risk of early delinquency for higher-priced loans holds across samples, demonstrating that rate spreads distinguish early delinquency risk under a range of economic conditions and creditor practices. Analyses published in response to the Bureau's ANPR and RFIs are consistent

[196] As in Tables 2 and 4, above, the 2018 data are divided into larger bins to ensure enough loans per bin. Loans with a DTI ratio greater than 50 percent are excluded, as well as loans with a DTI ratio at or below 25 percent and rate spreads of 1.5 percentage points and above, because these bins contained fewer than 500 loans in the matched 2018 NMDB–HMDA sample.

with the Bureau's analysis showing that early delinquency rates rise consistently with rate spread. For example, CoreLogic analyzes a set of 2018 HMDA conventional mortgage originations merged to loan performance data collected from mortgage servicers.[197] The CoreLogic analysis finds: (1) The lowest delinquency rates among loans with rate spreads that are below APOR, and (2) increased early delinquency rates for each sequentially higher bin of rate spreads up to two percentage points. In assessing the CoreLogic analysis, the Bureau notes that loans priced at or above two percentage points over APOR in the 2018 HMDA data are relatively rare and are disproportionately made for manufactured housing and smaller loan amounts and therefore may not be well represented in mortgage servicing datasets. However, these loans also have relatively high rates of delinquency.[198] CoreLogic finds a similar, but more variable, positive relationship between rate spreads over APOR and delinquency in earlier cohorts (2010–2017) of merged HMDA-CoreLogic originations, a period in which rate spreads were only reported for loans priced at least 1.5 percentage points over APOR.[199]

Further, using loan performance data from Black Knight, analyses by the Urban Institute show a comparable positive relationship between rate spreads—measured there as the note rate over Freddie Mac's Primary Mortgage Market Survey—and delinquency.[200] The analysis finds that the relationship holds across a range of loan types (conventional loans held in portfolio, in GSE securitizations, and in private securitizations; FHA loans; VA loans) and years (1995–2018). Additional analyses by the Urban Institute show the same positive relationship between rate spread and loan performance in Fannie Mae loan-level performance data.[201]

Collectively, this evidence suggests that higher rate spreads—including the specific measure of APR over APOR—are strongly correlated with early delinquency rates. Given that early delinquency captures consumers' difficulty making required payments, these rate spreads provide a proxy measure for whether the terms of mortgage loans reasonably reflect consumers' ability to repay at the time of origination. The Bureau acknowledges that a test that combines rate spread and DTI may better predict early delinquency rates than either metric on its own. However, any rule with a specific DTI limit would need to provide standards for calculating the income that may be counted and the debt that must be counted so that creditors and investors can ensure with reasonable certainty that they have accurately calculated DTI within the specific DTI limit. As noted above and discussed further below, the current definitions of debt and income in appendix Q have proven to be complex in practice and may unduly restrict access to credit. The Bureau has concerns about whether other potential approaches could define debt and income with sufficient clarify while at the same time providing flexibility to accommodate new approaches to verification and underwriting. As noted in part V.E below, the Bureau is requesting comment on whether the rule should retain a specific DTI limit and, if so, whether the Bureau's proposed approach to verification of income and debt in § 1026.43(e)(2)(v) would provide a workable method for defining debt and income for a specific DTI limit. Part V.E below requests comment on whether certain aspects of proposed § 1026.43(e)(2)(v) could be applied to a General QM loan definition that includes a specific DTI limit.

In addition to strongly correlating with loan performance, the Bureau tentatively concludes that a price-based QM definition, rather than conditioning QM status on a specific DTI limit, is a more holistic and flexible measure of a consumer's ability to repay. Mortgage underwriting, and by extension, a loan's price, generally includes consideration of a consumer's DTI. However, loan pricing also includes assessment of additional factors, including LTV ratios, credit scores, and cash reserves, that might compensate for a higher DTI ratio and that might also be probative of a consumer's ability to repay. One of the primary criticisms of the current 43 percent DTI ratio is that it is too limited in assessing a consumer's finances and, as such, may unduly restrict access to credit for some consumers for whom it might be appropriate to presume ability to repay at consummation. Therefore, a potential benefit of a price-based QM definition is that a mortgage loan's price reflects credit risk based on many factors, including DTI ratios, and may be a more holistic measure of ability to repay than DTI ratios alone. Further, there is inherent flexibility for creditors in a rate-spread-based QM definition, which could facilitate innovation in underwriting, including emerging research into alternative mechanisms to assess a consumer's ability to repay, such as cash flow underwriting. Although the Bureau is proposing to remove the 43 percent DTI limit in § 1026.43(e)(2)(vi), the Bureau continues to believe that DTI is an important factor for creditors to consider in evaluating consumers' ability to repay. As discussed further in the section-by-section analysis of § 1026.43(e)(2)(v), below, the Bureau is proposing to require creditors to consider a consumer's DTI ratio or residual income to satisfy the General QM loan definition.

The Bureau also notes that there is significant precedent for using the price of a mortgage loan to determine whether to apply additional consumer protections, in recognition of the lower risk generally posed by lower-priced mortgages. A price-based General QM loan definition would be consistent with these existing provisions that provide greater protections to consumers with more expensive loans. For example, TILA and Regulation Z use a loan's APR in comparison to APOR and as one trigger for heightened consumer protections for certain ''high-cost mortgages'' pursuant to HOEPA.[202] Loans that meet HOEPA's high-cost trigger are subject to special disclosure requirements and restrictions on loan terms, and consumers with high-cost mortgages have enhanced remedies for violations of the law. Further, in 2008, the Board exercised its authority under HOEPA to require certain consumer protections concerning a consumer's ability to repay, prepayment penalties,

[197] *See* Archana Pradhan & Pete Carroll, *Expiration of the CFPB's Qualified Mortgage (QM) GSE Patch—Part V,* LogicCore Insights Blog, (Jan. 13, 2020), *https://www.corelogic.com/blog/2020/1/expiration-of-the-cfpbs-qualified-mortgage-qm-gse-patch-part-v.aspx.* Delinquency was measured as of October 2019, so loans do not have two full years of payment history.

[198] The Bureau analyzes the performance and pricing for smaller loans in the section-by-section analysis for § 1026.43(e)(2)(vi).

[199] *See* Archana Pradhan & Pete Carroll, *Expiration of the CFPB's Qualified Mortgage (QM) GSE Patch*—Part *IV,* LogicCore Insights Blog, (Jan. 11, 2020), *https://www.corelogic.com/blog/2020/1/expiration-of-the-cfpbs-qualified-mortgage-qm-gse-patch-part-iv.aspx.* Delinquency measured as of October 2019.

[200] *See* Karan Kaul & Laurie Goodman, Urban Inst., *Updated: What, If Anything, Should Replace QM GSE Patch,* (Oct. 2020), at 9, *https://www.urban.org/sites/default/files/publication/99268/2018_10_30_qualified_mortgage_rule_update_finalized_4.pdf.*

[201] *See* Karan Kaul *et al.,* Urban Inst., *Comment Letter to the Consumer Financial Protection Bureau on the Qualified Mortgage Rule,* (Sept. 2019), at 9–10, *https://www.urban.org/sites/default/files/publication/101048/comment_letter_to_the_consumer_financial_protection_bureau_0.pdf.*

[202] *See* TILA section 103(aa)(i); Regulation Z § 1026.32(a)(1)(i). TILA and Regulation Z also provide a separate price-based coverage trigger based on the points and fees charged on a loan. *See* TILA section 130(aa)(ii); Regulation Z § 1026.32(a)(1)(ii).

and escrow accounts for taxes and insurance for a category of ''higher-priced mortgage loans,'' which have APR spreads lower than those prescribed for high-cost mortgages but that nevertheless exceed APOR by a specified threshold.[203] Although the ATR/QM Rule replaced the ability-to-repay requirements promulgated pursuant to HOEPA and the Board's 2008 rule,[204] higher-priced mortgage loans remain subject to additional requirements related to escrow accounts for taxes and homeowners insurance and to appraisal requirements.[205] The ATR/QM Rule itself provides additional protection to QMs that are higher-priced covered transactions, as defined in § 1026.43(b)(4), in the form of a rebuttable presumption of compliance with the ATR provisions, instead of a conclusive safe harbor.

Finally, the Bureau preliminarily concludes that a price-based General QM loan definition would provide compliance certainty to creditors, since creditors would be able to readily determine whether a loan is a General QM loan. Creditors have experience with APR calculations due to the existing price-based regulatory requirements described above, and for various other disclosure and compliance reasons under Regulation Z. Creditors also have experience determining the appropriate APOR for use in calculating rate spreads. As such, the Bureau believes this approach would provide certainty to creditors regarding a loan's status as a QM.[206]

Although the proposal would require creditors to consider the consumer's income, debt, and DTI ratio or residual income, the proposal would not provide a specific DTI limit. For the reasons discussed below in the section-by-section analysis of § 1026.43(e)(2)(v)(A), the Bureau preliminarily concludes that it is appropriate to remove current appendix Q and instead provide creditors additional flexibility for defining ''debt'' and ''income.'' Therefore, the Bureau is not proposing to provide a single, specific set of standards equivalent to appendix Q for what must be counted as debt and what may be counted as income for purposes of proposed § 1026.43(e)(2)(v)(A). For purposes of this proposed requirement, income and debt would be determined in accordance with proposed § 1026.43(e)(2)(v)(B), which requires the creditor to verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, and the consumer's current debt obligations, alimony, and child support. The proposed rule would provide a safe harbor to creditors using verification standards the Bureau specifies. This could potentially include relevant provisions from Fannie Mae's Single Family Selling Guide, Freddie Mac's Single-Family Seller/Servicer Guide, FHA's Single Family Housing Policy Handbook, the VA's Lenders Handbook, and the Field Office Handbook for the Direct Single Family Housing Program and Handbook for the Single Family Guaranteed Loan Program of the U.S. Department of Agriculture (USDA), current as of the proposal's public release. However, under the proposal, creditors would not be required to verify income and debt according to the standards the Bureau specifies. Rather, the proposed rule would also provide creditors with the flexibility to develop other methods of compliance with the verification requirements.

Under the proposal, a loan would meet the General QM loan definition in § 1026.43(e)(2) only if the APR exceeds APOR for a comparable transaction by less than two percentage points as of the date the interest rate is set. As described below in the section-by-section analysis of § 1026.43(e)(2)(vi), the Bureau tentatively concludes that this threshold would strike an appropriate balance between ensuring that loans receiving QM status may be presumed to comply with the ATR provisions and ensuring that access to responsible, affordable mortgage credit remains available to consumers. For these same reasons, the Bureau is proposing higher thresholds for smaller loans and subordinate-lien transactions, as the Bureau is concerned that loans with lower loan amounts may be priced higher than larger loans, even when the consumers have similar credit characteristics and a similar ability to repay. For all loans, regardless of loan size, the Bureau is not proposing to alter the current threshold separating safe harbor from rebuttable presumption QMs in § 1026.43(b)(4), under which a loan is a safe harbor QM if its APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set. As such, loans that otherwise meet the General QM loan definition and for which the APR exceeds APOR by 1.5 or more percentage points (but by less than 2 percentage points) as of the date the interest rate is set would receive a rebuttable presumption of compliance with the ATR provisions. This approach is discussed further, below.

Finally, the Bureau notes its analysis of the potential effects on access to credit of a price-based approach to defining a General QM loan. As indicated by the various combinations in Table 7 below, 2018 HMDA data show that under the current rule—including the Temporary GSE QM loan definition, the General QM loan definition with a 43 percent DTI limit, and the Small Creditor QM loan definition in § 1026.43(e)(5)—90.6 percent of conventional purchase loans were safe harbor QM loans and 95.8 percent were safe harbor QM or rebuttable presumption QM loans. Under the proposed General QM rate spread thresholds of 1.5 (safe harbor) and 2 (rebuttable presumption) percentage points over APOR, which are described further, below, 91.6 percent of conventional purchase loans would have been safe harbor QM loans and 96.1 percent would have been safe harbor QM or rebuttable presumption QM loans.[207] Based on these 2018 data, rate spread thresholds of 1–2 percentage points over APOR for safe harbor QM loans would have covered 83.3 to 94.1 percent of the conventional purchase market (as safe harbor QM loans), while rate spread thresholds of 1.5–2.5 percentage points over APOR for rebuttable presumption QM loans would have covered 94.3 to 96.8 percent of the conventional purchase market (as safe harbor and rebuttable presumption QM loans).

[203] 73 FR 44522 (July 30, 2008).

[204] The Board's 2008 rule was superseded by the January 2013 Final Rule, which imposed ability to repay requirements on a broader range of closed-end consumer credit transactions secured by a dwelling. *See generally* 78 FR 6407 (Jan. 30, 2013).

[205] *See* § 1026.35(b) and (c).

[206] The Bureau understands from feedback that creditors are concerned about errors in DTI calculations and have previously requested that the Bureau permit a cure of DTI overages that are discovered after consummation. *See* 79 FR 25730, 25743–45 (May 6, 2014) (requesting comment on potential cure or correction provisions for DTI overages).

[207] All estimates in Table 7 include loans that meet the Small Creditor QM loan definition in § 1026.43(e)(5). In particular, loans originated by small creditors that meet the criteria in § 1026.43(e)(5) are safe harbor QM loans if priced below 3.5 percentage points over APOR or are rebuttable presumption QM loans if priced 3.5 percentage points or more over APOR.

TABLE 7—SHARE OF 2018 CONVENTIONAL FIRST-LIEN PURCHASE LOANS WITHIN VARIOUS PRICE-BASED SAFE HARBOR (SH) QM AND REBUTTABLE PRESUMPTION (RP) QM DEFINITIONS (HMDA DATA)

Approach	Safe harbor QM (share of conventional purchase market)	QM overall (share of conventional purchase market)
Temporary GSE QM + DTI 43	90.6	95.8
Proposal (SH 1.50, RP 2.00)	91.6	96.1
SH 0.75, RP 1.50	74.6	94.3
SH 1.00, RP 1.50	83.3	94.3
SH 1.25, RP 1.75	88.4	95.3
SH 1.35, RP 2.00	89.8	96.1
SH 1.40, RP 2.00	90.5	96.1
SH 1.75, RP 2.25	93.1	96.6
SH 2.00, RP 2.50	94.1	96.8

Despite the expected benefits of a price-based General QM loan definition, the Bureau acknowledges concerns about the approach. First, while the Bureau believes a loan's price may be a more holistic and flexible measure of a consumer's ability to repay than DTI alone, the Bureau recognizes that there is a distinction between credit risk, which largely determines pricing relative to the prime rate, and a particular consumer's ability to repay, which is one component of credit risk. Pricing is based on creditors' expected net revenues (*i.e.,* whether a creditor will earn interest payments and recover the outstanding principal balance in the event of default). While a consumer's ability to afford loan payments is an important component of pricing, the loan's price will reflect additional factors related to the loan that may not in all cases be probative of the consumer's repayment ability. As noted above, the proposal includes a requirement to consider the consumer's DTI ratio or residual income as part of the General QM loan definition, and to verify the debt and income used to calculate DTI or residual income, because the Bureau believes these are important factors in assessing a consumer's ability to repay. These requirements are discussed further below and in the section-by-section analysis of § 1026.43(e)(2)(v).

The Bureau also acknowledges that factors unrelated to the individual loan can influence its price. Institutional factors, such as the competing policy considerations inherent in setting guarantee fees on GSE loans, can influence mortgage pricing independently of credit risk or ability to repay and would have some effect on which loans would be priced under the proposed General QM loan pricing threshold. The price-based approach also shifts the QM determination from a DTI calculation, which is relatively consistent across creditors and over time, to one which is more variable. An identical loan to a consumer with the same risk profile might satisfy the requirements of the General QM loan definition at one point in time but not at another since APOR will change over time. The Bureau also anticipates that a price-based approach would incentivize some creditors to price some loans just below the threshold so that the loans will receive the presumption of compliance that comes with QM status. While the Bureau acknowledges these criticisms of a price-based approach, the Bureau's delinquency analyses and the analyses by external parties discussed above provide evidence that rate spreads are correlated with delinquency.

Finally, the Bureau is aware of concerns about the sensitivity of a price-based QM definition to macroeconomic cycles. In particular, the Bureau is aware of concerns that the price-based approach would be a dynamic, trailing indicator of risk and could be pro-cyclical. For example, during periods of economic expansion, increasing house prices and strong demand from consumers with weaker credit characteristics often lead to greater availability of credit, as secondary market investors expect minimal losses, regardless of whether the consumer defaults, due to increasing collateral values. This may result in an underpricing of credit risk. To the extent that occurs, rate spreads over APOR would compress and additional higher-priced, higher-risk loans would fit within the proposed General QM loan definition. Further, during periods of economic downturn, investors' demand for mortgage credit may fall as they seek safer investments to limit losses in the event of a broader economic decline. This may result in creditors reducing the availability of mortgage credit to riskier borrowers, through credit overlays and price increases, to protect against the risk that creditors may be unable to sell the loans profitably in the secondary markets, or even sell the loans at all. While APOR would also increase during periods of economic stress and low secondary market liquidity, consumers with riskier credit characteristics may see disproportionate pricing increases relative to the increases in a more normal economic environment. These effects would likely make price-based QM standards pro-cyclical, with a more expansive QM market when the economy is expanding, and a more restrictive QM market when credit is tight. As a result, a rate spread-based QM threshold would likely be less effective in limiting risky loans during periods of strong housing price growth or encouraging safe loans during periods of weak housing price growth. The Bureau is particularly concerned about these potential effects given the recent economic disruptions associated with the COVID–19 pandemic. As described in part V.E below, the Bureau is requesting comment on an alternative, DTI-based approach. Unlike a price-based approach, a DTI-based approach would be counter-cyclical, because of the positive correlation between interest rates and DTI ratios. The alternative proposal is discussed in detail in part V.E.

As noted above, stakeholders have suggested a range of options to replace the 43 percent DTI limit in the General QM loan definition. The Bureau has considered these options in developing this proposed rule but is not providing specific proposals for these alternatives because the Bureau has preliminarily concluded that the price-based approach in proposed § 1026.43(e)(2) would best achieve the statutory goals of ensuring consumers' ability to repay and maintaining access to responsible, affordable, mortgage credit. For example, some stakeholders have suggested that the Bureau rely only on the statutory QM loan restrictions (*i.e.,*

prohibitions on certain loan features, requirements for underwriting, and a limitation on points and fees) to define a General QM loan. The Bureau is not proposing this approach because it is concerned that such an approach, which would define a General QM loan without either a direct or indirect measure of the consumer's finances, may not adequately ensure that consumers have a reasonable ability to repay their loans according to the loan terms.

Other stakeholders have suggested that the Bureau retain DTI as part of the General QM loan definition, but with modifications to the current rule. Some stakeholders have advocated for increasing the DTI limit to some other percentage to address concerns that the 43 percent DTI limit is too restrictive and may exclude consumers for whom it might be appropriate to presume ability to repay for their loans at consummation. Another stakeholder suggested a hybrid approach that would eliminate the DTI limit only for loans below a set pricing threshold, such that less expensive loans could obtain General QM loan status by meeting the statutory QM factors and more expensive loans could be General QM loans only if the consumer's DTI ratio is below a set threshold. This stakeholder suggests that more expensive loans pose greater risks to consumers, so it is critical to include a DTI limit for such loans. The Bureau recognizes these concerns and, as explained in part V.E, below, is requesting comment on whether an alternative approach that adopts a higher DTI limit or a hybrid approach that combines pricing and a DTI limit, along with a more flexible standard for defining debt and income, could provide a superior alternative to the price-based approach. In particular, the Bureau is requesting comment on whether such an approach would adequately balance considerations related to ensuring consumers' ability to repay and maintaining access to credit, which are described above.

Other stakeholders have advocated for granting QM status to loans with DTI ratios above a prescribed limit if certain compensating factors are present, such as credit score, LTV ratio, and cash reserves. Similarly, another stakeholder suggested the Bureau define General QM loans by reference to a multi-factor approach that combines DTI ratio, LTV ratio, and credit score. The Bureau is concerned about the complexity of these approaches. In particular, these approaches would present the same challenges with defining debt and income described above and would also require the Bureau to define compensating factors and set applicable thresholds for those factors. The Bureau is concerned that incorporating compensating factors into the General QM loan definition would not provide creditors adequate certainty about whether a loan satisfies the requirements of the General QM loan definition, given that it would be difficult to create a bright-line rule that incorporates a range of compensating factors. Further, the Bureau is concerned that a rule that incorporates only a few compensating factors might cause the market to over-emphasize those factors over others that might be equally predictive of a consumer's ability to repay, potentially stifling innovation and limiting access to credit. The Bureau has decided not to propose an approach that would combine a specific DTI limit with compensating factors.

The Bureau also acknowledges that some stakeholders have requested that the Bureau make the Temporary GSE QM loan definition permanent. The Bureau is not proposing this alternative because it is concerned that there is not a basis to presume for an indefinite period that loans eligible to be purchased or guaranteed by the GSEs—whether or not the GSEs are under conservatorship—have been originated with appropriate consideration of consumers' ability to repay. Making the Temporary GSE QM loan definition permanent could stifle innovation and the development of competitive private-sector approaches to underwriting. The Bureau is also concerned that, as long as the Temporary GSE QM loan definition continues in effect, the non-GSE private market is less likely to rebound, and that the existence of the Temporary GSE QM loan definition may be contributing to the continuing limited non-GSE private market.

The Bureau requests comment on all aspects of the proposal to remove the General QM loan definition's specific DTI limit in § 1026.43(e)(2)(vi) and replace it with a with a price-based threshold. In particular, the Bureau requests comment, including data or other analysis, on whether pricing is predictive of loan performance and whether the Bureau should consider other requirements, in addition to a price-based threshold, as part of the General QM loan definition. The Bureau also requests comment on whether and to what extent the private market would provide access to credit by originating responsible, affordable mortgages that would no longer receive QM status when the Temporary GSE QM loan definition expires, including loans with DTI ratios above 43 percent. In addition, in light of the concerns about the sensitivity of a price-based QM definition to macroeconomic cycles, the Bureau requests comment on whether it should consider adjusting the pricing thresholds in emergency situations and, if so, how the Bureau should do so. The Bureau also requests comment on how revisions to the General QM loan definition can support innovations in underwriting that would facilitate access to credit, while ensuring that loans granted QM status are those that should be presumed to comply with the ATR provisions.

As noted, the Bureau is proposing to require a creditor to consider a consumer's monthly DTI ratio or residual income, which the Bureau believes would help ensure that QMs remain within a consumer's ability to repay without the need to set a specific DTI limit. However, as discussed in more detail in part V.E below, the Bureau also specifically requests comment on whether, instead of or in addition to a price-based threshold, the rule should retain a DTI limit as part of the General QM loan definition or to determine which loans receive a safe harbor or a rebuttable presumption of compliance.

D. The QM Presumption of Compliance Under a Price-Based QM Definition

The Bureau is not proposing to alter the approach in the current ATR/QM Rule of providing a conclusive presumption of compliance (*i.e.,* a safe harbor) to loans that meet the General QM loan requirements in § 1026.43(e)(2) and for which the APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set. Loans that meet the General QM loan requirements in § 1026.43(e)(2), including the pricing thresholds in § 1026.43(e)(2)(vi), and for which the APR exceeds APOR for a comparable transaction by 1.5 percentage points or more as of the date the interest rate is set would receive a rebuttable presumption of compliance. Therefore, a loan that otherwise meets the General QM loan definition would receive a rebuttable presumption of compliance with the ATR provisions if the APR exceeds APOR between 1.5 percentage points and less than 2 percentage points as of the interest rate is set. The proposal would provide a rebuttable presumption of compliance up to a higher pricing threshold for smaller loans, depending on the loan amount, and for subordinate-lien transactions, as described further in the section-by-section analysis of § 1026.43(e)(2)(vi).

Under the ATR/QM Rule, a creditor that makes a QM loan receives either a rebuttable or conclusive presumption of compliance with the ATR provisions, depending on whether the loan is a higher-priced covered transaction. The Rule generally defines higher-priced covered transaction in § 1026.43(b)(4) to mean a first-lien mortgage with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points; or a subordinate-lien transaction with an APR that exceeds APOR for a comparable transaction as of the date the interest rate is set by 3.5 or more percentage points.[208] The Rule provides in § 1026.43(e)(1)(i) that a creditor that makes a QM loan that is not a higher-priced covered transaction is entitled to a safe harbor from liability under the ATR provisions. Under § 1026.43(e)(1)(ii), a creditor that makes a QM loan that is a higher-priced covered transaction is entitled to a rebuttable presumption that the creditor has complied with the ATR provisions.

In developing the approach to the presumptions of compliance for QMs in the January 2013 Final Rule, the Bureau first considered whether the statute prescribes if QM loans receive a conclusive or rebuttable presumption of compliance with the ATR provisions. As discussed above, TILA section 129C(b) provides that loans that meet certain requirements are ''qualified mortgages'' and that creditors making QMs ''may presume'' that such loans have met the ATR requirements. However, the statute does not specify whether the presumption of compliance means that the creditor receives a conclusive presumption or a rebuttable presumption of compliance with the ATR provisions. The Bureau noted that its analysis of the statutory construction and policy implications demonstrates that there are sound reasons for adopting either interpretation.[209] The Bureau concluded that the statutory language is ambiguous and does not mandate either interpretation and that the presumptions should be tailored to promote the policy goals of the statute.[210] The Bureau interpreted the statute to provide for a rebuttable presumption of compliance with the ATR provisions but used its adjustment and exception authority to establish a conclusive presumption of compliance for loans that are not ''higher-priced covered transactions.'' [211]

In the January 2013 Final Rule, the Bureau identified several reasons why loans that are not higher-priced loans (generally prime loans) should receive a safe harbor. The Bureau noted that the fact that a consumer receives a prime rate is itself indicative of the absence of any indicia that would warrant a loan level price adjustment, and thus is suggestive of the consumer's ability to repay.[212] The Bureau noted that prime rate loans have performed significantly better historically than subprime loans and that the prime segment of the market has been subject to fewer abuses.[213] The Bureau noted that the QM requirements will ensure that the loans do not contain certain risky product features and are underwritten with careful attention to consumers' DTI ratios.[214] The Bureau also noted that a safe harbor provides greater legal certainty for creditors and secondary market participants and may promote enhanced competition and expand access to credit.[215] The Bureau determined that if a loan met the product and underwriting requirements for QM and was not a higher-priced covered transaction, there are sufficient grounds for concluding that the creditor satisfied the ATR provisions.[216]

The Bureau in the January 2013 Final Rule pointed to factors to support its decision to adopt a rebuttable presumption for QMs that are higher-priced covered transactions. The Bureau noted that QM requirements, including the restrictions on product features and the 43 percent DTI limit, would help prevent the return of the lax lending practices prevalent in the years before the financial crisis, but that it is not possible to define by a bright-line rule a class of mortgages for which each consumer will have ability to repay, particularly for subprime loans.[217] The Bureau noted that subprime pricing is often the result of loan level price adjustments established by the secondary market and calibrated to default risk.[218] The Bureau also noted that consumers in the subprime market tend to be less sophisticated and have fewer options and thus are more susceptible to predatory lending practices.[219] The Bureau noted that subprime loans have performed considerably worse than prime loans.[220] The Bureau therefore concluded that QMs that are higher-priced covered transactions would receive a rebuttable presumption of compliance with the ATR provisions. The Bureau recognized that this approach could modestly increase the litigation risk for subprime QMs but did not expect that imposing a rebuttable presumption for higher-priced QMs would have a significant impact on access to credit.[221]

The Bureau is not proposing to alter this general approach to the presumption of compliance. Specifically, the Bureau is not proposing to amend the approach under the current rule, in which General QM loans that are higher-priced covered transactions (up to the pricing thresholds set out in proposed § 1026.43(e)(2)(vi)) receive a rebuttable presumption of compliance with the ATR requirements and General QM loans that are not higher-priced covered transactions receive a safe harbor. As discussed above, the Bureau has preliminarily concluded that pricing is strongly correlated with loan performance and that pricing thresholds should be included in the General QM loan definition in § 1026.43(e)(2). The Bureau preliminarily concludes that for prime loans, the pricing, in conjunction with the revised QM requirements in proposed § 1026.43(e)(2), provides sufficient grounds for supporting a conclusive presumption that the creditor complied with the ATR requirements. The Bureau recognizes that the January 2013 Final Rule relied in part on the 43 percent DTI limit to support its conclusion that a safe harbor is appropriate for QMs that are not higher-priced covered transactions. However, the Bureau believes that a specific DTI limit may not be necessary to support a decision to preserve the conclusive presumption, provided that the pricing threshold identified for the conclusive presumption is sufficiently low. As noted above, pricing is strongly correlated with loan performance, and the specific 43 percent DTI limit has been problematic, both because of the difficulties of calculating DTI with appendix Q and because, while DTI ratios in general may also be correlated with loan performance, the bright-line 43 percent threshold may unduly restrict access to credit for some consumers for whom it might be appropriate to presume ability to repay at consummation. Further, under the proposed price-based approach, creditors would be required to consider

[208] Section 1026.43(b)(4) also provides that a first-lien covered transaction that is a QM under § 1026.43(e)(5), (e)(6), or § 1026.43(f) is ''higher priced'' if its APR is 3.5 percentage points or more above APOR.

[209] 78 FR 6408, 6507 (Jan. 30, 2013).

[210] *Id.* at 6511.

[211] *Id.* at 6514.

[212] *Id.* at 6511.

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] *Id.*

[217] *Id.*

[218] *Id.*

[219] *Id.*

[220] *Id.*

[221] *Id.* at 6511–13.

DTI or residual income for a loan to satisfy the requirements of the General QM loan definition. Moreover, the other factors noted above appear to continue supporting a safe harbor for prime QMs, including the better performance of prime loans compared to subprime loans, and the potential benefits of greater competition and access to credit from the greater certainty and reduced litigation risk arising from a safe harbor.

The Bureau is not proposing to alter the current safe harbor thresholds for General QM loans under § 1026.43(e)(2). Under current § 1026.43(b)(4) and (e)(1)(i), a first-lien transaction that is a General QM loan under § 1026.43(e)(2) receives a safe harbor from liability under the ATR provisions if a loan's APR exceeds APOR for a comparable transaction by less than 1.5 percentage points as of the date the interest rate is set. Current paragraphs (b)(4) and (e)(1)(i) of § 1026.43 provide a separate safe harbor threshold of 3.5 percentage points for subordinate-lien transactions. The Bureau is also not proposing to amend that threshold.[222]

As explained above, the Bureau's January 2013 Final Rule generally viewed loans with APRs that did not exceed APOR by more than 1.5 percentage points (and 3.5 percentage points for subordinate-lien transactions) to be prime loans which, if the loan satisfies the criteria to be a QM, may be conclusively presumed to comply with the ATR provisions. In support of providing a conclusive presumption of compliance to prime loans, the Bureau cited the absence of loan level price adjustments for those loans (which the Bureau viewed as indicative of the consumer's ability to repay), the historical performance of prime rate loans compared to subprime loans, and historically fewer abusive practices in the prime market.[223] With respect to the specific thresholds chosen to separate safe harbor from rebuttable presumption QM loans, the Bureau in the January 2013 Final Rule noted that the line it was drawing had long been recognized as a rule of thumb to separate prime loans from subprime loans.[224] The 1.5 percentage point above APOR threshold is the same as that used in the Board's 2008 HOEPA Final Rule, described above, which was amended by the Board's 2011 Jumbo Loans Escrows Final Rule to include a separate threshold for jumbo loans for purposes of certain escrows requirements.[225] Subsequently, the Dodd-Frank Act adopted these same thresholds in TILA section 129C(a)(6)(D)(ii)(II), which provides that a creditor making a balloon-payment loan with an APR at or above certain thresholds must determine ability to repay using the contract's repayment schedule.[226] The Bureau concluded that a 1.5 percentage point threshold for first-lien QMs and 3.5 percentage point threshold for subordinate-lien QMs balanced competing consumer protection and access to credit considerations.[227] The Bureau also concluded that it was not appropriate to extend the safe harbor to first-lien loans above those thresholds because that approach would provide insufficient protection to consumers in loans with higher interest rates who may require greater protection than consumers in prime rate loans.[228]

For the reasons set forth below, the Bureau is not proposing to alter the safe harbor threshold of 1.5 percentage points for first-lien General QM loans under the price-based approach in proposed § 1026.43(e)(2). The Bureau tentatively concludes that the current safe harbor threshold of 1.5 percentage points for first liens is appropriate to restrict safe harbor QMs to lower-priced, generally less risky, loans while ensuring that responsible, affordable credit remains available to consumers. The Bureau generally believes these same considerations support not changing the current safe harbor threshold of 3.5 percentage points for subordinate-lien transactions, which generally perform better and have stronger credit characteristics than first-lien transactions. The Bureau's proposal to address subordinate-lien transactions is discussed further below in the section-by-section analysis of § 1026.43(e)(2)(vi).

As explained above, the Bureau uses early delinquency rates as a proxy for measuring whether a consumer had ability to repay at the time the mortgage loan was originated. Here, the Bureau analyzed early delinquency rates in considering whether it should propose to revise the threshold for first-lien safe harbor General QM loans under the proposed price-based approach; that is, which first-lien General QM loans should be conclusively presumed to comply with the ATR provisions in the absence of a specific DTI limit. As noted above, the January 2013 Final Rule relied in part on the 43 percent DTI limit to support its conclusion that a safe harbor is appropriate for QMs that are not higher-priced covered transactions. Under the proposal to replace the current 43 percent DTI limit with a price-based approach, some loans with DTI ratios above 43 percent will receive safe harbor QM status.

The Bureau compared projected early delinquency rates under the General QM loan definition with and without a 43 percent DTI limit under a range of potential rate-spread based safe harbor thresholds. Under the current 43 percent DTI limit for first-lien General QM loans, Table 5 (2002–2008), above, indicates early delinquency rates for loans with rate spreads just below 1.5 percentage points increase with DTI, from 6 percent for loans with a DTI ratio of 20 percent or below to 11 percent for loans with DTI ratios from 41 to 43 percent. For loans with rate spreads just below 1.5 percentage points and DTI ratios above 43 percent, Table 5 indicates early delinquency rates between 12 percent (for loans with 44 to 45 percent DTI ratios) and 15 percent (for loans with DTI ratios of 61 to 70 percent). The loans at that rate spread with DTI ratios above 43 percent in Table 5 are loans that are not QMs under the current General QM loan definition in § 1026.43(e)(2) because of the 43 percent DTI limit, but that would be QMs under the proposed General QM loan definition in § 1026.43(e)(2) in the absence of the 43 percent DTI limit. Therefore, the loans that would be newly granted safe harbor status under the proposed price-based approach at a safe harbor threshold of 1.5 percentage points are likely to have a somewhat higher early delinquency rate than those just at or below 43 percent DTI ratios, 12 to 15 percent versus 11 percent. The comparable early delinquency rates for 2018 loans from Table 6 also show a slightly higher early delinquency rate for DTI ratios above 43 percent compared to loans with DTI ratios of 36 to 43 percent: 2.3 percent versus 1.5 percent.

The Bureau acknowledges that removing the 43 percent DTI limit while retaining a 1.5 percentage point safe harbor threshold would lead to somewhat higher-risk loans obtaining safe harbor QM status relative to loans within the current General QM loan definition. However, Bureau analysis shows the early delinquency rate for this set of loans is on par with loans that have received safe harbor QM status under the Temporary GSE QM loan definition. Restricting the sample of 2018 NMDB–HMDA matched first-lien

[222] As noted above, the Bureau is not proposing to alter the higher threshold of 3.5 percentage points over APOR for small creditor portfolio QMs and balloon-payment QMs made by certain small creditors pursuant to § 1026.43(e)(5), (e)(6) and (f). *See* § 1026.43(b)(4).

[223] 78 FR 6408, 6511 (Jan. 30, 2013).

[224] *Id.* at 6408.

[225] *Id.* at 6451; *see also* 76 FR 11319 (Mar. 2, 2011) (2011 Jumbo Loans Escrows Final Rule).

[226] 78 FR 6408, 6451 (Jan. 30, 2013).

[227] *Id.* at 6514.

[228] *Id.*

conventional purchase originations to only those purchased and guaranteed by the GSEs, loans with DTI ratios above 43 and rate spreads between 1 and 1.49 percentage points had an early delinquency rate of 2.4 percent.[229] Consequently, the Bureau does not believe that the price-based alternative would result in substantially higher delinquency rates than the standard included in the current rule.

The Bureau also considered continued access to responsible, affordable mortgage credit in deciding not to propose revisions to the current 1.5 percentage point safe harbor threshold. The Bureau is concerned that a safe harbor threshold lower than 1.5 percentage points could reduce access to credit, as some loans that are General QM loans under current § 1026.43(e)(2) and receive a safe harbor would instead receive a rebuttable presumption of compliance under proposed § 1026.43(e)(2). HMDA data analyzed by the Bureau in the Assessment Report suggest that the safe harbor threshold of 1.5 percentage points has not constrained lenders, as the share of originations above the threshold remained steady after the implementation of the ATR/QM Rule.[230] However, the Report noted that these results are likely explained by the fact that, since the Board's issuance of a rule in 2008, an ability-to-repay requirement has applied to a category of mortgage loans that is substantially the same as rebuttable presumption QMs under the January 2013 Final Rule.[231] The Bureau is concerned about the potential effects on access to credit if the threshold is lowered, as loans that are newly subject to the rebuttable presumption rather than the safe harbor may cost materially more to consumers. For example, the Bureau is concerned that some loans that would have been originated as conventional mortgages may instead be originated as FHA loans, which the Bureau expects would cost materially more for many consumers. The Bureau expects that a safe harbor threshold of 1.5 percentage points over APOR for first liens under a price-based General QM loan definition would not have an adverse effect on access to credit. In particular, the Bureau estimates that the size of the safe harbor QM market would be comparable to the size of that market with the Temporary GSE QM loan definition in place and may expand slightly under the proposed amendments to the General QM loan definition in § 1026.43(e)(2), if the rule retains the current safe harbor threshold.[232]

As discussed above and in the January 2013 Final Rule, TILA does not plainly mandate either a safe harbor or a rebuttable presumption approach to a QM presumption of compliance.[233] With respect to General QM prime loans (General QM loans with an APR that does not exceed APOR by 1.5 or more percentage points for first liens), the Bureau preliminarily concludes that it is appropriate to use its adjustment authority under TILA section 105(a) to retain a conclusive presumption (*i.e.,* a safe harbor). The Bureau preliminarily concludes that this approach would balance the competing consumer protection and access to credit considerations described above. The Bureau acknowledges that, under the price-based approach in proposed § 1026.43(e)(2), General QM loans would not be limited to those with DTI ratios that do not exceed 43 percent, as is the case under the current rule. However, the Bureau preliminarily concludes that it remains appropriate to provide a safe harbor to these loans. The Bureau has recognized that receipt of a prime rate is suggestive of a consumer's ability to repay.[234] Further, the Bureau notes that proposed § 1026.43(e)(2)(v) would impose new requirements for the creditor to consider the consumer's income, debt, and monthly debt-to-income ratio or residual income to satisfy the General QM loan definition, thus retaining a requirement that the creditor consider key aspects of the consumer's financial capacity. The Bureau is not proposing to extend the safe harbor to higher-priced loans because the Bureau preliminarily concludes that such an approach would provide insufficient protection to consumers in loans with higher interest rates who may require greater protection than consumers in prime rate loans. The Bureau preliminarily concludes that providing a safe harbor for prime loans is necessary and proper to facilitate compliance with and to effectuate the purposes of section 129C and TILA, including to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans.

The Bureau requests comment on whether the rule should retain the current thresholds separating safe harbor from rebuttable presumption General QM loans and specifically requests feedback on whether the Bureau should adopt higher or lower safe harbor thresholds. The Bureau encourages commenters to suggest specific rate spread thresholds for the safe harbor. In particular, the Bureau requests comment on whether it may be appropriate to set the safe harbor threshold for first-lien transactions lower than 1.5 percentage points over APOR in light of the comparatively lower delinquency rates associated with high-DTI loans at lower rate spreads, as reflected in Tables 5 and 6.

The Bureau acknowledges that adopting a threshold below 1.5 percentage points over APOR could have some negative impact on access to credit, as some loans that are General QM loans under current § 1026.43(e)(2) and receive a safe harbor would instead receive a rebuttable presumption of compliance under proposed § 1026.43(e)(2). The Bureau similarly requests comment on whether it may be appropriate to set the safe harbor threshold for first liens higher than 1.5 percentage points over APOR. The Bureau acknowledges that some commenters to the ANPR suggested that the current safe harbor threshold is too low and may have an adverse impact on access to credit, including for minority consumers. At the same time, the Bureau notes its concern about higher early delinquency rates at higher safe harbor thresholds and is concerned that such an approach might result in safe harbors for loans for which it would not be appropriate to presume conclusively that consumers have a reasonable ability to repay their loans according to the loan terms. The Bureau requests comment on whether a safe harbor threshold of 2 percentage points over APOR would balance considerations regarding access to credit and ability to repay. For commenters that recommend a safe harbor threshold higher than 1.5

[229] This comparison uses 2018 data on GSE originations because such loans were originated while the Temporary GSE QM loan definition was in effect and the GSEs were in conservatorship. GSE loans from the 2002 to 2008 period were originated under a different regulatory regime and with different underwriting practices (*e.g.,* GSE loans more commonly had DTI ratios over 50 percent during the 2002 to 2008 period), and thus may not be directly comparable to loans made under the Temporary GSE QM loan definition.

[230] Assessment Report, *supra* note 58, section 5.5, at 187.

[231] *Id.* at 182. The Assessment Report explained that because of their nearly identical definitions, higher-priced mortgage loans (HPMLs) may serve as a proxy for higher-priced covered transactions under the ATR/QM Rule in analysis of HMDA data.

[232] The Bureau estimates that 90.9 percent of conventional purchase loans in 2018 HMDA data fell within safe harbor QM status under the current rule with the Temporary GSE QM loan definition. The Bureau estimates that under the proposed changes to the General QM loan definition in § 1026.43(e)(2), 91.9 percent of those conventional purchase loans would have had safe harbor QM status if the current safe harbor threshold of 1.5 percentage points remains in place. Therefore, the Bureau expects that the proposed changes would result in a comparable, or somewhat increased, portion of the QM share of the market that would be protected by the safe harbor.

[233] 78 FR 6408, 6513 (Jan. 30, 2013).

[234] *Id.* at 6511.

percentage points over APOR (such as a 2-percentage point threshold), the Bureau requests comment on an appropriate threshold to separate QM loans from non-QM loans. As discussed in the section-by-section analysis of § 1026.43(e)(2)(vi), below, the Bureau is proposing that loans with rate spreads between 1.5 and less than 2 percentage points over APOR receive a rebuttable presumption of compliance with the ATR provisions, and that loans with rate spreads of 2 percentage points over APOR or higher would not meet the General QM loan definition. Commenters are encouraged to provide data or other material to support their recommendations, as well as suggestions for commentary that would assist in understanding the application of the thresholds.

With respect to General QM loans that are higher-priced covered transactions the Bureau preliminarily concludes that such loans should receive a rebuttable presumption of compliance with the ATR requirements. Such loans would have to satisfy the revised QM requirements of § 1026.43(e)(2), and so would be prevented from including risky features and would be priced only moderately above prime loans. Accordingly, the Bureau preliminarily concludes that a rebuttable presumption of compliance is warranted for such loans. This approach may strike an appropriate balance between the access to credit benefits that arise from providing a greater degree of certainty that such loans comply with the ATR requirements and the consumer protections that stem from permitting consumers the opportunity to rebut the presumption of compliance.

The Bureau is not proposing to revise § 1026.43(e)(1)(ii)(B), which defines the grounds on which the presumption of compliance that applies to higher-priced QMs can be rebutted. Section 1026.43(e)(1)(ii)(B) provides that a consumer may rebut the presumption by showing that, at the time the loan was originated, the consumer's income and debt obligations left insufficient residual income or assets to meet living expenses. The analysis considers the consumer's monthly payments on the loan, mortgage-related obligations, and any simultaneous loans of which the creditor was aware, as well as any recurring, material living expenses of which the creditor was aware.

The Bureau stated in the January 2013 Final Rule that this standard was sufficiently broad to provide consumers a reasonable opportunity to demonstrate that the creditor did not have a good faith and reasonable belief in the consumer's repayment ability, despite meeting the prerequisites of a QM. At the same time, the Bureau stated that it believed the standard was sufficiently clear to provide certainty to creditors, investors, and regulators about the standards by which the presumption can successfully be challenged in cases where creditors have correctly followed the QM requirements. The Bureau also noted that the standard was consistent with the standard in the 2008 HOEPA Final Rule.[235] Commentary to that rule provides, as an example of how its presumption may be rebutted, that the consumer could show ''a very high debt-to-income ratio and a very limited residual income . . . depending on all of the facts and circumstances.'' [236] The Bureau noted that, under the definition of QM that the Bureau was adopting, the creditor was generally not entitled to a presumption if the consumer's DTI ratio was ''very high.'' The Bureau stated that, as a result, the Bureau was focusing the standard for rebutting the presumption in the January 2013 Final Rule on whether, despite meeting a DTI test, the consumer nonetheless had insufficient residual income to cover the consumer's living expenses.[237]

The Bureau is not proposing to change the standard for rebutting the presumption of compliance because it believes the existing standard continues to balance the consumer protection and access to credit considerations described above appropriately. For example, the Bureau is not amending the presumption of compliance to provide that the consumer may use the DTI ratio to rebut the presumption of compliance by establishing that the DTI ratio is very high, or by establishing that the DTI ratio is very high *and* that the residual income is not sufficient. First, the Bureau tentatively determines that permitting the consumer to rebut the presumption by establishing that the DTI ratio is very high is not necessary because the existing rebuttal standard already incorporates an examination of the consumer's actual income and debt obligations (*i.e.,* the components of the DTI ratio) by providing the consumer the option to show that the consumer's residual income—which is calculated using the same components—was insufficient at consummation. Accordingly, the Bureau anticipates that the addition of DTI ratio to the rebuttal standard would not add probative value beyond the current residual income test in § 1026.43(e)(1)(ii)(B). Second, the Bureau anticipates that the addition of DTI ratio as a ground to rebut the presumption of compliance would undermine compliance certainty to creditors and the secondary market without providing any clear benefit to consumers. The Bureau tentatively determines that the rebuttable presumption standard would continue to be sufficiently broad to provide consumers a reasonable opportunity to demonstrate that the creditor did not have a good faith and reasonable belief in the consumer's repayment ability, despite meeting the prerequisites of a QM. The Bureau requests comment on its tentative determination not to amend the grounds on which the presumption of compliance can be rebutted. The Bureau also requests comment on whether to amend the grounds on which the presumption of compliance can be rebutted, such as where the consumer has a very high DTI and low residual income. To the extent commenters suggest that the Bureau should amend the grounds on which to rebut the presumption to add instances of a consumer having very high DTI, the Bureau requests comment on whether and how to define ''very high DTI.''

The Bureau requests comment on all aspects of the proposed approach for the presumption of compliance. In particular, the Bureau requests comment, including data or other analysis, on whether a safe harbor for QMs that are not higher priced is appropriate and, if so, on whether other requirements should be imposed for such QMs to receive a safe harbor.

E. Alternative to the Proposed Price-Based QM Definition: Retaining a DTI Limit

Although the Bureau is proposing to remove the 43 percent DTI limit and adopt a price-based approach for the General QM loan definition, the Bureau requests comment on an alternative approach that retains a DTI limit, but raises it above the current limit of 43 percent and provides a more flexible set of standards for verifying debt and income in place of appendix Q.

As discussed above, the Bureau is proposing to remove the 43 percent DTI limit because it is concerned that, after the expiration of the Temporary GSE QM loan definition, the 43 percent DTI limit would result in a significant reduction in the size of QM and potentially could result in a significant reduction in access to credit. The

[235] *Id.* at 6512.

[236] *See* Regulation Z comment 34(a)(4)(iii)–1.

[237] 78 FR 6408, 6511–12 (Jan. 30, 2013). The Bureau in the January 2013 Final Rule stated that it interpreted TILA section 129C(b)(1) to create a rebuttable presumption of compliance, but exercised its adjustment authority under TILA section 105(a) to limit the ability to rebut the presumption because the Bureau found that an open-ended rebuttable presumption would unduly restrict access to credit without a corresponding benefit to consumers. *Id.* at 6514.

Bureau proposes to move away from a DTI-based approach because it is concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. The Bureau is proposing to remove appendix Q because its definitions of debt and income are rigid and difficult to apply and do not provide the level of compliance certainty that the Bureau anticipated at the time of the January 2013 Final Rule. As noted above, the Bureau is proposing a price-based General QM loan definition because it preliminarily concludes that a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

At the same time, the Bureau acknowledges concerns about a price-based approach, as described in part V, above. In particular, the Bureau acknowledges the sensitivity of a price-based QM definition to macroeconomic cycles, including concerns that the price-based approach could be pro-cyclical, with a more expansive QM market when the economy is expanding, and a more restrictive QM market when credit is tight. The Bureau is especially concerned about these potential effects given the recent economic disruptions associated with the COVID–19 pandemic. If the QM market were to contract, the Bureau would be concerned about a reduction in access to credit because of the modest amount of non-QM lending identified in the Bureau's Assessment Report, which the Bureau understands has declined further in recent months. The Bureau also acknowledges that a small share of loans that satisfy the current General QM loan definition would lose QM status under the proposed price-based approach due to the loan's rate spread exceeding the applicable threshold.

For these reasons, the Bureau requests comment on whether an approach that increases the DTI limit to a specific threshold within a range of 45 to 48 percent and that includes more flexible definitions of debt and income would be a superior alternative to a price-based approach.[238] As discussed above, the January 2013 Final Rule incorporated DTI as part of the General QM loan definition because the Bureau believed the QM criteria should include a standard for evaluating the consumer's ability to repay, in addition to the product-feature restrictions and other requirements that are specified in TILA. The Bureau has acknowledged that DTI is predictive of loan performance, and some commenters responding to the ANPR advocated for retaining a DTI limit as part of the General QM loan definition, arguing that it is a strong indicator of a consumer's ability to repay. The Bureau adopted a specific DTI limit as part of the General QM loan definition to provide certainty to creditors that a loan is in fact a QM.[239] The Bureau also provided a specific DTI limit to give certainty to assignees and investors in the secondary market, because the Bureau believed such certainty would help reduce possible concerns regarding risk of liability and promote credit availability.[240] Numerous commenters on the 2011 Proposed Rule and comments submitted subsequent to publication of the January 2013 Final Rule have highlighted the value of providing objective requirements that creditors can identify and apply based on information contained in loan files. Unlike a price-based approach, a DTI-based approach would be counter-cyclical, because of the positive correlation between interest rates and DTI ratios. Consumers' monthly payments on their debts—the numerator in DTI—will be higher when interest rates and home prices are high, leading to a more restrictive QM market. By contrast, DTI ratios will be lower when interest rates and home prices are lower, leading to a more expansive QM market.

The Bureau is proposing to remove the 43 percent DTI limit and appendix Q, based in substantial part on concerns about access to credit and the challenges associated with using appendix Q to define income and debt, and to adopt a price-based approach for the General QM loan definition. However, the Bureau requests comment on whether an alternative approach that adopts a higher DTI limit and a more flexible standard for defining debt and income could mitigate these concerns and provide a superior alternative to the price-based approach. In particular, the Bureau requests comment on whether such an approach would adequately balance considerations related to ensuring consumers' ability to repay and maintaining access to credit.

As described above, the Bureau uses early delinquency (measured by whether a consumer was ever 60 or more days past due within the first 2 years after origination) as a proxy for the likelihood of a lack of consumer ability to repay at consummation across a wide pool of loans. The Bureau's analyzed the relationship between DTI ratios and early delinquency, using data on first-lien conventional purchase originations from the NMDB, including a matched sample of NMDB and HMDA loans. That analysis, as shown in Tables 3 and 4 above, shows that early delinquency rates increase consistently with DTI ratio. This relationship is like the pattern shown in the Bureau's analysis of early delinquency rates by rate spread. For 2002–2008 originations, as shown in Table 3, there was a 7 percent early delinquency rate for loans with DTI ratios between 44 and 48 percent. For the sample of 2018 originations in the NMDB matched to HMDA data, as shown in Table 4, there was a 0.9 percent early delinquency rate for loans with DTI ratios between 44 and 50 percent.

Tables 5 and 6 show the early delinquency rates of these same samples categorized according to both their DTI and their rate spreads. Table 5, which shows early delinquency rates for the 2002–2008 data, shows early delinquency rates as high as 19 percent for loans with DTI ratios between 46 and 48 percent that are priced between 2 and 2.24 percentage points over APOR. This approximates the loans with the highest DTI and pricing that would be QMs under this alternative. For comparison, as discussed in the section-by-section analysis of § 1026.43(e)(2)(vi), the highest early delinquency rates for loans within the current General QM loan definition is 16 percent (DTI ratios of 41 to 43 percent and priced 2 percentage points or more over APOR) and the highest early delinquency rates for loans within the General QM loan definition under the proposed price-based approach is 22 percent (DTI ratios of 61 to 70 percent priced between 1.75 and 1.99 percentage points over APOR).

Table 6, which shows early delinquency rates for the 2018 sample, allows a similar comparison for 2018 originations. Table 6 shows early delinquency rates of 4.2 percent for loans with DTI ratios between 44 and 50 percent that are priced 2 percentage points or more above APOR. However,

[238] The Bureau acknowledges that some loans currently originated as Temporary GSE QM loans have higher DTI ratios. However, the Bureau is concerned about adopting a DTI limit above a range of 45 to 48 percent without a requirement to consider compensating factors. The Bureau is concerned about the complexity of approaches to the General QM loan definition that incorporate compensating factors, as explained in part V.C, above.

[239] 78 FR 6408 at 6526–27.

[240] *Id.*

the highest early delinquency rates for loans within the current General QM loan definition or the alternative is 4.4 percent (DTI ratios of 26 to 35 percent and priced 2 percentage points or more over APOR). The highest early delinquency rates for loans within the General QM loan definition under the proposed price-based approach is 3.2 percent (DTI ratios of 26 to 35 percent priced between 1.5 and 1.99 percentage points over APOR).

The Bureau has also analyzed the potential effects of a DTI-based approach on the size of QM and potentially on access to credit. As indicated in Table 8 below, 2018 HMDA data show that with the Temporary GSE QM loan definition and the General QM loan definition with a 43 percent DTI limit, 90.6 percent of conventional purchase loans were safe harbor QM loans and 95.8 percent were safe harbor QM or rebuttable presumption QM loans. If, instead, the Temporary GSE QM loan definition were not in place along with the General QM loan definition (with the 43 percent DTI limit), and assuming no change in consumer or creditor behavior from the 2018 HMDA data, then only 69.3 percent of loans would have been safe harbor QM loans and 73.6 percent of loans would have been safe harbor QM loans or rebuttable presumption QM loans. Raising the DTI limit above 43 percent would increase the size of the QM market and, as a result, potentially increase access to credit relative to the General QM loan definition with a DTI limit of 43 percent. The magnitude of the increase in the size of the QM market and potential increase in access to credit depends on the selected DTI limit. A DTI limit in the range of 45 to 48 percent would likely result in a QM market that is larger than one with a DTI limit of 43 percent but smaller than the status quo (*i.e.,* Temporary GSE QM loan definition and DTI limit of 43 percent). However, the Bureau expects that consumers and creditors would respond to changes in the General QM loan definition, potentially allowing additional loans to be made as safe harbor QM loans or rebuttable presumption QM loans.

TABLE 8—SHARE OF 2018 CONVENTIONAL PURCHASE LOANS WITHIN VARIOUS SAFE HARBOR QM AND REBUTTABLE PRESUMPTION QM DEFINITIONS

[HMDA data]

Approach	Safe harbor QM (share of conventional market)	QM overall (share of conventional market)
Temporary GSE QM + DTI 43	90.6	95.8
Proposal (Pricing at 2.0)	91.6	96.1
DTI limit 43	69.3	73.6
DTI limit 45	76.1	80.9
DTI limit 46	78.8	83.8
DTI limit 47	81.4	86.6
DTI limit 48	84.1	89.4
DTI limit 49	87.0	92.4
DTI limit 50	90.8	96.4

The Bureau seeks comment on whether to retain a specific DTI limit for the General QM loan definition, rather than or in addition to the proposed price-based approach. The Bureau specifically seeks comment on a specific DTI limit between 45 and 48 percent. The Bureau seeks comment and data on whether increasing the DTI limit to a specific percentage between 45 and 48 percent would be a superior alternative to the proposed price-based approach, and, if so, on what specific DTI percentage the Bureau should include in the General QM loan definition. The Bureau seeks comment and data as to how specific DTI percentages would be expected to affect access to credit and would be expected to affect the risk that the General QM loan definition would include loans for which the Bureau should not presume that the consumers who receive them have the ability to repay. The Bureau also requests comment on whether increasing the DTI limit to a specific percentage between 45 to 48 percent would better balance the goals of ensuring access to responsible, affordable credit and ensuring that QMs are limited to loans for which the Bureau should presume that consumers have the ability to repay. The Bureau also requests comment on the macroeconomic effects of a DTI-based approach as well as whether and how the Bureau should weigh such effects in amending the General QM loan definition. In addition, the Bureau requests comment on whether, if the Bureau adopts a higher specific DTI limit as part of the General QM loan definition, the Bureau should retain the price-based threshold of 1.5 percentage points over APOR to separate safe harbor QM loans from rebuttable presumption QM loans for first-lien transactions.

The Bureau also requests comment on whether to adopt a hybrid approach in which a combination of a DTI limit and a price-based threshold would be used in the General QM loan definition. One such approach could impose a DTI limit only for loans above a certain pricing threshold, to reduce the likelihood that the presumption of compliance with the ATR requirement would be provided to loans for which the consumer lacks ability to repay, while avoiding the potential burden and complexity of a DTI limit for many lower-priced loans. The Bureau estimates that 81 percent of conventional purchase loans have rate spreads below 1 percentage point and no product features restricted under the General QM loan definition. For example, the rule could impose a DTI limit of 50 percent for loans with rate spreads at or above 1 percentage point. Using 2018 HMDA data, the Bureau estimates that 91.5 percent of conventional purchase loans would be safe harbor QM loans under this approach, and 96 percent would be QM loans. A similar approach might impose a DTI limit above a certain pricing threshold and also tailor the presumption of compliance with the ATR requirement based on DTI. For example, the rule could provide that (1) for loans with rate spreads under 1 percentage point, the loan is a safe harbor QM regardless of the consumer's DTI ratio; (2) for loans with rate spreads at or above 1 but less than 1.5 percentage points, a loan is a safe harbor QM if the consumer's DTI ratio does not

exceed 50 percent and a rebuttable presumption QM if the consumer's DTI is above 50 percent; and (3) if the rate spread is at or above 1.5 but less than 2 percentage points, loans would be rebuttable presumption QM if the consumer's DTI ratio does not exceed 50 percent and non-QM if the DTI ratio is above 50 percent. Using 2018 HMDA data, the Bureau estimates that 91.5 percent of conventional purchase loans would be safe harbor QM loans under this approach, and 96.1 percent would be QM loans. The Bureau requests comment on whether a DTI limit of up to 50 percent would be appropriate under these hybrid approaches that incorporate pricing into the General QM loan definition given that the pricing threshold would generally limit the additional risk factors beyond the higher DTI ratio.

Another hybrid approach would impose a DTI limit on all General QM loans but would allow higher DTI ratios for loans below a set pricing threshold. For example, the rule could generally impose a DTI limit of 47 percent but could permit a loan with a DTI ratio up to 50 percent to be eligible for QM status under the General QM loan definition if the APR is less than 2 percentage points over APOR. This approach might limit the likelihood of providing QM status to loans for which the consumer lacks ability to repay, but also would permit some lower-priced loans with higher DTI ratios to achieve QM status. Using 2018 HDMA data, the Bureau estimates that 90.8 percent of conventional purchase loans would be safe harbor QM loans under this approach, and 96.2 percent would be QM loans. The Bureau requests comment on whether these hybrid approaches or a different hybrid approach would better address concerns about access to credit and ensuring that the General QM criteria support a presumption that consumers have the ability to repay their loans.

With respect to the Bureau's concerns about appendix Q, the Bureau requests comment on an alternative method of defining debt and income the Bureau believes could replace appendix Q in conjunction with a specific DTI limit. As noted, the Bureau is concerned that the appendix Q definitions of debt and income are rigid and difficult to apply and do not provide the level of compliance certainty that the Bureau anticipated at the time of the January 2013 Final Rule. Further, under the current rule, some loans that would otherwise have DTI ratios below 43 percent do not satisfy the General QM loan definition because their method of documenting and verifying income or debt is incompatible with appendix Q. In particular, the Bureau requests comment on whether the approach in proposed § 1026.43(e)(2)(v) could be applied with a General QM loan definition that includes a specific DTI limit. As discussed in more detail in the section-by-section discussion of § 1026.43(e)(2)(v), proposed § 1026.43(e)(2)(v)(A) would require creditors to consider income or assets, debt obligations, alimony, child support, and DTI or residual income for their ability-to-repay determination. Proposed § 1026.43(e)(2)(v)(B) and the associated commentary explain how creditors must verify and count the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan and the consumer's current debt obligations, alimony, and child support, relying on the standards set forth in the ATR requirements in § 1026.43(c). Proposed § 1026.43(e)(2)(v)(B) would further provide creditors a safe harbor with standards the Bureau may specify for verifying debt and income. This could potentially include relevant provisions from the Fannie Mae Single Family Selling Guide, the Freddie Mac Single-Family Seller/Servicer Guide, FHA's Single Family Housing Policy Handbook, the VA's Lenders Handbook, and USDA's Field Office Handbook for the Direct Single Family Housing Program and Handbook for the Single Family Guaranteed Loan Program, current as of this proposal's public release. The Bureau also is seeking comments on potentially adding to the safe harbor other standards that external stakeholders develop.

The Bureau requests comment on whether the alternative method of defining debt and income in proposed § 1026.43(e)(2)(v)(B) could replace appendix Q in conjunction with a specific DTI limit. As noted above, the Bureau is concerned that this approach that combines a general standard with safe harbors may not be appropriate for a specific DTI limit. The Bureau requests comment on whether the approach in proposed § 1026.43(e)(2)(v)(B) would address the problems associated with appendix Q and would provide an alternative method of defining debt and income that would be workable with a specific DTI limit. The Bureau seeks comment on whether allowing creditors to use standards the Bureau may specify to verify debt and income—as would be permitted under proposed § 1026.43(e)(2)(v)(B)—as well as potentially other standards external stakeholders develop and the Bureau adopts would provide adequate clarity and flexibility while also ensuring that DTI calculations across creditors and consumers are sufficiently consistent to provide meaningful comparison of a consumer's calculated DTI to any DTI ratio threshold specified in the rule.

The Bureau also requests comment on what changes, if any, would be needed to proposed § 1026.43(e)(2)(v)(B) to accommodate a specific DTI limit. For example, the Bureau requests comment on whether creditors that comply with guidelines that have been revised but are substantially similar to the guides specified above should receive a safe harbor, as the Bureau has proposed. The Bureau also seeks comment on its proposal to allow creditors to ''mix and match'' verification standards, including whether the Bureau should instead limit or prohibit such ''mixing and matching'' under an approach that incorporates a specific DTI limit. The Bureau requests comment on whether these aspects of the approach in proposed § 1026.43(e)(2)(v)(B), if used in conjunction with a specific DTI limit, would provide sufficient certainty to creditors, investors, and assignees regarding a loan's QM status and whether it would result in potentially inconsistent application of the rule.

VI. Section-by-Section Analysis

1026.43 Minimum Standards for Transactions Secured by a Dwelling

43(b) Definitions

43(b)(4)

Section 1026.43(b)(4) provides the definition of a higher-priced covered transaction. It provides that a covered transaction is a higher-priced covered transaction if the APR exceeds APOR for a comparable transaction as of the date the interest rate is set by the applicable rate spread specified in the Rule. For purposes of General QM loans under § 1026.43(e)(2), the applicable rate spreads are 1.5 or more percentage points for a first-lien covered transaction and 3.5 or more percentage points for a subordinate-lien covered transaction. Pursuant to § 1026.43(e)(1), a loan that satisfies the requirements of a qualified mortgage and is a higher-priced covered transaction under § 1026.43(b)(4) is eligible for a rebuttable presumption of compliance with the ATR requirements. A qualified mortgage that is not a higher-priced covered transaction is eligible for a conclusive presumption of compliance with the ATR requirements.

The Bureau is proposing to revise § 1026.43(b)(4) to create a special rule

for purposes of determining whether certain types of General QM loans under § 1026.43(e)(2) are higher-priced covered transactions. This special rule would apply to loans for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. For such loans, the creditor would be required to determine the APR, for purposes of determining whether a QM under § 1026.43(e)(2) is a higher-priced covered transaction, by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

An identical special rule also would apply to loans for which the interest rate may or will change under proposed § 1026.43(e)(2)(vi), which would revise the definition of a General QM loan under § 1026.43(e)(2) to implement the price-based approach described in part V. The section-by-section analysis of proposed § 1026.43(e)(2)(vi) explains the Bureau's reasoning for proposing these rules. The special rules in the proposed revisions to § 1026.43(b)(4) and in proposed § 1026.43(e)(2)(vi) would not modify other provisions in Regulation Z for determining the APR for other purposes, such as the disclosures addressed in or subject to the commentary to § 1026.17(c)(1).

Proposed comment 43(b)(4)–4 explains that provisions in subpart C, including commentary to § 1026.17(c)(1), address how to determine the APR disclosures for closed-end credit transactions and that provisions in § 1026.32(a)(3) address how to determine the APR to determine coverage under § 1026.32(a)(1)(i). It further explains that proposed § 1026.43(b)(4) requires, only for purposes of a QM under paragraph (e)(2), a different determination of the APR for purposes of paragraph (b)(4) for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. It also cross-references proposed comment 43(e)(2)(vi)–4 for how to determine the APR of such a loan for purposes of § 1026.43(b)(4) and (e)(2)(vi).

As discussed above in part IV, TILA section 105(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. In particular, it is the purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable.

As also discussed above in part IV, TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of section 129C, necessary and appropriate to effectuate the purposes of section 129C and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such section.

The Bureau is proposing the special rule in § 1026.43(b)(4) regarding the APR determination of certain loans for which the interest rate may or will change pursuant to its authority under TILA section 105(a) to make such adjustments and exceptions as are necessary and proper to effectuate the purposes of TILA, including that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. The Bureau believes that these proposed provisions may ensure that safe harbor QM status would not be accorded to certain loans for which the interest rate may or will change that pose a heightened risk of becoming unaffordable relatively soon after consummation. The Bureau is also proposing these provisions pursuant to its authority under TILA section 129C(b)(3)(B)(i) to revise and add to the statutory language. The Bureau believes that the proposed APR determination provisions in § 1026.43(b)(4) may ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purpose of TILA section 129C, referenced above, as well as effectuate that purpose.

The Bureau requests comment on all aspects of the proposed special rule that would be required in proposed § 1026.43(b)(4) to determine the APR for certain loans for which the interest rate may or will change. See the section-by-section analysis of proposed § 1026.43(e)(2)(vi) for specific data requests and additional solicitation of comments.

43(c) Repayment Ability

43(c)(4) Verification of Income or Assets

TILA section 129C(a)(4) states that a creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service (IRS) Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In the January 2013 Final Rule, the Bureau implemented this requirement in § 1026.43(c)(4), which states that a creditor must verify the amounts of income or assets that the creditor relies on under § 1026.43(c)(2)(i) to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. Section 1026.43(c)(4) further states that a creditor may verify the consumer's income using a tax-return transcript issued by the IRS and lists several examples of other records the creditor may use to verify the consumer's income or assets, including, among others, financial institution records. Additionally, § 1026.43(e)(2)(v)(A) provides that a General QM loan is a covered transaction for which the creditor considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan in accordance with § 1026.43(c)(4), as well as § 1026.43(c)(2)(i) and appendix Q.

The Bureau is not proposing to change the text of § 1026.43(c)(4). The Bureau is proposing to add comment 43(c)(4)–4, which would clarify that a creditor does not meet the requirements of § 1026.43(c)(4) if it observes an inflow of funds into the consumer's account without confirming that the funds are income. The proposed comment would also state that, for example, a creditor would not meet the requirements of § 1026.43(c)(4) where it observes an unidentified $5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and not, for example, proceeds from the disbursement of a loan. (As described below in the section-by-section analysis of proposed § 1026.43(e)(2)(v), below, the Bureau is also proposing to amend

the verification requirements in the General QM loan definition.)

The Bureau is proposing to include this clarification as part of its effort to avoid potential compliance uncertainty that could arise from the removal of appendix Q and from the resulting greater reliance on regulation text and commentary to define a creditor's obligations to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. (Other proposed revisions related to this effort are described below with respect to § 1026.43(e)(2)(v).) The Bureau understands, based on outreach and on its experience supervising creditors, that this clarification could be useful to creditors because the Rule includes ''financial institution records'' as one of the examples of records that a creditor may use to verify a consumer's income or assets. As part of their underwriting process, creditors may seek to use transactions in electronic or paper financial records such as consumer account statements to examine inflows and outflows from consumers' accounts. In many cases, there may be sufficient basis in transaction data alone, or in combination with other information, to determine that a deposit or other credit to a consumer's account represents income, such that a creditor's use of the data in an underwriting process is distinguishable from the example in the proposed comment. The Bureau's preliminary view is that this clarification would help creditors understand their verification requirements under the General QM loan definition, given that proposed comment 43(e)(2)(v)(B)–1 would explain that a creditor must verify the consumer's current or reasonably expected income or assets in accordance with § 1026.43(c)(4) and its commentary.[241]

The Bureau requests comment on this proposed new comment. The Bureau also requests comment on whether additional clarifications may be helpful with respect to cash flow underwriting and verifying whether inflows are income under the Rule.

43(e) Qualified Mortgages

43(e)(2) Qualified Mortgage Defined—General

43(e)(2)(v)

As discussed above in part V, the Bureau is proposing to remove the specific DTI limit in § 1026.43(e)(2)(vi). Furthermore, as discussed below in this section-by-section analysis of proposed § 1026.43(e)(2)(v), the Bureau is proposing to require that creditors consider the consumer's DTI ratio or residual income and to remove the appendix Q requirements from § 1026.43(e)(2)(v). The Bureau tentatively concludes that these proposed amendments necessitate additional revisions to clarify a creditor's obligation to consider and verify certain information under the General QM loan definition. Consequently, the Bureau is proposing to amend the consider and verify requirements in § 1026.43(e)(2)(v) and its associated commentary.

TILA section 129C contains several requirements that creditors consider and verify various types of information. In the statute's general ATR provisions, TILA section 129C(a)(1) requires that a creditor make a reasonable and good faith determination, based on ''verified and documented information,'' that a consumer has a reasonable ability to repay the loan. TILA section 129C(a)(3) states that a creditor's ATR determination shall include ''consideration'' of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, DTI ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. TILA section 129C(a)(4) states that a creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's IRS Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. Finally, in the statutory QM definition, TILA section 129C(b)(2)(A)(iii) provides that, for a loan to be a QM, the income and financial resources relied on to qualify the obligors on the loan must be ''verified and documented.''

In the January 2013 Final Rule, the Bureau implemented the requirements to consider and verify various factors for the general ATR standard in § 1026.43(c)(2), (c)(3), (c)(4), and (c)(7). Section 1026.43(c)(2) states that—except as provided in certain other provisions (including the General QM loan definition)—a creditor must consider several specified factors in making its ATR determination. These factors include, among others, the consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan (under § 1026.43(c)(2)(i)); the consumer's current debt obligations, alimony, and child support (§ 1026.43(c)(2)(vi)); and the consumer's monthly DTI ratio or residual income in accordance with § 1026.43(c)(7). Section 1026.43(c)(3) requires a creditor to verify the information the creditor relies on in determining a consumer's repayment ability using reasonably reliable third-party records, with a few specified exceptions. Section 1026.43(c)(3) further states that a creditor must verify a consumer's income and assets that the creditor relies on in accordance with § 1026.43(c)(4). Section 1026.43(c)(4) requires that a creditor verify the amounts of income or assets that the creditor relies on to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. It also provides examples of records the creditor may use to verify the consumer's income or assets.

As noted in part V, the January 2013 Final Rule incorporated some aspects of the general ATR standards into the General QM loan definition, including the requirement to consider and verify income or assets and debt obligations, alimony, and child support. Section 1026.43(e)(2)(v) states that a General QM loan is a covered transaction for which the creditor considers and verifies at or before consummation: (A) The consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with appendix Q, § 1026.43(c)(2)(i), and (c)(4); and (B) the consumer's current debt obligations, alimony, and child support in accordance with appendix Q, § 1026.43(c)(2)(vi) and (c)(3). The Bureau used its adjustment and exception authority under TILA section 129C(b)(3)(B)(i) to require creditors to consider and verify the consumer's debt obligations, alimony, and child support pursuant to the General QM loan definition.

The Bureau proposes to revise § 1026.43(e)(2)(v) to separate and clarify the requirements to consider and verify certain information. Proposed § 1026.43(e)(2)(v)(A) would contain the ''consider'' requirements, and proposed § 1026.43(e)(2)(v)(B) would contain the ''verify'' requirements. Specifically, proposed § 1026.43(e)(2)(v) would state that a General QM loan is a covered

[241] *See* the section-by-section analysis for proposed § 1026.43(e)(2)(v)(B).

transaction for which the creditor: (A) Considers the consumer's income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income, using the amounts determined from § 1026.43(e)(2)(v)(B); and (B) verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with § 1026.43(c)(4), and the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with § 1026.43(c)(3). The regulatory text would also state that, for purposes of § 1026.43(e)(2)(v)(A), the consumer's monthly DTI ratio or residual income is determined in accordance with § 1026.43(c)(7), except that the consumer's monthly payment on the covered transaction, including the monthly payment for mortgage-related obligations, is calculated in accordance with § 1026.43(e)(2)(iv).

As noted above, the Bureau is proposing to remove the specific 43 percent DTI limit in § 1026.43(e)(2)(vi) and the appendix Q requirement in § 1026.43(e)(2)(v). Given that these proposed amendments would change how a creditor would satisfy the General QM loan definition, the Bureau is proposing to amend the consider and verify requirements in § 1026.43(e)(2)(v). Under the Bureau's proposal, the General QM loan definition would no longer include a specific DTI limit in § 1026.43(e)(2)(vi), but a creditor would be required to consider DTI or residual income, debt obligations, alimony, child support, and income or assets under § 1026.43(e)(2)(v). The Bureau tentatively concludes that providing additional explanation of the proposed requirement to consider this information may ease compliance uncertainty. To meet the consider requirement in § 1026.43(e)(2)(v)(A), the proposal would require the creditor to use the amounts determined according to § 1026.43(e)(2)(v)(B). For example, if the creditor relied on assets in its ability-to-repay determination, the creditor could consider current and reasonably expected assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan as calculated under 1026.43(e)(2)(v)(B). The Bureau tentatively concludes that providing additional explanation of the proposed requirement to consider income or assets, debt obligations, alimony, child support, and DTI or residual income may ease compliance uncertainty.

The Bureau is proposing to remove appendix Q and the requirement to use appendix Q from the rule. The Bureau's principal reason for adopting appendix Q in 2013 was to provide clear and specific standards for calculating a consumer's debt, income, and DTI ratio for purposes of comparison with the 43 percent DTI limit and to provide certainty about whether a loan meets the requirements for being a General QM loan. As discussed in more detail below, appendix Q has not provided clear and specific standards, and the Bureau is proposing to remove the 43 percent DTI limit. Accordingly, the Bureau preliminarily concludes that appendix Q, and the requirement to use appendix Q to calculate DTI for purposes of the General QM loan definition, should be removed from the Rule. However, appendix Q currently serves the additional function of specifying what a creditor must do to comply with the requirements of § 1026.43(e)(2)(v) to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. The Bureau is concerned that the rule would create significant compliance uncertainty if it merely removed appendix Q without clarifying how a creditor can evaluate various types of income, assets, and debt.

The Bureau's objective in proposing to clarify the § 1026.43(e)(2)(v) requirements to consider a consumer's income, assets, debt obligations, alimony, and child support is to ensure that a loan for which a creditor disregards these factors cannot obtain QM status, while ensuring that creditors and investors can readily determine if a loan is a QM. The Bureau's primary objective in clarifying the requirement to verify a consumer's income, assets, debt obligations, alimony, and child support is to provide reasonable assurance that only income and assets that exist or will exist are part of a creditor's ATR determination and that none of the consumer's debt obligations, alimony, and child support are excluded from consideration. The Bureau also aims to ensure that the verification requirement provides substantial flexibility for creditors to adopt innovative verification methods, such as the use of bank account data that identifies the source of deposits to determine personal income, while also specifying examples of compliant verification standards to provide greater certainty that a loan has QM status.

As described above, proposed § 1026.43(e)(2)(v)(B) would provide that creditors must verify income, assets, debt obligations, alimony, and child support in accordance with the general ATR verification provisions. Specifically, § 1026.43(e)(2)(v)(B)(1) requires a creditor to verify the consumer's current or reasonably expected income or assets (including any real property attached to the value of the dwelling) that secures the loan in accordance with § 1026.43(c)(4), which states that a creditor must verify such amounts using third-party records that provide reasonably reliable evidence of the consumer's income or assets. Section 1026.43(e)(2)(v)(B)(2) requires a creditor to verify the consumer's current debt obligations, alimony, and child support in accordance with § 1026.43(c)(3), which states that a creditor must verify such amounts using reasonably reliable third-party records. So long as a creditor complies with the provisions of § 1026.43(c)(3) with respect to debt obligations, alimony, and child support and § 1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria. By incorporating § 1026.43(c)(3) and (c)(4) in § 1026.43(e)(2)(v)(B), the Bureau seeks to maintain in the General QM loan verification requirements the flexibility inherent to these ATR provisions. At the same time, the Bureau seeks to provide greater certainty to creditors regarding the General QM loan verification requirements by explaining that a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with any one of certain verification standards the Bureau would specify.

The Bureau also proposes revisions to the commentary for § 1026.43(e)(2)(v). The Bureau proposes to remove comments 43(e)(2)(v)–2 and –3. In general, these comments currently clarify that creditors must consider and verify any income as well as any debt or liability specified in appendix Q and that, while other income and debt may be considered and verified, such income and debt would not be included in the DTI ratio determination required by § 1026.43(e)(2)(vi). The Bureau preliminarily concludes that these comments would no longer be needed in light of the proposed revisions to § 1026.43(e)(2)(v). The first sentence of each of these two comments merely restates language in the regulatory text. The second sentence would no longer be needed because the Bureau is proposing to remove references to appendix Q in § 1026.43(e)(2)(v). And the third sentence would no longer be needed because the Bureau is proposing

to remove the DTI limit in § 1026.43(e)(2)(vi).

43(e)(2)(v)(A)

As explained above, the Bureau proposes to revise § 1026.43(e)(2)(v), which currently includes the requirement to consider and verify the consumer's reasonably expected income or assets, debt obligations, alimony, and child support, as part of the QM definition. The Bureau is proposing to separate the consider and verify requirements in § 1026.43(e)(2)(v) into § 1026.43(e)(2)(v)(A) for the ''consider'' requirements and § 1026.43(e)(2)(v)(B) for the ''verify'' requirements. The Bureau proposes to revise § 1026.43(e)(2)(v)(A) to provide that a General QM loan is a covered transaction for which the creditor, at or before consummation, considers the consumer's income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income, using the amounts determined from proposed § 1026.43(e)(2)(v)(B).

For purposes of § 1026.43(e)(2)(v)(A), the Bureau proposes to prescribe the same method for the creditor to calculate the consumer's monthly payment that is currently prescribed in § 1026.43(e)(2)(vi), in which the consumer's monthly DTI ratio is determined using the consumer's monthly payment on the covered transaction and any simultaneous loan that the creditor knows or has reason to know will be made. The Bureau is proposing to eliminate appendix Q and the DTI limit in § 1026.43(e)(2)(vi). To make clear that any DTI calculation must incorporate alimony and child support—which is currently facilitated through appendix Q—the Bureau is proposing to cross-reference the § 1026.43(c)(7) requirements. In order to maintain the monthly DTI ratio calculation method from § 1026.43(e)(2)(vi)(B), the Bureau is proposing to move the text prescribing the calculation method from § 1026.43(e)(2)(vi)(B) to § 1026.43(e)(2)(v)(A). The Bureau is proposing to expand the § 1026.43(c)(7) cross-reference and the monthly payment calculation method to residual income given that the proposal allows creditors the option of considering residual income in lieu of DTI. The Bureau tentatively concludes that the reference to simultaneous loans is not necessary because the cross-reference to § 1026.43(c)(7) would require creditors to consider simultaneous loans.

Proposed § 1026.43(e)(2)(v)(A) would revise existing § 1026.43(e)(2)(v) by requiring a creditor to consider DTI or residual income in addition to income or assets, debt obligations, alimony, and child support, as determined under proposed § 1026.43(e)(2)(v)(B). The Bureau tentatively concludes that the amounts considered under § 1026.43(e)(2)(v)(A) should be consistent with the amounts verified according to § 1026.43(e)(2)(v)(B). For example, if the creditor relies on assets in its ability-to-repay determination and seeks to comply with the consider requirement under § 1026.43(e)(2)(v)(A), the creditor could consider current and reasonably expected assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan as calculated under 1026.43(e)(2)(v)(B).

The Bureau is proposing the revision to add DTI to ensure that, although the Bureau is proposing to eliminate the DTI limit in § 1026.43(e)(2)(vi), creditors still must consider DTI (or residual income, as discussed below) as part of the General QM loan definition. The Bureau continues to believe that DTI is an important factor in assessing a consumer's ability to repay. Comments responding to the 2019 ANPR indicate that creditors generally use DTI as part of their underwriting process. These comments indicate that requiring as part of the General QM loan definition that creditors consider DTI when determining a consumer's ability to repay—even if the QM definition no longer includes a specific DTI limit—would be consistent with current market practices. In a final rule issued in June 2013 (June 2013 Final Rule), the Bureau created an exception from the DTI limit requirement for small creditors that hold QMs on portfolio.[242] The Bureau determined that, even though the DTI limit was not appropriate for a small creditor that holds loans on their portfolio, DTI (or residual income) was still a fundamental part of the creditor's ATR determination.[243] The Bureau tentatively concludes that requiring creditors to consider DTI as part of the QM definition is necessary and appropriate to ensure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan.

Proposed § 1026.43(e)(2)(v)(A) would require creditors to consider either a consumer's monthly residual income or DTI. The January 2013 Final Rule adopted a bright-line DTI limit for the General QM loan definition under § 1026.43(e)(2)(vi), but the Bureau concluded that it did not have enough information to establish a bright-line residual income limit as an alternative to the DTI limit.[244] In comparison, TILA and the January 2013 Final Rule allow creditors to consider either residual income or DTI as part of the general ATR requirements in § 1026.43(c)(2)(vii), and the June 2013 Final Rule allows small creditors originating QM loans pursuant to § 1026.43(e)(5) to consider DTI or residual income. Given the Bureau's proposal to eliminate the bright-line DTI limit in § 1026.43(e)(2)(vi), comments from stakeholders discussed in the January 2013 Final Rule regarding the value of residual income in determining ability to repay,[245] and the Bureau's determination in the June 2013 Final Rule that residual income can be a valuable measure of ability to repay, the Bureau tentatively concludes that allowing creditors the option to consider (but not requiring them to consider) residual income in lieu of DTI would allow space for creditor flexibility and innovation and is necessary and proper to preserve access to responsible, affordable mortgage credit.

The Bureau is proposing the requirement that the creditor consider the consumer's debt obligations, alimony, child support, income or assets, and monthly DTI or residual income under § 1026.43(e)(2)(A) pursuant to its adjustment and

[242] 78 FR 35430 (June 12, 2013).

[243] *Id.* at 35487 (''The Bureau continues to believe that consideration of debt-to-income ratio or residual income is fundamental to any determination of ability to repay. A consumer is able to repay a loan if he or she has sufficient funds to pay his or her other obligations and expenses and still make the payments required by the terms of the loan. Arithmetically comparing the funds to which a consumer has recourse with the amount of those funds the consumer has already committed to spend or is committing to spend in the future is necessary to determine whether sufficient funds exist.'').

[244] 78 FR 6408, 6528 (Jan. 30, 2013) (''Unfortunately, however, the Bureau lacks sufficient data, among other considerations, to mandate a bright-line rule based on residual income at this time.'').

[245] *Id.* at 6527 (''Another consumer group commenter argued that residual income should be incorporated into the definition of QM. Several commenters suggested that the Bureau use the general residual income standards of the VA as a model for a residual income test, and one of these commenters recommended that the Bureau coordinate with FHFA to evaluate the experiences of the GSEs in using residual income in determining a consumer's ability to repay.''); *id.* at 6528 (''Finally, the Bureau acknowledges arguments that residual income may be a better measure of repayment ability in the long run. A consumer with a relatively low household income may not be able to afford a 43 percent debt-to-income ratio because the remaining income, in absolute dollar terms, is too small to enable the consumer to cover his or her living expenses. Conversely, a consumer with a relatively high household income may be able to afford a higher debt ratio and still live comfortably on what is left over.'').

exception authority under TILA section 129C(b)(3)(B)(i). The Bureau preliminarily finds that this addition to the General QM loan criteria is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner that is consistent with the purposes of TILA section 129C and necessary and appropriate to effectuate the purposes of TILA section 129C, which includes assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan. The Bureau also incorporates this requirement pursuant to its authority under TILA section 105(a) to issue regulations that, among other things, contain such additional requirements, other provisions, or that provide for such adjustments for all or any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, which include the above purpose of section 129C. The Bureau preliminarily finds that including consideration of DTI or residual income in the General QM loan criteria is necessary and proper to fulfill the purpose of assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan. The Bureau also believes that § 1026.43(e)(2)(A) is authorized by TILA section 129C(b)(2)(A)(vi), which permits, but does not require, the Bureau to adopt guidelines or regulations relating to debt-to-income ratios or alternative measures of ability to pay regular expenses after payment of total monthly debt.

The Bureau is proposing to revise § 1026.43(e)(2)(v)(A) to incorporate the monthly payment calculation method from current § 1026.43(e)(2)(vi)(B). In order to preserve the incorporation of alimony and child support in this calculation—which currently is facilitated by appendix Q—the Bureau is proposing to cross-reference the requirement in § 1026.43(c)(7). The cross-reference also incorporates simultaneous loans. Additionally, given the proposal to allow creditors to consider residual income in lieu of monthly DTI, the Bureau is proposing to apply this calculation requirement to residual income. This proposed revision would ensure that the mortgage payment and the payment on any simultaneous loans are included in a manner consistent with § 1026.43(e)(2)(iv) both when a creditor considers DTI or residual income. The Bureau tentatively concludes that requiring this pre-existing calculation method for DTI and residual income is appropriate because it would assist creditors in complying with the consider requirement and would assist in enforcement of the rule because it would encourage consistency in DTI and residual income calculations.

To clarify the proposed requirements in § 1026.43(e)(2)(v)(A), the Bureau proposes to add comments 43(e)(2)(v)(A)–1 to –3. The Bureau proposes these new comments because they may be appropriate to ensure that the rule's requirement to consider the consumer's debt obligations, alimony, child support, income or assets, and DTI ratio or residual income is clear and detailed enough to provide creditors with sufficient certainty about whether a loan satisfies the General QM loan definition. Under the proposal, the General QM loan definition would no longer include a specific DTI limit in § 1026.43(e)(2)(vi) and would require instead that creditors consider DTI or residual income, along with debt and income. By requiring calculation of DTI and comparing that calculation to a DTI limit, the existing DTI limit provides creditors with a bright-line rule demonstrating how to consider the consumer's income or assets, debt, and DTI when making its ATR determination. Without providing additional explanation of the proposed requirement to consider DTI or residual income, along with debt and income, eliminating the DTI limit could create compliance uncertainty that could leave some creditors reluctant to originate QM loans to consumers and could allow other creditors to originate risky loans without considering DTI or residual income and still receive QM status. In addition, without additional explanation, it may be difficult to enforce the requirement to consider income or assets, debt obligations, alimony, child support, and monthly DTI or residual income. Several ANPR commenters requested that the Bureau maintain the ''consider'' requirement in the General QM loan definition and clarify this requirement. Accordingly, the Bureau tentatively concludes that it is appropriate to provide additional explanation for the consider requirement in § 1026.43(e)(2)(v) in proposed comments 43(e)(2)(v)(A)–1 to –3.

Proposed comment 43(e)(2)(v)(A)–1 would explain that, in order to comply with the requirement in § 1026.43(e)(2)(v)(A) to consider income or assets, debt obligations, alimony, child support, and DTI ratio or residual income, a creditor must take into account income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income in its ATR determination. In making this determination, creditors must use the amounts determined under the requirement to verify the consumer's current or reasonably expected income or assets and the consumer's current debt obligations, alimony, and child support in § 1026.43(e)(2)(v)(B). The proposed comment would further explain that, according to requirements in § 1026.25(a) to retain records showing compliance with the Rule, a creditor must retain documentation showing how it took into account these factors in its ATR determination. By citing the record retention requirement, this comment would clarify that to comply with § 1026.43(e)(2)(v)(A) and obtain QM status, a creditor must document how the required factors were taken into account in the creditor's ATR determination. If a creditor ignores the required factors of income or assets, debt obligations, alimony, child support, and DTI or residual income—or otherwise did not take them into account as part of its ATR determination—the loan would not be eligible for QM status. While creditors must take these factors into account and retain documentation of how they did so, the Bureau emphasizes that creditors would have great latitude in how they took these factors into account and that they would be able to document how they did so in a simple and non-burdensome manner, such as a creditor documenting that it followed its standard procedures for considering these factors in connection with a specific loan. As an example of the type of documents that a creditor might use to show that income or assets, debt obligations, alimony, child support, and DTI or residual income were taken into account, the proposed comment cites an underwriter worksheet or a final automated underwriting system certification, alone or in combination with the creditor's applicable underwriting standards, that shows how these required factors were taken into account in the creditor's ability-to-repay determination.

To reinforce that the QM definition no longer would include a specific DTI limit, proposed comment 43(e)(2)(v)(A)–2 explains that creditors have flexibility in how they consider these factors and that the proposed rule does not prescribe a specific monthly DTI or residual income threshold. To assist creditors, the Bureau is proposing two examples of how to comply with the requirement to consider DTI. Proposed comment 43(e)(2)(v)(A)–2 provides an example in which a creditor considers

monthly DTI or residual income by establishing monthly DTI or residual income thresholds for its own underwriting standards and documenting how those thresholds were applied to determine the consumer's ability to repay. Given that some creditors use several thresholds that depend on any relevant compensating factors, the Bureau is also proposing a second example. The second example in the comment would provide that a creditor may also consider DTI or residual income by establishing monthly DTI or residual income thresholds and exceptions to those thresholds based on other compensating factors, and documenting application of the thresholds along with any applicable exceptions. The Bureau tentatively concludes that both examples are consistent with current market practices and therefore providing these examples would clarify a loan's QM status without imposing a significant burden on the market.

The Bureau is aware that some creditors look to factors in addition to income or assets, debt obligations, alimony, child support, and DTI or residual income in determining a consumer's ability to repay. For example, the Bureau is aware that some creditors may look to net cash flow into a consumer's deposit account as a method of residual income analysis. As the Bureau understands it, a net cash flow calculation typically consists of residual income, further reduced by consumer expenditures other than those already subtracted from income in calculating the consumer's residual income. Accordingly, the result of a net cash flow calculation may be useful in to assessing the adequacy of a particular consumer's residual income.

Proposed comment 43(e)(2)(v)(A)–3 would explain that the requirement in § 1026.43(e)(2)(v)(A) to consider income or assets, debt obligations, alimony, child support, and monthly DTI or residual income does not preclude the creditor from taking into account additional factors that are relevant in making its ability-to-repay determination. The proposed comment further provides that creditors may look to comment 43(c)(7)–3 for guidance on considering additional factors in determining the consumer's ATR. Comment 43(c)(7)–3 explains that creditors may consider additional factors when determining a consumer's ability to repay and provides an example of looking to consumer assets other than the value of the dwelling, such as a savings account.

The Bureau seeks comment on proposed § 1026.43(e)(2)(v)(A) and the related commentary. The Bureau specifically seeks comment on whether the proposed commentary provides sufficient clarity as to what creditors must do to comply with the requirement to consider income or assets, debt obligations, alimony, child support, and DTI or residual income, and whether it creates impediments to consideration of other factors or data in making an ATR determination. The Bureau also seeks comment on whether it should retain the monthly payment calculation method for DTI, which it is proposing to move from § 1026.43(e)(2)(vi)(B) to proposed § 1026.43(e)(2)(v)(A).

The Bureau is proposing revisions to § 1026.43(e)(2)(v)(A) and related commentary as part of the proposal to eliminate the specific DTI limit. In amending the General QM loan definition under § 1026.43(e)(2), Bureau is concerned about balancing various factors, including the need for clarity regarding QM status and for flexibility as market underwriting practices evolve, while also trying to ensure that creditors making loans that receive QM status have considered the consumers' financial capacity and thus should receive a presumption of compliance with the ATR requirements. In particular, the Bureau is concerned about the potential that the price-based approach may permit some loans to receive QM status, even if creditors may have originated those loans without meaningfully considering the consumer's financial capacity because they believe their risk of loss may be limited by factors like a rising housing price environment or the consumer's existing equity in the home. As discussed in the January 2013 Final Rule, the Bureau is aware of concerns about creditors relying on factors related to the value of the dwelling, like LTV ratio, and how such reliance may have contributed to the mortgage crisis.[246]

Given these concerns, the Bureau also seeks comment on whether proposed § 1026.43(e)(2)(v)(A) and its associated commentary sufficiently address the risk that loans with a DTI that is so high or residual income that is so low that a consumer may lack ability to repay can obtain QM status. In particular, the Bureau seeks comment on whether the Rule should provide examples in which a creditor has not considered the required factors and, if so, what may be appropriate examples. The Bureau also requests comment on whether the Rule should provide that a creditor does not appropriately consider DTI or residual income if a very high DTI ratio or low residual income indicates that the consumer lacks ability to repay but the creditor disregards this information and instead relies on the consumer's expected or present equity in the dwelling, such as might be identified through the consumer's LTV ratio. The Bureau also requests comment on whether the Rule should specify which compensating factors creditors may or may not rely on for purposes of determining the consumer's ability to repay. The Bureau also seeks comment on the tradeoffs of addressing these ability-to-repay concerns with undermining the clarity of a loan's QM status. The Bureau also seeks comment on the impact of the COVID–19 pandemic on how creditors consider income or assets, debt obligations, alimony, child support, and monthly DTI ratio or residual income.

43(e)(2)(v)(B)

For the reasons discussed below, the Bureau proposes to revise § 1026.43(e)(2)(v)(B) to provide that a General QM loan is a covered transaction for which the creditor, at or before consummation, verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party

[246] *See id.* at 6561 (Jan. 30, 2013) (''In some cases, lenders and borrowers entered into loan contracts on the misplaced belief that the home's value would provide sufficient protection. These cases included subprime borrowers who were offered loans because the lender believed that the house value either at the time of origination or in the near future could cover any default. Some of these borrowers were also counting on increased housing values and a future opportunity to refinance; others likely understood less about the transaction and were at an informational disadvantage relative to the lender.''); *id.* at 6564 (''During those periods there were likely some lenders, as evidenced by the existence of no-income, no-asset (NINA) loans, that used underwriting systems that did not look at or verify income, debts, or assets, but rather relied primarily on credit score and LTV.''); *id.* at 6559 (''If the lender is assured (or believes he is assured) of recovering the value of the loan by gaining possession of the asset, the lender may not pay sufficient attention to the ability of the borrower to repay the loan or to the impact of default on third parties. For very low LTV mortgages, *i.e.,* those where the value of the property more than covers the value of the loan, the lender may not care at all if the borrower can afford the payments. Even for higher LTV mortgages, if prices are rising sharply, borrowers with even limited equity in the home may be able to gain financing since lenders can expect a profitable sale or refinancing of the property as long as prices continue to rise. . . . In all these cases, the common problem is the failure of the originator or creditor to internalize particular costs, often magnified by information failures and systematic biases that lead to underestimation of the risks involved. The first such costs are simply the pecuniary costs from a defaulted loan—if the loan originator or the creditor does not bear the ultimate credit risk, he or she will not invest sufficiently in verifying the consumer's ability to repay.'').

records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with § 1026.43(c)(4) and verifies the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with § 1026.43(c)(3).

To clarify this requirement, the Bureau proposes to add comments 43(e)(2)(v)(B)–1 through –3. Proposed comment 43(e)(2)(v)(B)–1 would explain that § 1026.43(e)(2)(v)(B) does not prescribe specific methods of underwriting that creditors must use. It would provide that § 1026.43(e)(2)(v)(B)(*1*) requires a creditor to verify the consumer's current or reasonably expected income or assets (including any real property attached to the value of the dwelling) that secures the loan in accordance with § 1026.43(c)(4), which states that a creditor must verify such amounts using third-party records that provide reasonably reliable evidence of the consumer's income or assets. The proposed comment would provide further that § 1026.43(e)(2)(v)(B)(*2*) requires a creditor to verify the consumer's current debt obligations, alimony, and child support in accordance with § 1026.43(c)(3), which states that a creditor must verify such amounts using reasonably reliable third-party records. Proposed comment 43(e)(2)(v)(B)–1 would then clarify that, so long as a creditor complies with the provisions of § 1026.43(c)(3) with respect to debt obligations, alimony, and child support and § 1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria.

Proposed comment 43(e)(2)(v)(B)–2 would clarify that ''current and reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan'' is determined in accordance with § 1026.43(c)(2)(i) and its commentary and that ''current debt obligations, alimony, and child support'' has the same meaning as under § 1026.43(c)(2)(vi) and its commentary. The proposed comment would further clarify that § 1026.43(c)(2)(i) and (vi) and the associated commentary apply to a creditor's determination with respect to what inflows and property it may classify and count as income or assets and what obligations it must classify and count as debt obligations, alimony, and child support, pursuant to its compliance with § 1026.43(e)(2)(v)(B).

The Bureau notes that proposed comments 43(e)(2)(v)(B)–1 and –2 would enable creditors to take into account the effects of public emergencies that affect consumers' incomes when verifying a particular consumer's income. These proposed comments would clarify that § 1026.43(e)(2)(v)(B) does not prescribe precisely how creditors must verify the consumer's income or assets, debt obligations, alimony, and child support—merely that they must do so using third-party records that are reasonably reliable. As such, creditors would have the flexibility to adjust their verification methods in the event of an emergency, such as the COVID–19 pandemic, that affects consumer incomes.

Proposed comment 43(e)(2)(v)(B)–3.i would explain further that a creditor also complies with § 1026.43(e)(2)(v)(B) if it satisfies one of the specific verification standards the Bureau would set forth in the rule. These standards may include relevant provisions in specified versions of the Fannie Mae Single Family Selling Guide,[247] the Freddie Mac Single-Family Seller/Servicer Guide,[248] the FHA's Single Family Housing Policy Handbook,[249] the VA's Lenders Handbook,[250] and the USDA's Field Office Handbook for the Direct Single Family Housing Program [251] and the Handbook for the Single Family Guaranteed Loan Program, current as of the date of this proposal's public release.[252] The Bureau seeks comment on whether these or other verification standards should be incorporated into proposed comment 43(e)(2)(v)(B)–3.i.

Proposed comment 43(e)(2)(v)(B)–3.ii would clarify that a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with requirements in the standards listed in comment 43(e)(2)(v)(B)–3 for creditors to verify income or assets, debt obligations, alimony and child support using specified guides or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support. For example, such requirements would include a specified standard's definition of the term ''self-employment income,'' description of when the creditor may use self-employment income as qualifying income for a mortgage, and explanation of how the creditor must document self-employment income.

Proposed comment 43(e)(2)(v)(B)–3.iii would clarify that, for purposes of compliance with § 1026.43(e)(2)(v)(B), a creditor need not comply with requirements in the standards listed in comment 43(e)(2)(v)(B)–3.i other than those that require creditors to verify income, assets, debt obligations, alimony, and child support using specified documents or to classify particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support. For example, a standard the Bureau would specify may include information on the use of DTI ratios. Because such information is not a requirement to verify income, assets, debt obligations, alimony and child support using specified documents or to classify particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support, a creditor would need not comply with this requirement to be eligible to receive a safe harbor as described in comment 43(e)(2)(v)(B)–3.i.

Proposed comment 43(e)(2)(v)(B)–3.iv would clarify that a creditor also complies with § 1026.43(e)(2)(v)(B) if it complies with revised versions of standards that the Bureau would specify in comment 43(e)(2)(v)(B)–3, provided that the two versions are substantially similar. This provision is intended to allow creditors to use new versions of standards without the Bureau needing to amend the commentary unless the new versions of the standards deviate in important respects from the older versions of the standards.

Finally, proposed comment 43(e)(2)(v)(B)–3.v would clarify that a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with the verification requirements in one or more of the standards the Bureau would specify in comment 43(e)(2)(v)(B)–3.i. The proposed comment would provide further that a creditor may, but need not, comply with § 1026.43(e)(2)(v)(B) by complying with the verification requirements from more than one standard (in other words, by ''mixing and matching'' verification requirements). For example, if a creditor complies with the requirements in one of the standards the Bureau would

[247] Fed. Nat'l Mortgage Assoc., Single Family Selling Guide (2020), *https://selling-guide.fanniemae.com/.*

[248] Fed. Home Loan Mort. Corp., The Single-Family Seller/Servicer Guide (2020), *https://guide.freddiemac.com/app/guide/.*

[249] U.S. Dep't of Hous. & Urban Dev., Single Family Housing Policy Handbook 4000.1 (2019), *https://www.hud.gov/program_offices/housing/sfh/handbook_4000-1.*

[250] U.S. Dept. of Veterans Affairs, Lenders Handbook-VA Pamphlet 26–7 (2019), *https://www.benefits.va.gov/WARMS/pam26_7.asp.*

[251] U.S. Dep't of Agric. Rural Hous. Serv., Direct Single Family Housing Loans and Grants-Field Office Handbook HB–1–3550 (2019), *https://www.rd.usda.gov/resources/directives/handbooks#hb13555.*

[252] U.S. Dep't of Agric. Rural Hous. Serv., Guaranteed Loan Program Technical Handbook HB–1–3555 (2020), *https://www.rd.usda.gov/resources/directives/handbooks#hb13555.*

specify for when the creditor may use ''self-employment income,'' and also complies with the requirements in a different standard the Bureau would specify regarding certain vested assets, the creditor complies with § 1026.43(e)(2)(v)(B) and receives a safe harbor as described in comment 43(e)(2)(v)(B)–3.i with respect to those determinations. A creditor that chooses to comply with the verification requirements from more than one standard need not satisfy all of the verification requirements in each of the standards it uses.

The Bureau proposes these revisions because it preliminarily concludes that they may help ensure that the Rule's verification requirements are clear and detailed enough to provide creditors with sufficient certainty about whether a loan satisfies the General QM loan definition. Without such certainty, creditors may be less likely to provide General QM loans to consumers, reducing the availability of responsible, affordable mortgage credit to consumers. The Bureau also seeks to ensure that the Rule's verification requirements are flexible enough to adapt to emerging issues with respect to the treatment of certain types of debt or income, advancing the provision of responsible, affordable credit to consumers.

To further these objectives, the Bureau is proposing to remove the requirement that creditors verify the consumer's income or assets, debt obligations, alimony, and child support in accordance with appendix Q and to add commentary clarifying that a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with verification standards the Bureau would specify. The Bureau encourages stakeholders to develop additional verification standards that the Bureau could incorporate into the safe harbor set forth in proposed comment 43(e)(2)(v)(B)–3. Stakeholder standards also could incorporate, in whole or in part, any standards that the Bureau specifies as providing a safe harbor, including mixing and matching these standards. The Bureau thus welcomes the submission of stakeholder-developed verification standards and would review any such standards for potential inclusion in the safe harbor.

In the January 2013 Final Rule, the Bureau adopted the requirement that creditors verify the consumer's income or assets, debt obligations, alimony, and child support in accordance with appendix Q. The Bureau believed this requirement would provide certainty to creditors as to whether a loan meets the General QM loan definition and would not deter creditors from providing QMs to consumers.[253] However, appendix Q has not achieved this goal. The Assessment Report highlighted three concerns with appendix Q. First, the Report stated that appendix Q lacks the high degree of specific detail that is provided by, for example, Fannie Mae's Seller Guide and Freddie Mac's Seller/Servicer Guide.[254] Second, the Report noted that there is a perceived lack of clarity in appendix Q. As the Report noted, commenters on the Assessment RFI stated that appendix Q ''is ambiguous and leads to uncertainty'' and is ''confusing and unworkable,'' and that ''additional guidance . . . is needed.'' [255] Third, the Report noted that appendix Q has been static since its adoption, while the GSEs regularly update and adjust their guidelines in response to, among other things, emerging issues with respect to the treatment of certain types of debt or income.[256] The Assessment Report found that such concerns ''may have contributed to investors'—and at least derivatively, creditors'—preference'' for Temporary GSE QM loans instead of originating loans under the General QM loan definition.[257] Commenters responding to the ANPR also raised similar concerns, but some commenters also recommended maintaining appendix Q as an option for compliance.

As described above in part III, the ANPR solicited comment on whether the rule should retain appendix Q as the standard for calculating and verifying debt and income.[258] Nearly all commenters agreed that appendix Q in its existing form is insufficient—specifically, that the requirements lacked clarity in certain areas, particularly with respect to the application of the standards to consumers who are self-employed or otherwise have non-traditional income. These commenters stated that this lack of clarity leaves creditors uncertain of the QM status of some loans. Commenters also criticized appendix Q for being overly prescriptive and outdated in other areas and therefore lacking the flexibility to adapt to changing market conditions. Commenters suggested that the Bureau supplement appendix Q or replace it with reasonable alternatives that allow for more flexibility, such as a general reasonability standard for verifying income and debt or verification standards issued by the GSEs, FHA, USDA, or VA. Commenters also stated that appendix Q hampers innovation because it is incompatible with practices such as digital underwriting. Although most commenters advocated for elimination of appendix Q, the commenters that advocated for retaining appendix Q generally suggested the Bureau should revise appendix Q to modernize the standards and ease industry compliance.

The Bureau tentatively determines that, due to the well-founded and consistent concerns described above, appendix Q does not provide sufficient compliance certainty to creditors and does not provide flexibility to adapt to emerging issues with respect to the treatment of certain types of debt or income categories. The Bureau recognizes that some findings in the Assessment Report suggest that the issues raised by creditors with respect to appendix Q do not appear to have had a substantial impact for certain loans. For example, although creditors have stated that it may be difficult to comply with certain appendix Q requirements for self-employed borrowers, the Assessment Report noted that application data indicated that the approval rates for non-high DTI, non-GSE eligible self-employed borrowers have decreased by only two percentage points since the January 2013 Final Rule became effective.[259] The Bureau tentatively concludes, however, that this limited decrease in approvals for such applications does not undermine creditors' concerns that appendix Q's definitions of debt and income are rigid and difficult to apply and do not provide the level of compliance certainty that the Bureau anticipated in the January 2013 Final Rule. Additionally, the Assessment Report showed that about 40 percent of respondents to a lender survey indicated that they ''often'' or ''sometimes'' originate non-QM loans where the borrower could not provide documentation required by appendix Q. The Bureau concluded that these results left open the possibility that appendix Q requirements may have had an impact on access to credit.[260]

The Bureau thus proposes to remove the appendix Q requirements from

[253] 78 FR 6408, 6523 (Jan. 30, 2013).

[254] *See* Assessment Report, *supra* note 58, at 193.

[255] *Id.*

[256] *Id.* at 193–94.

[257] *Id.* at 193.

[258] Specifically, the Bureau sought comment on whether the rule should retain appendix Q as the standard for verification if the rule retains a direct measure of a consumer's personal finances for General QM. Even though the Bureau is proposing to remove the DTI ratio requirement, the question about retention of appendix Q remains relevant because the proposal would require creditors to verify income, assets, debt obligations, alimony, and child support.

[259] *See* Assessment Report, *supra* note 58, at 11.

[260] *See id.* at 155.

§ 1026.43(e)(2)(v), and to remove appendix Q from Regulation Z entirely. The Bureau proposes to remove appendix Q entirely in light of concerns from creditors and investors that its perceived inflexibility, ambiguity, and static nature result in standards that are both confusing and outdated. The Bureau understands it would be time- and resource-intensive to revise appendix Q in a manner that would resolve these concerns. The Bureau tentatively concludes that a more efficient and practicable solution is to propose to remove appendix Q entirely.

As described above, the proposal would instead provide that creditors must verify income, assets, debt obligations, alimony, and child support in accordance with the general ATR verification provisions. The proposal would also provide a safe harbor for compliance with § 1026.43(e)(2)(v)(B) if a creditor complies with verification requirements in standards the Bureau would specify in comment 43(e)(2)(v)(B)–3. Because the Bureau believes that the general ATR verification provisions and external standards the Bureau would specify would provide a workable approach, and because the Bureau preliminarily agrees that the existing concerns with appendix Q discussed above have merit, the Bureau is not proposing to retain appendix Q as an option for creditors to comply with the requirements of § 1026.43(e)(2)(v) to consider and verify a consumer's income, assets, debt obligations, alimony, and child support. As proposed comment 43(e)(2)(v)(B)–1 makes clear, creditors would still be required to verify the consumer's income or assets in accordance with § 1026.43(c)(4) and its commentary and verify the consumer's current debt obligations, alimony, and child support in accordance with § 1026.43(c)(3) and its commentary.

As noted above, the proposal would also provide a safe harbor for compliance with § 1026.43(e)(2)(v)(B) where a creditor complies with verification requirements in standards the Bureau specifies. These may include relevant provisions from Fannie Mae's Single Family Selling Guide, Freddie Mac's Single-Family Seller/Servicer Guide, FHA's Single Family Housing Policy Handbook, the VA's Lenders Handbook, and the USDA's Field Office Handbook for the Direct Single Family Housing Program as well as its Handbook for the Single Family Guaranteed Loan Program, current as of this proposal's public release. All of these verification standards are available to the public for free online.[261] As discussed above, the Bureau is also open to including stakeholder-developed verification standards among this list of guides such that a creditor's compliance with such verification standards would provide conclusive evidence of compliance with § 1026.43(e)(2)(v)(B).

The Bureau tentatively determines, based on extensive public feedback and its own experience and review, that external standards appear reasonable and would provide creditors with substantially greater certainty about whether many loans satisfy the General QM loan definition—particularly with respect to verifying income for self-employed consumers, consumers with part-time employment, and consumers with irregular or unusual income streams. The Bureau tentatively determines that these types of income would be addressed more fully by certain external standards than by appendix Q. The Bureau tentatively determines that, as a result, this proposal would increase access to responsible, affordable credit for consumers.

The Bureau emphasizes that a creditor would not be required to comply with any of the verification requirements in the standards the Bureau would specify in comment 43(e)(2)(v)(B)–3.i in order to comply with § 1026.43(e)(2)(v)(B). Rather, the Bureau is proposing to clarify that compliance with these standards constitutes compliance with the verification requirements of § 1026.43(c)(3) and (c)(4) and their commentary, which generally require creditors to verify income, assets, debt obligations, alimony, and child support using reasonably reliable third-party records. The Bureau tentatively determines that this would help address the concerns of many creditors and commenters that appendix Q has not facilitated adequate compliance certainty.

The Bureau also tentatively determines that the proposal would provide creditors with the flexibility to develop other methods of compliance with the verification requirements of § 1026.43(e)(2)(v)(B), consistent with § 1026.43(c)(3) and (c)(4) and their commentary, an option that the Bureau intends to address the concerns of creditors and commenters that found appendix Q to be too rigid or prescriptive. As explained in proposed comment 43(e)(2)(v)(B)–1, § 1026.43(e)(2)(v)(B) does not prescribe specific methods of underwriting, and so long as a creditor complies with § 1026.43(c)(3) and (c)(4), the creditor is permitted to use any reasonable verification methods and criteria. Furthermore, as proposed comment 43(e)(2)(v)(B)–3.v would clarify, creditors would have the flexibility to ''mix and match'' the verification requirements in the standards the Bureau would specify in comment 43(e)(2)(v)(B)–3.i, and receive a safe harbor with respect to verification that is made consistent with those standards.

The Bureau also proposes to explain in proposed comment 43(e)(2)(v)(B)–3.iv that a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with revised versions of the standards the Bureau would specify in comment 43(e)(2)(v)(B)–3.i, provided that the two versions are substantially similar. Many of the standards that the Bureau could specify in comment 43(e)(2)(V)(B)–3.i, such as GSE and Federal agency standards, are regularly updated in response to emerging issues with respect to the treatment of certain types of debt or income. This proposed comment would explain that the safe harbor described in comment 43(e)(2)(v)(B)–3.i applies not only to verification requirements in the specific versions of the standards listed, but also revised versions of these standards, as long as the revised version is substantially similar.

The Bureau is aware, based on comments received on the ANPR, that some creditors would prefer that compliance with *any* future version of the standards the Bureau specifies, rather than just the versions of those standards the Bureau would specify in comment 43(e)(2)(v)(B)–3.i (as well as any substantially similar version, under proposed comment 43(e)(2)(v)(B)–3.iv), be automatically deemed to constitute compliance with the verification requirements of § 1026.43(c)(3) and (c)(4). However, such an approach would mean that any future revisions to those standards by the third parties that issue them could cause significant changes in the creditor obligations and consumer protections under the Rule without review by the Bureau. For this reason, the Bureau is not proposing such an approach.

[261] The current versions of the guides (as of June 17, 2020) are available on the respective Federal agency and GSE websites. The current versions of the Federal agency guides noted above will be posted with the proposed rule on *https://www.regulations.gov*. In the event that the GSEs replace the current versions of the guides noted above with new versions of the guides on their websites during the comment period, the version current as of June 17, 2020 of Fannie Mae's Single Family Selling Guide will be available at *http://www.allregs.com/tpl/public/fnma_freesiteconv_tll.aspx*, and the version current as of June 17, 2020 of Freddie Mac's Single-Family Seller/Servicer Guide will be available at *https://www.allregs.com/tpl/public/fhlmc_freesite_tll.aspx*.

As in the January 2013 Final Rule, the Bureau is proposing to incorporate the requirement that the creditor verify the consumer's current debt obligations, alimony, and child support into the definition of a General QM loan in § 1026.43(e)(2) pursuant to its authority under TILA section 129C(b)(3)(B)(i). The Bureau is also proposing the revisions to the commentary to § 1026.43(e)(2)(v)(B)—including the clarification that a creditor complies with the General QM loan verification requirement where it complies with certain verification standards issued by third parties that the Bureau would specify—pursuant to its authority under TILA section 129C(b)(3)(B)(i). The Bureau tentatively finds that these provisions would be necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner that is consistent with the purposes of TILA section 129C and necessary and appropriate to effectuate the purposes of TILA section 129C, which includes assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan.

The Bureau also proposes these provisions pursuant to its authority under TILA section 105(a) to issue regulations that, among other things, contain such additional requirements, other provisions, or that provide for such adjustments for all or any class of transactions, that in the Bureau's judgment are necessary or proper to effectuate the purposes of TILA, which include the above purpose of section 129C, among other things. The Bureau tentatively finds that these provisions would be necessary and proper to achieve this purpose. In particular, the Bureau tentatively finds that incorporating the requirement that a creditor verify a consumer's current debt obligations, alimony, and child support into the General QM loan criteria—as well as clarifying that a creditor complies with the General QM verification requirement where it complies with certain verification standards issued by third parties that the Bureau would specify—would ensure that creditors verify whether a consumer has the ability to repay a General QM loan. Finally, the Bureau concludes that these regulatory amendments are authorized by TILA section 129C(b)(2)(A)(vi), which permits, but does not require, the Bureau to adopt guidelines or regulations relating to debt-to-income ratios or alternative measures of ability to pay regular expenses after payment of total monthly debt.

The Bureau seeks comment on proposed § 1026.43(e)(2)(v)(B) and related commentary, including on whether it should retain appendix Q as an option for complying with the Rule's verification standards. In addition, the Bureau requests comment on whether proposed § 1026.43(e)(2)(v)(B) and related commentary would facilitate or create obstacles to verification of income, assets, debt obligations, alimony, and child support through automated analysis of electronic transaction data from consumer account records. The Bureau also requests comment on whether the Rule should include a safe harbor for compliance with certain verification standards, as the Bureau proposes in proposed comment 43(e)(2)(v)(B)–3, and, if so, what verification standards the Bureau should specify for the safe harbor. The Bureau also requests comment about the advantages and disadvantages of the verification requirements in each possible standard the Bureau could specify for the safe harbor, including: (1) Chapters B3–3 through B3–6 of the Fannie Mae Single Family Selling Guide, published June 3, 2020; (2) sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020; (3) sections II.A.1 and II.A.4–5 of the FHA's Single Family Housing Policy Handbook, issued October 24, 2019; (4) chapter 4 of the VA's Lenders Handbook, revised February 22, 2019; (5) chapter 4 of the USDA's Field Office Handbook for the Direct Single Family Housing Program, revised March 15, 2019; and (6) chapters 9 through 11 of the USDA's Handbook for the Single Family Guaranteed Loan Program, revised March 19, 2020. In addition, the Bureau requests comment on whether creditors that comply with standards that have been revised but are substantially similar should receive a safe harbor, as the Bureau proposes. The Bureau further seeks comment on whether the Rule should include examples of revisions that might qualify as substantially similar, and if so, what types of examples would provide helpful clarification to creditors and other stakeholders. For example, the Bureau seeks comment on whether it would be helpful to clarify that a revision might qualify as substantially similar where it is a clarification, explanation, logical extension, or application of a pre-existing proposition in the standard. The Bureau also seeks comment on its proposal to allow creditors to ''mix and match'' requirements from verification standards, including whether examples of such ''mixing and matching'' would be helpful and whether the Bureau should instead limit or prohibit such ''mixing and matching,'' and why.

Finally, the Bureau requests comment on whether the Bureau should specify in the safe harbor existing stakeholder standards or standards that stakeholders develop that define debt and income. The Bureau seeks comment on whether the potential inclusion or non-inclusion of Federal agency or GSE verification standards in the safe harbor in the future would further encourage stakeholders to develop such standards.

43(e)(2)(vi)

TILA section 129C(b)(2)(vi) states that the term ''qualified mortgage'' includes any mortgage loan that complies with any guidelines or regulations established by the Bureau relating to ratios of total monthly debt to monthly income or alternative measure of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the consumer and such other factors as the Bureau may determine relevant and consistent with the purposes described in TILA section 129C(b)(3)(B)(i). TILA section 129C(b)(3)(B)(i) authorizes the Bureau to revise, add to, or subtract from the criteria that define a QM upon a finding that the changes are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C, necessary and appropriate to effectuate the purposes of TILA sections 129C and 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with TILA sections 129C and 129B. Current § 1026.43(e)(2)(vi) implements TILA section 129C(b)(2)(vi), consistent with TILA section 129C(b)(3)(B)(i), and provides that, as a condition to be a General QM loan under § 1026.43(e)(2), the consumer's total monthly DTI ratio may not exceed 43 percent. Section 1026.43(e)(2)(vi) further provides that the consumer's total monthly DTI ratio is generally determined in accordance with appendix Q.

For the reasons described in part V above, the Bureau is proposing to remove the 43 percent DTI limit in current § 1026.43(e)(2)(vi) and replace it with a price-based approach. The proposal also would require a creditor to consider and verify the consumer's debt, income, and monthly DTI ratio or residual income. Specifically, the Bureau proposes to remove the text of current § 1026.43(e)(2)(vi) and to

provide instead that, to be a General QM loan under § 1026.43(e)(2), the APR may not exceed APOR for a comparable transaction as of the date the interest rate is set by the amounts specified in § 1026.43(e)(2)(vi)(A) through (E).[262] Proposed § 1026.43(e)(2)(vi)(A) through (E) would provide specific rate spread thresholds for purposes of § 1026.43(e)(2), including higher thresholds for small loan amounts and subordinate-lien transactions. Proposed § 1026.43(e)(2)(vi)(A) would provide that for a first-lien covered transaction with a loan amount greater than or equal to $109,898 (indexed for inflation), the APR may not exceed APOR for a comparable transaction as of the date the interest rate is set by two or more percentage points. Proposed § 1026.43(e)(2)(vi)(B) and (C) would provide higher thresholds for smaller first-lien covered transactions. Proposed § 1026.43(e)(2)(vi)(D) and (E) would provide higher thresholds for subordinate-lien covered transactions. Loans priced at or above the thresholds in proposed § 1026.43(e)(2)(vi)(A) through (E) would not be eligible for QM status under § 1026.43(e)(2). The proposal would also provide that the loan amounts specified in § 1026.43(e)(2)(vi)(A) through (E) be adjusted annually for inflation based on changes in the Consumer Price Index for All Urban Consumers (CPI–U).

Proposed § 1026.43(e)(2)(vi) would also provide a special rule for determining the APR for purposes of determining a loan's status as a General QM loan under § 1026.43(e)(2) for certain ARMs and other loans for which the interest rate may or will change in the first five years of the loan. Specifically, proposed § 1026.43(e)(2)(vi) would provide that, for purposes of § 1026.43(e)(2)(vi), the creditor must determine the APR for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

The Bureau is proposing these revisions to § 1026.43(e)(2)(vi) for the reasons set forth above in part V. As explained above, the Bureau is proposing to remove the 43 percent DTI limit in current § 1026.43(e)(2)(vi) and replace it with a price-based approach because the Bureau is concerned that retaining the existing General QM loan definition with the 43 percent DTI limit after the expiration of Temporary GSE QM loan definition expires would significantly reduce the size of QM and could significantly reduce access to responsible, affordable credit. The Bureau is proposing a price-based approach to replace the specific DTI limit approach because it is concerned that imposing a DTI limit as a condition for QM status under the General QM loan definition may be overly burdensome and complex in practice and may unduly restrict access to credit because it provides an incomplete picture of the consumer's financial capacity. The Bureau preliminarily concludes that a price-based General QM loan definition is appropriate because a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay and is a more holistic and flexible measure of a consumer's ability to repay than DTI alone.

The Bureau also proposes to remove current comment 43(e)(2)(vi)–1, which relates to the calculation of monthly payments on a covered transaction and for simultaneous loans for purposes of calculating the consumer's DTI ratio under current § 1026.43(e)(2)(vi). The Bureau believes this comment would be unnecessary under the proposal to move the text of current § 1026.43(e)(2)(vi) and revise it to remove the references to appendix Q. The Bureau proposes to replace current comment 43(e)(2)(vi)–1 with a cross-reference to comments 43(b)(4)–1 through –3 for guidance on determining APOR for a comparable transaction as of the date the interest rate is set. The Bureau also proposes new comment 43(e)(2)(vi)–2, which provides that a creditor must determine the applicable rate spread threshold based on the face amount of the note, which is the ''loan amount'' as defined in § 1026.43(b)(5). In addition, the Bureau proposes comment 43(e)(2)(vi)–3 in which it will publish the annually adjusted loan amounts to reflect changes in the CPI–U. The Bureau also proposes new comment 43(e)(2)(vi)–4, which explains the proposed special rule that, for purposes of § 1026.43(e)(2)(vi), the creditor must determine the APR for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan. The guidance provided in proposed comment 43(e)(2)(vi)–4 is discussed further, below.

The Bureau proposes to adopt a price-based approach to defining General QM loans in § 1026.43(e)(2)(vi) pursuant to its authority under TILA section 129C(b)(3)(B)(i). The Bureau preliminarily concludes that a price-based approach to the General QM loan definition is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner that is consistent with the purposes of TILA section 129C and is necessary and appropriate to effectuate the purposes of TILA section 129C, which includes assuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan. As noted above, the Bureau is concerned that, when the Temporary GSE QM loan definition expires, there would be a significant reduction in access to credit if the Bureau retained the existing General QM loan definition with the 43 percent DTI limit. The Bureau preliminarily concludes that a price-based General QM loan definition is appropriate because a loan's price, as measured by comparing a loan's APR to APOR for a comparable transaction, is a strong indicator of a consumer's ability to repay. Further, the Bureau preliminarily concludes that a price-based approach is a more holistic and flexible measure of a consumer's ability to repay than DTI ratios alone, and therefore would better promote access to credit by providing QM status to consumers with DTI ratios above 43 percent for whom it may be appropriate to presume ability to repay. As such, the Bureau preliminarily concludes that a price-based approach to the General QM loan definition would both ensure that responsible, affordable mortgage credit remains available to consumers and assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loan. For these same reasons, the Bureau also proposes to adopt a price-based requirement in § 1026.43(e)(2)(vi) pursuant to its authority under TILA section 105(a) to issue regulations that, among other things, contain such additional requirements or other provisions, or that provide for such adjustments for all or any class of transactions, that in the Bureau's

[262] As explained above in the section-by-section discussion of § 1026.43(e)(2)(v)(A), the Bureau is proposing to move to § 1026.43(e)(2)(v)(A) the provisions in existing § 1026.43(e)(2)(vi)(B), which specify that the consumer's monthly DTI ratio is determined using the consumer's monthly payment on the covered transaction and any simultaneous loan that the creditor knows or has reason to know will be made.

judgment are necessary or proper to effectuate the purposes of TILA, which include the above purpose of section 129C, among other things. The Bureau preliminarily concludes that the price-based addition to the QM criteria is necessary and proper to achieve this purpose, for the reasons described above. Finally, the Bureau preliminarily concludes a price-based approach is authorized by TILA section 129C(b)(2)(A)(vi), which permits, but does not require, the Bureau to adopt guidelines or regulations relating to DTI ratios or alternative measures of ability to pay regular expenses after payment of total monthly debt.

The General QM Loan Pricing Thresholds

Proposed § 1026.43(e)(2)(vi)(A) would establish the pricing threshold for most General QM loans. Specifically, proposed § 1026.43(e)(2)(vi)(A) would provide that, for a first-lien covered transaction with a loan amount greater than or equal to $109,898 (indexed for inflation), the APR may not exceed APOR for a comparable transaction as of the date the interest rate is set by two or more percentage points. Loans that are priced at or above the two-percentage point threshold would not be eligible for QM status under § 1026.43(e)(2), except that, as discussed below, the proposal provides higher thresholds for loans with smaller loan amounts and for subordinate-lien transactions. As discussed above, for all loans, the proposal preserves the current thresholds in § 1026.43(e)(1)(i) that separate safe harbor from rebuttable presumption QMs, so that a loan that otherwise meets the General QM loan definition is a safe harbor QM if its APR exceeds APOR for a comparable transaction as of the date the interest rate was set by less than 1.5 percentage points for first-lien transactions, or 3.5 percentage points for subordinate-lien transactions. Under the proposal, all other QM loans would continue to be considered rebuttable presumption QMs under § 1026.43(e)(1)(ii).

In considering pricing thresholds for the General QM loan definition, the Bureau has placed particular emphasis on balancing considerations related to ensuring consumers' ability to repay with maintaining access to responsible, affordable mortgage credit. The Bureau tentatively concludes that, in general, a two-percentage-point-over-APOR threshold would strike the appropriate balance between these two objectives.

As explained above, the Bureau uses early delinquency rates as a proxy for measuring whether a consumer had a reasonable ability to repay at the time the loan was consummated. Here, the Bureau analyzed early delinquency rates in considering the pricing thresholds at which a loan should be presumed to comply with the ATR provisions. The Bureau analyzed NMDB and HMDA data to assess early delinquency rates for first-lien purchase originations, using both DTI and rate spread. The data are summarized in Tables 1 through 6, above. Tables 5 and 6 show the early delinquency rates for samples of loans categorized by both their DTI and their rate spread.

Table 5 shows early delinquency rates for 2002–2008 first-lien purchase originations in the NMDB. The 2002–2008 time period corresponds to a market environment that, in general, demonstrates looser, higher-risk credit conditions.[263] The Bureau's analyses found direct correlations between rate spreads and early delinquency rates across all DTI ranges reviewed. Loans with low rate spreads had relatively low early delinquency rates even at high DTI levels. The highest early delinquency rates corresponded to loans with both high rate spreads and high DTI ratios. For loans with DTI ratios of 41 to 43 percent—the category in Table 5 that includes the current DTI limit of 43 percent—the early delinquency rates reached 16 percent at rate spreads including and above 2.25 percentage points over APOR. At rate spreads inclusive of 1.75 through 1.99 percentage points over APOR—the category that is just below the proposed two-percentage-point rate spread threshold—the early delinquency rate reached 22 percent for DTI ratios of 61 to 70 percent. At DTI ratios of 41 to 43 percent and rate spreads inclusive of 1.75 through 1.99 percentage points over APOR, the early delinquency rate is 15 percent.

Table 6 shows average delinquency statistics for 2018 NMDB first-lien purchase originations that have been matched to 2018 HMDA data. In contrast to Table 5, the time period in Table 6 corresponds to a market environment that, in general, demonstrates tighter, lower-risk credit conditions.[264] In the 2018 data in Table 6, early delinquency rates also increased as rate spreads increased across each range of DTI ratios analyzed, although the overall performance of loans in the Table 6 dataset was significantly better than those represented in Table 5. For loans with DTI ratios of 36 to 43 percent—the category in Table 6 that includes the current DTI limit of 43 percent—early delinquency rates reached 3.9 percent (at rate spreads of at least 2 percentage points). The highest early delinquency rate associated with the proposed rate spread threshold (less than 2 percentage points over APOR) is 3.2 percent and corresponds to loans with the DTI ratios of 26 to 35 percent. At the same rate spread threshold, the early delinquency rate for the loans with the highest DTI ratios is 2.3 percent.[265]

Although in Tables 5 and 6 delinquency rates rise with rate spread, there is no clear point at which delinquency rates accelerate. Comparisons between a high-risk credit market (Table 5) and a low-risk credit market (Table 6) show substantial expansion of early delinquency rates during an economic downturn across all rate spreads and DTI ratios. Data show that, for example, prime loans that experience a 0.2 percent early delinquency rate in a low-risk market might experience a 2 percent early delinquency rate in a higher-risk market, while subprime loans with a 4.2 percent early delinquency rate in a low-risk market might experience a 19 percent early delinquency rate in a higher-risk market.

As discussed above, other analyses reviewed by the Bureau also show a strong positive correlation of delinquency rates with interest rate spreads.[266] Collectively, this evidence suggests that higher rate spreads—including the specific measure of APR over APOR—are strongly correlated with future early delinquency rates. The Bureau expects that, for loans just below the respective thresholds, a pricing threshold of two percentage points over APOR would generally result in similar or somewhat higher early delinquency rates relative to the current DTI limit of 43 percent. However, Bureau analysis shows the early delinquency rate for this set of loans is on par with loans that have received QM status under the Temporary GSE QM loan definition. Restricting the sample of 2018 NMDB–

[263] Characteristics of a high-risk credit market include very high unemployment and falling home prices.

[264] Characteristics of a low-risk credit market include very low unemployment and rising home prices. As noted above, this more recent sample of data provides insight into early delinquency rates under post-crisis lending standards for a dataset of loans that had not undergone an economic downturn.

[265] The apparent anomalies in the progression of the early delinquency rates across DTI ratios at the higher rate spread categories in Table 6 is likely because there are relatively few loans in the 2018 data with the indicated combinations of higher rate spreads and lower DTI ratios and some creditors require that consumers demonstrate more compensating factors on higher DTI loans.

[266] See discussion of data and analyses provided by CoreLogic and the Urban Institute, in part V, above.

HMDA matched first-lien conventional purchase originations to only those purchased and guaranteed by the GSEs, loans with rate spreads at or above 2 percentage points had an early delinquency rate of 4.2 percent, higher than the maximum early delinquency rates observed for loans with rate spreads below 2 percentage points in either Table 2 (2.7 percent) or Table 6 (3.2 percent).[267] Consequently, the Bureau does not believe that the price-based approach would result in substantially higher delinquency rates than the standard included in the current rule. Although some commenters on the ANPR recommended rate spread thresholds as high as 2.5 percentage points over APOR, the Bureau is not proposing a higher General QM threshold for most loans because of concerns that such loans would have high predicted delinquency rates, which appears inconsistent with the goal of assuring that consumers of loans that receive QM status and the resulting presumption of compliance with the ATR requirements do, in fact, have ability to repay.

The Bureau has used 2018 HMDA data to estimate that 95.8 percent of conventional purchase loans currently meet the criteria to be defined as QMs, including under the Temporary GSE QM loan definition. The Bureau also uses 2018 HMDA data to project that the proposed two-percentage-point-over-APOR threshold would result in a 96.1 percent market share for QMs with an adjustment for small loans, as discussed below.[268] Creditors may also respond to such a threshold by lowering pricing on some loans near the threshold, further increasing the QM market share. Therefore, using the size of the QM market as an indicator of access to credit, the Bureau expects that a pricing threshold of two percentage points over APOR, in combination with the proposed adjustments for small loans, would result in an expansion of access to credit as compared to the current rule including the Temporary GSE QM loan definition, particularly as creditors are likely to adjust pricing in response to the rule, allowing additional loans to obtain QM status.[269] Further, the proposal would result in a substantial expansion of access to credit as compared to the current rule without the Temporary GSE QM loan definition, under which only an estimated 73.6 percent of conventional purchase loans would be QMs.

The Bureau is concerned that rate spread thresholds lower than two percentage points over APOR could result in a significant reduction in access to credit when the Temporary GSE QM definition expires. This is especially true given the modest amount of non-QM lending identified in the Bureau's Assessment Report, and the recent sharp reduction in that lending in recent months. The Bureau is also concerned that a rate spread threshold higher than two percentage points over APOR would define a QM boundary that substantially covers the entire mortgage market, except for loans with statutorily prohibited features, including loans for which the early delinquency rate suggests the consumer may not have had a reasonable ability to repay at consummation.

The Bureau preliminarily concludes that, for most first-lien covered transactions, a threshold of two percentage points over APOR is an appropriate criterion to include in the definition of General QM in § 1026.43(e)(2)(vi). This proposed threshold would appropriately balance the certainty provided to the market from ensuring that loans afforded QM status may be presumed to comply with the ATR provisions, with assurances that access to responsible, affordable mortgage credit remains available to consumers.

The Bureau requests comment on whether the final rule should establish in § 1026.43(e)(2)(vi)(A) a different rate spread threshold and, if so, what the threshold should be. The Bureau requests comment on whether the General QM rate spread threshold should be higher than 2 percentage points over APOR. For commenters suggesting a higher rate spread threshold, the Bureau requests commenters provide data or other analysis that would support providing QM status to such loans, which the Bureau expects would have higher risk profiles. The Bureau also requests comment on whether the General QM rate spread threshold should be set lower than 2 percentage points over APOR. For commenters suggesting a lower rate spread threshold, the Bureau requests commenters provide data or other analysis that would show that adopting a lower threshold would not have adverse effects on access to credit. All commenters are encouraged to include data or other analysis to support their recommendations for a particular threshold, including the proposed two-percentage-point-over-APOR threshold. The Bureau also seeks comments on whether creditors may be expected to change lending practices in response to the addition of any rate spread threshold in the definition of General QM (for example, by lowering interest rates to fit within rate spread thresholds), and how that would affect the size of the QM market. In addition, in light of the concerns about the sensitivity of a price-based QM definition to macroeconomic cycles, the Bureau requests comment on whether the Bureau should consider adjusting the pricing thresholds in emergency situations and, if so, how the Bureau should do so.

Thresholds for Smaller Loans and Subordinate-Lien Transactions

Proposed § 1026.43(e)(2)(vi)(B) and (C) would establish higher pricing thresholds for smaller loans, and loans priced at or above the proposed thresholds would not be eligible for QM status under § 1026.43(e)(2). Specifically, proposed § 1026.43(e)(2)(vi)(B) would provide that, for first-lien covered transactions with loan amounts greater than or equal to $65,939 but less than $109,898,[270] the threshold would be 3.5 percentage points over APOR. Proposed § 1026.43(e)(2)(vi)(C) would provide that, for first-lien covered transactions with loan amounts less than $65,939, the threshold would be 6.5 percentage points over APOR.

Proposed § 1026.43(e)(2)(vi)(D) and (E) would establish higher thresholds for subordinate-lien transactions, with different thresholds depending on the size of the transaction. Subordinate-lien transactions priced at or above the proposed thresholds would not be

[267] This comparison uses 2018 data on GSE originations because such loans were originated while the Temporary GSE QM loan definition was in effect and the GSEs were in conservatorship. GSE loans from the 2002 to 2008 period were originated under a different regulatory regime and with different underwriting practices (*e.g.,* GSE loans more commonly had DTI ratios over 50 percent during the 2002 to 2008 period), and thus may not be directly comparable to loans made under the Temporary GSE QM loan definition.

[268] The Bureau estimates that alternative QM pricing thresholds of 1.5, 1.75, 2.25, and 2.5 percentage points over APOR would result in QM market shares of 94.3, 95.3, 96.6, and 96.8 percent, respectively.

[269] The Bureau acknowledges, however, that some loans that do not meet the current General QM loan definition, but that would be General QMs under the proposed price-based approach, would have been made under other QM definitions (*e.g.,* FHA, small-creditor QM).

[270] The Bureau is proposing $65,939, rather than a threshold such as $60,000 or $65,000, and $109,898, rather than a threshold such as $100,000 or $110,000, because the proposed thresholds align with certain thresholds for the limits on points and fees, as updated for inflation, in § 1026.43(e)(3)(i) and the associated commentary. The Bureau will update these loan amounts if the corresponding dollar amounts for § 1026.43(e)(3)(i) and the associated commentary are updated before this final rule becomes effective, in order to ensure that the loan amounts for this provision and § 1026.43(e)(3) remain synchronized.

eligible for QM status under § 1026.43(e)(2). Specifically, proposed § 1026.43(e)(2)(vi)(D) would provide that, for subordinate-lien covered transactions with loan amounts greater than or equal to $65,939, the threshold would be 3.5 percentage points over APOR. Proposed § 1026.43(e)(2)(vi)(E) would provide that, for subordinate-lien covered transactions with loan amounts less than $65,939, the threshold would be 6.5 percentage points over APOR.

The proposal would also provide that the loan amounts specified in § 1026.43(e)(2)(vi)(A) through (E) be adjusted annually for inflation based on changes in CPI–U. Specifically, the Bureau would adjust the loan amounts in § 1026.43(e)(2)(vi) annually on January 1 by the annual percentage change in the CPI–U that was reported on the preceding June 1. The Bureau would publish adjustments in new comment 43(e)(2)(vi)-3 after the June figures become available each year.

The Bureau is proposing higher thresholds for smaller loans because it is concerned that loans with smaller loan amounts are typically priced higher than loans with larger loan amounts, even though a consumer with a smaller loan may have similar credit characteristics and ability to repay. Many of the creditors' costs for a transaction may be the same or similar, regardless of the loan amount. For creditors to recover their costs for smaller loans, they may have to charge higher interest rates or higher points and fees as a percentage of the loan amounts than they would for comparable larger loans. As a result, smaller loans may have higher APRs than larger loans to consumers with similar credit characteristics and who may have a similar ability to repay. As discussed below, the Bureau's analysis indicates that consumers who take out smaller loans with APRs within higher thresholds may have similar credit characteristics as consumers who take out larger loans. The Bureau's analysis also indicates that smaller loans with APRs within higher thresholds may have comparable levels of early delinquencies as larger loans within lower thresholds. However, as explained further below, the Bureau's analysis of delinquency levels for smaller loans, compared to larger loans, does not appear to indicate a threshold at which delinquency levels significantly accelerate.

The Bureau is concerned that adopting the same threshold of two percentage points above APOR for all loans could disproportionately prevent smaller loans from being originated as General QM loans. In particular, the Bureau's analysis indicates that without higher thresholds for smaller loans, loans for manufactured housing and loans to minority consumers could disproportionately be excluded from being originated as General QM loans. The Bureau's analysis of 2018 HMDA data found that 57.9 percent of manufactured housing loans are priced two percentage points or more over APOR. The Bureau's analysis also found that 5.1 percent of site-built loans to minority consumers are priced two percentage points or more over APOR, but 3.5 percent of site-built loans to non-Hispanic white consumers are priced two percentage points or more over APOR. While some loans may be originated under other QM definitions or as non-QM loans, those loans may be meaningfully more expensive, and some loans may not be originated at all. As discussed in part V, the non-QM market has been slow to develop, and the negative impact on the non-QM market from the disruptions caused by the COVID–19 pandemic raises further concerns about the capacity of the non-QM market to provide consumers with access to credit through such loans.

The Bureau also notes that, in the Dodd-Frank Act, Congress provided for additional pricing flexibility for creditors making smaller loans, allowing smaller loans to include higher points and fees while still meeting the QM definition. TILA section 129C(b)(2)(A)(vi) defines a QM as a loan for which, among other things, the total points and fees payable in connection with the loan do not exceed 3 percent of the total loan amount. However, TILA section 129C(b)(2)(D) requires the Bureau to prescribe rules adjusting the points-and-fees limits for smaller loans. In the January 2013 Final Rule, the Bureau implemented this requirement in § 1026.43(e)(3), adopting higher points-and-fees thresholds for different tiers of loan amounts less than or equal to $100,000, adjusted for inflation. The Bureau's preliminary conclusion that creditors originating smaller loans typically impose higher points and fees or higher interest rates to recover their costs, regardless of the consumer's creditworthiness, and that higher thresholds for smaller loans in § 1026.43(e)(2)(vi) may, therefore, be appropriate, is consistent with the statutory directive to adopt higher points-and-fees thresholds for smaller loans.

To develop the proposed thresholds for smaller loans in § 1026.43(e)(2)(vi)(B) and (C), the Bureau analyzed evidence related to credit characteristics and loan performance for first-lien purchase transactions at various rate spreads and loan amounts (adjusted for inflation) using HMDA and NMDB data, as shown in Table 9.[271]

TABLE 9—LOAN CHARACTERISTICS AND PERFORMANCE FOR DIFFERENT SIZES OF FIRST-LIEN TRANSACTIONS AT VARIOUS RATE SPREADS

Loan size group	Rate spread range (percentage points over APOR)	Mean CLTV, 2018 HMDA	Mean DTI, 2018 HMDA	Mean credit score, 2018 HMDA	Percent observed 60+ days delinquent within first 2 years, 2002–2008 NMDB	Percent observed 60+ days delinquent within first 2 years, 2018 NMDB
Under $65,939	1.5–2.0	81.9	32.3	717	6.1%	2.8%
Under $65,939	1.5–2.5	82.2	32.3	714	6.1%	2.3%
Under $65,939	1.5–3.0	82.1	32.2	714	6.2%	2.3%
Under $65,939	1.5–3.5	81.9	32.1	715	6.2%	2.5%
Under $65,939	1.5–4.0	81.7	32.3	714	6.3%	2.5%

[271] *See* Bureau of Labor and Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI–U)*, *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202004.pdf.* (Using the CPI–U price index, nominal loan amounts are inflated to June 2019 dollars from the price level in June of the year prior to origination. This effectively categorizes loans according to the inflation-adjusted thresholds for smaller loans that would have been in effect on the origination date.)

TABLE 9—LOAN CHARACTERISTICS AND PERFORMANCE FOR DIFFERENT SIZES OF FIRST-LIEN TRANSACTIONS AT VARIOUS RATE SPREADS—Continued

Loan size group	Rate spread range (percentage points over APOR)	Mean CLTV, 2018 HMDA	Mean DTI, 2018 HMDA	Mean credit score, 2018 HMDA	Percent observed 60+ days delinquent within first 2 years, 2002–2008 NMDB	Percent observed 60+ days delinquent within first 2 years, 2018 NMDB
Under $65,939	1.5–4.5	81.7	32.5	710	6.4%	2.6%
Under $65,939	1.5–5.0	81.7	32.6	706	6.4%	2.5%
Under $65,939	1.5–5.5	81.6	32.7	699	6.5%	2.4%
Under $65,939	1.5–6.0	81.7	32.9	694	6.5%	2.5%
Under $65,939	1.5–6.5	81.9	33.1	685	6.5%	3.4%
Under $65,939	1.5 and above	82.0	33.3	676	6.6%	4.1%
$65,939 to $109,897	1.5–2.0	89.9	35.5	704	11.1%	3.4%
$65,939 to $109,897	1.5–2.5	90.1	35.4	702	12.2%	4.2%
$65,939 to $109,897	1.5–3.0	90.0	35.5	702	12.9%	4.2%
$65,939 to $109,897	1.5–3.5	89.7	35.5	703	13.0%	4.3%
$65,939 to $109,897	1.5–4.0	89.4	35.6	703	13.1%	4.0%
$65,939 to $109,897	1.5–4.5	89.3	35.7	701	13.2%	4.2%
$65,939 to $109,897	1.5–5.0	89.1	35.8	699	13.3%	4.1%
$65,939 to $109,897	1.5–5.5	89.1	35.9	696	13.4%	4.0%
$65,939 to $109,897	1.5–6.0	89.2	36.0	692	13.4%	4.2%
$65,939 to $109,897	1.5–6.5	89.3	36.1	684	13.4%	4.5%
$65,939 to $109,897	1.5 and above	89.3	36.1	684	13.7%	4.5%
$109,898 and above	1.5–2.0 (for comparison)	92.7	39.4	698	14.9%	2.5%

The Bureau's analysis indicates that consumers with smaller loans with APRs within higher potential thresholds, such as 6.5 or 3.5 percentage points above APOR, have similar credit characteristics as consumers with larger loans between 1.5 and 2 percentage points above APOR.[272] More specifically, the Bureau analyzed 2018 HMDA data on first-lien conventional purchase loans and found that loans below $65,939 that are priced between 1.5 and 6.5 percentage points above APOR have a mean DTI ratio of 33.1 percent, a mean combined LTV ratio of 81.9 percent, and a mean credit score of 685. Loans equal to or greater than $65,939 but less than $109,898 that are priced between 1.5 and 3.5 percentage points above APOR have a mean DTI ratio of 35.5 percent, a mean combined LTV of 89.7 percent, and a mean credit score of 703. Loans equal to or greater than $109,898 that are priced between 1.5 and 2 percentage points above APOR have a mean DTI ratio of 39.4 percent, a mean combined LTV of 92.7 percent, and a mean credit score of 698. These all suggest that the credit characteristics, and potentially the ability to repay, of consumers taking out smaller loans with higher APRs, may be at least comparable to those of consumers taking out larger loans with lower APRs.

With respect to early delinquencies, the evidence summarized in Table 9 generally provides support for higher thresholds for smaller loans. Loans less than $65,939 had lower delinquency rates than loans between $65,939 and $109,897 across all rate spread ranges and had delinquency rates lower than or comparable to larger loans (equal to or greater than $109,898) priced between 1.5 and 2 percentage points above APOR. Loans between $65,939 and $109,897 had lower delinquency rates than larger loans between 2002 and 2008, but higher delinquency rates for 2018 loans.

More specifically, the Bureau analyzed NMDB data from 2002 through 2008 on first-lien conventional purchase loans and found that loans below $65,939 that were priced between 1.5 and 6.5 percentage points above APOR had an early delinquency rate of 6.5 percent. Loans equal to or greater than $65,939 but less than $109,898 that were priced between 1.5 and 3.5 percentage points above APOR had an early delinquency rate of 13 percent. Loans equal to or greater than $109,898 that were priced between 1.5 and 2 percentage points above APOR had an early delinquency rate of 14.9 percent. These rates suggest that the historical loan performance of smaller loans with higher APRs may be comparable, if not better, than larger loans with lower APRs.

However, the Bureau's analysis found that early delinquency rates for 2018 loans are somewhat higher for smaller loans with higher APRs than larger loans with lower APRs. More specifically, NMDB data from 2018 on first-lien conventional purchase loans show that loans below $65,939 that were priced between 1.5 and 6.5 percentage points above APOR had an early delinquency rate of 3.4 percent. Loans equal to or greater than $65,939 but less than $109,898 that were priced between 1.5 and 3.5 percentage points above APOR had an early delinquency rate of 4.3 percent. Loans equal to or greater than $109,898 that were priced between 1.5 and 2 percentage points above APOR had an early delinquency rate of 2.5 percent.

Although the current data do not appear to indicate a particular threshold at which the credit characteristics or loan performance for smaller loans with higher APRs decline significantly, the Bureau preliminarily concludes that the proposed thresholds in § 1026.43(e)(2)(vi)(B) and (C) for smaller, first-lien covered transactions would strike the right balance in delineating which loans should be eligible for a rebuttable presumption of compliance with the ATR requirements. The Bureau believes the proposed thresholds may help ensure that responsible, affordable credit remains available to consumers taking out smaller loans, in particular loans for manufactured housing and loans to minority consumers, while also helping to ensure that the risks are limited so

[272] Portfolio loans made by small creditors, as defined in § 1026.35(b)(2)(iii)(B) and (C), are excluded, as such loans are likely Small Creditor QMs pursuant to § 1026.43(e)(5) regardless of pricing.

that it would be appropriate for those loans to receive a rebuttable presumption of compliance with the ATR requirements.

The Bureau is proposing higher thresholds in § 1026.43(e)(2)(vi)(D) and (E) for subordinate-lien transactions because it is concerned that subordinate-lien transactions may be priced higher than comparable first-lien transactions for reasons other than consumers' ability to repay. In general, the creditor of a subordinate lien will recover its principal, in the event of default and foreclosure, only to the extent funds remain after the first-lien creditor recovers its principal. Thus, to compensate for this risk, creditors typically price subordinate-lien transactions higher than first-lien transactions, even though the consumer in the subordinate-lien transaction may have similar credit characteristics and ability to repay. In addition, subordinate-lien transactions are often for smaller loan amounts, so the pricing factors discussed above for smaller loan amounts may further increase the price of subordinate-lien transaction, regardless of the consumer's ability to repay. The Bureau is concerned that, to the extent the higher pricing for subordinate-lien transaction is not related to consumers' ability to repay, subordinate-lien transactions may be inappropriately excluded from QM status under § 1026.43(e)(2) if the pricing thresholds for subordinate-lien transactions are not increased.

In the January 2013 Final Rule, the Bureau adopted higher thresholds for determining when subordinate-lien QMs received a rebuttable presumption or a conclusive presumption of compliance with the ATR requirements. For subordinate-lien transactions, the definition of ''higher-priced covered transaction'' in § 1026.43(b)(4) is used in § 1026.43(e)(1) to set a threshold of 3.5 percentage points above APOR to determine which subordinate-lien QMs receive a safe harbor and which receive a rebuttable presumption of compliance. As discussed above in part V, the Bureau is not proposing to alter the threshold for subordinate-lien transactions in § 1026.43(b)(4). To avoid the odd result that a subordinate-lien transaction would otherwise be eligible to receive a safe harbor under § 1026.43(b)(4) and (e)(1) but would not be eligible for QM status under § 1026.43(e)(2)(vi), the Bureau considered which threshold or thresholds at or above 3.5 percentage points above APOR may be appropriate to propose for subordinate-lien transactions in § 1026.43(e)(2)(vi).

To develop the proposed thresholds for subordinate-lien transactions in § 1026.43(e)(2)(vi)(D) and (E), the Bureau considered evidence related to credit characteristics and loan performance for subordinate-lien transactions at various rate spreads and loan amounts (adjusted for inflation) using HMDA and Y–14M data, as shown in Table 10.

TABLE 10—LOAN CHARACTERISTICS AND PERFORMANCE FOR DIFFERENT SIZES OF SUBORDINATE-LIEN TRANSACTIONS AT VARIOUS RATE SPREADS

Loan size group	Rate spread range (percentage points over APOR)	Mean CLTV, 2018 HMDA	Mean DTI, 2018 HMDA	Mean credit score, 2018 HMDA	Percent observed 90+ days delinquent within first 2 years, 2013–2016 Y–14M data (subset)
Under $65,939	2.0–2.5	76.9	36.1	728	2.1%
Under $65,939	2.0–3.0	78.4	36.5	724	1.6%
Under $65,939	2.0–3.5	79.7	36.8	721	1.4%
Under $65,939	2.0–4.0	80.1	36.9	720	1.4%
Under $65,939	2.0–4.5	80.2	36.9	719	1.3%
Under $65,939	2.0–5.0	80.3	37.0	718	1.3%
Under $65,939	2.0–5.5	80.3	37.1	718	1.3%
Under $65,939	2.0–6.0	80.3	37.1	717	1.3%
Under $65,939	2.0–6.5	80.4	37.2	717	1.3%
Under $65,939	2.0 and above	80.7	37.3	715	1.4%
$65,939 and above	2.0–2.5	79.5	37.2	738	1.9%
$65,939 and above	2.0–3.0	80.5	37.3	735	1.7%
$65,939 and above	2.0–3.5	81.0	37.4	732	1.6%
$65,939 and above	2.0–4.0	81.3	37.5	732	1.7%
$65,939 and above	2.0–4.5	81.3	37.6	731	1.7%
$65,939 and above	2.0–5.0	81.5	37.7	731	1.8%
$65,939 and above	2.0–5.5	81.6	37.7	730	1.8%
$65,939 and above	2.0–6.0	81.6	37.8	729	1.8%
$65,939 and above	2.0–6.5	81.7	37.9	729	1.8%
$65,939 and above	2.0 and above	81.8	37.9	728	1.9%

In general, the Bureau's analysis found strong credit characteristics and loan performance for subordinate-lien loans at various thresholds above two percentage points above APOR. The current data do not appear to indicate a particular threshold at which the credit characteristics or loan performance decline significantly.

With respect to larger subordinate-lien transactions, the Bureau's analysis of 2018 HMDA data on subordinate-lien conventional loans found that, for consumers with subordinate-lien transactions greater than or equal to $65,939 that were priced 2 to 3.5 percentage points above APOR, the mean DTI ratio was 37.4 percent, the mean combined LTV was 81 percent, and the mean credit score was 732. The Bureau also analyzed Y–14M loan data for 2013 to 2016 and estimated that subordinate-lien transactions greater than or equal to $65,939 that were priced 2 to 3.5 percentage points above APOR had an early delinquency rate of

approximately 1.6 percent.[273] These factors appear to provide a strong indication of ability to repay, so the Bureau preliminarily concludes that it may be appropriate to set the threshold at 3.5 percentage points above APOR for subordinate-lien transactions to be eligible for QM status under § 1026.43(e)(2). The Bureau recognizes that, because the proposed price-based approach would leave the threshold in § 1026.43(b)(4) for higher-priced QMs at 3.5 percentage points above APOR for subordinate-lien transactions (and that such transactions that are not higher priced would, therefore, receive a safe harbor under § 1026.43(e)(1)(i)), this approach, if adopted, would result in subordinate-lien transactions for amounts over $65,939 either being a safe harbor QM or not being eligible for QM status under § 1026.43(e)(2). No such loans would be eligible to be a rebuttable presumption QM. Nevertheless, the Bureau believes that the proposed threshold may appropriately balance the relatively strong credit characteristics and loan performance of these transactions historically, which is indicative of ability to repay, against the concern that the supporting data are limited to recent years with strong economic performance and conservative underwriting.

For smaller subordinate-lien transactions, the Bureau's analysis of 2018 HMDA data on subordinate-lien conventional loans found that for consumers with subordinate-lien transactions less than $65,939 with that were priced between 2 and 6.5 percentage points above APOR, the mean DTI ratio was 37.2 percent, the mean combined LTV was 80.4 percent, and the mean credit score was 717. The Bureau also analyzed Y–14M loan data for 2013 to 2016 and estimated that subordinate-lien transactions less than $65,939 that were priced between 2 and 6.5 percentage points above APOR, the early delinquency rate was approximately 1.3 percent. Based on these relatively strong credit characteristics and low delinquency rates, the Bureau preliminarily concludes that it may be appropriate to set the threshold at 6.5 percentage points above APOR for subordinate-lien transactions less than $65,939 to be eligible for QM status under § 1026.43(e)(2). The Bureau notes that under this proposal, subordinate-lien transactions less than $65,939 priced greater than or equal to 3.5 but less than 6.5 percentage points above APOR would be eligible only for a rebuttable presumption of compliance under § 1026.43(e)(1)(ii) and that consumers, therefore, would have the opportunity to rebut the presumption under § 1026.43(e)(1)(ii)(B).

The Bureau requests comment, including data or other analysis, on whether the final rule in § 1026.43(e)(2)(vi)(B) through (C) should include different rate spread thresholds at which smaller loans would be considered General QM loans, and, if so, what those thresholds should be. Specifically, the Bureau requests comment on whether the General QM rate spread threshold for first-lien loans should be higher or lower than the rate spread ranges set forth in Table 9 for such loans with loan amounts less than $109,987 and greater than or equal to $65,939 and for such loans with loan amounts less than $65,939. For example, the Bureau solicits comments on whether a rate spread threshold of less than 6.5 percentage points above APOR for loan amounts less than $65,939 would strike a better balance between ability to repay and access to credit, in particular with respect to loans for manufactured housing and loans to minority borrowers. For commenters suggesting a different rate spread threshold, the Bureau requests commenters provide data or other analysis that would support providing General QM status to such loans taking into account concerns regarding the consumer's ability to repay and adverse effects on access to credit.

The Bureau also requests comment, including data or other analysis, on whether the final rule in § 1026.43(e)(2)(vi)(D) through (E) should include different rate spread thresholds at which subordinate-lien loans would be considered General QM loans, and, if so, what those thresholds should be. Specifically, the Bureau requests comment on whether the General QM rate spread threshold for subordinate-lien loans should be higher or lower than the rate spread ranges set forth in Table 10 for such loans with loan amounts greater than or equal to $65,939 and for such loans with loan amounts less than $65,939. For example, the Bureau solicits comments on whether a rate spread threshold of less than 6.5 percentage points above APOR for subordinate-lien loans with loan amounts less than $65,939 would strike a better balance between ability to repay and access to credit. For commenters suggesting a different rate spread threshold, the Bureau requests commenters provide data or other analysis that would support providing General QM status to such loans taking into account concerns regarding the consumer's ability to repay and adverse effects on access to credit.

The Bureau also requests comment, including data and other analysis, on whether the rule should include a DTI limit for smaller loans and subordinate-lien loans; for example, a DTI limit between 45 and 48 percent, instead of a pricing threshold or together with a pricing threshold, and, if so, what those limits should be. This includes comment on whether the approach to smaller loans and subordinate-lien loans should differ from the approach to other loans if the Bureau adopts one of the alternatives outlined in part V.E above.

Determining the APR for Certain Loans for which the Interest Rate May or Will Change

The Bureau is also proposing to revise § 1026.43(e)(2)(vi) to include a special rule for determining the APR for certain types of loans for purposes of whether a loan meets the General QM loan definition under § 1026.43(e)(2). This special rule would apply to loans for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. For such loans, for purposes of determining whether the loan is a General QM loan under § 1026.43(e)(2)(vi), the creditor would be required to determine the APR by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.[274] The special rule in the proposed revisions to § 1026.43(e)(2)(vi) would not modify other provisions in Regulation Z for determining the APR for other purposes, such as the disclosures addressed in or subject to the commentary to § 1026.17(c)(1).

The Bureau anticipates that the proposed price-based approach to defining General QM loans would in general be effective in identifying which loans consumers have the ability to repay and should therefore be eligible for QM status under § 1026.43(e)(2).

[273] The loan data were a subset of the supervisory loan-level data collected as part of the Board's Comprehensive Capital Analysis and Review, known as Y–14M data. The early delinquency rate measured the percentage of loans that were 90 or more days late in the first two years. The Bureau used loans with payments that were 90 or more days late to measure delinquency, rather than the 60 or more days used with the data discussed above for first-lien transactions, because the Y–14M data do not include a measure for payments 60 or more days late. Data from a small number of creditors were not included due to incompatible formatting.

[274] As discussed above in the section-by-section analysis of proposed § 1026.43(b)(4), an identical special rule for determining the APR for certain loans for which the interest rate may or will change also would apply under that paragraph for purposes of determining whether a QM under § 1026.43(e)(2) is a higher-priced covered transaction.

However, the Bureau is concerned that, absent the special rule, the proposed price-based approach may less effectively capture specific unaffordability risks of certain loans for which the interest rate may or will change relatively soon after consummation. Therefore, for loans for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, a modified approach to determining the APR for purposes of the rate-spread thresholds under proposed § 1026.43(e)(2) may be warranted.

Structure and pricing particular to ARMs. The special rule in proposed § 1026.43(e)(2)(vi) would apply principally to ARMs with initial fixed-rate periods of five years or less (referred to herein as ''short-reset ARMs'').[275] These loans may be affordable for the initial fixed-rate period but may become unaffordable relatively soon after consummation if the payments increase appreciably after reset, causing payment shock. The APR for short-reset ARMs may be less predictive of ability to repay than for fixed-rate mortgages because of how ARMs are structured and priced and how the APR for ARMs is determined under various provisions in Regulation Z. Several different provisions in Regulation Z address the calculation of the APR for ARMs. For disclosure purposes, if the initial interest rate is determined by the index or formula to make later interest rate adjustments, Regulation Z generally requires the creditor to base the APR disclosure on the initial interest rate at consummation and to not assume that the rate will increase during the remainder of the loan.[276] In some transactions, including many ARMs, the creditor may set an initial interest rate that is lower (or less commonly, higher) than the rate would be if it were determined by the index or formula used to make later interest rate adjustments. For these ARMs, Regulation Z requires the creditor to disclose a composite APR based on the initial rate for as long as it is charged and, for the remainder of the term, on the fully indexed rate.[277] The fully indexed rate at consummation is the sum of the value of the index at the time of consummation plus the margin, based on the contract. The Dodd-Frank Act requires a different APR calculation for ARMs for the purpose of determining whether ARMs are subject to certain HOEPA requirements.[278] As implemented in § 1026.32(a)(3)(ii), the creditor is required to determine the APR for HOEPA coverage for transactions in which the interest rate may vary during the term of the loan in accordance with an index, such as with an ARM, by using the fully indexed rate or the introductory rate, whichever is greater.[279]

The requirements in Regulation Z for determining the APR for disclosure purposes and for HOEPA coverage purposes do not account for any potential increase or decrease in interest rates based on changes to the underlying index. If interest rates rise after consummation, and therefore the value of the index rises to a higher level, the loan can reset to a higher interest rate than the fully indexed rate at the time of consummation. The result would be a higher payment than the one implied by the rates used in determining the APR, and a higher effective rate spread (and increased likelihood of delinquency) than the spread that would be taken into account for determining General QM status at consummation under the price-based approach in the absence of a special rule.

ARMs may present more risk for consumers than fixed-rate mortgages, depending on the direction and magnitude of changes in interest rates. In the case of a 30-year fixed-rate loan, creditors or mortgage investors assume both the credit risk and the interest-rate risk (*i.e.,* the risk that interest rates rise above the fixed rate the consumer is obligated to pay), and the price of the loan, which is fully captured by the APR, reflects both risks. In the case of an ARM, the creditor or investor is assuming the credit risk of the loan, but the consumer assumes most of the interest-rate risk, as the interest rate will adjust along with the market. The extent to which the consumer assumes the interest-rate risk is established by caps in the note on how high the interest rate charged to the consumer may rise. To compensate for the added interest-rate risk assumed by the consumer (as opposed to the investor), ARMs are generally priced lower—in absolute terms—than a 30-year fixed-rate mortgage with comparable credit risk.[280] Yet with rising interest rates, the risks that ARMs could become unaffordable, and therefore lead to delinquency or default, are more pronounced. As noted above, the requirements for determining the APR for ARMs in Regulation Z do not reflect this risk because they do not take into account potential increases in the interest rate over the term of the loan based on changes to the underlying index. This APR may therefore understate the risk that the loan may become unaffordable to the consumer if interest rates increase.

Unaffordability risk more acute for short-reset ARMs. While all ARMs run the risk of increases in interest rates and payments over time, longer-reset ARMs (*i.e.,* ARMs with initial fixed-rate periods of longer than five years) present a less acute risk of unaffordability than short-reset ARMs. Longer-reset ARMs permit consumers to take advantage of lower interest rates for more than five years and thus, akin to fixed-rate mortgages, provide consumers significant time to pay off or refinance, or to otherwise adjust to anticipated changes in payment during that relatively long period while the interest rate is fixed and before payments may increase.

Short-reset ARMs can also contribute to speculative lending because they permit creditors to originate loans that could be affordable in the short term, with the expectation that property values will increase and thereby permit consumers to refinance before payments may become unaffordable. Further, creditors can minimize their credit risk on such ARMs by, for example, requiring lower LTV ratios, as was common in the run-up to the 2008 financial crisis.[281] Additionally, creditors may be more willing to market these ARMs in areas of strong housing-price appreciation, irrespective of a consumer's ability to absorb the potentially higher payments after reset, because they may expect that consumers will have the equity to refinance if necessary.

[275] In addition to short-reset ARMs, the proposed special rule would apply to step-rate mortgages that have an initial fixed-rate period of five years or less. The Bureau recognizes that the interest rates in step-rate mortgages are known at consummation. However, unlike fixed-rate mortgages and akin to ARMs, the interest rate of step-rate mortgages changes, thereby raising the concern that interest-rate increases relatively soon after consummation may present affordability risks due to higher loan payments. Moreover, applying the proposed APR determination requirement to such loans is consistent with the treatment of step-rate mortgages pursuant to the requirement in the current General QM loan definition to underwrite loans using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due. *See* comment 43(e)(2)(iv)–3.iii.

[276] *See* comment 17(c)(1)–8.

[277] *See* comment 17(c)(1)–10.

[278] *See* TILA section 103(bb)(1)(B)(ii).

[279] *See* comment 32(a)(3)–3.

[280] The lower absolute pricing of ARMs with comparable credit risk is reflected in the lower ARM APOR, which is typically 50 to 150 basis points lower than the fixed-rate APOR.

[281] Bureau analysis of NMDB data shows crisis-era short-reset ARMs had lower LTVs at consummation relative to comparably priced fixed-rate loans.

In the Dodd-Frank Act, Congress addressed affordability concerns specific to short-reset ARMs and their eligibility for QM status by providing in TILA section 129C(b)(2)(A)(v) that, to receive QM status, ARMs must be underwritten using the maximum interest rate that may apply during the first five years.[282] The ATR/QM Rule implemented this requirement in Regulation Z at § 1026.43(e)(2)(iv). For many short-reset ARMs, this requirement resulted in a higher DTI that would have to be compared to the Rule's 43 percent DTI limit to determine whether the loans were eligible to receive General QM status. Particularly in a higher-rate environment in which short-reset ARMs could become more attractive, the five-year maximum interest-rate requirement combined with the Rule's 43 percent DTI limit would have likely prevented some of the riskiest short-reset ARMs (*i.e.,* those that adjust sharply upward in the first five years and cause payment shock) from obtaining General QM status. As discussed above, the proposed price-based approach would remove the DTI limit from the General QM loan definition in § 1026.43(e)(2)(vi). As a result, the Bureau is concerned that, without the special rule, a price-based approach may not adequately address the risk that consumers taking out short-reset ARMs may not have the ability to repay those loans but that such loans would nonetheless be eligible for General QM status under § 1026.43(e)(2).[283]

How the price-based approach would address affordability concerns. Bureau analysis of historical ARM pricing and performance indicates that the General QM product restrictions combined with the proposed price-based approach would have effectively excluded many—but not all—of the riskiest short-reset ARMs from obtaining General QM status. As a result, the Bureau believes an additional mechanism may be merited to exclude from the General QM loan definition any short-reset ARMs for which the pricing and structure indicate a risk of delinquency that is inconsistent with the presumption of compliance with ATR that comes with QM status.

Bureau analysis of NMDB data shows that short-reset ARMs originated from 2002 through 2008 had, on average, substantially higher early delinquency rates (14.9 percent) than other ARMs (10.1 percent) or fixed-rate mortgages (5.4 percent). Many of these short-reset ARMs were also substantially higher-priced relative to APOR and more likely to have product features that TILA and the Rule now prohibits for QMs, such as interest-only payments or negative amortization. When considering only loans without such restricted features and with rate spreads within 2 percentage points of APOR, short-reset ARMs still have the highest average early delinquency rate (5.5 percent), but the difference relative to other ARMs (4.3 percent) and fixed-rate mortgages (4.2 percent) is smaller. Many ARMs in the data during this period do not report the time between consummation and the first interest-rate reset, and so are excluded from this analysis.

While the data indicates that short-reset ARMs pose a greater risk of early delinquency than other ARMs and fixed-rate mortgages, the Bureau requests additional data or evidence comparing loan performance of short-reset ARMs, other ARMs, and fixed-rate mortgages. Moreover, as discussed above, the proposed special rule is designed to address the risk that, for consumers with short-reset ARMs, a rising-rate environment can lead to significantly higher payments and delinquencies in the first five years of the loan term. Therefore, the Bureau also requests data comparing the performance of such loans during periods of rising interest rates. The Bureau recognizes that rising rates may pose some risk of unaffordability for longer-reset ARMs later in the loan term. However, as discussed above, the Bureau is proposing the special rule to address the specific concern that short-reset ARMs pose a higher risk vis-a-vis other ARMs of becoming unaffordable in the first five years, before consumers have sufficient time to refinance or adjust to the larger payments—a concern Congress also identified in the Dodd-Frank Act.

During the peak of the mid-2000s housing boom, ARMs accounted for as much as 52 percent of all new originations. In contrast, the current market share of ARMs is relatively small. Post-crisis, the ARM share had declined to 12 percent by December 2013 and to 2 percent by November 2019, only slightly above the historical low of 1 percent in 2009.[284] A number of factors contributed to the overall decline in ARM volume, particularly the low-interest-rate environment since the end of the financial crisis. Typically, ARMs are more popular when conventional interest rates are high, since the rate (and monthly payment) during the initial fixed period is typically lower than the rate of a comparable conventional fixed-rate mortgage.

Consistent with TILA section 129C(b)(2)(A), the January 2013 Final Rule prohibited ARMs with higher-risk features such as interest-only payments or negative amortization from receiving General QM status. According to the Assessment Report, short-reset ARMs comprised 17 percent of ARMs in 2012, prior to the January 2013 Final Rule, and fell to 12.3 percent in 2015, after the effective date of the Rule.[285] The Assessment Report also found that short-reset ARMs originated after the effective date of the Rule were restricted to highly creditworthy borrowers.[286]

This combination of factors post-crisis—the sharp drop in ARM originations and the restriction of such originations to highly creditworthy borrowers, as well as the prevalence of low interest rates—likely has muted the overall risks of short-reset ARMs. For example, the Assessment Report found that conventional, non-GSE short-reset ARMs originated after the effective date of the Rule had early delinquency rates of only 0.2 percent.[287] Thus, these recent originations may not accurately reflect the potential unaffordability of short-reset ARMs under different market

[282] This approach for ARMs is different from the approach in § 1026.43(c)(5) for underwriting ARMs under the ATR requirements, which, like the APR determination for HOEPA coverage for ARMs under § 1026.32(a)(3), is based on the greater of the fully indexed rate or the initial rate.

[283] As discussed, the Bureau proposes to exercise its adjustment and revision authorities to amend § 1026.43(e)(2)(vi) to provide that, to determine the APR for short-reset ARMs for purposes of General QM status, the creditor must treat the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan. The Bureau observes that the requirement in TILA section 129C(b)(2)(A)(v) to underwrite ARMs for QM purposes using the maximum interest rate that may apply during the first five years is at least ambiguous with respect to whether it independently obligates the creditor to determine the APR for short-reset ARMs in the same manner as the proposed special rule, at least where the Bureau relies on pricing thresholds as the primary indicator of likely repayment ability in the proposed General QM loan definition. Furthermore, the Bureau tentatively concludes that it would be reasonable, in light of the proposed definition of a General QM loan and in light of the policy concerns already described, to construe TILA section 129C(b)(2)(A)(v) as imposing the same obligations as the proposed special rule in § 1026.43(e)(2)(vi). Thus, in addition to relying on its adjustment and revision authorities to amend § 1026.43(e)(2)(vi), the Bureau tentatively concludes that it may do so under its general authority to interpret TILA in the course of prescribing regulations under TILA section 105(a) to carry out the purposes of TILA.

[284] Laurie Goodman *et. al.,* Urban Inst., *Housing Finance at a Glance* (Feb. 2020), at 9, *https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-february-2020/view/full_report.*

[285] Assessment Report, *supra* note 58, at 94 (fig. 25).

[286] *Id.* at 93–95.

[287] *Id.* at 95 (fig. 26).

conditions than those that currently prevail.

Proposed special rule for APR determination for short-reset ARMs.[288] Given the potential that rising interest rates could cause short-reset ARMs to become unaffordable for consumers following consummation and the fact that the price-based approach may not account for some of those risks because of how APRs are determined for ARMs, the Bureau is proposing a special rule to determine the APR for short-reset ARMs for purposes of defining General QM under § 1026.43(e)(2). As noted above, in defining QM in TILA, Congress adopted a special requirement to address affordability concerns for short-reset ARMs. Specifically, the statute provides that, for an ARM to be a QM, the underwriting must be based on the maximum interest rate permitted under the terms of the loan during the first five years. With the 43 percent DTI limit in the current rule, implementing the five-year underwriting requirement is straightforward: The rule requires a creditor to calculate DTI using the mortgage payment that results from the maximum possible interest rate that could apply during the first five years.[289] This ensures that the creditor calculates the DTI using the highest interest rate that the consumer may experience in the first five years, and the loan is not eligible for QM status under § 1026.43(e)(2) if the DTI calculated using that interest rate exceeds 43 percent. The Bureau is concerned that using the fully indexed rate to determine the APR for purposes of the rate spread thresholds in proposed § 1026.43(e)(2)(vi) would not provide a sufficiently meaningful safeguard against the elevated likelihood of delinquency for short-reset ARMs. For that reason, the Bureau is proposing the special rule for determining the APR for such loans.

The Bureau believes the statutory five-year underwriting requirement provides a basis for the special rule for determining the APR for short-reset ARMs for purposes of General QM rate-spread thresholds under § 1026.43(e)(2). Specifically, the Bureau is proposing that the creditor must determine the APR by treating the maximum interest rate that may apply during the first five years, as described in proposed § 1026.43(e)(2)(vi), as the interest rate for the full term of the loan. That APR determination would then be compared to the APOR[290] to determine General QM status. This approach would address in a targeted manner the primary concern about short-reset ARMs—payment shock—by accounting for the risk of delinquency and default associated with payment increases under these loans. And it would do so in a manner that is consistent with the five-year framework embedded in the statutory provision for such ARMs and implemented in the current rule.

In sum, the proposed special rule is consistent with both the statutory mandate for short-reset ARMs and the proposed price-based approach. As discussed above in part V, the rate spread of APR over APOR is strongly correlated with early delinquency rates. As a result, such rate spreads may generally serve as an effective proxy for a consumer's ability to repay. However, the structure and pricing of ARMs can result in early interest rate increases that are not fully accounted for in Regulation Z provisions for determining the APR for ARMs. Such increases would diminish the effectiveness of the rate spread as a proxy, and lead to heightened risk of early delinquency for short-reset ARMs relative to other loans with comparable APRs over APOR rate spreads. The proposed special rule, by requiring creditors to more fully incorporate this interest-rate risk in determining the APR for short-reset ARMs, would help ensure that the resulting pricing would account for that risk for such loans.

The proposed special rule would require that the maximum interest rate in the first five years be treated as the interest rate for the full term of the loan to determine the APR. The Bureau is concerned that a composite APR determination based on the maximum interest rate in the first five years and the fully indexed rate for the remaining loan term could understate the APR for short-reset ARMs by failing to sufficiently account for the risk that consumers with such loans could face payment shock early in the loan term. Accordingly, to account for that risk, and due to concerns about whether it would be appropriate to presume ATR for short-reset ARMs without such a safeguard, the Bureau is proposing that the APR for short-reset ARMs be based on the maximum interest rate during the first five years.

The Bureau considered several alternatives to the proposed special rule for certain loans for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will due. In response to the ANPR, several consumer advocates submitted comments suggesting prohibiting altogether short-reset ARMs from consideration as General QMs. These commenters pointed to the high default and foreclosure rates of such ARMs, the complex nature of the product, and consumers' insufficient comprehension of the product as justification to deny General QM status for ARMs with a fixed-rate period of less than five years. The Bureau believes the risks associated with short-reset ARMs can be effectively managed without prohibiting them from receiving General QM status, given that the Dodd-Frank Act explicitly permits short-reset ARMs to be considered as General QMs and includes a specific provision for addressing the potential for payment shock from such loans.

One of the above-referenced commenters alternatively recommended the Bureau impose specific limits on annual adjustments for short-reset ARMs. The Bureau considered this and similar alternatives, including applying a different rate spread over APOR for short-reset ARMs. The Bureau anticipates that the proposed approach would address in a more streamlined and targeted manner the core problem, *i.e.,* that short-reset ARMs could reset to significantly higher interest rates shortly after consummation resulting in a risk of default from unaffordable payments not adequately reflected under the standard determination of APR for ARMs. Further, the Bureau believes that including different rate spreads or similar schemes for short-reset ARMs and additional subtypes of loans would impose unnecessary operational and compliance complexity.

Proposed comment 43(e)(2)(vi)–4.i explains that provisions in subpart C, including the existing commentary to § 1026.17(c)(1), address the determination of the APR disclosures for closed-end credit transactions and that provisions in § 1026.32(a)(3) address how to determine the APR to determine coverage under § 1026.32(a)(1)(i). It further explains that proposed § 1026.43(e)(2)(vi) requires, for the purposes of that paragraph, a different determination of the APR for a QM under proposed § 1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular

[288] As noted above, the proposed special rule would also apply to step-rate mortgages in which the interest rate changes in the first five years.

[289] 12 CFR 1026.43(e)(2)(iv).

[290] This refers to the standard APOR for ARMs. The proposed requirement would modify the determination for the APR of ARMs but would not affect the determination of the APOR. The Bureau notes that the APOR used for step-rate mortgages would be the ARM APOR because, as with ARMs, the interest rate in step-rate mortgages adjusts and is not fixed. Thus, the APOR for fixed-rate mortgages would be inapt.

periodic payment will be due. In addition, proposed comment 43(e)(2)(vi)–4.i explains that an identical special rule for determining the APR for such a loan also applies for purposes of proposed § 1026.43(b)(4).

Proposed comment 43(e)(2)(vi)–4.ii explains the application of the special rule in proposed § 1026.43(e)(2)(vi) for determining the APR for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. Specifically, it explains that the special rule applies to ARMs that have a fixed-rate period of five years or less and to step-rate mortgages for which the interest rate changes within that five-year period.

Proposed comment 43(e)(2)(vi)–4.iii explains that, to determine the APR for purposes of proposed 43(e)(2)(vi), a creditor must treat the maximum interest rate that could apply at any time during the five-year period after the date on which the first regular periodic payment will be due as the interest rate for the full term of the loan, regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. Further, the proposed comment cross-references existing comments 43(e)(2)(iv)–3 and –4 for additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due.

Proposed comment 43(e)(2)(vi)–4.iv explains how to use the maximum interest rate to determine the APR for purposes of proposed § 1026.43(e)(2)(vi). Specifically, the proposed comment explains that the creditor must determine the APR by treating the maximum interest rate described in proposed § 1026.43(e)(2)(vi) as the interest rate for the full term of the loan. It further provides an example of how to determine the APR by treating the maximum interest rate as the interest rate for the full term of the loan.

As discussed above in part IV, TILA section 105(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. In particular, a purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans.

As also discussed above in part IV, TILA section 129C(b)(3)(B)(i) authorizes the Bureau to prescribe regulations that revise, add to, or subtract from the criteria that define a QM upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of section 129C, necessary and appropriate to effectuate the purposes of section 129C and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such section.

The Bureau is proposing the special rule in § 1026.43(e)(2)(vi) regarding the APR determination of certain loans for which the interest rate may or will change pursuant to its authority under TILA section 105(a) to make such adjustments and exceptions as are necessary and proper to effectuate the purposes of TILA, including that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans. The Bureau believes that these proposed provisions may ensure that General QM status would not be accorded to short-reset ARMs and certain other loans that pose a heightened risk of becoming unaffordable relatively soon after consummation. The Bureau is also proposing these provisions pursuant to its authority under TILA section 129C(b)(3)(B)(i) to revise and add to the criteria that define a QM. The Bureau believes that the proposed APR determination provisions in § 1026.43(e)(2)(vi) may ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purpose of TILA section 129C, referenced above, as well as effectuate that purpose.

The Bureau requests comment on all aspects of the proposed special rule in proposed § 1026.43(e)(2)(vi). In particular, the Bureau requests data regarding short-reset ARMs and those step-rate mortgages that would be subject to the proposed special rule, including default and delinquency rates and the relationship of those rates to price. The Bureau also requests comment on alternative approaches for such loans, including the ones discussed above, such as imposing specific limits on annual rate adjustments for short-reset ARMs, applying a different rate spread, and excluding such loans from General QM eligibility altogether.

43(e)(4)

TILA section 129C(b)(3)(B)(ii) directs HUD, VA, USDA, and the Rural Housing Service (RHS) to prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are QMs. Pending the other agencies' implementation of this provision, the Bureau included in the ATR/QM Rule a temporary category of QM loans in the special rules in § 1026.43(e)(4)(ii)(B) through (E) consisting of mortgages eligible to be insured or guaranteed (as applicable) by HUD, VA, USDA, and RHS. The Bureau also created the Temporary GSE QM loan definition, in § 1026.43(e)(4)(ii)(A).

Section 1026.43(e)(4)(i) states that, notwithstanding § 1026.43(e)(2), a QM is a covered transaction that satisfies the requirements of § 1026.43(e)(2)(i) through (iii)—the General QM loan-feature prohibitions and points-and-fees limits—as well as one or more of the criteria in § 1026.43(e)(4)(ii). Section 1026.43(e)(4)(ii) states that a QM under § 1026.43(e)(4) must be a loan that is eligible under enumerated ''special rules'' to be (A) purchased or guaranteed by the GSEs while under the conservatorship of the FHFA (the Temporary GSE QM loan definition), (B) insured by HUD under the National Housing Act, (C) guaranteed by VA, (D) guaranteed by USDA pursuant to 42 U.S.C. 1472(h), or (E) insured by RHS. Section 1026.43(e)(4)(iii)(A) states that § 1026.43(e)(4)(ii)(B) through (E) shall expire on the effective date of a rule issued by each respective agency pursuant to its authority under TILA section 129C(b)(3)(ii) to define a QM. Section 1026.43(e)(4)(iii)(B) states that, unless otherwise expired under § 1026.43(e)(4)(iii)(A), the special rules in § 1026.43(e)(4) are available only for covered transactions consummated on or before January 10, 2021.

The Bureau proposes to amend § 1026.43(e)(4) to state that, notwithstanding § 1026.43(e)(2), a QM is a covered transaction that is defined as a QM by HUD under 24 CFR 201.7 or 24 CFR 203.19, VA under 38 CFR 36.4300 or 38 CFR 36.4500, or USDA under 7 CFR 3555.109. There are two reasons for this proposed amendment.

First, if the Bureau issues a final rule in connection with this present proposal, the Bureau anticipates that the Temporary GSE QM loan definition described in § 1026.43(e)(4)(ii)(A) may expire upon the effective date of such a final rule. This is because, in a separate proposed rule released simultaneously with this proposal, the Bureau proposes

to revise § 1026.43(e)(4)(iii)(B) to state that, unless otherwise expired under § 1026.43(e)(4)(iii)(A), the special rules in § 1026.43(e)(4) are available only for covered transactions consummated on or before the effective date of a final rule issued by the Bureau amending the General QM loan definition. The Bureau may issue a final rule concerning its proposal to extend the sunset date in § 1026.43(e)(4)(iii)(B) before it issues a final rule concerning this present proposal (which would amend the General QM loan definition). Thus, if the Bureau issues a final rule in connection with this present proposal, such a final rule would remove the Temporary GSE QM loan definition from § 1026.43(e)(4)(ii)(A).

Second, after promulgation of the January 2013 Final Rule, each of the agencies described in § 1026.43(e)(4)(ii)(B) through (E) adopted separate definitions of qualified mortgages.[291] Under current § 1026.43(e)(4)(iii)(A), the special rules in § 1026.43(e)(4)(ii)(B) through (E) are already superseded by the actions of HUD, VA, and USDA. The Bureau proposes to amend § 1026.43(e)(4) to provide cross-references to each of these other agencies' definitions so that creditors and practitioners have a single point of reference for all QM definitions.

The Bureau also proposes to amend comment 43(e)(4)–1 to reflect the cross-references to the QM definitions of other agencies and to clarify that a covered transaction that meets another agency's definition is a QM for purposes of § 1026.43(e). Comment 43(e)(4)–2 would be amended to clarify that covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), were eligible for purchase or guarantee by Fannie Mae or Freddie Mac, and were consummated prior to the effective date of any final rule promulgated as a result of the proposal would still be considered a QM for purposes of § 1026.43(e) after the adoption of such potential final rule. Comments 43(e)(4)–3, –4, and –5 would be amended to indicate that such comments are reserved for future use. The Bureau requests comment on the proposed amendments to § 1026.43(e)(4) and related commentary.

Conforming Changes

As discussed above, the Bureau is proposing revisions to § 1026.43(e)(2)(v) and (e)(2)(vi) that would, among other things, remove references to appendix Q and remove the DTI ratio limit in § 1026.43(e)(2)(vi). The Bureau is also proposing to remove appendix Q. Accordingly, the Bureau is proposing nonsubstantive conforming changes in certain provisions to reflect the proposed changes to § 1026.43(e)(2)(v) and (e)(2)(vi) and the proposed removal of appendix Q. Specifically, the Bureau proposes to update comment 43(c)(7)–1 by removing the reference to the DTI limit in § 1026.43(e). The Bureau also proposes conforming changes to provisions related to small creditor QMs in § 1026.43(e)(5)(i) and to balloon-payment QMs in § 1026.43(f)(1). Both § 1026.43(e)(5) and (f)(1) provide that as part of the respective QM definitions, loans must comply with the requirements to consider and verify debts and income in existing § 1026.43(e)(2)(v). As discussed above, the Bureau is proposing to reorganize and revise § 1026.43(e)(2)(v) in order to provide that creditors must consider DTI or residual income and to clarify the requirements for creditors to consider and verify income, debt and other information. The proposed conforming changes to § 1026.43(e)(5) and (f)(1) would generally insert the substantive requirements of existing § 1026.43(e)(2)(v) into § 1026.43(e)(5)(i) and (f)(1), respectively, and would provide that loans under § 1026.43(e)(5) and § 1026.43(f) do not have to comply with proposed § 1026.43(e)(2)(v) or (e)(2)(vi). The proposed conforming changes would not insert the requirement that lenders consider and verify income, debt, and other information in accordance with appendix Q because, as described elsewhere in this proposal, the Bureau is proposing to remove appendix Q from Regulation Z. The Bureau is also proposing conforming changes to the related commentary.

Appendix Q to Part 1026—Standards for Determining Monthly Debt and Income

Appendix Q to part 1026 contains standards for calculating and verifying debt and income for purposes of determining whether a mortgage satisfies the 43 percent DTI limit for General QM loans. As explained in the section-by-section analysis of § 1026.43(e)(2)(v)(B) above, the Bureau proposes to remove appendix Q entirely in light of concerns from creditors and investors that its perceived rigidity, ambiguity, and static nature result in standards that are both confusing and outdated. As noted above, the Bureau seeks comment on its proposal to remove appendix Q entirely and not to retain it as an option for creditors to verify the consumer's income, assets, debt obligations, alimony, and child support.

VII. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

As discussed above, this proposal would amend the General QM loan definition to, among other things, remove the specific DTI limit and add a pricing threshold. In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act. Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. The Bureau consulted with appropriate prudential regulators and other Federal agencies regarding the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act. The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

1. Data and Evidence

The discussion in these impact analyses relies on data from a range of sources. These include data collected or developed by the Bureau, including HMDA [292] and NMDB [293] data, as well

[291] 78 FR 75215 (Dec. 11, 2013) (HUD); 79 FR 26620 (May 9, 2014) and 83 FR 50506 (Oct. 9, 2018) (VA); and 81 FR 26461 (May 3, 2016) (USDA).

[292] HMDA requires many financial institutions to maintain, report, and publicly disclose loan-level information about mortgages. These data help show whether creditors are serving the housing needs of their communities; they give public officials information that helps them make decisions and policies; and they shed light on lending patterns that could be discriminatory. HMDA was originally enacted by Congress in 1975 and is implemented by Regulation C. *See* Bureau of Consumer Fin. Prot., *https://www.consumerfinance.gov/data-research/hmda/.*

[293] The NMDB, jointly developed by the FHFA and the Bureau, provides de-identified loan characteristics and performance information for a five percent sample of all mortgage originations from 1998 to the present, supplemented by de-identified loan and borrower characteristics from Federal administrative sources and credit reporting data. *See* Bureau of Consumer Fin. Prot., *Sources and Uses of Data at the Bureau of Consumer Financial Protection,* at 55–56 (Sept. 2018), *https://www.consumerfinance.gov/documents/6850/bcfp_sources-uses-of-data.pdf.* Differences in total market size estimates between NMDB data and HMDA data

as data obtained from industry, other regulatory agencies, and other publicly available sources. The Bureau also conducted the Assessment and issued the Assessment Report as required under section 1022(d) of the Dodd-Frank Act. The Assessment Report provides quantitative and qualitative information on questions relevant to the proposed rule, including the extent to which DTI ratios are probative of a consumer's ability to repay, the effect of rebuttable presumption status relative to safe harbor status on access to credit, and the effect of QM status relative to non-QM status on access to credit. Consultations with other regulatory agencies, industry, and research organizations inform the Bureau's impact analyses.

The data the Bureau relied upon provide detailed information on the number, characteristics, pricing, and performance of mortgage loans originated in recent years. However, it would be useful to supplement these data with more information relevant to pricing and APR calculations (particularly PMI costs) for originations before 2018. PMI costs are an important component of APRs, particularly for loans with smaller down payments, and thus should be included or estimated in calculations of rate spreads relative to APOR. The Bureau seeks additional information or data which could inform quantitative estimates of PMI costs or APRs for these loans.

The data also do not provide information on creditor costs. As a result, analyses of any impacts of the proposal on creditor costs, particularly realized costs of complying with underwriting criteria or potential costs from legal liability, are based on more qualitative information. Similarly, estimates of any changes in burden on consumers resulting from increased or decreased verification requirements are based on qualitative information.

The Bureau seeks additional information or data which could inform quantitative estimates of the number of borrowers whose documentation cannot satisfy appendix Q, or the costs to borrowers or covered persons of complying with appendix Q verification requirements (or the potential costs of complying with appendix Q for Temporary GSE QM loans) or the proposed verification requirements. The Bureau also seeks comment or additional information which could inform quantitative estimates of the availability, underwriting, and pricing of non-QM alternatives to loans made under the Temporary GSE QM loan definition.

are attributable to differences in coverage and data construction methodology.

2. Description of the Baseline

The Bureau considers the benefits, costs, and impacts of the proposal against the baseline in which the Bureau takes no action and the Temporary GSE QM loan definition expires on January 10, 2021, or when the GSEs exit conservatorship, whichever occurs first. Under the proposal, the amendments to the General QM loan definition would take effect either at the time or after the Temporary GSE QM loan definition expires, depending on whether the GSEs remain in conservatorship on the effective date of a final rule issued by the Bureau amending the General QM loan definition. As a result, the proposal's direct market impacts are considered relative to a baseline in which the Temporary GSE QM has expired and no changes have been made to the General QM loan definition. Unless described otherwise, estimated loan counts under the baseline, proposal, and alternatives are annual estimates.

Under the baseline, conventional loans could receive QM status under the Bureau's rules only by underwriting according to the General QM requirements, Small Creditor QM requirements, Balloon Payment QM requirements, or the expanded portfolio QM amendments created by the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act. The General QM loan definition, which would be the only type of QM available to larger creditors for conventional loans, requires that consumers' DTI ratio not exceed 43 percent and requires creditors to determine debt and income in accordance with the standards in appendix Q.

The Bureau anticipates that there are two main types of conventional loans that would be affected by the expiration of the Temporary GSE QM loan definition: High-DTI GSE loans (those with DTI ratios above 43 percent) and GSE-eligible loans without appendix Q-required documentation. These loans are currently originated as QM loans due to the Temporary GSE QM loan definition but may not be originated as General QM loans, or may not be originated at all, without the proposed amendments to the General QM loan definition. This section 1022 analysis refers to these loans as potentially displaced loans.

High-DTI GSE Loans. The ANPR provided an estimate of the number of loans potentially affected by the expiration of the Temporary GSE QM loan definition.[294] In providing the estimate, the ANPR focused on loans that fall within the Temporary GSE QM loan definition but not the General QM loan definition because they have a DTI ratio above 43 percent. This proposal refers to these loans as High-DTI GSE loans. Based on NMDB data, the Bureau estimated that there were approximately 6.01 million closed-end first-lien residential mortgage originations in the United States in 2018.[295] Based on supplemental data provided by the FHFA, the Bureau estimated that the GSEs purchased or guaranteed 52 percent—roughly 3.12 million—of those loans.[296] Of those 3.12 million loans, the Bureau estimated that 31 percent—approximately 957,000 loans—had DTI ratios greater than 43 percent.[297] Thus, the Bureau estimated that, as a result of the General QM loan definition's 43 percent DTI limit, approximately 957,000 loans—16 percent of all closed-end first-lien residential mortgage originations in 2018—were High-DTI GSE loans.[298] This estimate does not include Temporary GSE QM loans that were eligible for purchase by the GSEs but were not sold to the GSEs.

Loans Without Appendix Q-Required Documentation That Are Otherwise GSE-Eligible. In addition to High-DTI GSE loans, the Bureau noted that an additional, smaller number of Temporary GSE QM loans with DTI ratios of 43 percent or less, when calculated using GSE underwriting guides, may not fall within the General QM loan definition because their method of verifying income or debt is incompatible with appendix Q.[299] These loans would also likely be affected when the Temporary GSE QM loan definition expires. The Bureau understands, from extensive public feedback and its own experience, that appendix Q does not specifically address whether and how to verify certain forms of income. The Bureau understands these concerns are particularly acute for self-employed consumers, consumers with part-time employment, and consumers with

[294] 84 FR 37155, 37158–59 (July 31, 2019).

[295] 84 FR at 37158–59.

[296] *Id.* at 37159.

[297] *Id.* The Bureau estimates that 616,000 of these loans were for home purchases, and 341,000 were refinance loans. In addition, the Bureau estimates that the share of these loans with DTI ratios over 45 percent has varied over time due to changes in market conditions and GSE underwriting standards, rising from 47 percent in 2016 to 56 percent in 2017, and further to 69 percent in 2018.

[298] *Id.* at 37159.

[299] *Id.* at 37159 n.58. Where these types of loans have DTI ratios above 43 percent, they would be captured in the estimate above relating to High-DTI GSE loans.

irregular or unusual income streams.[300] As a result, these consumers' access to credit may be affected if the Temporary GSE QM loan definition were to expire without amendments to the General QM loan definition.

The Bureau's analysis of the market under the baseline focuses on High-DTI GSE loans because the Bureau estimates that most potentially displaced loans are High-DTI GSE loans. The Bureau also lacks the loan-level documentation and underwriting data necessary to estimate with precision the number of potentially displaced loans that do not fall within the other General QM loan requirements and are not High-DTI GSE loans. However, the Assessment did not find evidence of substantial numbers of loans in the non-GSE-eligible jumbo market being displaced when appendix Q verification requirements became effective in 2014.[301] Further, the Assessment Report found evidence of only a limited reduction in the approval rate of self-employed applicants for non-GSE eligible mortgages.[302] Based on this evidence, along with qualitative comparisons of GSE and appendix Q verification requirements and available data on the prevalence of borrowers with non-traditional or difficult-to-document income (*e.g.,* self-employed borrowers, retired borrowers, those with irregular income streams), the Bureau estimates this second category of potentially displaced loans is considerably less numerous than the category of High-DTI GSE loans.

Additional Effects on Loans Not Displaced. While the most significant market effects under the baseline are displaced loans, loans that continue to be originated as QM loans after the expiration of the Temporary GSE QM loan definition would also be affected. After the expiration date, all loans with DTI ratios at or below 43 percent which are or would have been purchased and guaranteed as GSE loans under the Temporary GSE QM loan definition—approximately 2.16 million loans in 2018—and that continue to be originated as General QM loans after the provision expires would be required to verify income and debts according to appendix Q, rather than only according to GSE guidelines. Given the concerns raised about appendix Q's ambiguity and lack of flexibility, this would likely entail both increased documentation burden for some consumers as well as increased costs or time-to-origination for creditors on some loans.[303]

B. Potential Benefits and Costs to Covered Persons and Consumers

1. Benefits to Consumers

The primary benefit to consumers of the proposal is increased access to credit, largely through the expanded availability of High-DTI conventional QM loans. Given the large number of consumers who obtain High-DTI GSE loans rather than available alternatives, including loans from the private non-QM market and FHA loans, such High-DTI conventional QM loans may be preferred due to their pricing, underwriting requirements, or other features. Based on HMDA data, the Bureau estimates that 943,000 High-DTI conventional loans in 2018 would fall outside the QM definitions under the baseline, but fall within the proposal's amended General QM loan definition.[304] In addition, some consumers who would have been limited in the amount they could borrow due to the DTI limit under the baseline would likely be able to obtain larger mortgages at higher DTI levels.

Under the baseline, a sizeable share of potentially displaced High-DTI GSE loans may instead be originated as FHA loans. Thus, under the proposal, any price advantage of GSE or other conventional QM loans over FHA loans would be a realized benefit to consumers. Based on the Bureau's analysis of 2018 HMDA data, FHA loans comparable to the loans received by High-DTI GSE borrowers, based on loan purpose, credit score, and combined LTV ratio, on average have $3,000 to $5,000 higher upfront total loan costs at origination. APRs provide an alternative, annualized measure of costs over the life of a loan. FHA borrowers typically pay different APRs, which can be higher or lower than APRs for GSE loans depending on a borrower's credit score and LTV. Borrowers with credit scores at or above 720 pay an APR 30 to 60 basis points higher than borrowers of comparable GSE loans, leading to higher monthly payments over the life of the loan. However, FHA borrowers with credit scores below 680 and combined LTVs exceeding 85 percent pay an APR 20 to 40 basis points lower than borrowers of comparable GSE loans, leading to lower monthly payments over the life of the loan.[305] For a loan size of $250,000, these APR differences amount to $2,800 to $5,600 in additional total monthly payments over the first five years of mortgage payments for borrowers with credit scores above 720, and $1,900 to $3,800 in reduced total monthly payments over five years for borrowers with credit scores below 680 and LTVs exceeding 85 percent.[306] Thus, all FHA borrowers are likely to pay higher costs at origination, while some pay higher monthly mortgage payments, and others pay lower monthly mortgage payments. Assuming for comparison that all 943,000 additional loans falling within the amended General QM loan definition would be made as FHA loans in the absence of the proposal, the average of the upfront pricing estimates implies total savings for consumers of roughly $4 billion per year on upfront costs.[307] The total savings or costs over the life of the loan implied by APR differences would vary substantially across borrowers depending on credit scores, LTVs, and length of time holding the mortgage. While this comparison assumed all potentially displaced loans would be made as FHA loans, higher costs (either upfront or in monthly payments) are likely to prevent some borrowers from obtaining loans at all.

In the absence of the proposed amendment to the regulation, some of these potentially displaced consumers,

[300] For example, in qualitative responses to the Bureau's Lender Survey conducted as part of the Assessment, underwriting for self-employed borrowers was one of the most frequently reported sources of difficulty in originating mortgages using appendix Q. These concerns were also raised in comments submitted in response to the Assessment RFI, noting that appendix Q is ambiguous with respect to how to treat income for consumers who are self-employed, have irregular income, or want to use asset depletion as income. *See* Assessment Report, *supra* note 58, at 200.

[301] *Id.* at 107 (''For context, total jumbo purchase originations increased from an estimated 108,700 to 130,200 between 2013 and 2014, based on nationally representative NMDB data.'').

[302] *Id.* at 118 (''The Application Data indicates that, notwithstanding concerns that have been expressed about the challenge of documenting and verifying income for self-employed borrowers under the General QM standard and the documentation requirements contained in appendix Q to the Rule, approval rates for non-High DTI, non-GSE eligible self-employed borrowers have decreased only slightly, by two percentage points . . . .'').

[303] *See* part V.B. for additional discussion of concerns raised about appendix Q.

[304] This estimate includes only HMDA loans which have a reported DTI and rate spread over APOR, and thus may underestimate the true number of loans gaining QM status under the proposal.

[305] The Bureau expects consumers could continue to obtain FHA loans where such loans were cheaper or preferred for other reasons.

[306] Based on NMDB data, the Bureau estimates that the average loan amount among High-DTI GSE borrowers in 2018 was $250,000. While the time to repayment for mortgages varies with economic conditions, the Bureau estimates that half of mortgages are typically closed or paid off five to seven years into repayment. Payment comparisons based on typical 2018 HMDA APRs for GSE loans, 5 percent for borrowers with credit scores over 720, and 6 percent for borrowers with credit scores below 680 and LTVs exceeding 85.

[307] This approximation assumes $4,000 in savings from total loan costs for all 943,000 consumers. Actual expected savings would vary substantially based on loan and credit characteristics, consumer choices, and market conditions.

particularly those with higher credit scores and the resources to make larger down payments, likely would be able to obtain credit in the non-GSE private market at a cost comparable to or slightly higher than the costs for GSE loans, but below the cost of an FHA loan. As a result, the above cost comparisons between GSE and FHA loans provide an estimated upper bound on pricing benefits to consumers of the proposal. However, under the baseline, some potentially displaced consumers may not obtain loans, and thus would experience benefits of credit access under the proposal. As discussed above, the Assessment Report found that the January 2013 Final Rule eliminated between 63 and 70 percent of high-DTI home purchase loans that were not Temporary GSE QM loans.[308] The Bureau requests information or data which would inform quantitative estimates of the number of consumers who may not obtain loans and the costs to such consumers.

The proposal would also benefit those consumers with incomes difficult to verify using appendix Q to obtain General QM status, as the proposed General QM amendments would no longer require the use of appendix Q for verification of income. Under the proposal—as under the current rule—creditors would be required to verify income and assets in accordance with § 1026.43(c)(4) and debt obligations, alimony, and child support in accordance with § 1026.43(c)(3). The proposal would also state that a creditor complies with the General QM requirement to verify income, assets, debt obligations, alimony, and child support where it complies with verification requirements in standards the Bureau specifies. The greater flexibility of verification standards allowed under the proposal is likely to reduce effort and costs for these consumers, and in the most difficult cases in which consumers' documentation cannot satisfy appendix Q, the proposal may allow consumers to obtain General QM loans rather than potential FHA or non-QM alternatives. These consumers—likely including self-employed borrowers and those with non-traditional forms of income—would likely benefit from cost savings under the proposal, similar to those for High-DTI consumers discussed above.

Finally, as noted below under ''Costs to consumers,'' the Bureau estimates that 28,000 low-DTI conventional loans which are QM under the baseline would fall outside the amended QM definition under the proposal, due to exceeding the pricing thresholds in proposed § 1026.43(e)(2)(vi). If consumers of such loans are able to obtain non-QM loans with the amended General QM loan definition in place, they would gain the benefit of the ability-to-repay causes of action and defenses against foreclosure. However, some of these consumers may instead obtain FHA loans with QM status.

2. Benefits to Covered Persons

The proposal's primary benefit to covered persons, specifically mortgage creditors, is the expanded profits from originating High-DTI conventional QM loans. Under the baseline, creditors would be unable to originate such loans under the Temporary GSE QM loan definition and would instead have to originate loans with comparable DTI ratios as FHA, Small Creditor QM, or non-QM loans, or originate at lower DTI ratios as conventional General QM loans. Creditors' current preference for originating large numbers of High-DTI Temporary GSE QMs likely reflects advantages in a combination of costs or guarantee fees (particularly relative to FHA loans), liquidity (particularly relative to Small Creditor QM), or litigation and credit risk (particularly relative to non-QM). Moreover, QM loans—including Temporary GSE QMs—are exempt from the Dodd-Frank Act risk retention requirement whereby creditors that securitize mortgage loans are required to retain at least five percent of the credit risk of the security, which adds significant cost. As a result, the proposal conveys benefits to mortgage creditors originating High-DTI conventional QMs on each of these dimensions.

In addition, for those lower-DTI GSE loans which could satisfy General QM requirements, creditors may realize cost savings from underwriting loans using the more flexible verification standards allowed under the proposal compared with using appendix Q. Under the proposal, creditors would be required to consider DTI or residual income in addition to income and debt but would not need to comply with the appendix Q standards required for General QM loans under the baseline. For conventional consumers unable to provide documentation compatible with appendix Q, the proposal may allow such loans to continue receiving QM status, providing comparable benefits to creditors as described for High-DTI GSE loans above.

Finally, those creditors whose business models rely most heavily on originating High-DTI GSE loans would likely see a competitive benefit from the continued ability to originate such loans as General QMs. This is effectively a transfer in market share to these creditors from those who primarily originate FHA or private non-QM loans, who likely would have gained market share under the baseline.

3. Costs to Consumers

As discussed above, relative to the baseline, the Bureau estimates that 943,000 additional High-DTI loans could be originated as General QM loans under the proposal. Some of these loans would have been non-QM loans (if originated) under the baseline. As a result, the proposal is likely to increase the number of consumers who become delinquent on QM loans, meaning an increase in consumers with delinquent loans who do not have the benefit of the ability-to-repay causes of action and defenses against foreclosure.

Tables 5 and 6 in part V.C provide historical early delinquency rates for loans under different combinations of DTI ratio and rate spread. Under the proposal, conventional loans originated with rate spreads below 2 percentage points and DTI above 43 percent would newly fall within the amended General QM loan definition relative to the baseline. Based on the number and characteristics of 2018 HMDA originations, the Bureau estimates 8,000 to 59,000 additional General QM loans annually could become delinquent within two years of origination, based on the observed early delinquencies from Table 6 (2018) and Table 5 (2002–2008), respectively. Further, consumers who would have been limited in the amount they could borrow due to the DTI limit under the baseline may obtain larger mortgages at higher DTI levels, further increasing the expected number of delinquencies. However, given that many of these loans may have been originated as FHA (or other non-General QM) loans under the baseline, the increase in delinquent loans held by consumers without the ability-to-repay causes of action and defenses against foreclosure is likely smaller than the upper bound estimates cited above.

For the estimated 28,000 consumers obtaining low-DTI General QM or Temporary GSE QM loans priced 2 percentage points or more above APOR under the baseline, the amended General QM loan definition may restrict access to conventional QM credit. There are several possible outcomes for these consumers. Many may instead obtain FHA loans, likely paying higher total loan costs as discussed in part VII.B.1. Others may be able to obtain General QM loans priced below 2 percentage points over APOR due to creditor

[308] *See* Assessment Report *supra* note 58, at 10–11, 117, 131–47.

responses to the proposal or obtain loans under the Small Creditor QM definition. However, some consumers may not be able to obtain a mortgage at all. The Bureau requests data or evidence that could inform estimates for the likelihood of these outcomes among consumers with low-DTI General QM or Temporary GSE QM loans priced 2 percentage points or more above APOR.

In addition, the proposal could slow the development of the non-QM market, particularly new mortgage products which may have become available under the baseline. To the extent that some consumers would prefer some of these products to conventional QM loans due to pricing, verification flexibility, or other advantages, the delay of their development would be a cost to consumers of the proposal.

4. Costs to Covered Persons

For creditors retaining the credit risk of their General QM mortgages (*e.g.,* portfolio loans and private securitizations), an increase in High-DTI General QM originations may lead to increased risk of credit losses. There is reason to believe, however, that on average the effects on portfolio lenders may be small. Creditors that hold loans on portfolio have an incentive to verify ability to repay regardless of liability under the ATR provisions, because they hold the credit risk. While portfolio lenders (or those who manage the portfolios) may recognize and respond to this incentive to different degrees, the proposed rule is likely on average to cause a small increase in the willingness of these creditors to originate loans with a greater risk of default and credit losses, such as certain loans with high DTI ratios. The credit losses to investors in private securitizations are harder to predict. In general, these losses would depend on the scrutiny that investors are willing and able to give to the non-QM loans under the baseline that become QM loans (with high DTI ratios) under the proposed rule. It is possible, however, that the reduction in liability under the ATR provisions would lead to securitizations with more loans that have a greater risk of default and credit losses.

In addition, creditors would generally no longer be able to originate low-DTI conventional loans priced 2 percentage points or higher above APOR as General QMs under the proposal.[309] Creditors may be able to originate some of these loans at prices below 2 percentage points above APOR or as non-QM or other types of QM loans, but in any of these cases may pay higher costs or receive lower revenues relative to under the baseline. If creditors are unable to originate such loans at all, they would see a larger reduction in revenue.

The proposal also generates what are effectively transfers between creditors relative to the baseline, reflecting reduced loan origination volume for creditors who primarily originate FHA or private non-QM loans and increased origination volume for creditors who primarily originate conventional QM loans. Business models vary substantially within market segments, with portfolio lenders and lenders originating non-QM loans most likely to forgo market share gains possible under the baseline, while GSE-focused bank and non-bank creditors are likely to maintain market share that might be lost in the absence of the proposal.

5. Other Benefits and Costs

The proposal may limit the development of the secondary market for non-QM mortgage loan securities. Under the baseline, those loans that do not fit within General QM requirements represent a potential new market for non-QM securitizations. Thus, the proposal would reduce the scope of the potential non-QM market, likely lowering profits and revenues for participants in the private secondary market. This would effectively be a transfer from these non-QM secondary market participants to participants in the agency or other QM loan secondary markets.

6. Alternatives

A potential alternative to the proposed rule is maintaining the General QM loan definition's DTI limit but at a higher level, for example, 45 or 50 percent. The Bureau estimates the effects of such alternatives relative to the proposed rule, assuming no change in consumer or creditor behavior. For an alternative General QM loan definition with a DTI limit of 45 percent, the Bureau estimates that 662,000 fewer loans would be General QM due to DTI ratios over 45 percent, while 32,000 additional loans with rate spreads above the proposed rule's QM pricing thresholds would newly fit within the General QM loan definition due to DTI ratios at or below 45 percent. For an alternative DTI limit of 50 percent, the Bureau estimates 48,000 fewer loans would fit within the General QM loan definition due to DTI ratios over 50 percent, while 41,000 additional loans with rate spreads above the proposed rule's QM pricing thresholds would newly fit within the General QM loan definition due to DTI ratios at or below 50 percent.

In addition to these effects on the composition of loans within the General QM loan definition, the Bureau uses the historical delinquency rates from Tables 5 and 6 in part V.C to estimate the number of loans expected to become delinquent within the General QM loan definition relative to the proposal. The Bureau estimates that under an alternative DTI limit of 45 percent, 4,000 to 35,000 fewer General QM loans would become delinquent relative to the proposal, based on delinquency rates for 2018 and 2002–2008 originations respectively. Under an alternative DTI limit of 50 percent, the Bureau estimates approximately 1,000 additional General QM loans would become delinquent relative to the proposal, due to loans priced 2 percentage points or more above APOR gaining QM status.

For an alternative DTI limit of 45 percent, these estimates collectively indicate that substantially fewer loans would fit within the General QM loan definition relative to the proposal, which would also reduce the number of General QM loans becoming delinquent. By contrast, the estimates indicate that an alternative DTI limit of 50 percent would lead to a comparable number of General QM loans relative to the proposal, both overall and among those that would become delinquent. However, consumer and creditor responses to such alternatives, such as reducing loan amounts to lower DTI ratios, could increase the number of loans that fit within the General QM loan definition relative to the proposal.

Other potential alternatives to the proposed rule could impose a DTI limit only for loans above a certain pricing threshold, for example a DTI limit of 50 percent for loans with rate spreads at or above 1 percentage point.[310] Such an alternative would function as a hybrid of the proposal and an alternative which maintains a DTI limit at a higher level, 50 percent in the case of this example. As a result, the number of loans fitting

[309] The comparable thresholds are 6.5 percentage points over APOR for loans priced under $65,939 and 3.5 percentage points over APOR for loans priced under $109,898 but at or above $65,939.

[310] As discussed in part V.E, a similar approach could impose a DTI limit above a certain pricing threshold and also tailor the presumption of compliance with the ATR requirement based on DTI. For example, the rule could provide that (1) for loans with rate spreads under 1 percentage point, the loan is a safe harbor QM regardless of the consumer's DTI ratio; (2) for loans with rate spreads at or above 1 but less than 1.5 percentage points, a loan is a safe harbor QM if the consumer's DTI ratio does not exceed 50 percent and a rebuttable presumption QM if the consumer's DTI is above 50 percent; and (3) if the rate spread is at or above 1.5 but less than 2 percentage points, loans would be rebuttable presumption QM if the consumer's DTI ratio does not exceed 50 percent and non-QM if the DTI ratio is above 50 percent.

within the General QM loan definition would generally be between the Bureau's estimates for the proposal and its estimates for the corresponding alternative which maintains the higher DTI limit. Thus, this hybrid approach would bring fewer loans within the General QM loan definition compared to the proposal but more loans within the General QM loan definition compared to the alternative DTI limit of 50 percent, both overall and among loans that would become delinquent.

C. Potential Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The proposal's expected impact on depository institutions and credit unions that are also creditors making covered loans (depository creditors) with $10 billion or less in total assets is similar to the expected impact on larger depository creditors and on non-depository creditors. As discussed in part VII.B.4 (Costs to Covered Persons), depository creditors originating portfolio loans may forgo potential market share gains that would occur in the absence of the proposal. In addition, depository creditors with $10 billion or less in total assets that originate portfolio loans can originate High-DTI Small Creditor QM loans under the rule. These depository creditors may currently rely less on the Temporary GSE QM loan definition for originating High-DTI loans. If the expiration of the Temporary GSE QM loan definition would confer a competitive advantage to these small creditors in their origination of High-DTI loans, the proposal would offset this outcome.

Conversely, those small depository creditors that primarily rely on the GSEs as a secondary market outlet because they do not have the capacity to hold numerous loans on portfolio or the infrastructure or scale to securitize loans may continue to benefit from the ability to make High-DTI GSE loans as QM loans. In the absence of the proposal, these creditors would be limited to originating GSE loans as QMs only with DTI at or below 43 percent under the current General QM loan definition. These creditors may also originate FHA, VA, or USDA loans or non-QM loans for private securitizations, likely at a higher cost relative to originating Temporary GSE QM loans. The proposed rule would allow these creditors to originate more GSE loans under the General QM loan definition and have a lower cost of origination relative to the baseline.[311]

D. Potential Impact on Rural Areas

The proposal's expected impact on rural areas is similar to the expected impact on non-rural areas. Based on 2018 HMDA data, the Bureau estimates that High-DTI conventional purchase mortgages originated for homes in rural areas are approximately as likely to be reported as initially sold to the GSEs (52.5 percent) as loans in non-rural areas (52 percent).[312] In addition, the Bureau estimates that in 2018, 95.6 percent of conventional purchase loans originated for homes in rural areas would have been QM loans under the proposal, similar to the Bureau's estimate for all conventional purchase loans in rural and non-rural areas (96.1 percent).[313]

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[314]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities (SISNOSE).[315] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.[316]

An IRFA is not required for this proposal because the proposal, if adopted, would not have a SISNOSE. As the below analysis makes clear, relative to the baseline, the proposed rule has only one sizeable adverse effect. Certain loans with DTI ratios under 43 percent that would otherwise be originated as rebuttable presumption QM loans under the baseline would be non-QM loans under the proposal. The proposal would also have a number of more minor effects on small entities which are not quantified in this analysis, including adjustments to the APR calculation used for certain ARMs when determining QM status; amendments to the Rule's requirements to consider and verify income, assets, debt obligations, alimony, and child support; and the addition of DTI as a factor consumers may use to rebut the QM presumption of compliance for loans priced 1.5 percentage points or more over APOR. The Bureau expects only small increases or decreases in burden from these more minor effects.

The analysis divides potential originations into different categories and considers whether the proposed rule has any adverse impact on originations relative to the baseline. Note that under the baseline, the category of Temporary GSE QM loans no longer exists. The Bureau has identified five categories of small entities that may be subject to the proposed provisions: Commercial banks, savings institutions and credit unions (NAICS 522110, 522120, and 522130) with assets at or below $600 million; mortgage brokers (NAICS 522310) with average annual receipts at or below $8 million; and mortgage companies (NAICS 522292 and 522298) with average annual receipts at or below $41.5 million. As discussed further below, the Bureau relies primarily on 2018 HMDA data for the analysis.[317]

Type I: First Liens That Are Not Small Loans, DTI Is Over 43 Percent

Under the baseline, small entities cannot originate Type I loans as safe harbor or rebuttable presumption QM

[311] Alternative approaches, such as retaining a DTI limit of 45 or 50 percent, would have similar effects of allowing small depository creditors originate more GSE loans under an expanded General QM loan definition relative to the baseline, while offsetting potential competitive advantages for small depository creditors that originate Small Creditor QM loans.

[312] These statistics are estimated based on originations from the first nine months of the year, to allow time for loans to be sold before HMDA reporting deadlines. In addition, a higher share of High-DTI conventional purchase non-rural loans (33.3 percent) report being sold to other non-GSE purchasers compared to rural loans (22.3 percent).

[313] For alternative approaches, the Bureau estimates 84.7 percent of conventional purchase loans for homes in rural areas would have been QMs under a DTI limit of 45 percent, and 95.7 percent of conventional purchase loans for homes in rural areas would have been QMs under a DTI limit of 50 percent.

[314] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[315] 5 U.S.C. 603–605.

[316] 5 U.S.C. 609.

[317] Non-depositories are classified as small entities if they had fewer than 5,188 total originations in 2018. The classification for non-depositories is based on the SBA small entity definition for mortgage companies (less than $41.5 million in annual revenues) and an estimate of $8,000 for revenue-per-origination from the Assessment Report, *supra* note 58, at 78. The HMDA data do not directly distinguish mortgage brokers from mortgage companies, so the more inclusive revenue threshold is used.

loans unless they are also small creditors and comply with the additional requirements of the small creditor QM category. Neither the removal of DTI requirements nor the addition of the pricing conditions have an adverse impact on the ability of small entities to originate these loans.

Type II: First Liens That Are Not Small Loans, DTI Is 43 Percent or Under

Under the baseline, small entities can originate these loans as either safe harbor QM or rebuttable presumption QM, depending on pricing. The removal of DTI requirements has no adverse impact on the ability of small entities to originate these loans. The addition of the pricing conditions has no adverse impact on the ability of small creditors to originate these loans as safe harbor QM loans: A loan with APR within 1.5 percentage points of APOR that can be originated as a safe harbor QM loan under the baseline can be originated as a safe harbor QM loan under the pricing conditions of the proposed rule. Similarly, the addition of the pricing conditions has no adverse impact on the ability of small creditors to originate rebuttable presumption QM loans with APR between 1.5 percentage points and 2 percentage points over APOR. The addition of the pricing conditions would, however, prevent small creditors from originating rebuttable presumption QM loans with APR 2 percentage points or more over APOR. In the SISNOSE analysis below, the Bureau conservatively assumes that none of these loans would be originated.

Type III: First-Liens That Are Small Loans

Under the baseline, small entities can originate these loans as General QM loans if they have DTI ratios at or below the DTI limit of 43 percent. The proposal's amended General QM loan definition preserves QM status for some smaller, low-DTI loans priced 2 percentage points or more over APOR. Specifically, loans under $65,939 with APR less than 6.5 percentage points over APOR and loans under $109,898 with APR less than 3.5 percentage points over APOR can be originated as General QM loans, assuming they meet all other General QM requirements. The proposal would prevent small creditors from originating smaller, low-DTI loans with APR at or above these higher thresholds as General QM loans. For the SISNOSE analysis below, the Bureau conservatively assumes that none of these loans would be originated.

Type IV: Closed-End Subordinate-Liens

Under the baseline, small entities can originate these loans as General QM loans if they have DTI ratios at or below the DTI limit of 43 percent. The proposal's amended General QM loan definition creates new pricing thresholds for subordinate-lien originations. Subordinate-lien loans under $65,939 with APR less than 6.5 percentage points over APOR and larger subordinate-lien loans with APR less than 3.5 percentage points over APOR can be originated as General QM loans, assuming they meet all other General QM requirements. The proposal would prevent small creditors from originating low-DTI, subordinate-lien loans with APR at or above these thresholds as General QM loans. For the SISNOSE analysis below, the Bureau conservatively assumes that none of these loans would be originated.

Analysis

For purposes of this analysis, the Bureau assumes that average annual receipts for small entities is proportional to mortgage loan origination volume. The Bureau further assumes that a small entity experiences a significant negative effect from the proposed rule if the proposed rule would cause a reduction in origination volume of over 2 percent. Using the 2018 HMDA data, the Bureau estimates that if none of the Type II, III, or IV loans adversely affected were originated, 149 small entities would experience a loss of over 2 percent in mortgage loan origination volume. Thus, there are at most 149 small entities that experience a significant adverse economic impact. The Bureau estimates that there are 2,027 small entities in the HMDA data. 149 is not a substantial number relative to 2,027.

The Bureau recognizes that there are small entities that originate mortgage credit that do not report HMDA data. The Bureau has no reason to expect, however, that small entities that originate mortgage credit that do not report HMDA data would be affected differently from small HMDA reporters by the proposed rule. In other words, the Bureau expects that including HMDA non-reporters in the analysis would increase the number of small entities that would experience a loss of over 2 percent in mortgage loan origination volume and the number of relevant small entities by the same proportion. Thus, the overall number of small entities that would experience a significant adverse economic impact would not be a substantial number of the overall number of small entities that originate mortgage credit.

Accordingly, the Director certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on its analysis of the impact of the proposal on small entities and requests any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[318] Federal agencies are generally required to seek, prior to implementation, approval from the Office of Management and Budget (OMB) for information collection requirements. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposal does not contain any new or substantively revised information collection requirements other than those previously approved by OMB under OMB control number 3170–0015. The proposal would amend 12 CFR part 1026 (Regulation Z), which implements TILA. OMB control number 3170–0015 is the Bureau's OMB control number for Regulation Z.

The Bureau welcomes comments on these determinations or any other aspect of the proposal for purposes of the PRA.

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1026

Advertising, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

[318] 44 U.S.C. 3501 *et seq.*

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Amend § 1026.43 by revising paragraphs (b)(4), (e)(2)(v) and (vi), (e)(4), (e)(5)(i)(A) and (B), and (f)(1)(i) and (iii) to read as follows:

§ 1026.43 Minimum standards for transactions secured by a dwelling.

* * * * *

(b) * * *

(4) *Higher-priced covered transaction* means a covered transaction with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for a first-lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a subordinate-lien covered transaction. For purposes of a qualified mortgage under paragraph (e)(2) of this section, for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of this paragraph (b)(4) by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

* * * * *

(e) * * *

(2) * * *

(v) For which the creditor, at or before consummation:

(A) Considers the consumer's income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income, using the amounts determined from paragraph (e)(2)(v)(B) of this section. For purposes of this paragraph (e)(2)(v)(A), the consumer's monthly debt-to-income ratio or residual income is determined in accordance with paragraph (c)(7) of this section, except that the consumer's monthly payment on the covered transaction, including the monthly payment for mortgage-related obligations, is calculated in accordance with paragraph (e)(2)(iv) of this section.

(B)(*1*) Verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with paragraph (c)(4) of this section; and

(*2*) Verifies the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with paragraph (c)(3) of this section.

(vi) For which the annual percentage rate does not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the amounts specified in paragraphs (e)(2)(vi)(A) through (E) of this section. The amounts specified here shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) that was reported on the preceding June 1. For purposes of this paragraph (e)(2)(vi), the creditor must determine the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

(A) For a first-lien covered transaction with a loan amount greater than or equal to $109,898 (indexed for inflation), 2 or more percentage points;

(B) For a first-lien covered transaction with a loan amount greater than or equal to $65,939 (indexed for inflation) but less than $109,898 (indexed for inflation), 3.5 or more percentage points;

(C) For a first-lien covered transaction with a loan amount less than $65,939 (indexed for inflation), 6.5 or more percentage points;

(D) For a subordinate-lien covered transaction with a loan amount greater than or equal to $65,939 (indexed for inflation), 3.5 or more percentage points;

(E) For a subordinate-lien covered transaction with a loan amount less than $65,939 (indexed for inflation), 6.5 or more percentage points.

* * * * *

(4) *Qualified mortgage defined—other agencies.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that is defined as a qualified mortgage by the U.S. Department of Housing and Urban Development under 24 CFR 201.7 and 24 CFR 203.19, the U.S. Department of Veterans Affairs under 38 CFR 36.4300 and 38 CFR 36.4500, or the U.S. Department of Agriculture under 7 CFR 3555.109.

(5) * * *

(i) * * *

(A) That satisfies the requirements of paragraph (e)(2) of this section other than the requirements of paragraphs (e)(2)(v) and (vi);

(B) For which the creditor:

(*1*) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(*2*) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

(*3*) Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in paragraph (c)(7)(i)(A) shall be determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of this section;

* * * * *

(f) * * *

(1) * * *

(i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A) and (e)(2)(ii) and (iii) of this section;

* * * * *

(iii) The creditor:

(A) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(B) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

(C) Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be

determined in accordance with paragraph (f)(1)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;

* * * * *

Appendix Q to Part 1026 [Removed]

■ 3. Remove Appendix Q to Part 1026.

■ 4. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling:*

■ a. Revise *43(b)(4), 43(c)(4),* and *43(c)(7);*

■ b. Revise *Paragraph 43(e)(2)(v);*

■ c. Add *Paragraphs 43(e)(2)(v)(A) and 43(e)(2)(v)(B)* (after *Paragraph 43(e)(2)(v)*);

■ d. Revise *Paragraph 43(e)(2)(vi);*

■ e. Revise *43(e)(4);* and

■ f. Revise *Paragraph 43(e)(5), Paragraph 43(f)(1)(i),* and e *Paragraph 43(f)(1)(iii).*

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.43—Minimum Standards for Transactions Secured by a Dwelling

* * * * *

43(b)(4) Higher-Priced Covered Transaction

1. *Average prime offer rate.* The average prime offer rate is defined in § 1026.35(a)(2). For further explanation of the meaning of ''average prime offer rate,'' and additional guidance on determining the average prime offer rate, *see* comments 35(a)(2)–1 through –4.

2. *Comparable transaction.* A higher-priced covered transaction is a consumer credit transaction that is secured by the consumer's dwelling with an annual percentage rate that exceeds by the specified amount the average prime offer rate for a comparable transaction as of the date the interest rate is set. The published tables of average prime offer rates indicate how to identify a comparable transaction. *See* comment 35(a)(2)–2.

3. *Rate set.* A transaction's annual percentage rate is compared to the average prime offer rate as of the date the transaction's interest rate is set (or ''locked'') before consummation. Sometimes a creditor sets the interest rate initially and then re-sets it at a different level before consummation. The creditor should use the last date the interest rate is set before consummation.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.* Provisions in subpart C of this part, including the commentary to § 1026.17(c)(1), address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(b)(4) requires, only for the purposes of a qualified mortgage under § 1026.43(e)(2), a different determination of the annual percentage rate for purposes of § 1026.43(b)(4) for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. *See* comment 43(e)(2)(vi)–4 for how to determine the annual percentage rate of such a loan.

* * * * *

43(c)(4) Verification of Income or Assets

1. *Income or assets relied on.* A creditor need consider, and therefore need verify, only the income or assets the creditor relies on to evaluate the consumer's repayment ability. *See* comment 43(c)(2)(i)–2. For example, if a consumer's application states that the consumer earns a salary and is paid an annual bonus and the creditor relies on only the consumer's salary to evaluate the consumer's repayment ability, the creditor need verify only the salary. *See also* comments 43(c)(3)–1 and –2.

2. *Multiple applicants.* If multiple consumers jointly apply for a loan and each lists income or assets on the application, the creditor need verify only the income or assets the creditor relies on in determining repayment ability. *See* comment 43(c)(2)(i)–5.

3. *Tax-return transcript.* Under § 1026.43(c)(4), a creditor may verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, which summarizes the information in a consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. A creditor may obtain a copy of a tax-return transcript or a filed tax return directly from the consumer or from a service provider. A creditor need not obtain the copy directly from the IRS or other taxing authority. *See* comment 43(c)(3)–2.

4. *Unidentified funds.* A creditor does not meet the requirements of § 1026.43(c)(4) if it observes an inflow of funds into the consumer's account without confirming that the funds are income. For example, a creditor would not meet the requirements of § 1026.43(c)(4) where it observes an unidentified $5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and not, for example, proceeds from the disbursement of a loan.

* * * * *

43(c)(7) Monthly Debt-to-Income Ratio or Residual Income

1. *Monthly debt-to-income ratio or monthly residual income.* Under § 1026.43(c)(2)(vii), the creditor must consider the consumer's monthly debt-to-income ratio, or the consumer's monthly residual income, in accordance with the requirements in § 1026.43(c)(7). Section 1026.43(c) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, an appropriate threshold for a consumer's monthly debt-to-income ratio or monthly residual income is for the creditor to determine in making a reasonable and good faith determination of a consumer's ability to repay.

2. *Use of both monthly debt-to-income ratio and monthly residual income.* If a creditor considers the consumer's monthly debt-to-income ratio, the creditor may also consider the consumer's residual income as further validation of the assessment made using the consumer's monthly debt-to-income ratio.

3. *Compensating factors.* The creditor may consider factors in addition to the monthly debt-to-income ratio or residual income in assessing a consumer's repayment ability. For example, the creditor may reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio or lower residual income in light of the consumer's assets other than the dwelling, including any real property attached to the dwelling, securing the covered transaction, such as a savings account. The creditor may also reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio in light of the consumer's residual income.

* * * * *

Paragraph 43(e)(2)(v)

1. *General.* For guidance on satisfying § 1026.43(e)(2)(v), a creditor may rely on commentary to § 1026.43(c)(2)(i) and (vi), (c)(3), and (c)(4).

Paragraph 43(e)(2)(v)(A)

1. *Consider.* In order to comply with the requirement to consider income or assets, debt obligations, alimony, child

support, and monthly debt-to-income ratio or residual income under § 1026.43(e)(2)(v)(A), a creditor must take into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. Under § 1026.25(a), a creditor must retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. Examples of such documentation may include, for example, an underwriter worksheet or a final automated underwriting system certification, alone or in combination with the creditor's applicable underwriting standards, that shows how these required factors were taken into account in the creditor's ability-to-repay determination.

2. *Requirement to consider monthly debt-to-income ratio or residual income.* Section 1026.43(e)(2)(v)(A) does not prescribe specifically how a creditor must consider monthly debt-to-income ratio or residual income. Section 1026.43(e)(2)(v)(A) also does not prescribe a particular monthly debt-to-income ratio or residual income threshold with which a creditor must comply. A creditor may, for example, consider monthly debt-to-income ratio or residual income by establishing monthly debt-to-income or residual income thresholds for its own underwriting standards and documenting how it applied those thresholds to determine the consumer's ability to repay. A creditor may also consider these factors by establishing monthly debt-to-income or residual income thresholds and exceptions to those thresholds based on other compensating factors, and documenting application of the thresholds along with any applicable exceptions.

3. *Flexibility to consider additional factors related to a consumer's ability to repay.* The requirement to consider income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income does not preclude the creditor from taking into account additional factors that are relevant in determining a consumer's ability to repay the loan. For guidance on considering additional factors in determining the consumer's ability to repay, see comment 43(c)(7)–3.

Paragraph 43(e)(2)(v)(B)

1. *Verification of income, assets, debt obligations, alimony, and child support.* Section 1026.43(e)(2)(v)(B) does not prescribe specific methods of underwriting that creditors must use. Section 1026.43(e)(2)(v)(B)(*1*) requires a creditor to verify the consumer's current or reasonably expected income or assets (including any real property attached to the value of the dwelling) that secures the loan in accordance with § 1026.43(c)(4), which states that a creditor must verify such amounts using third-party records that provide reasonably reliable evidence of the consumer's income or assets. Section 1026.43(e)(2)(v)(B)(*2*) requires a creditor to verify the consumer's current debt obligations, alimony, and child support in accordance with § 1026.43(c)(3), which states that a creditor must verify such amounts using reasonably reliable third-party records. So long as a creditor complies with the provisions of § 1026.43(c)(3) with respect to debt obligations, alimony, and child support and § 1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria.

2. *Classifying and counting income, assets, debt obligations, alimony, and child support.* ''Current and reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan'' is determined in accordance with § 1026.43(c)(2)(i) and its commentary. ''Current debt obligations, alimony, and child support'' has the same meaning as under § 1026.43(c)(2)(vi) and its commentary. Section 1026.43(c)(2)(i) and (vi) and the associated commentary apply to a creditor's determination with respect to what inflows and property it may classify and count as income or assets and what obligations it must classify and count as debt obligations, alimony, and child support, pursuant to its compliance with § 1026.43(e)(2)(v)(B).

3. *Safe harbor for compliance with specified external standards.*

i. Meeting the standards in the following documents for verifying current or reasonably expected income or assets using third-party records provides a creditor with reasonably reliable evidence of the consumer's income or assets. Meeting the standards in the following documents for verifying current debt obligations, alimony, and child support obligation using third-party records provides a creditor with reasonably reliable evidence of the consumer's debt obligations, alimony, and child support obligations. Accordingly, a creditor complies with § 1026.43(e)(2)(v)(B) if it complies with verification standards in one or more of the following documents: [List to be Determined, as Discussed in Preamble].

ii. *Applicable provisions in standards.* A creditor complies with § 1026.43(e)(2)(v)(B) if it complies with requirements in the standards listed in comment 43(e)(2)(v)(B)–3 for creditors to verify income, assets, debt obligations, alimony and child support using specified documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iii. *Inapplicable provisions in standards.* For purposes of compliance with § 1026.43(e)(2)(v)(B), a creditor need not comply with requirements in the standards listed in comment 43(e)(2)(v)(B)–3 other than those that require lenders to verify income, assets, debt obligations, alimony and child support using specified documents or to classify and count particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iv. *Revised versions of standards.* A creditor also complies with § 1026.43(e)(2)(v)(B) where it complies with revised versions of the standards listed in comment 43(e)(2)(v)(B)–3.i, provided that the two versions are substantially similar.

v. *Use of standards from more than one document.* A creditor complies with § 1026.43(e)(2)(v)(B) if it complies with the verification standards in one or more of the documents specified in comment 43(e)(2)(v)(B)–3.i. Accordingly, a creditor may, but need not, comply with § 1026.43(e)(2)(v)(B) by complying with the verification standards from more than one document (in other words, by ''mixing and matching'' verification standards).

Paragraph 43(e)(2)(vi)

1. *Determining the average prime offer rate for a comparable transaction as of the date the interest rate is set.* For guidance on determining the average prime offer rate for a comparable transaction as of the date the interest rate is set, see comments 43(b)(4)–1 through –3.

2. *Determination of applicable threshold.* A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the ''loan amount'' as defined in § 1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of $75,000, the loan would fall into the tier for loans greater than or equal to $65,939 (indexed for inflation) but less than $109,898 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

3. *Annual adjustment for inflation.* The dollar amounts in § 1026.43(e)(2)(vi) will be adjusted annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.*

i. *In general.* The commentary to § 1026.17(c)(1) and other provisions in subpart C address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in § 1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under § 1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of § 1026.43(e)(2)(vi), a different determination of the annual percentage rate for a qualified mortgage under § 1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. An identical special rule for determining the annual percentage rate for such a loan also applies for purposes of § 1026.43(b)(4).

ii. *Loans for which the interest rate may or will change.* Section 1026.43(e)(2)(vi) includes a special rule for determining the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. This rule applies to adjustable-rate mortgages that have a fixed-rate period of five years or less and to step-rate mortgages for which the interest rate changes within that five-year period.

iii. *Maximum interest rate during the first five years.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, a creditor must treat the maximum interest rate that could apply at any time during that five-year period as the interest rate for the full term of the loan to determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi), regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. For additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due. *See* comments 43(e)(2)(iv)–3 and –4.

iv. *Treatment of the maximum interest rate in determining the annual percentage rate.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of § 1026.43(e)(2)(vi) by treating the maximum interest rate that may apply within the first five years as the interest rate for the full term of the loan. For example, assume an adjustable-rate mortgage with a loan term of 30 years and an initial discounted rate of 5.0 percent that is fixed for the first three years. Assume that the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.0 percent. Pursuant to § 1026.43(e)(2)(vi), the creditor must determine the annual percentage rate based on an interest rate of 7.0 percent applied for the full 30-year loan term.

* * * * *

43(e)(4) Qualified Mortgage Defined—Other Agencies

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section.

2. *Mortgages originated prior to [effective date of final rule].* Covered transactions that met the requirements of § 1026.43(e)(2)(i) thorough (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and were consummated prior to [effective date of final rule] continue to be qualified mortgages for the purposes of this section.

3. [RESERVED].

4. [RESERVED].

5. [RESERVED].

Paragraph 43(e)(5)

1. *Satisfaction of qualified mortgage requirements.* For a covered transaction to be a qualified mortgage under § 1026.43(e)(5), the mortgage must satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), other than the requirements in § 1026.43(e)(2)(v) and (vi). For example, a qualified mortgage under § 1026.43(e)(5) may not have a loan term in excess of 30 years because longer terms are prohibited for qualified mortgages under § 1026.43(e)(2)(ii). Similarly, a qualified mortgage under § 1026.43(e)(5) may not result in a balloon payment because § 1026.43(e)(2)(i)(C) provides that qualified mortgages may not have balloon payments except as provided under § 1026.43(f). However, a covered transaction need not comply with § 1026.43(e)(2)(v) and (vi).

2. *Debt-to-income ratio or residual income.* Section 1026.43(e)(5) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, creditors must consider a consumer's debt-to-income ratio or residual income calculated generally in accordance with § 1026.43(c)(7) and verify the information used to calculate the debt-to-income ratio or residual income in accordance with § 1026.43(c)(3) and (4). However, § 1026.43(c)(7) refers creditors to § 1026.43(c)(5) for instructions on calculating the payment on the covered transaction. Section 1026.43(c)(5) requires creditors to calculate the payment differently than § 1026.43(e)(2)(iv). For purposes of the qualified mortgage definition in § 1026.43(e)(5), creditors must base their calculation of the consumer's debt-to-income ratio or residual income on the payment on the covered transaction calculated according to § 1026.43(e)(2)(iv) instead of according to § 1026.43(c)(5).

3. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a ''forward commitment.'' A mortgage that will be acquired by a purchaser pursuant to a forward commitment does not satisfy the requirements of § 1026.43(e)(5), whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of transactions with certain prescribed criteria that the transaction meets. However, a forward commitment to another person that also meets the requirements of § 1026.43(e)(5)(i)(D) is permitted. For example, assume a creditor that is eligible to make qualified mortgages under § 1026.43(e)(5) makes a mortgage. If that mortgage meets the purchase

criteria of an investor with which the creditor has an agreement to sell loans after consummation, then the loan does not meet the definition of a qualified mortgage under § 1026.43(e)(5). However, if the investor meets the requirements of § 1026.43(e)(5)(i)(D), the mortgage will be a qualified mortgage if all other applicable criteria also are satisfied.

4. *Creditor qualifications.* To be eligible to make qualified mortgages under § 1026.43(e)(5), a creditor must satisfy the requirements stated in § 1026.35(b)(2)(iii)(B) and (C). Section 1026.35(b)(2)(iii)(B) requires that, during the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person. Section 1026.35(b)(2)(iii)(C) requires that, as of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended, during the applicable period, covered transactions, as defined by § 1026.43(b)(1), secured by first liens, together, had total assets of less than $2 billion, adjusted annually by the Bureau for inflation.

5. *Requirement to hold in portfolio.* Creditors generally must hold a loan in portfolio to maintain the transaction's status as a qualified mortgage under § 1026.43(e)(5), subject to four exceptions. Unless one of these exceptions applies, a loan is no longer a qualified mortgage under § 1026.43(e)(5) once legal title to the debt obligation is sold, assigned, or otherwise transferred to another person. Accordingly, unless one of the exceptions applies, the transferee could not benefit from the presumption of compliance for qualified mortgages under § 1026.43(e)(1) unless the loan also met the requirements of another qualified mortgage definition.

6. *Application to subsequent transferees.* The exceptions contained in § 1026.43(e)(5)(ii) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a qualified mortgage under § 1026.43(e)(5). Six months after consummation, Creditor A sells the qualified mortgage to Creditor B pursuant to § 1026.43(e)(5)(ii)(B) and the loan retains its qualified mortgage status because Creditor B complies with the limits on asset size and number of transactions. If Creditor B sells the qualified mortgage, it will lose its qualified mortgage status under § 1026.43(e)(5) unless the sale qualifies for one of the § 1026.43(e)(5)(ii) exceptions for sales three or more years after consummation, to another qualifying institution, as required by supervisory action, or pursuant to a merger or acquisition.

7. *Transfer three years after consummation.* Under § 1026.43(e)(5)(ii)(A), if a qualified mortgage under § 1026.43(e)(5) is sold, assigned, or otherwise transferred three years or more after consummation, the loan retains its status as a qualified mortgage under § 1026.43(e)(5) following the transfer. The transferee need not be eligible to originate qualified mortgages under § 1026.43(e)(5). The loan will continue to be a qualified mortgage throughout its life, and the transferee, and any subsequent transferees, may invoke the presumption of compliance for qualified mortgages under § 1026.43(e)(1).

8. *Transfer to another qualifying creditor.* Under § 1026.43(e)(5)(ii)(B), a qualified mortgage under § 1026.43(e)(5) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of § 1026.43(e)(5)(i)(D). That section requires that a creditor together with all its affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than $2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A qualified mortgage under § 1026.43(e)(5) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

9. *Supervisory sales.* Section 1026.43(e)(5)(ii)(C) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A qualified mortgage under § 1026.43(e)(5) retains its qualified mortgage status if it is sold, assigned, or otherwise transferred to another person pursuant to: A capital restoration plan or other action under 12 U.S.C. 1831o; the actions or instructions of any person acting as conservator, receiver or bankruptcy trustee; an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or an agreement between the creditor and such an agency. A qualified mortgage under § 1026.43(e)(5) that is sold, assigned, or otherwise transferred under these circumstances retains its qualified mortgage status regardless of how long after consummation it is sold and regardless of the size or other characteristics of the transferee. Section 1026.43(e)(5)(ii)(C) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in § 1026.43(e)(5)(ii)(C) directing the sale of one or more qualified mortgages under § 1026.43(e)(5) held by the creditor or one of the other circumstances listed in § 1026.43(e)(5)(ii)(C). For example, a qualified mortgage under § 1026.43(e)(5) that is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o would retain its status as a qualified mortgage following the sale. However, if the creditor simply chose to sell the same qualified mortgage as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement it would lose its status as a qualified mortgage following the sale unless it qualifies under another definition of qualified mortgage.

10. *Mergers and acquisitions.* A qualified mortgage under § 1026.43(e)(5) retains its qualified mortgage status if a creditor merges with, is acquired by, or acquires another person regardless of whether the creditor or its successor is eligible to originate new qualified mortgages under § 1026.43(e)(5) after the merger or acquisition. However, the creditor or its successor can originate new qualified mortgages under § 1026.43(e)(5) only if it complies with all of the requirements of § 1026.43(e)(5) after the merger or acquisition. For example, assume a creditor that originates 250 covered transactions each year and originates qualified mortgages under § 1026.43(e)(5) is acquired by a

larger creditor that originates 10,000 covered transactions each year. Following the acquisition, the small creditor would no longer be able to originate § 1026.43(e)(5) qualified mortgages because, together with its affiliates, it would originate more than 500 covered transactions each year. However, the § 1026.43(e)(5) qualified mortgages originated by the small creditor before the acquisition would retain their qualified mortgage status.

* * * * *

Paragraph 43(f)(1)(i)

1. *Satisfaction of qualified mortgage requirements.* Under § 1026.43(f)(1)(i), for a mortgage that provides for a balloon payment to be a qualified mortgage, the mortgage must satisfy the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), and (e)(2)(iii). Therefore, a covered transaction with balloon payment terms must provide for regular periodic payments that do not result in an increase of the principal balance, pursuant to § 1026.43(e)(2)(i)(A); must have a loan term that does not exceed 30 years, pursuant to § 1026.43(e)(2)(ii); and must have total points and fees that do not exceed specified thresholds pursuant to § 1026.43(e)(2)(iii).

* * * * *

Paragraph 43(f)(1)(iii)

1. *Debt-to-income or residual income.* A creditor must consider and verify the consumer's monthly debt-to-income ratio or residual income to meet the requirements of § 1026.43(f)(1)(iii)(C). To calculate the consumer's monthly debt-to-income or residual income for purposes of § 1026.43(f)(1)(iii)(C), the creditor may rely on the definitions and calculation rules in § 1026.43(c)(7) and its accompanying commentary, except for the calculation rules for a consumer's total monthly debt obligations (which is a component of debt-to-income and residual income under § 1026.43(c)(7)). For purposes of calculating the consumer's total monthly debt obligations under § 1026.43(f)(1)(iii), the creditor must calculate the monthly payment on the covered transaction using the payment calculation rules in § 1026.43(f)(1)(iv)(A), together with all mortgage-related obligations and excluding the balloon payment.

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Dated: June 22, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 200625–0169]

RIN 0648–BJ06

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

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

ACTION: Final rule; notification of issuance of Letters of Authorization.

SUMMARY: NMFS, upon request from the U.S. Navy (Navy), issues these regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the taking of marine mammals incidental to the training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area over the course of seven years, effectively extending the time period from December 20, 2023, to December 20, 2025. In August 2018, the MMPA was amended by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 to allow for seven-year authorizations for military readiness activities, as compared to the previously allowed five years. The Navy's activities qualify as military readiness activities pursuant to the MMPA as amended by the NDAA for Fiscal Year 2004. These regulations, which allow for the issuance of Letters of Authorization (LOAs) for the incidental take of marine mammals during the described activities and timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and establish requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from July 10, 2020, to December 20, 2025.

ADDRESSES: Copies of the Navy's applications, NMFS' proposed rule for these regulations, NMFS' proposed and final rules and subsequent LOAs for the associated five-year HSTT Study Area regulations, other supporting documents cited herein, and a list of the references cited in this document may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Wendy Piniak, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose of Regulatory Action

These regulations, issued under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), extend the framework for authorizing the take of marine mammals incidental to the Navy's training and testing activities (which qualify as military readiness activities) from the use of sonar and other transducers, in-water detonations, air guns, impact pile driving/vibratory extraction, and the movement of vessels throughout the HSTT Study Area. The HSTT Study Area is comprised of established operating and warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes (the Hawaii Range Complex, the Southern California (SOCAL) Range Complex, and the Silver Strand Training Complex), and overlaps a portion of the Point Mugu Sea Range (PMSR). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor [1] on the high seas where sonar training and testing may occur.

NMFS received an application from the Navy requesting to extend NMFS' existing MMPA regulations (50 CFR part 218, subpart H; hereafter ''2018 HSTT regulations'') that authorize the take of marine mammals incidental to Navy training and testing activities conducted in the HSTT Study Area to cover seven years of the Navy's activities, instead of five. Take is anticipated to occur by Level A harassment and Level B harassment as well as a very small number of serious injuries or mortalities incidental to the Navy's training and testing activities.

[1] Vessel transit corridors are the routes typically used by Navy assets to traverse from one area to another. The route depicted in Figure 2–1 of the Navy's March 2019 rulemaking/LOA application is the shortest route between Hawaii and Southern California, making it the quickest and most fuel efficient. The depicted vessel transit corridor is notional and may not represent the actual routes used by ships and submarines transiting from Southern California to Hawaii and back. Actual routes navigated are based on a number of factors including, but not limited to, weather, training, and operational requirements.

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I, provide the legal basis for issuing this final rule and the subsequent LOAs. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Final Rule

Following is a summary of the major provisions of this final rule regarding the Navy's activities. Major provisions include, but are not limited to:

- The use of defined powerdown and shutdown zones (based on activity);
- Measures to reduce or eliminate the likelihood of ship strikes;
- Activity limitations in certain areas and times that are biologically important (*i.e.,* for foraging, migration, reproduction) for marine mammals;
- Implementation of a Notification and Reporting Plan (for dead, live stranded, or marine mammals struck by a vessel); and
- Implementation of a robust monitoring plan to improve our understanding of the environmental effects resulting from the Navy training and testing activities.

Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed

authorization is provided to the public for review and the opportunity to submit comments.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stocks for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in this rule as ''mitigation measures''); and requirements pertaining to the monitoring and reporting of such takings. The MMPA defines ''take'' to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The *Analysis and Negligible Impact Determination* section below discusses the definition of ''negligible impact.''

The NDAA for Fiscal Year 2004 (2004 NDAA) (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' The definition of harassment for military readiness activities (section 3(18)(B) of the MMPA) is: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to seven years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to five years.

Summary of Request

On December 27, 2018, NMFS published a five-year final rule governing the taking of marine mammals incidental to Navy training and testing activities conducted in the HSTT Study Area (83 FR 66846; hereafter ''2018 HSTT final rule''). Previously, on August 13, 2018, and towards the end of the time period in which NMFS was processing the Navy's request for the 2018 regulations, the 2019 NDAA amended the MMPA for military readiness activities to allow incidental take regulations to be issued for up to seven years instead of the previous five years. The Navy's training and testing activities conducted in the HSTT Study Area qualify as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA. On March 11, 2019 the Navy submitted an application requesting that NMFS extend the 2018 HSTT regulations and associated LOAs such that they would cover take incidental to seven years of training and testing activities instead of five, extending the expiration date from December 20, 2023 to December 20, 2025.

In its 2019 application, the Navy proposed no changes to the nature of the specified activities covered by the 2018 HSTT final rule, the level of activity within and between years will be consistent with that previously analyzed in the 2018 HSTT final rule, and all activities will be conducted within the same boundaries of the HSTT Study Area identified in the 2018 HSTT final rule. Therefore, the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) and the mitigation, monitoring, and nearly all reporting measures are identical to those described and analyzed in the 2018 HSTT final rule. The only changes included in the Navy's request were to conduct those same activities in the same region for an additional two years. In its request, the Navy included all information necessary to identify the type and amount of incidental take that may occur in the two additional years so NMFS could determine whether the analyses and conclusions regarding the impacts of the proposed activities on marine mammal species and stocks previously reached for five years of activities remain applicable for seven years of identical activity.

The purpose of the Navy's training and testing activities is to ensure that the Navy meets its mission mandated by federal law (10 U.S.C. 8062), which is to maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. The Navy executes this responsibility by establishing and executing training programs, including at-sea training and exercises, and ensuring naval forces have access to the ranges, operating areas (OPAREAs), and airspace needed to develop and maintain skills for conducting naval activities. The Navy's mission is achieved in part by conducting training and testing within the HSTT Study Area.

The Navy's March 11, 2019, rulemaking and LOA extension application (hereafter ''2019 Navy application'') reflects the same compilation of training and testing activities presented in the Navy's October 13, 2017, initial rulemaking and LOA application (hereafter ''2017 Navy application'') and the 2018 HSTT regulations that were subsequently promulgated, which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* These activities are deemed by the Navy necessary to accomplish military readiness requirements and are anticipated to continue into the reasonably foreseeable future. The 2019 Navy application and this rule cover training and testing activities that will occur over seven years, including the five years already authorized under the 2018 HSTT regulations, with the regulations valid from the publication date of this final rule through December 20, 2025.

Summary of the Regulations

NMFS is extending the incidental take regulations and associated LOAs through December 20, 2025, to cover the same Navy activities covered by the 2018 HSTT regulations. The 2018 HSTT final rule was recently published and its analysis remains current and valid. In its 2019 application, the Navy proposed no changes to the nature (*e.g.,* equipment and sources used, exercises conducted) or level of the specified activities within or between years or to the boundaries of the HSTT Study Area. The mitigation, monitoring, and nearly all reporting measures (described below) will be identical to those described and analyzed in the 2018 HSTT final rule. The regulatory language included at the end of this final rule, which will be published at 50 CFR part 218, subpart H, also is the same as the HSTT 2018 regulations, except for a small number of technical changes. No new information has been received from the

Navy, or otherwise become available to NMFS, since publication of the 2018 HSTT final rule that significantly changes the analyses supporting the 2018 findings. Where there is any new information pertinent to the descriptions, analyses, or findings required to authorize incidental take for military readiness activities under MMPA section 101(a)(5)(A), that information is provided in the appropriate sections below.

Because the activities included in the 2019 Navy application have not changed and the analyses and findings included in the documents provided and produced in support of the recently published 2018 HSTT final rule remain current and applicable, this final rule relies heavily on and references to the applicable information and analyses in those documents. Below is a list of the primary documents referenced in this final rule. The list indicates the short name by which the document is referenced in this final rule, as well as the full titles of the cited documents. All of the documents can be found at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *http://www.hstteis.com/.*

- NMFS June 26, 2018, Hawaii-Southern California Training and Testing (HSTT) proposed rule (83 FR 29872; hereafter ''2018 HSTT proposed rule'');
- NMFS December 27, 2018, Hawaii-Southern California Training and Testing (HSTT) final rule (83 FR 66846; hereafter ''2018 HSTT final rule'');
- NMFS September 13, 2019, Hawaii-Southern California Training and Testing (HSTT) proposed rule (84 FR 48388; hereafter ''2019 HSTT proposed rule'');
- Navy October 13, 2017, MMPA rulemaking and LOA application (hereafter ''2017 Navy application'');
- Navy March 11, 2019, MMPA rulemaking and LOA extension application (hereafter ''2019 Navy application''); and
- October 26, 2018, Hawaii-Southern California Training and Testing (HSTT) Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS) (hereafter ''2018 HSTT FEIS/OEIS'').

Description of the Specified Activity

The Navy requested authorization to take marine mammals incidental to conducting training and testing activities. The Navy has determined that acoustic and explosives stressors are most likely to result in impacts on marine mammals that could rise to the level of harassment. A small number of serious injuries or mortalities are also possible from vessel strikes or exposure to explosive detonations. Detailed descriptions of these activities are provided in Chapter 2 of the 2018 HSTT FEIS/OEIS and in the 2017 and 2019 Navy applications.

Overview of Training and Testing Activities

The Navy routinely trains and tests in the HSTT Study Area in preparation for national defense missions. Training and testing activities and components covered in the 2019 Navy application are described in detail in the *Overview of Training and Testing Activities* sections of the 2018 HSTT proposed rule, the 2018 HSTT final rule, and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS. Each military training and testing activity described meets mandated Fleet requirements to deploy combat-ready forces. The Navy proposed no changes to the specified activities described and analyzed in the 2018 HSTT final rule. The boundaries of the HSTT Study Area (see Figure 2–1 of the 2019 Navy application); the training and testing activities (*e.g.,* equipment and sources used, exercises conducted); manner of or amount of vessel movement; and standard operating procedures presented in this final rule are identical to those described and analyzed in the 2018 HSTT final rule.

Dates and Duration

The specified activities will occur at any time during the seven-year period of validity of the regulations. The number of training and testing activities are described in the *Detailed Description of the Specified Activities* section (Tables 1 through 5).

Geographical Region

The geographic extent of the HSTT Study Area is identical to that described in the 2018 HSTT final rule. The HSTT Study Area (see Figure 2–1 of the 2019 Navy application) is comprised of established operating and warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes (the Hawaii Range Complex, the Southern California (SOCAL) Range Complex, and the Silver Strand Training Complex), and overlaps a portion of the Point Mugu Sea Range (PMSR). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor [2] on the high seas where sonar training and testing may occur.

A Navy range complex consists of geographic areas that encompass a water component (above and below the surface) and airspace, and may encompass a land component where training and testing of military platforms, tactics, munitions, explosives, and electronic warfare systems occur. Range complexes include established OPAREAs, which may be further divided to provide better control of the area for safety reasons. Additional detail on range complexes and testing ranges was provided in the *Duration and Location* section of the 2018 HSTT proposed rule; please see the 2018 HSTT proposed rule or the 2017 Navy application for more information and maps.

Description of Acoustic and Explosive Stressors

The Navy uses a variety of sensors, platforms, weapons, and other devices, including ones used to ensure the safety of Sailors and Marines, to meet its statutory mission. Training and testing with these systems may introduce acoustic (sound) energy or shock waves from explosives into the environment. The specific components that could act as stressors by having direct or indirect impacts on the environment are described in detail in the *Description of Acoustic and Explosive Stressors* section of the 2018 HSTT final rule and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS. The Navy proposes no changes to the nature of the specified activities and, therefore, the acoustic and explosive stressors are identical to those described and analyzed in the 2018 HSTT final rule.

Other Stressor—Vessel Strike

Vessel strikes are not specific to any particular training or testing activity, but rather a limited, sporadic, and incidental result of Navy vessel movement within the HSTT Study Area. Navy vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. The average speed of large Navy ships ranges between 10 and 15 knots and

[2] Vessel transit corridors are the routes typically used by Navy assets to traverse from one area to another. The route depicted in Figure 2–1 of the 2019 Navy application is the shortest route between Hawaii and Southern California, making it the quickest and most fuel efficient. The depicted vessel transit corridor is notional and may not represent the actual routes used by ships and submarines transiting from Southern California to Hawaii and back. Actual routes navigated are based on a number of factors including, but not limited to, weather, training, and operational requirements.

submarines generally operate at speeds in the range of 8 to 13 knots, while a few specialized vessels can travel at faster speeds. By comparison, this is slower than most commercial vessels where full speed for a container ship is typically 24 knots (Bonney and Leach, 2010), with average vessel speeds along the California coast recently reported to be between 14 and 18 knots (Moore *et al.,* 2018).

Should a vessel strike occur, it would likely result in incidental take from serious injury and/or mortality and, accordingly, for the purposes of the analysis we assume that any ship strike would result in serious injury or mortality. The Navy proposed no changes to the nature of the specified activities, the training and testing activities, the manner of or amount of vessel movement, or standard operating procedures described in the 2018 HSTT final rule. Therefore, the description of vessel strikes as a stressor is the same as that presented in the *Other Stressor—Vessel Strike* sections of the 2018 HSTT proposed rule and 2018 HSTT final rule.

Detailed Description of the Specified Activities

The Navy's specified activities are presented and analyzed as a representative year of training to account for the natural fluctuation of training cycles and deployment schedules in any seven-year period. In the 2018 HSTT final rule, NMFS analyzed the potential impacts of these activities (*i.e.,* incidental take of marine mammals) based on the Navy conducting three years of a representative level of activity and two years of a maximum level of activity. For the purposes of this rulemaking, the Navy presented and NMFS analyzed activities based on the additional two years of training and testing consisting of an additional one year of a maximum level of activity and one year of a representative level of activity consistent with the pattern set forth in the 2018 HSTT final rule, the 2018 HSTT FEIS/OEIS, and the 2017 Navy application.

Training Activities

The number of planned training activities that could occur annually and the duration of those activities remains identical to those presented in Table 4 of the 2018 HSTT final rule, and are not repeated here. The number of planned training activities that could occur over the seven-year period are presented in Table 1. The table is organized according to primary mission areas and includes the activity name, associated stressors applicable to these regulations, sound source bin, number of proposed activities, and locations of those activities in the HSTT Study Area. For further information regarding the primary platform used (*e.g.,* ship or aircraft type) see Appendix A (*Navy Activity Descriptions*) of the 2018 HSTT FEIS/OEIS.

TABLE 1—TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Major Training Events—Large Integrated Anti-Submarine Warfare					
Acoustic	Composite Training Unit Exercise [1].	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment that certifies them ready to deploy.	ASW1, ASW2, ASW3, ASW4, ASW5, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	SOCAL	18
Acoustic	Rim of the Pacific Exercise [1].	A biennial multinational training exercise in which navies from Pacific Rim nations and the United Kingdom assemble in Pearl Harbor, Hawaii, to conduct training throughout the Hawaiian Islands in a number of warfare areas. Marine mammal systems may be used during a Rim of the Pacific exercise. Components of a Rim of the Pacific exercise, such as certain mine warfare and amphibious training, may be conducted in the Southern California Range Complex.	ASW2, ASW3, ASW4, HF1, HF3, HF4, M3, MF1, MF3, MF4, MF5, MF11.	HRC SOCAL	4 4
Major Training Events—Medium Integrated Anti-Submarine Warfare					
Acoustic	Fleet Exercise/ Sustainment Exercise [1].	Aircraft carrier and carrier air wing integrates with surface and submarine units in a challenging multi-threat operational environment to maintain ability to deploy.	ASW1, ASW2, ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	HRC SOCAL	7 35
Acoustic	Undersea Warfare Exercise.	Elements of the anti-submarine warfare tracking exercise combine in this exercise of multiple air, surface, and subsurface units, over a period of several days. Sonobuoys are released from aircraft. Active and passive sonar used.	ASW3, ASW4, HF1, LF6, MF1, MF3, MF4, MF5, MF11, MF12.	HRC	17
Integrated/Coordinated Training—Small Integrated Anti-Submarine Warfare Training					
Acoustic	Navy Undersea Warfare Training and Assessment Course Surface Warfare Advanced Tactical Training.	Multiple ships, aircraft, and submarines integrate the use of their sensors to search for, detect, classify, localize, and track a threat submarine in order to launch an exercise torpedo.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5.	HRC SOCAL	7 18
Integrated/Coordinated Training—Medium Coordinated Anti-Submarine Warfare Training					
Acoustic	Submarine Commanders Course.	Train prospective submarine Commanding Officers to operate against surface, air, and subsurface threats.	ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, TORP1, TORP2.	HRC SOCAL	12 12

TABLE 1—TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Integrated/Coordinated Training—Small Coordinated Anti-Submarine Warfare Training					
Acoustic	Amphibious Ready Group/ Marine Expeditionary Unit Exercise Group Sail Independent Deployer Certification Exercise/ Tailored Anti-Submarine Warfare Training.	Small-scale, short duration, coordinated anti-submarine warfare exercises.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	HRC SOCAL	14 86
Amphibious Warfare					
Explosive	Naval Surface Fire Support Exercise—at Sea.	Surface ship uses large-caliber gun to support forces ashore; however, land target simulated at sea. Rounds impact water and are scored by passive acoustic hydrophones located at or near target area.	Large-caliber HE rounds (E5).	HRC (W188)	105
Acoustic	Amphibious Marine Expeditionary Unit Exercise.	Navy and Marine Corps forces conduct advanced integration training in preparation for deployment certification.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18
Acoustic	Amphibious Marine Expeditionary Unit Integration Exercise.	Navy and Marine Corps forces conduct integration training at sea in preparation for deployment certification.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18
Acoustic	Marine Expeditionary Unit Composite Training Unit Exercise.	Amphibious Ready Group exercises are conducted to validate the Marine Expeditionary Unit's readiness for deployment and includes small boat raids; visit, board, search, and seizure training; helicopter and mechanized amphibious raids; and a non-combatant evacuation operation.	ASW2, ASW3, ASW4, HF1, MF1, MF3, MF4, MF5, MF11.	SOCAL	18
Anti-Submarine Warfare					
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Helicopter.	Helicopter crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF4, MF5, TORP1	HRC SOCAL	42 728
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Maritime Patrol Aircraft.	Maritime patrol aircraft crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF5, TORP1	HRC SOCAL	70 175
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Ship.	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used during this event.	ASW3, MF1, TORP1	HRC SOCAL	350 819
Acoustic	Anti-Submarine Warfare Torpedo Exercise—Submarine.	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this event.	ASW4, HF1, MF3, TORP2	HRC SOCAL	336 91
Acoustic	Anti-Submarine Warfare Tracking Exercise—Helicopter.	Helicopter crews search for, track, and detect submarines.	MF4, MF5	HRC SOCAL, PMSR HSTT Transit Corridor.	1,113 3,668 42
Acoustic	Anti-Submarine Warfare Tracking Exercise—Maritime Patrol Aircraft.	Maritime patrol aircraft aircrews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MF5	HRC SOCAL, PMSR	182 350
Acoustic	Anti-Submarine Warfare Tracking Exercise—Ship.	Surface ship crews search for, track, and detect submarines.	ASW3, MF1, MF11, MF12	HRC SOCAL, PMSR	1,568 2,961
Acoustic	Anti-Submarine Warfare Tracking Exercise—Submarine.	Submarine crews search for, track, and detect submarines.	ASW4, HF1, HF3, MF3	HRC SOCAL, PMSR HSTT Transit Corridor.	1,400 350 49
Explosive, Acoustic.	Service Weapons Test	Air, surface, or submarine crews employ explosive torpedoes against virtual targets.	HF1, MF3, MF6, TORP2, Explosive torpedoes (E11).	HRC SOCAL	14 7
Mine Warfare					
Acoustic	Airborne Mine Countermeasure–Mine Detection.	Helicopter aircrews detect mines using towed or laser mine detection systems.	HF4	SOCAL	70
Explosive, Acoustic.	Civilian Port Defense—Homeland Security Anti-Terrorism/Force Protection Exercises.	Maritime security personnel train to protect civilian ports against enemy efforts to interfere with access to those ports.	HF4, SAS2 E2, E4	Pearl Harbor, HI San Diego, CA	7 21
Explosive	Marine Mammal Systems	The Navy deploys trained bottlenose dolphins (*Tursiops truncatus*) and California sea lions (*Zalophus californianus*) as part of the marine mammal mine-hunting and object-recovery system.	E7	HRC SOCAL	70 1,225
Acoustic	Mine Countermeasure Exercise—Ship Sonar.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	HF4, HF8, MF1K	HRC SOCAL	210 664
Acoustic	Mine Countermeasure Exercise—Surface.	Mine countermeasure ship crews detect, locate, identify, and avoid mines while navigating restricted areas or channels, such as while entering or leaving port.	HF4	SOCAL	1,862

TABLE 1—TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Explosive, Acoustic.	Mine Countermeasures Mine Neutralization Remotely Operated Vehicle.	Ship, small boat, and helicopter crews locate and disable mines using remotely operated underwater vehicles.	HF4, E4	HRC SOCAL	42 2,604
Explosive	Mine Neutralization Explosive Ordnance Disposal.	Personnel disable threat mines using explosive charges.	E4, E5, E6, E7	HRC (Puuloa) SOCAL (IB, TAR 2, TAR 3, TAR 21, SWAT 3, SOAR).	140 1,358
Acoustic	Submarine Mine Exercise	Submarine crews practice detecting mines in a designated area.	HF1	HRC SOCAL	280 84
Acoustic	Surface Ship Object Detection.	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K, HF8	HRC SOCAL	287 1,134
Explosive	Underwater Demolitions Multiple Charge—Mat Weave and Obstacle Loading.	Military personnel use explosive charges to destroy barriers or obstacles to amphibious vehicle access to beach areas.	E10, E13	SOCAL (TAR 2, TAR 3).	126
Explosive	Underwater Demolition Qualification and Certification.	Navy divers conduct various levels of training and certification in placing underwater demolition charges.	E6, E7	HRC (Puuloa) SOCAL (TAR 2)	203 700
Surface Warfare					
Explosive	Bombing Exercise Air-to-Surface.	Fixed-wing aircrews deliver bombs against surface targets.	E12[2]	HRC SOCAL HSTT Transit Corridor.	1,309 4,480 35
Explosive	Gunnery Exercise Surface-to-Surface Boat Medium-Caliber.	Small boat crews fire medium-caliber guns at surface targets.	E1, E2	HRC SOCAL	70 98
Explosive	Gunnery Exercise Surface-to-Surface Ship Large-caliber.	Surface ship crews fire large-caliber guns at surface targets.	E5	HRC SOCAL HSTT Transit Corridor.	210 1,302 91
Explosive	Gunnery Exercise Surface-to-Surface Ship Medium-Caliber.	Surface ship crews fire medium-caliber guns at surface targets.	E1, E2	HRC SOCAL HSTT Transit Corridor.	350 1,260 280
Explosive, Acoustic.	Independent Deployer Certification Exercise/ Tailored Surface Warfare Training.	Multiple ships, aircraft and submarines conduct integrated multi-warfare training with a surface warfare emphasis. Serves as a ready-to-deploy certification for individual surface ships tasked with surface warfare missions.	E1, E3, E6, E10	SOCAL	7
Explosive	Integrated Live Fire Exercise.	Naval Forces defend against a swarm of surface threats (ships or small boats) with bombs, missiles, rockets, and small-, medium- and large-caliber guns.	E1, E3, E6, E10	HRC (W188A) SOCAL (SOAR)	7 7
Explosive	Missile Exercise Air-to-Surface.	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E6, E8, E10	HRC SOCAL	70 1,498
Explosive	Missile Exercise Air-to-Surface Rocket.	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	HRC SOCAL	1,598 1,722
Explosive	Missile Exercise Surface-to-Surface.	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E6, E10	HRC (W188) SOCAL (W291)	140 70
Explosive, Acoustic.	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with a variety of munitions.	TORP2, E5, E10, E12	HRC SOCAL	21 4
Pile driving	Elevated Causeway System.	A pier is constructed off of the beach. Piles are driven into the bottom with an impact hammer. Piles are removed from seabed via vibratory extractor. Only in-water impacts are analyzed.	Impact hammer or vibratory extractor.	SOCAL	14
Other Training Exercises					
Acoustic	Kilo Dip	Functional check of the dipping sonar prior to conducting a full test or training event on the dipping sonar.	MF4	HRC SOCAL	420 16,800
Acoustic	Submarine Navigation Exercise.	Submarine crews operate sonar for navigation and object detection while transiting into and out of port during reduced visibility.	HF1, MF3	Pearl Harbor, HI San Diego Bay, CA.	1,540 560
Acoustic	Submarine Sonar Maintenance and Systems Checks.	Maintenance of submarine sonar systems is conducted pierside or at sea.	MF3	HRC Pearl Harbor, HI SOCAL San Diego Bay, CA. HSTT Transit Corridor.	1,820 1,820 651 644 70

TABLE 1—TRAINING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Acoustic	Submarine Under-Ice Certification.	Submarine crews train to operate under ice. Ice conditions are simulated during training and certification events.	HF1	HRC SOCAL	84 42
Acoustic	Surface Ship Sonar Maintenance and Systems Checks.	Maintenance of surface ship sonar systems is conducted pierside or at sea.	HF8, MF1	HRC Pearl Harbor, HI SOCAL San Diego, CA HSTT Transit Corridor.	525 560 1,750 1,750 56
Acoustic	Unmanned Underwater Vehicle Training—Certification and Development.	Unmanned underwater vehicle certification involves training with unmanned platforms to ensure submarine crew proficiency. Tactical development involves training with various payloads for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	FLS2, M3, SAS2	HRC SOCAL	175 70

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, PMSR = Point Mugu Sea Range Overlap, TAR = Training Area and Range, SOAR = Southern California Anti-Submarine Warfare Range, IB = Imperial Beach Minefield.
1. Any non-antisubmarine warfare activity that could occur is captured in the individual activities.
2. For the Bombing Exercise Air-to-Surface, all activities were analyzed using E12 explosive bin, but smaller explosives are frequently used.

Testing Activities

The number of planned testing activities that could occur annually and the duration of those activities are identical to those presented in Tables 5 through 8 of the 2018 HSTT final rule, and are not repeated here. Similar to the 2017 Navy application, the Navy's planned testing activities here are based on the level of testing activities anticipated to be conducted into the reasonably foreseeable future, with adjustments that account for changes in the types and tempo (increases or decreases) of testing activities to meet current and future military readiness requirements. The number of planned testing activities that could occur for the seven-year period are presented in Tables 2 through 5.

Naval Air Systems Command

The Naval Air Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 2.

TABLE 2—NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Anti-Submarine Warfare					
Acoustic	Anti-Submarine Warfare Torpedo Test.	This event is similar to the training event torpedo exercise. Test evaluates anti-submarine warfare systems onboard rotary-wing and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	MF5, TORP1	HRC SOCAL	134 353
Explosive, Acoustic.	Anti-Submarine Warfare Tracking Test–Helicopter.	This event is similar to the training event anti-submarine tracking exercise–helicopter. The test evaluates the sensors and systems used to detect and track submarines and to ensure that helicopter systems used to deploy the tracking systems perform to specifications.	MF4, MF5, E3	SOCAL	414
Explosive, Acoustic.	Anti-Submarine Warfare Tracking Test–Maritime Patrol Aircraft.	The test evaluates the sensors and systems used by maritime patrol aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	ASW2, ASW5, MF5, MF6, E1, E3.	HRC SOCAL	399 436
Explosive, Acoustic.	Sonobuoy Lot Acceptance Test.	Sonobuoys are deployed from surface vessels and aircraft to verify the integrity and performance of a lot or group of sonobuoys in advance of delivery to the fleet for operational use.	ASW2, ASW5, HF5, HF6, LF4, MF5, MF6, E1, E3, E4.	SOCAL	1,120
Mine Warfare					
Acoustic	Airborne Dipping Sonar Minehunting Test.	A mine-hunting dipping sonar system that is deployed from a helicopter and uses high-frequency sonar for the detection and classification of bottom and moored mines.	HF4	SOCAL	24
Explosive	Airborne Mine Neutralization System Test.	A test of the airborne mine neutralization system that evaluates the system's ability to detect and destroy mines from an airborne mine countermeasures capable helicopter (*e.g.,* MH–60). The airborne mine neutralization system uses up to four unmanned underwater vehicles equipped with high-frequency sonar, video cameras, and explosive and non-explosive neutralizers.	E4	SOCAL	117

TABLE 2—NAVAL AIR SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Acoustic	Airborne Sonobuoy Minehunting Test.	A mine-hunting system made up of sonobuoys deployed from a helicopter. A field of sonobuoys, using high-frequency sonar, is used for detection and classification of bottom and moored mines.	HF6	SOCAL	33
Surface Warfare					
Explosive	Air-to-Surface Bombing Test	This event is similar to the training event bombing exercise air-to-surface. Fixed-wing aircraft test the delivery of bombs against surface maritime targets with the goal of evaluating the bomb, the bomb carry and delivery system, and any associated systems that may have been newly developed or enhanced.	E9	HRC SOCAL	56 98
Explosive	Air-to-Surface Gunnery Test	This event is similar to the training event gunnery exercise air-to-surface. Fixed-wing and rotary-wing aircrews evaluate new or enhanced aircraft guns against surface maritime targets to test that the gun, gun ammunition, or associated systems meet required specifications or to train aircrew in the operation of a new or enhanced weapons system.	E1	HRC SOCAL	35 330
Explosive	Air-to-Surface Missile Test	This event is similar to the training event missile exercise air-to-surface. Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E6, E9, E10	HRC SOCAL	126 384
Explosive	Rocket Test	Rocket tests are conducted to evaluate the integration, accuracy, performance, and safe separation of guided and unguided 2.75-inch rockets fired from a hovering or forward flying helicopter or tilt rotor aircraft.	E3	HRC SOCAL	14 142
Other Testing Activities					
Acoustic	Kilo Dip	Functional check of a helicopter deployed dipping sonar system (*e.g.,* AN/AQS–22) prior to conducting a testing or training event using the dipping sonar system.	MF4	SOCAL	12
Acoustic	Undersea Range System Test.	Post installation node survey and test and periodic testing of range node transmit functionality.	MF9	HRC	129

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex.

Naval Sea Systems Command

The Naval Sea Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 3.

TABLE 3—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Anti-Submarine Warfare					
Acoustic	Anti-Submarine Warfare Mission Package Testing.	Ships and their supporting platforms (*e.g.,* rotary-wing aircraft and unmanned aerial systems) detect, localize, and prosecute submarines.	ASW1, ASW2, ASW3, ASW5, MF1, MF4, MF5, MF12, TORP1.	HRC SOCAL	154 161
Acoustic	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	ASW3, ASW4, HF1, LF4, LF5, M3, MF1, MF1K, MF2, MF3, MF5, MF9, MF10, MF11.	HRC HRC—SOCAL SOCAL	109 7 138
Acoustic	Countermeasure Testing	Countermeasure testing involves the testing of systems that will detect, localize, and track incoming weapons, including marine vessel targets. Testing includes surface ship torpedo defense systems and marine vessel stopping payloads.	ASW3, ASW4, HF5, TORP1, TORP2.	HRC HRC—SOCAL SOCAL HSTT Transit Corridor.	56 28 77 14
Acoustic	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities.	HF1, HF3, HF8, M3, MF1, MF3, MF9.	Pearl Harbor, HI San Diego, CA	49 49
Acoustic	Submarine Sonar Testing/ Maintenance.	Pierside and at-sea testing of submarine systems occurs periodically following major maintenance periods and for routine maintenance.	HF1, HF3, M3, MF3	HRC Pearl Harbor, HI San Diego, CA	28 119 168
Acoustic	Surface Ship Sonar Testing/Maintenance.	Pierside and at-sea testing of ship systems occurs periodically following major maintenance periods and for routine maintenance.	ASW3, MF1, MF1K, MF9, MF10.	HRC Pearl Harbor, HI San Diego, CA SOCAL	21 21 21 21

TABLE 3—NAVAL SEA SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA—Continued

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Explosive, Acoustic.	Torpedo (Explosive) Testing.	Air, surface, or submarine crews employ explosive and non-explosive torpedoes against artificial targets.	ASW3, HF1, HF5, HF6, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, E8, E11.	HRC (W188) HRC (W188) SOCAL. SOCAL	56 21 56
Acoustic	Torpedo (Non-Explosive) Testing.	Air, surface, or submarine crews employ non-explosive torpedoes against submarines or surface vessels.	ASW3, ASW4, HF1, HF6, M3, MF1, MF3, MF4, MF5, MF6, TORP1, TORP2, TORP3.	HRC HRC SOCAL SOCAL	56 63 56
Mine Warfare					
Explosive, Acoustic.	Mine Countermeasure and Neutralization Testing.	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	HF4, E4	SOCAL	70
Explosive, Acoustic.	Mine Countermeasure Mission Package Testing.	Vessels and associated aircraft conduct mine countermeasure operations.	HF4, SAS2, E4	HRC SOCAL	118 406
Acoustic	Mine Detection and Classification Testing.	Air, surface, and subsurface vessels detect and classify mines and mine-like objects. Vessels also assess their potential susceptibility to mines and mine-like objects.	HF1, HF8, MF1, MF5	HRC HRC SOCAL SOCAL	14 10 77
Surface Warfare					
Explosive	Gun Testing—Large-Caliber.	Surface crews defend against surface targets with large-caliber guns.	E3	HRC HRC—SOCAL SOCAL	49 504 49
Explosive	Gun Testing—Medium-Caliber.	Surface crews defend against surface targets with medium-caliber guns.	E1	HRC HRC—SOCAL SOCAL	28 336 28
Explosive	Missile and Rocket Testing.	Missile and rocket testing includes various missiles or rockets fired from submarines and surface combatants. Testing of the launching system and ship defense is performed.	E6	HRC HRC—SOCAL SOCAL	91 168 140
Unmanned Systems					
Acoustic	Unmanned Surface Vehicle System Testing.	Testing involves the production or upgrade of unmanned surface vehicles. This may include tests of mine detection capabilities, evaluations of the basic functions of individual platforms, or complex events with multiple vehicles.	HF4, SAS2	HRC SOCAL	21 28
Acoustic	Unmanned Underwater Vehicle Testing.	Testing involves the production or upgrade of unmanned underwater vehicles. This may include tests of mine detection capabilities, evaluations of the basic functions of individual platforms, or complex events with multiple vehicles.	HF4, MF9	HRC SOCAL	21 2,037
Vessel Evaluation					
Acoustic	Submarine Sea Trials—Weapons System Testing.	Submarine weapons and sonar systems are tested at-sea to meet the integrated combat system certification requirements.	HF1, M3, MF3, MF9, MF10, TORP2.	HRC SOCAL	7 7
Explosive	Surface Warfare Testing	Tests the capabilities of shipboard sensors to detect, track, and engage surface targets. Testing may include ships defending against surface targets using explosive and non-explosive rounds, gun system structural test firing, and demonstration of the response to Call for Fire against land-based targets (simulated by sea-based locations).	E1, E5, E8	HRC HRC—SOCAL SOCAL	63 441 102
Acoustic	Undersea Warfare Testing	Ships demonstrate capability of countermeasure systems and underwater surveillance, weapons engagement, and communications systems. This tests ships ability to detect, track, and engage undersea targets.	ASW4, HF4, HF8, MF1, MF4, MF5, MF6, TORP1, TORP2.	HRC HRC SOCAL\ SOCAL	49 60 69
Acoustic	Vessel Signature Evaluation.	Surface ship, submarine and auxiliary system signature assessments. This may include electronic, radar, acoustic, infrared and magnetic signatures.	ASW3	HRC HRC SOCAL SOCAL	28 252 168
Other Testing Activities					
Acoustic	Insertion/Extraction	Testing of submersibles capable of inserting and extracting personnel and payloads into denied areas from strategic distances.	M3, MF9	HRC SOCAL	7 7
Acoustic	Signature Analysis Operations.	Surface ship and submarine testing of electromagnetic, acoustic, optical, and radar signature measurements.	HF1, M3, MF9	HRC SOCAL	14 7

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, CA = California, HI = Hawaii.

Office of Naval Research

The Office of Naval Research testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 4.

TABLE 4—OFFICE OF NAVAL RESEARCH TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Acoustic and Oceanographic Science and Technology					
Explosive, Acoustic.	Acoustic and Oceanographic Research.	Research using active transmissions from sources deployed from ships and unmanned underwater vehicles. Research sources can be used as proxies for current and future Navy systems.	AG, ASW2, BB4, BB9, LF3, LF4, LF5, MF8, MF9, MF9, MF9, E3.	HRC SOCAL	14 28
Acoustic	Long Range Acoustic Communications.	Bottom mounted acoustic source off of the Hawaiian Island of Kauai will transmit a variety of acoustic communications sequences.	LF4	HRC	21

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex.

Naval Information Warfare Systems Command

The Naval Information Warfare Systems Command testing activities that could occur over the seven-year period within the HSTT Study Area are presented in Table 5.

TABLE 5—NAVAL INFORMATION WARFARE SYSTEMS COMMAND TESTING ACTIVITIES ANALYZED FOR SEVEN-YEAR PERIOD IN THE HSTT STUDY AREA

Stressor category	Activity name	Description	Source bin	Location	7-year number of events
Acoustic	Anti-Terrorism/Force Protection.	Testing sensor systems that can detect threats to naval piers, ships, and shore infrastructure.	SD1	San Diego, CA SOCAL	98 112
Acoustic	Communications	Testing of underwater communications and networks to extend the principles of FORCEnet below the ocean surface.	ASW2, ASW5, HF6, LF4	HRC SOCAL	5 70
Acoustic	Energy and Intelligence, Surveillance, and Reconnaissance Sensor Systems.	Develop, integrate, and demonstrate Intelligence, Surveillance, and Reconnaissance systems and in-situ energy systems to support deployed systems.	AG, HF2, HF7, LF4, LF5, LF6, MF10.	HRC SOCAL HSTT Transit Corridor.	87 357 56
Acoustic	Vehicle Testing	Testing of surface and subsurface vehicles and sensor systems that may involve Unmanned Underwater Vehicles, gliders, and Unmanned Surface Vehicles.	BB4, FLS2, FLS3, HF6, LF3, M3, MF9, MF13, SAS1, SAS2, SAS3.	HRC SOCAL HSTT Transit Corridor.	8 1,141 14

Notes: HRC = Hawaii Range Complex, SOCAL = Southern California Range Complex, HSTT = Hawaii-Southern California Training and Testing, CA = California.

Summary of Acoustic and Explosive Sources Analyzed for Training and Testing

Tables 6 through 9 show the acoustic and explosive source classes, bins, and numbers used, airgun sources and numbers used, and numbers of pile driving and removal activities associated with the Navy's planned training and testing activities over a seven-year period in the HSTT Study Area that were analyzed in the 2019 Navy application and for this final rule. The annual numbers for acoustic source classes, explosive source bins, and airgun sources, as well as the annual pile driving and removal activities associated with Navy training and testing activities in the HSTT Study Area are identical to those presented in Tables 9 through 12 of the 2018 HSTT final rule, and are not repeated here. Consistent with the periodicity in the 2018 HSTT final rule, the Navy included the addition of two pile driving/extraction activities for each of the two additional years.

Table 6 describes the acoustic source classes (*i.e.,* low-frequency (LF), mid-frequency (MF), and high-frequency (HF)) that could occur over seven years under the planned training and testing activities. Acoustic source bin use in the planned activities would vary annually. The seven-year totals for the planned training and testing activities take into account that annual variability.

TABLE 6—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA

Source class category	Bin	Description	Unit [1]	Training	Testing
				7-year total	7-year total
Low-Frequency (LF): Sources that produce signals less than 1 kHz.	LF3	LF sources greater than 200 dB	H	0	1,365

TABLE 6—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Source class category	Bin	Description	Unit [1]	Training	Testing
				7-year total	7-year total
	LF4	LF sources equal to 180 dB and up to 200 dB.	H	0	4,496
			C	0	140
	LF5	LF sources less than 180 dB	H	65	14,458
	LF6	LF sources greater than 200 dB with long pulse lengths.	H	956	360
Mid-Frequency (MF): Tactical and non-tactical sources that produce signals between 1 and 10 kHz.	MF1	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–53C and AN/SQS–61).	H	38,489	8,692
	MF1K	Kingfisher mode associated with MF1 sonars.	H	700	98
	MF2 [2]	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–56).	H	0	378
	MF3	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	14,700	9,177
	MF4	Helicopter-deployed dipping sonars (*e.g.,* AN/AQS–22 and AN/AQS–13).	H	2,719	2,502
	MF5	Active acoustic sonobuoys (*e.g.,* DICASS)	C	40,128	38,233
	MF6	Active underwater sound signal devices (*e.g.,* MK 84).	C	63	8,202
	MF8	Active sources (greater than 200 dB) not otherwise binned.	H	0	490
	MF9	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	36,056
	MF10	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	0	13,104
	MF11	Hull-mounted surface ship sonars with an active duty cycle greater than 80%.	H	5,205	392
	MF12	Towed array surface ship sonars with an active duty cycle greater than 80%.	H	1,260	4,620
	MF13	MF sonar source	H	0	2,100
High-Frequency (HF): Tactical and non-tactical sources that produce signals between 10 and 100 kHz.	HF1	Hull-mounted submarine sonars (*e.g.,* AN/BQQ–10).	H	12,550	5,403
	HF2	HF Marine Mammal Monitoring System	H	0	840
	HF3	Other hull-mounted submarine sonars (classified).	H	1,919	769
	HF4	Mine detection, classification, and neutralization sonar (*e.g.,* AN/SQS–20).	H	15,012	114,069
	HF5	Active sources (greater than 200 dB) not otherwise binned.	H	0	6,720
			C	0	280
	HF6	Active sources (equal to 180 dB and up to 200 dB) not otherwise binned.	H	0	7,015
	HF7	Active sources (greater than 160 dB, but less than 180 dB) not otherwise binned.	H	0	9,660
	HF8	Hull-mounted surface ship sonars (*e.g.,* AN/SQS–61).	H	711	5,136
Anti-Submarine Warfare (ASW): Tactical sources (*e.g.,* active sonobuoys and acoustic countermeasures systems) used during ASW training and testing activities.	ASW1	MF systems operating above 200 dB	H	1,503	3,290
	ASW2	MF Multistatic Active Coherent sonobuoy (*e.g.,* AN/SSQ–125).	C	4,824	32,900
	ASW3	MF towed active acoustic countermeasure systems (*e.g.,* AN/SLQ–25).	H	37,385	19,187
	ASW4	MF expendable active acoustic device countermeasures (*e.g.,* MK 3).	C	9,023	15,398
	ASW5 [3]	MF sonobuoys with high duty cycles	H	1,780	3,854
Torpedoes (TORP): Source classes associated with the active acoustic signals produced by torpedoes.	TORP1	Lightweight torpedo (*e.g.,* MK 46, MK 54, or Anti-Torpedo Torpedo).	C	1,605	6,454
	TORP2	Heavyweight torpedo (*e.g.,* MK 48)	C	3,515	2,756
	TORP3		C	0	315
Forward Looking Sonar (FLS): Forward or upward looking object avoidance sonars used for ship navigation and safety.	FLS2	HF sources with short pulse lengths, narrow beam widths, and focused beam patterns.	H	196	3,424
	FLS3	VHF sources with short pulse lengths, narrow beam widths, and focused beam patterns.	H	0	18,480

TABLE 6—ACOUSTIC SOURCE CLASSES ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES IN THE HSTT STUDY AREA—Continued

Source class category	Bin	Description	Unit [1]	Training	Testing
				7-year total	7-year total
Acoustic Modems (M): Systems used to transmit data through the water.	M3	MF acoustic modems (greater than 190 dB)	H	274	3,623
Swimmer Detection Sonars (SD): Systems used to detect divers and submerged swimmers.	SD1–SD2	HF and VHF sources with short pulse lengths, used for the detection of swimmers and other objects for the purpose of port security.	H	0	70
Synthetic Aperture Sonars (SAS): Sonars in which active acoustic signals are post-processed to form high-resolution images of the seafloor.	SAS1	MF SAS systems	H	0	13,720
	SAS2	HF SAS systems	H	6,297	60,088
	SAS3	VHF SAS systems	H	0	32,200
	SAS4	MF to HF broadband mine countermeasure sonar.	H	294	0
Broadband Sound Sources (BB): Sonar systems with large frequency spectra, used for various purposes.	BB4	LF to MF oceanographic source	H	0	6,414
	BB7	LF oceanographic source	C	0	196
	BB9	MF optoacoustic source	H	0	3,360

[1] H = hours; C = count (*e.g.,* number of individual pings or individual sonobuoys).
[2] MF2/MF2K are sources on frigate class ships, which were decommissioned during Phase II.
[3] Formerly ASW2 (H) in Phase II.
Notes: dB = decibel(s), kHz = kilohertz, VHF = very high frequency.

Table 7 describes the number of air gun shots that could occur over seven years under the planned training and testing activities.

TABLE 7—TRAINING AND TESTING AIR GUN SOURCES QUANTITATIVELY ANALYZED IN THE HSTT STUDY AREA

Source class category	Bin	Unit [1]	Training	Testing
			7-year total	7-year total
Air Guns (AG): Small underwater air guns	AG	C	0	5,908

[1] C = count. One count (C) of AG is equivalent to 100 air gun firings.

Table 8 summarizes the impact pile driving and vibratory pile removal activities that could occur during a 24-hour period. Annually, for impact pile driving, the Navy will drive 119 piles, two times a year for a total of 238 piles. Over the seven-year period of the rule, the Navy will drive a total of 1,666 piles by impact pile driving. Annually, for vibratory pile extraction, the Navy will extract 119 piles, two times a year for a total of 238 piles. Over the seven-year period of the rule, the Navy will extract a total of 1,666 piles by vibratory pile extraction.

TABLE 8—SUMMARY OF PILE DRIVING AND REMOVAL ACTIVITIES PER 24-HOUR PERIOD IN THE HSTT STUDY AREA

Method	Piles per 24-hour period	Time per pile (minutes)	Total estimated time of noise per 24-hour period (minutes)
Pile Driving (Impact)	6	15	90
Pile Removal (Vibratory)	12	6	72

Table 9 describes the number of in-water explosives that could be used in any year under the proposed training and testing activities. Under the proposed activities bin use would vary annually, and the seven-year totals for the planned training and testing activities take into account that annual variability.

TABLE 9—EXPLOSIVE SOURCE BINS ANALYZED AND NUMBER USED FOR SEVEN-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES WITHIN THE HSTT STUDY AREA

Bin	Net explosive weight (lb.) [1]	Example explosive source	Modeled underwater detonation depths (ft.)	Training	Testing
				7-year total	7-year total
E1	0.1–0.25	Medium-caliber projectiles	0.3, 60	20,580	87,012
E2	>0.25–0.5	Medium-caliber projectiles	0.3, 50	12,222	0
E3	>0.5–2.5	Large-caliber projectiles	0.3, 60	19,579	20,848
E4	>2.5–5	Mine neutralization charge	10, 16, 33, 50, 61, 65, 650	266	4,372
E5	>5–10	5 in projectiles	0.3, 10, 50	33,310	9,800
E6	>10–20	Hellfire missile	0.3, 10, 50, 60	4,056	230
E7	>20–60	Demo block/ shaped charge	10, 50, 60	91	0
E8	>60–100	Lightweight torpedo	0.3, 150	241	399
E9	>100–250	500 lb bomb	0.3	2,950	28
E10	>250–500	Harpoon missile	0.3	1,543	210
E11	>500–650	650 lb mine	61, 150	69	84
E12	>650–1,000	2,000 lb bomb	0.3	114	0
E13	>1,000–1,740	Multiple Mat Weave charges	NA [2]	63	0

[1] Net Explosive Weight refers to the amount of explosives; the actual weight of a munition may be larger due to other components.
[2] Not modeled because charge is detonated in surf zone; not a single E13 charge, but multiple smaller charges detonated in quick succession.
Notes: in. = inch(es), lb. = pound(s), ft. = feet.

Vessel Movement

Vessels used as part of the planned activities include ships, submarines, unmanned vessels, and boats ranging in size from small, 22 ft (7 m) rigid hull inflatable boats to aircraft carriers with lengths up to 1,092 ft (333 m). The average speed of large Navy ships ranges between 10 and 15 knots and submarines generally operate at speeds in the range of 8–13 knots (kn), while a few specialized vessels can travel at faster speeds. Small craft (for purposes of this analysis, less than 18 m in length) have much more variable speeds (0–50+ kn, dependent on the activity), but generally range from 10 to 14 kn. From unpublished Navy data, average median speed for large Navy ships in the HSTT Study Area from 2011–2015 varied from 5–10 kn with variations by ship class and location (*i.e.,* slower speeds close to the coast). While these speeds for large and small craft are representative of most events, some vessels need to temporarily operate outside of these parameters. A full description of Navy vessels that are used during training and testing activities can be found in the 2017 Navy application and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS.

The number of Navy vessels used in the HSTT Study Area varies based on military training and testing requirements, deployment schedules, annual budgets, and other dynamic factors. Most training and testing activities involve the use of vessels. These activities could be widely dispersed throughout the HSTT Study Area, but would typically be conducted near naval ports, piers, and range areas. Navy vessel traffic will be especially concentrated near San Diego, California and Pearl Harbor, Hawaii. There is no seasonal differentiation in Navy vessel use because of continual operational requirements from Combatant Commanders. The majority of large vessel traffic occurs between the installations and the OPAREAs. Support craft will be more concentrated in the coastal waters in the areas of naval installations, ports, and ranges. Activities involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to weeks.

The manner in which Navy vessels will be used during training and testing activities, the speeds at which they operate, the number of vessels that will be used during various activities, and the locations in which Navy vessel movement will be concentrated within the HSTT Study Area have not changed from those analyzed in the 2018 HSTT final rule. The only change related to the Navy's request regarding Navy vessel movement is the vessel use associated with the additional two years of Navy activities.

Standard Operating Procedures

For training and testing to be effective, personnel must be able to safely use their sensors and weapon systems as they are intended to be used in a real-world situation and to their optimum capabilities. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources. Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the planned activities and included them in the environmental analysis. Details on standard operating procedures were provided in the 2018 HSTT proposed rule; please see the 2018 HSTT proposed rule, the 2017 Navy application, and Chapter 2 (*Description of Proposed Action and Alternatives*) of the 2018 HSTT FEIS/OEIS for more information. The Standard Operating Procedures for the seven-year period will be identical to those in place under the 2018 HSTT final rule.

Comments and Responses

On May 8, 2019, we published a notice of receipt (NOR) in the **Federal Register** (84 FR 20105) for the Navy's application to effectively extend the five-year 2018 HSTT regulations to seven years, and requested comments and information related to the Navy's request. The review and comment period for the NOR ended on June 7, 2019. We reviewed and considered all comments and information received on the NOR in development of the proposed rule. We published the proposed seven-year rule for the Navy's HSTT activities in the **Federal Register** on September 13, 2019 (83 FR 48388),

with a 30-day comment period. In that proposed rule, we requested public input on the request for authorization described therein, our analyses, and the proposed authorizations and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day comment period, we received 30 comment letters. Of this total, one submission was from the Marine Mammal Commission (hereafter ''Commission''), two letters were from organizations or individuals acting in an official capacity (*e.g.,* non-governmental organizations (NGOs)) and 27 submissions were from private citizens. Both the Commission and NGOs included their comments submitted on the 2018 HSTT proposed five-year rule, which the seven-year rule here is nearly identical to. The Commission did not reiterate their 2018 HSTT proposed rule recommendations in their comment letter but maintained that the recommendations that NMFS did not incorporate into the 2018 HSTT final rule are still relevant and pertain to the extension of the five-year rule and asked that they be reviewed again in the course of considering the new seven-year rule. One letter from NGOs attached their 2018 HSTT proposed rule comment letter. They stated that ''most of the issues raised [in their 2018 HSTT proposed rule comment letter] were not adequately addressed in the 2018–2023 Final Rule'' and asked that NMFS renew consideration of their prior comments. To the extent they raised concerns with how ''most'' issues were addressed previously, they did not identify which issues those were. The second letter from NGOs also attached their comments on the 2018 HSTT proposed rule and the Notice of Receipt of the 2017 Navy application.

NMFS has reviewed and considered all public comments received on the 2019 HSTT proposed rule and issuance of the LOAs. In considering the comments received we realized that our responses to some of the comments on the 2018 HSTT proposed rule could benefit from additional detail and/or clarification. Accordingly, we are republishing the responses to comments received on the 2018 HSTT proposed rule, some of which have been updated, along with providing our responses to new comments on the 2019 proposed rule. Therefore, all relevant comments received on both the 2018 and 2019 HSTT proposed rules and our responses are presented below. We provide no response to specific comments that addressed species or statutes not relevant to our proposed authorization under section 101(a)(5)(A) of the MMPA (*e.g.,* comments related to sea turtles) or species or stocks that do not occur in the HSTT Study Area (*e.g.,* Southern Resident Killer whales).

General Comments

The majority of the 18 comment letters received on the 2018 HSTT proposed rule and 27 comment letters received on the 2019 HSTT proposed rule from private citizens expressed general opposition toward the Navy's proposed training and testing activities and requested that NMFS not issue the LOAs while one comment on the 2019 HSTT proposed rule expressed general support, with none of these general commenters providing information relevant to NMFS' decisions. Therefore, these comments were not considered further. The remaining comments are addressed below.

Comment 1: Some commenters expressed concern with issuing LOAs for seven years.

Response: Under section 101(a)(5)(A) of the MMPA, applicants may apply for the incidental take coverage that they need for their activities and NMFS ''shall issue'' the requested authorizations provided certain findings (see the *Background* section) can be made. In August 2018, Congress amended the MMPA through the NDAA for Fiscal Year 2019 to allow for seven-year authorizations for military readiness activities, as compared to the previously allowed five years. Following the statutory amendment, the Navy applied for longer term coverage for its testing and training activities in the HSTT Study Area, and with NMFS making the required findings through this rulemaking, issuance of regulations and LOAs for the longer period is appropriate.

Comment 2: Several Commenters expressed concern and the need for increased reporting and assessment of impacts due to impacts of climate change on marine mammal populations.

Response: We note that the Navy is required to provide annual reports to NMFS and the Adaptive Management process allows for timely modification of mitigation or monitoring measures based on new information, when appropriate (see the *Mitigation Measures* and *Monitoring* sections for additional detail). The reporting requirements included in this final rule are consistent with NMFS' regulations and the goals of the monitoring and reporting program, as discussed in the 2018 HSTT final rule.

Impact Analysis

General

Comment 3: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that the Navy provide NMFS with an acoustics analysis that addresses noise impacts on land, from the air, and underwater. Full environmental analysis of the noise would examine a suite of metrics appropriate to the array of resources impacted. The impacts should discuss potential effects on wildlife, visitors, and other noise-sensitive receivers.

The commenter also recommended that the Navy consider the following as it plans to conduct activities in the HSTT Study Area:

- Use appropriate metrics to assess potential environmental impacts on land and water.
- Determine natural ambient acoustic conditions as a baseline for analysis.
- Assess effects from cumulative noise output, incorporating noise generated from other anthropogenic sources.
- Determine distance at which noise will attenuate to natural levels.
- Assess effects that these noise levels would have on terrestrial wildlife, marine wildlife, and visitors.
- Appropriate and effective mitigation measures should be developed and used to reduce vessel strike (*e.g.,* timing activities to avoid migration, and searching for marine mammals before and during activities and taking avoidance measures).

Response: The analysis conducted by the Navy and provided to NMFS was based on the best available science and provided NMFS with all information needed to conduct a complete and thorough analysis of the effects of Navy activities on affected marine mammals and their habitat. In addition, NMFS refers the Commenter to the 2018 HSTT FEIS/OEIS which conducted an assessment of all of the activities which comprised the proposed action and their impacts (including cumulative impacts) along with alternatives to the proposed action and their impacts to relevant resources. In the context of this MMPA rule, the Navy was not required to do ambient noise monitoring or assess impacts to wildlife other than marine mammals or to visitors/tourists. The mitigation measures in this rule include procedural measures to use trained Lookouts to observe for marine mammals within a mitigation zone before, during, and after applicable activities to avoid or reduce potential impacts wherever and whenever training and testing activities occur. Additionally, the Navy will implement

measures within mitigation areas to avoid potential impacts in key areas of importance for marine mammal foraging, reproduction, and migration. The mitigation measures in this rule also include procedural measures to minimize vessel strike (avoiding whales by 500 yds, *etc.*), mitigation areas to minimize strike in biologically important areas, and Awareness Notification Message areas wherein all vessels are alerted to stay vigilant to the presence of large whales.

Density Estimates

Comment 4: In a comment on the 2018 HSTT proposed rule, a Commenter stated that 30 iterations or Monte Carlo simulations is low for general bootstrapping methods used in those models but understands that increasing the number of iterations in turn increases the computational time needed to run the models. Accordingly, the Commenter suggested that the Navy consider increasing the iterations from 30 to at least 200 for activities that have yet to be modeled for upcoming MMPA rulemakings for Navy testing and training activities.

Response: In areas where there are four seasons, 30 iterations are used in NAEMO which results in a total of 120 iterations per year for each event. However, in areas where there are only two seasons, warm and cold, the number of iterations per season is increased to 60 so that 120 iterations per year are maintained. The Navy reached this number of iterations by running two iterations of a scenario and calculating the mean of exposures, then running a third iteration and calculating the running mean of exposures, then a fourth iteration and so on. This is done until the running mean becomes stable. Through this approach, it was determined 120 iterations was sufficient to converge to a statistically valid answer and provides a reasonable uniformity of exposure predictions for most species and areas. There are a few exceptions for species with sparsely populated distributions or highly variable distributions. In these cases, the running mean may not flatten out (or become stable); however, there were so few exposures in these cases that while the mean may fluctuate, the overall number of exposures did not result in significant differences in the totals. In total, the number of simulations conducted for HSTT Phase III exceeded six million simulations and produced hundreds of terabytes of data. Increasing the number of iterations, based on the discussion above, would not result in a significant change in the results, but would incur a significant increase in resources (*e.g.,* computational and storage requirements). This would divert these resources from conducting other more consequential analysis without providing for meaningfully improved data. The Navy has communicated that it is continually looking at ways to improve NAEMO and reduce data and computational requirements. As technologies and computational efficiencies improve, the Navy will evaluate these advances and incorporate them where appropriate. NMFS has reviewed the Navy's approach and concurs that it is technically sound and reflects the best available science.

Comment 5: In a comment on the 2018 HSTT proposed rule, a Commenter had concerns regarding the Navy's pinniped density estimates. Given that a single density was provided for the respective areas and pinnipeds were assumed to occur at sea as individual animals, uncertainty does not appear to have been incorporated in the Navy's animat modeling for pinnipeds. The Navy primarily used sightings or abundance data, assuming certain correction factors, divided by an area to estimate pinniped densities. Many, if not all, of the abundance estimates had associated measures of uncertainty (*i.e.,* coefficients of variation (CV), standard deviation (SD), or standard error (SE)). Therefore, the Commenter recommended that NMFS require the Navy to specify whether and how it incorporated uncertainty in the pinniped density estimates into its animat modeling and if it did not, require the Navy to use measures of uncertainty inherent in the abundance data (*i.e.,* CV, SD, SE) similar to the methods used for cetaceans.

Response: As noted in the cited technical report ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing'' (U.S. Department of the Navy, 2018), the Navy did not apply statistical uncertainty outside the survey boundaries into non-surveyed areas, since it deemed application of statistical uncertainty would not be meaningful or appropriate. We note that there are no measures of uncertainty (*i.e.,* no CV, SD, or SE) provided in NMFS Pacific Stock Assessment Report (SAR) Appendix 3 (Carretta *et al.,* 2019) associated with the abundance data for any of the pinniped species present in Southern California. Although some measures of uncertainty are presented in some citations within the SAR and in other relevant publications for some survey findings, it is not appropriate for the Navy to attempt to derive summations of total uncertainty for an abundance when the authors of the cited studies and the SAR have not. For additional information regarding use of pinniped density data, see the cited ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area'' Section 11 (U.S. Department of the Navy, 2017b). As a result of the lack of published applicable measures of uncertainty for pinnipeds during this analysis, the Navy did not incorporate measures of uncertainty into the pinniped density estimates. NMFS independently reviewed the methods and densities used by the Navy and concur that they are appropriate and reflect the best available science.

Comment 6: In a comment on the 2018 HSTT proposed rule, a Commenter had concerns regarding the various areas, abundance estimates, and correction factors that the Navy used for pinnipeds. The Commenter referenced a lot of information in the context of both what the Navy used and what the Commenter argued they could have used instead and summarized the discussion with several recommendations.

For harbor seals, the area was based on the NMFS SOCAL stratum (extending to the extent of the U.S. exclusive economic zone (EEZ), 370 km from the coast) for its vessel-based surveys (*i.e.,* Barlow 2010) and the Navy applied the density estimates from the coast to 80 km offshore. The Commenter believes that this approach is inappropriate and that the Navy should use the area of occurrence to estimate the densities for harbor seals. For harbor seals, the Navy assumed that 22 percent of the stock occurred in SOCAL, citing Department of the Navy (2015). The Commenter had two concerns with this approach. First, one has to go to Department of the Navy (2015) to determine the original source of the information (Lowry *et al.,* 2008; see the commenter's February 20, 2014, letter on this matter). Second, Lowry *et al.* (2008) indicated that 23.3 percent of the harbor seal population occurred in SOCAL, not 22 percent as used by the Navy. Therefore, the Commenter recommended that, at the very least, NMFS require the Navy to revise the pinniped density estimates using the extent of the coastal range (*e.g.,* from shore to 80 km offshore) of harbor seals as the applicable area, 23.3 percent of the California abundance estimate based on Lowry *et al.* (2008), and an at-sea correction factor of 65 percent based on Harvey and Goley (2011) for both seasons.

For monk seals the area was based on the areas within the 200-m isobaths in both the Main and Northwest Hawaiian Islands (MHI and NWHI, respectively) and areas beyond the 200-m isobaths in the U.S. EEZ. The Commenter asserted that some of the abundances used were not based on best available science. The Navy noted that its monk seal abundance was less than that reported by Baker *et al.* (2016), but that those more recent data were not available when the Navy's modeling process began. The Baker *et al.* (2016) data have been available for almost two years and should have been incorporated accordingly, particularly since the data would yield greater densities and the species is endangered. For monk seals, the Commenter recommended using the 2015 monk seal abundance estimate from Baker *et al.* (2016) and an at-sea correction factor of 63 percent for the MHI based on Baker *et al.* (2016) and 69 percent for the NWHI based on Harting *et al.* (2017).

For the northern fur seals, the area was based on the NMFS SOCAL stratum (extending to the extent of the U.S. EEZ, 370 km from the coast) for its vessel-based surveys (*i.e.,* Barlow, 2010). For elephant seals, California sea lions, and Guadalupe fur seals, the area was based on the Navy SOCAL modeling area. The Commenter had concerns that these areas are not based on the biology or ecology of these species. The Commenter recommended using the same representative area for elephant seals, northern fur seals, Guadalupe fur seals, and California sea lions.

The Commenter recommended using an increasing trend of 3.8 percent annually for the last 15 years for elephant seals as part of the California population and at least 31,000 as representative of the Mexico population based on Lowry *et al.* (2014). Additionally, the commenter recommended using an at-sea correction factor of 44 percent for the cold season and 48 percent for the warm season for California sea lions based on Lowry and Forney (2005).

Finally, the Commenter recommended that NMFS require the Navy to (1) specify the assumptions made and the underlying data that were used for the at-sea correction factors for Guadalupe and northern fur seals and (2) consult with experts in academia and at the NMFS Science Centers to develop more refined pinniped density estimates that account for pinniped movements, distribution, at-sea correction factors, and density gradients associated with proximity to haul-out sites or rookeries.

Response: The Navy provided additional clarification regarding the referenced concerns about areas, abundance estimates, and correction factors that were used for pinnipeds. We note that take estimation is not an exact science. There are many inputs that go into an estimate of marine mammal exposure, and the data upon which those inputs are based come with varying levels of uncertainty and precision. Also, differences in life histories, behaviors, and distributions of stocks can support different decisions regarding methods in different situations. Different methods may be supportable in different situations, and, further, there may be more than one acceptable method to estimate take in a particular situation. Accordingly, while NMFS always ensures that the methods are technically supportable and reflect the best available science, NMFS does not prescribe any one method for estimating take (or calculating some of the specific take estimate components that the Commenter is concerned about). NMFS reviewed the areas, abundances, and correction factors used by the Navy to estimate take and concurs that they are appropriate. We note the following in further support of the analysis: while some of the suggestions the Commenter makes could provide alternate valid ways to conduct the analyses, these modifications are not required in order to have equally valid and supportable analyses and, further, would not change NMFS' determinations for pinnipeds. In addition, we note that (1) many of the specific recommendations that the Commenter makes are largely minor in nature: ''44 not 47 percent,'' ''63 not 61 percent,'' ''23.3 not 22 percent'' or ''area being approximately 13 percent larger;'' and (2) even where the recommendation is somewhat larger in scale, given the ranges of these stocks, the size of the stocks, and the number and nature of pinniped takes, recalculating the estimated take for any of these pinniped stocks using the Commenter's recommended changes would not change NMFS' assessment of impacts on the recruitment or survival of any of these stocks, or the negligible impact determination. Below, we address the Commenter's issues in more detail and, while we do not explicitly note it in every section, NMFS has reviewed the Navy's analysis and choices in relation to these comments and concurs that they are technically sound and reflect the best available science.

For harbor seals—Based on the results from satellite tracking of harbor seals at Monterey, California and the documented dive depths (Eguchi and Harvey, 2005), the extent of the range for harbor seals in the HSTT Study Area used by the Navy (a 50 Nmi buffer around all known haul-out sites; approximately 93 km) is more appropriate than the suggested 80 km offshore suggested by Commenter.

The comment is incorrect in its claim that the NMFS and Navy did not use the best available science. Regarding the appropriate percentage of the California Current Ecosystem abundance to assign to the HSTT Study Area, the 22 percent that the Navy used is based on the most recent of the two years provided in Lowry *et al.* (2008) rather than the mean of two years, which is one valid approach. Additionally, since approximately 74 percent of the harbor seal population in the Channel Islands (Lowry *et al.,* 2017) is present outside and to the north of the HSTT Study Area, it is a reasonable assumption that the 22 percent used already provides a conservative overestimate and that it would not be appropriate to apply a higher percentage of the overall population for distribution into the Navy's modeling areas.

Again, the comment is incorrect in its claim that the correction factors applied to population estimates were either unsubstantiated or incorrect. Regarding the Commenter's recommended use of an at-sea correction factor of 65 percent for both seasons based on Harvey and Goley (2011), that correction factor was specifically meant to apply to the single molting season when harbor seals are traditionally surveyed (see discussion in Lowry *et al.,* 2017). Additionally, the authors of that study provided a correction factor (CF = 2.86; 35 percent) for Southern California but left open the appropriateness of that factor given the limited data available at the time. For these reasons, having separate correction factors for each of the seasons is more appropriate as detailed in Section 11.1.5 (*Phoca vitulina,* Pacific harbor seal) of the ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area'' (U.S. Department of the Navy, 2017b).

For monk seals, as detailed in Section 11.1.4 (*Neomonachus schauinslandi,* Hawaiian monk seal) of the ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area'' (U.S. Department of the Navy, 2017b), the Navy consulted with the researchers and subject matter experts at the Pacific Science Center and the Monk Seal Recovery Team regarding the abundance estimates, at sea correction factors, and distribution for monk seals in the Hawaiian Islands during development

of the 2018 HSTT FEIS/OEIS throughout 2015 and the Summer of 2016, and as used subsequently in its MMPA application. The Navy incorporated the results of those consultations, including unpublished data, into the analysis of monk seals. Additional details in this regard to monk seal distributions and population trends as reflected by the abundance in the Hawaiian Islands are presented in the 2018 HSTT FEIS/OEIS in Section 3.7.2.2.9.2 (Habitat and Geographic Range) and Section 3.7.2.2.9.3 (Population Trends). The Navy has indicated that it has continued ongoing communications with researchers at the Pacific Islands Science Center and elsewhere, has accounted for the findings in the citations noted by the Commenter (Baker *et al.,* 2016; Harting *et al.,* 2017) as well as information in forthcoming publications provided ahead of publication via those researchers (cited as in preparation), and specifically asked for and received concurrence from subject matter experts regarding specific findings presented in the 2018 HSTT FEIS/OEIS regarding monk seals. The Navy also considered (subsequent to publication of the 2018 HSTT FEIS/OEIS) the new Main Hawaiian Islands haul-out correction factor presented in the publication by Wilson *et al.* (2017, which would be inconsistent with the use of the Baker *et al.* (2016) correction factors suggested by the Commenter), and the Harting *et al.* (2017) correction factor, and considered the new abundance numbers presented in the 2016 Stock Assessment Report, which first became available in January 2018. It is the Navy's assessment that a revision of the monk seal at-sea density would only result in small changes to the predicted effects and certainly would not change the conclusions presented in the 2018 HSTT FEIS/OEIS regarding impact on the population or the impact on the species. NMFS concurs with this conclusion. The Navy has communicated that it assumes that as part of the ongoing regulatory discussions with NMFS, changes to estimates of effects can be best dealt with in the next rulemaking given Wilson *et al.* (2017) has now also provided a totally new haulout correction factor for the Main Hawaiian Islands that was not considered in Baker *et al.* (2016), Harting *et al.* (2017), or the 2016 SAR. NMFS agrees.

For northern fur seals, elephant seals, California sea lions, and Guadalupe fur seals, the Navy consulted with various subject matter experts regarding the abundances and distributions used in the 2018 HSTT FEIS/OEIS analyses for these species and based on those consultations and the literature available, the Navy and NMFS believe that the findings presented in the 2018 HSTT FEIS/OEIS and supporting technical reports provide the most accurate assessments available for these species. Given the demonstrated differences in the at-sea distributions of elephant seals, northern fur seals, Guadalupe fur seals, and California sea lions (Gearin *et al.,* 2017; Lowry *et al.,* 2014; Lowry, *et al.,* 2017; Norris, 2017; Norris, *et al.,* 2015; Robinson *et al.,* 2012; University of California Santa Cruz and National Marine Fisheries Service, 2016), it would not be appropriate to use the same representative area for distributions of these species' population abundances. For example, California sea lions forage predominantly within 20 nmi from shore (Lowry and Forney, 2005), while tag data shows that many elephant seals (Robinson *et al.,* 2012) and Guadalupe fur seals (Norris, 2017) seasonally forage in deep waters of the Pacific well outside the boundaries of the HSTT Study Area.

For northern elephant seals (*Mirounga angustirostris,* Northern elephant seal), as detailed in Section 11.1.3 of the technical report titled *U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area* (U.S. Department of the Navy, 2017b), the Navy considered a number of factors in the development of the data for this species, including the fact that not all of the elephant seal population is likely to occur exclusively within the Southern California portion of the HSTT Study Area. Given that the three main rookeries considered in this analysis are located at the northern boundary of the HSTT Study Area and that elephant seals migrate northward after the breeding season, the Navy, in consultation with subject matter experts, believes the current abundance used in the analysis is based on the best available science and represents a conservative overestimate of the number of elephant seals likely to be affected by Navy activities in the HSTT Study Area. NMFS agrees with this assessment, and it was used in the MMPA analysis.

For California sea lions, the citation (Lowry and Forney, 2005) used as the basis for this recommendation specifically addressed the use of the Central and Northern California at-sea correction factor elsewhere, with the authors stating; ''In particular, [use of the Central and Northern California at-sea correction factor] would not be appropriate for regions where sea lions reproduce, such as in the Southern California Bight (SCB) and in Mexico, . . .'' Given the waters of the Southern California Bight and off Mexico overlap the HSTT Study Area and since the authors of the cited study specifically recommended not using the correction factor in the manner the Commenter suggested, the Navy does not believe use of that correction factor for the HSTT Study Area would be appropriate. NMFS concurs with this approach.

For Guadalupe fur seal—Additional detail regarding the data used for the analysis of Guadalupe fur seals was added to the 2018 HSTT FEIS/OEIS Section 3.7.2.2.8 (*Arctocephalus townsendi,* Guadalupe Fur Seal). The Navy had integrated the latest (September 2017) unpublished data for Guadalupe fur seals from researchers in the United States and Mexico into the at-sea correction factor and density distribution of the species used in the modeling, but consultations with experts in academia and at the NMFS Science Centers and their recommendations had not been finalized before release of the Draft EIS/OEIS. Subsequently, this revision of the text was not considered critical for the final NEPA document since the new data did not provide any significant change to the conclusions reached regarding the Guadalupe fur seal population. In fact, the data indicates an increase in the population and expansion of their range concurrent with decades of ongoing Navy training and testing in the SOCAL range complex. The Navy recently supported new census and at-sea satellite tagging of Guadalupe fur seals in 2018 and 2019. These data were not available during the development of the 2018 HSTT FEIS/OEIS, but the results do not change the overall conclusions. For instance, Guadalupe fur seals tagged to date are truly pelagic and mainly transit the offshore (<2000 m) waters of the HSTT SOCAL area (Norris *et al.,* 2019a, 2019b; Norris *et al.,* 2020). Therefore, modeled takes are likely an over-prediction of exposure. NMFS agrees with this assessment, and it was used in the MMPA analysis.

For Northern Fur Seal—As presented in Section 11.1.2 (*Callorhinus ursinus,* Northern fur seal) of the Navy's Density Technical Report (U.S. Department of the Navy, 2017b), the correction factor percentages for northern fur seals potentially at sea were derived from the published literature as cited (Antonelis *et al.,* 1990; Ream, *et al.,* 2005; Roppel, 1984).

For future EISs, the Navy explained that it did and will continue to consult with authors of the papers relevant to the analyses as well as other experts in

academia and at the NMFS Science Centers during the development of the Navy's analyses. During the development of the 2018 HSTT EIS/OEIS and as late as September 2017, the Navy had ongoing communications with various subject matter experts and specifically discussed pinniped movements, the distribution of populations within the study area to support the analyses, the pinniped haulout or at-sea correction factors, and the appropriateness of density gradients associated with proximity to haul-out sites or rookeries. As shown in the references cited, the personal communications with researchers have been made part of the public record, although many other informal discussions with colleagues have also assisted in the Navy's approach to the analyses presented.

The Navy acknowledges that there have been previous comments provided by this Commenter on other Navy range complex documents regarding the use of satellite tag movement and location data to derive at-sea pinniped density data, and the Navy asserts that previous responses to those comments remain valid. Additionally, the Commenter has noted that the ''. . . Commenter continues to believe that data regarding movements and dispersion of tagged pinnipeds could yield better approximations of densities than the methods the Navy currently uses.'' The Navy acknowledges that in comments to previous HSTT EIS/OEIS analyses, the Commenter has recommended this untried approach; responses to those previous comments have been provided. The Navy also notes that there have been papers suggesting the future application of Bayesian or Markov chain techniques for use in habitat modeling (*e.g.,* Redfern *et al.,* 2006) and overcoming the bias introduced by interpretation of population habitat use based on non-randomized tagging locations (*e.g.,* Whitehead and Jonsen, 2013). However, the use of satellite tag location data in a Bayesian approach to derive cetacean or pinniped densities at sea has yet to be accepted, implemented, or even introduced in the scientific literature.

This issue was in fact recently discussed as part of the Density Modeling Workshop associated with the October 2017 Society for Marine Mammalogy conference. The consensus of the marine mammal scientists present was that while pinniped tag data could provide a good test case, it realistically was unlikely to be a focus of the near-term research. The working group determined that a focused technical group should be established to specifically discuss pinnipeds and data available for density surface modelling in the future. It was also discussed at the Density Modeling Workshop in October 2018. The Navy has convened a pinniped working group and NMFS Alaska Fisheries Science Center is sponsoring a demonstration project to use haul-out and telemetry data from seals in Alaska to determine the viability of such an approach.

Therefore, consistent with previous assessments and based on recent discussions with subject matter experts in academia, the NMFS Science Centers, and the National Marine Mammal Laboratory, and given there is no currently established methodology for implementing the approach suggested by the Commenter, the Navy believes that attempting to create and apply a new density derivation method at this point would introduce additional levels of uncertainty into density estimations.

For these reasons, the Navy and NMFS did not use density estimates based on pinniped tracking data. Publications reporting on satellite tag location data have been and will continue to be used to aid in the understanding of pinniped distributions and density calculations as referenced in the 2018 HSTT FEIS/OEIS and the Navy's ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area'' report (U.S. Department of the Navy, 2017b). The Navy has communicated that it will continue, as it has in the past, to refine pinniped density and distributions using telemetry data and evolving new techniques (such as passive acoustic survey data) in development of the Navy's analyses. As noted above, NMFS has reviewed the Navy's methods and concurs that they are appropriate and reflect the best available science.

Comment 7: Commenters noted that in the 2018 HSTT final rule, NMFS stated that it would incorporate the best and most recently available abundance and haul out data for monk seals into its next rulemaking, but failed to do so in the 2019 HSTT proposed rule. They argued that in light of the critical status of the monk seals, which number approximately 1,415 individuals, there is no justification for NMFS' failure to comply with the MMPA's command to incorporate the best available science into the proposed extension rule.

Response: As described in the response to Comment 6, in developing the Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area, as part of the 2018 HSTT FEIS/OEIS, the Navy consulted with researchers and subject matter experts at NMFS' Pacific Islands Fisheries Science Center and the Monk Seal Recovery Team regarding the abundance estimates, at sea correction factors, and distribution for monk seals in the Hawaiian Islands. The Navy incorporated the results of those consultations, including unpublished data from Wilson *et al.,* then in review, into the analysis of monk seals for the 2018 HSTT FEIS/OEIS and the 2017 and 2019 Navy Applications. When developing the analysis for monk seals, the Navy, in consultation with researchers at the NMFS Pacific Islands Fisheries Science Center, incorporated an estimated increased monk seal abundance. The published SAR for Hawaiian monk seals at the time (2015) reported a population size of 1,112, however in consultation with NMFS the Navy used a population size of 1,300. This estimate was also in agreement with the population size estimates reported by Baker *et al.* (2016) (2013 = 1,291, 2014 = 1,309, 2015 = 1,324). The most recent draft 2019 SARs report a population size of 1,351 and the abundance estimate used in the Navy's analyses is within the 95 percent confidence interval (1,294–1,442; CV = 0.03). It is the Navy's assessment that a revision of the monk seal at-sea density (given the most recent abundance estimate of 1,351) would result in only very small changes to the predicted effects (particularly given the distribution of monk seals in the HSTT Study Area) and would not change the conclusions presented in the 2018 HSTT FEIS/OEIS and 2017 and 2019 Navy applications regarding impact on the population or the impact on the species. NMFS concurs with this conclusion. NMFS and the Navy will continue to consider the most recent and best available data in future EIS and MMPA rule analyses.

Comment 8: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS require the Navy to (1) specify what modeling method and underlying assumptions, including any relevant source spectra and assumed animal swim speeds and turnover rates, were used to estimate the ranges to PTS and TTS for impact and vibratory pile-driving activities, (2) accumulate the energy for the entire day of proposed activities to determine the ranges to PTS and TTS for impact and vibratory pile-driving activities, and (3) clarify why the PTS and TTS ranges were estimated to be the same for LF and HF cetaceans during impact pile driving.

Response: As explained in Section 3.7.3.1.4.1 of the 2018 HSTT FEIS/OEIS,

the Navy measured values for source levels and transmission loss from pile driving of the Elevated Causeway System, the only pile driving activity included in the Specified Activity. The Navy reviewed the source levels and how the spectrum was used to calculate the range to effects; NMFS supports the use of these measured values for the MMPA analysis. These recorded source waveforms were weighted using the auditory weighting functions. Low-frequency and high-frequency cetaceans have similar ranges for impact pile driving since low-frequency cetaceans would be relatively more sensitive to the low-frequency sound which is below high-frequency cetaceans' best range of hearing. Neither the NMFS user spreadsheet nor NAEMO were required for calculations. An area density model was developed in MS Excel which calculated zones of influence (ZOI) to thresholds of interest (*e.g.,* behavioral response) based on durations of pile driving and the aforementioned measured and weighted source level values. The resulting area was then multiplied by density of each marine mammal species that could occur within the vicinity. This produced an estimated number of animals that could be impacted per pile, per day, and overall during the entire activity for both the impact pile driving and vibratory removal phases. NMFS reviewed the manner in which the Navy applied the frequency weighting and calculated all values and concurred with the approach.

Regarding the appropriateness of accumulating energy for the entire day, based on the best available science regarding animal reaction to sound, selecting a reasonable SEL calculation period is necessary to more accurately reflect the time period an animal would likely be exposed to the sound. The Navy factored both mitigation effectiveness and animal avoidance of higher sound levels into the impact pile driving analysis. For impact pile driving, the mitigation zone extends beyond the average ranges to PTS for all hearing groups; therefore, mitigation will help prevent or reduce the potential for exposure to PTS. The impact pile driving mitigation zone also extends beyond or into a portion of the average ranges to TTS; therefore, mitigation will help prevent or reduce the potential for exposure to all TTS or some higher levels of TTS, depending on the hearing group. Mitigation effectiveness and animal avoidance of higher sound levels were both factored into the impact pile driving analysis as most marine mammals should be able to easily move away from the expanding ensonified zone of TTS/PTS within 60 seconds, especially considering the soft start procedure, or avoid the zone altogether if they are outside of the immediate area upon startup. Marine mammals are likely to leave the immediate area of pile driving and extraction activities and be less likely to return as activities persist. However, some ''naive'' animals may enter the area during the short period of time when pile driving and extraction equipment is being re-positioned between piles. Therefore, an animal ''refresh rate'' of 10 percent was selected. This means that 10 percent of the single pile ZOI was added for each consecutive pile within a given 24-hour period to generate the daily ZOI per effect category. These daily ZOIs were then multiplied by the number of days of pile driving and pile extraction and then summed to generate a total ZOI per effect category (*i.e.,* behavioral response, TTS, PTS). The small size of the mitigation zone and its close proximity to the observation platform will result in a high likelihood that Lookouts would be able to detect marine mammals throughout the mitigation zone. NMFS concurs with the Navy's approach, and it was used in the MMPA analysis.

PTS/TTS Thresholds

Comment 9: In a comment on the 2018 HSTT proposed rule, a Commenter supported the weighting functions and associated thresholds as stipulated in Finneran (2016), which are the same as those used for Navy Phase III activities, but points to additional recent studies that provide additional behavioral audiograms (*e.g.,* Branstetter *et al.,* 2017; Kastelein *et al.,* 2017b) and information on TTS (*e.g.,* Kastelein *et al.,* 2017a, 2017c). However, they commented that the Navy should provide a discussion of whether those new data corroborate the current weighting functions and associated thresholds.

Response: The NMFS Revised Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS 2018) (Acoustic Technical Guidance), which was used in the assessment of effects for this rulemaking, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing, including the articles that the Commenter referenced that were published subsequent to the publication of the first version of 2016 Acoustic Technical Guidance. The new data included in those articles are consistent with the thresholds and weighting functions included in the current version of the Acoustic Technical Guidance (NMFS, 2018).

NMFS will continue to review and evaluate new relevant data as it becomes available and consider the impacts of those studies on the Acoustic Technical Guidance to determine what revisions/updates may be appropriate. Thus far, no new information has been published or otherwise conveyed that would fundamentally change the assessment of impacts or conclusions of this rule. Furthermore, the recent peer-reviewed updated marine mammal noise exposure criteria by Southall *et al.* (2019a) provide identical PTS and TTS thresholds to those provided in NMFS' Acoustic Technical Guidance.

Comment 10: In a comment on the 2018 HSTT proposed rule, Commenters stated that the criteria that NMFS has produced to estimate temporary threshold shift (TTS) and permanent threshold shift (PTS) in marine mammals are erroneous and non-conservative. Commenters cited multiple purported issues with NMFS' Acoustic Technical Guidance, such as pseudoreplication and inconsistent treatment of data, broad extrapolation from a small number of individuals, and disregarding ''non-linear accumulation of uncertainty.'' Commenters suggested that NMFS not rely exclusively on its auditory guidance for determining Level A harassment take, but should at a minimum retain the historical 180-dB rms Level A harassment threshold as a ''conservative upper bound'' or conduct a ''sensitivity analysis'' to ''understand the potential magnitude'' of the supposed errors.

Response: NMFS disagrees with this characterization of the Acoustic Technical Guidance and the associated recommendation. The Acoustic Technical Guidance is a compilation, interpretation, and synthesis of the scientific literature that provides the best scientific information regarding the effects of anthropogenic sound on marine mammals' hearing. The technical guidance was classified as a Highly Influential Scientific Assessment and, as such, underwent three independent peer reviews, at three different stages in its development, including a follow-up to one of the peer reviews, prior to its dissemination by NMFS. In addition, there were three separate public comment periods, during which time we received and responded to similar comments on the guidance (81 FR 51694), which we cross-reference here, and more recent public and interagency review under Executive Order 13795. This review process was scientifically rigorous and

ensured that the Guidance represents the best scientific data available. Furthermore, the recent peer-reviewed updated marine mammal noise exposure criteria by Southall *et al.* (2019a) provide identical PTS and TTS thresholds to those provided in NMFS' Acoustic Technical Guidance.

The Acoustic Technical Guidance updates the historical 180 dB rms injury threshold, which was based on professional judgement (*i.e.,* no data were available on the effects of noise on marine mammal hearing at the time this original threshold was derived). NMFS disagrees with any suggestion that the use of the Acoustic Technical Guidance provides erroneous results. The 180-dB rms threshold is plainly outdated, as the best available science indicates that rms SPL is not even an appropriate metric by which to gauge potential auditory injury.

Multiple studies from humans, terrestrial mammals, and marine mammals have demonstrated less TTS from intermittent exposures compared to continuous exposures with the same total energy because hearing is known to experience some recovery in between noise exposures, which means that the effects of intermittent noise sources such as tactical sonars are likely overestimated. Marine mammal TTS data have also shown that, for two exposures with equal energy, the longer duration exposure tends to produce a larger amount of TTS. Most marine mammal TTS data have been obtained using exposure durations of tens of seconds up to an hour, much longer than the durations of many tactical sources (much less the continuous time that a marine mammal in the field would be exposed consecutively to those levels), further suggesting that the use of these TTS data are likely to overestimate the effects of sonars with shorter duration signals.

Regarding the suggestion of pseudoreplication and erroneous models, since marine mammal hearing and noise-induced hearing loss data are limited, both in the number of species and in the number of individuals available, attempts to minimize pseudoreplication would further reduce these already limited data sets. Specifically, with marine mammal behavioral temporary threshold shift studies, behaviorally derived data are only available for two mid-frequency cetacean species (bottlenose dolphin, beluga) and two phocids (in-water) pinniped species (harbor seal and northern elephant seal), with otariid (in-water) pinnipeds and high-frequency cetaceans only having behaviorally-derived data from one species. Arguments from Wright (2015) regarding pseudoreplication within the TTS data are therefore largely irrelevant in a practical sense because there are so few data. Multiple data points were not included for the same individual at a single frequency. If multiple data existed at one frequency, the lowest TTS onset was always used. There is only a single frequency where TTS onset data exist for two individuals of the same species: 3 kHz for dolphins. Their TTS (unweighted) onset values were 193 and 194 dB re 1 µPa2s. Thus, NMFS believes that the current approach makes the best use of the given data. Appropriate means of reducing pseudoreplication may be considered in the future, if more data become available. Many other comments from Wright (2015) and the comments from Racca *et al.* (2015b) appear to be erroneously based on the idea that the shapes of the auditory weighting functions and TTS/PTS exposure thresholds are directly related to the audiograms; *i.e.,* that changes to the composite audiograms would directly influence the TTS/PTS exposure functions (*e.g.,* Wright (2015) describes weighting functions as ''effectively the mirror image of an audiogram'' (p. 2) and states, ''The underlying goal was to estimate how much a sound level needs to be above hearing threshold to induce TTS.'' (p. 3)). Both statements are incorrect and suggest a fundamental misunderstanding of the criteria/threshold derivation. This would require a constant (frequency-independent) relationship between hearing threshold and TTS onset that is not reflected in the actual marine mammal TTS data. Attempts to create a ''cautionary'' outcome by artificially lowering the composite audiogram thresholds would not necessarily result in lower TTS/PTS exposure levels, since the exposure functions are to a large extent based on applying mathematical functions to fit the existing TTS data.

Behavioral Harassment Thresholds

Comment 11: In a comment on the 2018 HSTT proposed rule, Commenters commented on what they assert is NMFS' failure to set proper thresholds for behavioral impacts. Referencing the biphasic function that assumes an unmediated dose response relationship at higher received levels and a context-influenced response at lower received levels that NMFS uses to quantify behavioral harassment from sonar, Commenters commented that resulting functions depend on some inappropriate assumptions that tend to significantly underestimate effects. Commenters expressed concern that every data point that informs the agency's pinniped function, and nearly two-thirds of the data points informing the odontocete function (30/49), are derived from a captive animal study. Additionally, Commenters asserted that the risk functions do not incorporate (nor does NMFS apparently consider) a number of relevant studies on wild marine mammals. The Commenters stated that it is not clear from the proposed rule, or from the Navy's recent technical report on acoustic ''criteria and thresholds,'' on which NMFS' approach in the rule is based, exactly how each of the studies that NMFS employed was applied in the analysis, or how the functions were fitted to the data, but the available evidence on behavioral response raises concerns that the functions are not conservative for some species. Commenters recommended NMFS make additional technical information available, including from any expert elicitation and peer review, so that the public can fully comment.

Response: The ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles Technical Report'' (U.S. Department of the Navy, 2017a) details how the Navy's proposed method, which was determined appropriate and adopted by NMFS, accounted for the differences in captive and wild animals in the development of the behavioral response functions. The Navy used the best available science, which has been reviewed by external scientists and approved by NMFS, in the analysis. The Navy and NMFS have utilized all available data that relate known or estimable received levels to observations of individual or group behavior as a result of sonar exposure (which is needed to inform the behavioral response function) for the development of updated thresholds. Limiting the data to the small number of field studies that include these necessary data would not provide enough data with which to develop the new risk functions. In addition, NMFS agrees with the assumptions made by the Navy, including the fact that captive animals may be less sensitive, in that the scale at which a moderate to severe response was considered to have occurred is different for captive animals than for wild animals, as the agency understands those responses will be different.

The new risk functions were developed in 2016, before several recent papers were published or the data were available. As new science is published, NMFS and the Navy continue to evaluate the information. The

thresholds have been rigorously vetted among scientists and within the Navy community and then reviewed by the public before being applied—all applicable technical information considered has been shared with the public. It is not possible to revise and update the criteria and risk functions every time a new paper is published. These new papers provide additional information, and the Navy has considered them for updates to the thresholds in the future, when the next round of updated criteria will be developed. Thus far, no new information has been published or otherwise conveyed that would fundamentally change the assessment of impacts or conclusions of the HSTT FEIS/OEIS or this rule. To be included in the behavioral response function, data sets need to relate known or estimable received levels to observations of individual or group behavior. Melcon *et al.* (2012) does not relate observations of individual/group behavior to known or estimable received levels (at that individual/group). In Melcon *et al.* (2012), received levels at the HARP buoy averaged over many hours are related to probabilities of D-calls, but the received level at the blue whale individuals/group are unknown.

As noted, the derivation of the behavioral response functions is provided in the 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)''. The appendices to this report detail the specific data points used to generate the behavioral response functions. Data points come from published data that is readily available and cited within the technical report.

Comment 12: In a comment on the 2018 HSTT proposed rule, Commenters stated concerns with the use of distance ''cut-offs'' in the behavioral harassment thresholds, and one commenter recommended that NMFS refrain from using cut-off distances in conjunction with the Bayesian BRFs and re-estimate the numbers of marine mammal takes based solely on the Bayesian BRFs.

Response: The consideration of proximity (cut-off distances) was part of the criteria developed in consultation between the Navy and NMFS, is appropriate based on the best available science which shows that marine mammal responses to sound vary based on both sound level and distance, and was applied within the Navy's acoustic effects model. The derivation of the behavioral response functions and associated cut-off distances is provided in the 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)''. To account for non-applicable contextual factors, all available data on marine mammal reactions to actual Navy activities and other sound sources (or other large scale activities such as seismic surveys when information on proximity to sonar sources is not available for a given species group) were reviewed to find the farthest distance to which significant behavioral reactions were observed. These distances were rounded up to the nearest 5 or 10 km interval, and for moderate to large scale activities using multiple or louder sonar sources, these distances were greatly increased—doubled in most cases. The Navy's BRFs applied within these distances provide technically sound methods reflective of the best available science to estimate the impact and potential take under military readiness for the actions analyzed within the 2018 HSTT FEIS/OEIS and included in these regulations. NMFS has independently assessed the Navy's behavioral harassment thresholds and believes that they appropriately apply the best available science and it is not necessary to recalculate take estimates.

The Commenter also specifically expressed concern that distance ''cut-offs'' alleviate some of the exposures that would otherwise have been counted if the received level alone were considered. It is unclear why the Commenter finds this inherently inappropriate, as this is what the data show. As noted previously, there are multiple studies illustrating that in situations where one would expect a behavioral harassment because of the received levels at which previous responses were observed, it has not occurred when the distance from the source was larger than the distance of the first observed response.

Comment 13: In a comment on the 2018 HSTT proposed rule regarding cut-off distances, Commenters noted that dipping sonar appears to be a significant predictor of deep-dive rates in beaked whales on Southern California Anti-submarine Warfare Range (SOAR), with the dive rate falling significantly (*e.g.,* to 35 percent of that individual's control rate) during sonar exposure, and likewise appears associated with habitat abandonment. Importantly, these effects were observed at substantially greater distances (*e.g.,* 30 or more km) from dipping sonar than would otherwise be expected given the systems' source levels and the beaked whale response thresholds developed from research on hull-mounted sonar. Commenters suggested that the analysis, and associated cut-off distances, do not properly consider the impacts of dipping sonar.

Response: The Navy relied upon the best science that was available to develop the behavioral response functions in consultation with NMFS. The Navy's current beaked whale BRF acknowledges and incorporates the increased sensitivity observed in beaked whales during both behavioral response studies and during actual Navy training events, as well as the fact that dipping sonar can have greater effects than some other sources with the same source level. Specifically, the distance cut-off for beaked whales is 50 km, larger than any other group. Moreover, although dipping sonar has a significantly lower source level than hull-mounted sonar, it is included in the category of sources with larger distance cut-offs, specifically in acknowledgement of its unpredictability and association with observed effects. This means that ''takes'' are reflected at lower received levels that would have been excluded because of the distance for other source types.

The referenced article (Falcone *et al.,* 2017) was not available at the time the BRFs were developed. However, NMFS and the Navy have reviewed the article and concur that neither this article nor any other new information that has been published or otherwise conveyed since the 2018 HSTT proposed rule was published would change the assessment of impacts or conclusions in the 2018 HSTT FEIS/OEIS or in this rulemaking. Nonetheless, the new information and data presented in the new article were thoroughly reviewed by the Navy and will be quantitatively incorporated into future behavioral response functions, as appropriate, when and if other new data that would meaningfully change the functions would necessitate their revision.

Furthermore, ongoing Navy funded beaked whale monitoring at the same site where the dipping sonar tests were conducted has not documented habitat abandonment by beaked whales. Passive acoustic detections of beaked whales have not significantly changed over ten years of monitoring (DiMarzio *et al.,* 2018, updated in 2020). From visual surveys in the area since 2006 there have been repeated sightings of: The same individual beaked whales, beaked whale mother-calf pairs, and beaked whale mother-calf pairs with mothers on their second calf (Schorr *et al.,* 2018, 2020). Satellite tracking studies of beaked whale documented high site fidelity to this area (Schorr *et al.,* 2018, updated in 2020).

Comment 14: In a comment on the 2018 HSTT proposed rule regarding the behavioral thresholds for explosives, Commenters recommended that NMFS

estimate and ultimately authorize behavioral takes of marine mammals during all explosive activities, including those that involve single detonations.

Response: The derivation of the explosive injury criteria is provided in the 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III),'' and NMFS has applied the general rule a commenter referenced to single explosives for years, *i.e.,* that marine mammals are unlikely to respond to a single instantaneous detonation *at received levels below the TTS threshold* in a manner that would rise to the level of a take. Neither NMFS nor the Navy are aware of evidence to support the assertion that animals will have significant behavioral reactions (*i.e.,* those that would rise to the level of a take) to temporally and spatially isolated explosions below the TTS threshold.

Marine mammals may be exposed to isolated impulses in their natural environment (*e.g.,* lightning). There is no evidence to support that animals have significant behavioral responses to temporally and spatially isolated impulses (such as military explosions) that may rise to the level of ''harassment'' under the MMPA for military readiness activities. Still, the analysis conservatively assumes that any modeled instance of temporally or spatially separated detonations occurring in a single 24-hour period would result in harassment under the MMPA for military readiness activities. The Navy has been monitoring detonations since the 1990s and has not observed these types of reactions. To be clear, this monitoring has occurred under the monitoring plans developed specifically for shock trials, the detonations with the largest net explosive weight conducted by the Navy, and no shock trials are proposed in this Study Area.

Further, to clarify, the current take estimate framework does not preclude the consideration of animals being behaviorally disturbed during single explosions as they are counted as ''taken by Level B harassment'' if they are exposed above the TTS threshold, which is only 5 dB higher than the behavioral harassment threshold. We acknowledge in our analysis that individuals exposed above the TTS threshold may also be behaviorally harassed and those potential impacts are considered in the negligible impact determination.

All of the Navy's monitoring projects, reports, and publications are available on the marine species monitoring web page (*https://www.navymarinespeciesmonitoring.us/*). NMFS will continue to review applicable monitoring and science data and consider modifying these criteria when and if new information suggests it is appropriate.

Mortality and injury thresholds for explosions

Comment 15: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS require the Navy to (1) explain why the constants and exponents for onset mortality and onset slight lung injury thresholds for Phase III have been amended, (2) ensure that the modified equations are correct, and (3) specify any additional assumptions that were made.

Response: The derivation of the explosive injury equations, including any assumptions, is provided in the 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)''. It is our understanding that the constants and exponents for onset mortality and onset slight lung injury were amended by the Navy since Phase II to better account for the best available science. Specifically, the equations were modified in Phase III to fully incorporate the injury model in Goertner (1982), specifically to include lung compression with depth. NMFS independently reviewed and concurred with this approach.

Comment 16: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the Navy only used the onset mortality and onset slight lung injury criteria to determine the range to effects, while it used the 50 percent mortality and 50 percent slight lung injury criteria to estimate the numbers of marine mammal takes. The Commenter believes that this approach is inconsistent with the manner in which the Navy estimated the numbers of takes for PTS, TTS, and behavioral disruption for explosive activities. All of those takes have been and continue to be based on onset, not 50-percent values. The Commenter commented on circumstances of the deaths of multiple common dolphins during one of the Navy's underwater detonation events in March 2011 (Danil and St. Leger, 2011) and indicated that the Navy's mitigation measures are not fully effective, especially for explosive activities. The Commenter believes it would be more prudent for the Navy to estimate injuries and mortalities based on onset rather than a 50-percent incidence of occurrence. The Navy did indicate that it is reasonable to assume for its impact analysis—thus its take estimation process—that extensive lung hemorrhage is a level of injury that would result in mortality for a wild animal (Department of the Navy 2017a). Thus, the Commenter asserted that it is unclear why the Navy did not follow through with that premise. The Commenter recommended that NMFS use onset mortality, onset slight lung injury, and onset GI tract injury thresholds to estimate both the numbers of marine mammal takes and the respective ranges to effect.

Response: Based on an extensive review of the incident referred to by the Commenter, in coordination with NMFS the Navy revised and updated the mitigation for these types of events. There have been no further incidents since these mitigation changes were instituted in 2011. The Navy used the range to one percent risk of mortality and injury (referred to as ''onset'' in the Draft EIS/OEIS) to inform the development of mitigation zones for explosives. In all cases, the mitigation zones for explosives extend beyond the range to one percent risk of non-auditory injury, even for a small animal (representative mass = 5 kg). The 2018 HSTT FEIS/OEIS clarified that the ''onset'' non-auditory injury and mortality criteria are actually one percent risk criteria.

Over-predicting impacts, which would occur with the use of one percent non-auditory injury risk criteria in the quantitative analysis, would not afford extra protection to any animal. The Navy, in coordination with NMFS, has determined that the 50 percent incidence of occurrence is a reasonable representation of a potential effect and appropriate for take estimation. Although the commenter implies that the Navy did not use extensive lung hemorrhage as indicative of mortality, that statement is incorrect. Extensive lung hemorrhage is assumed to result in mortality, and the explosive mortality criteria are based on extensive lung injury data. See the 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III).''

Range to Effects

Comment 17: In a comment on the 2018 HSTT proposed rule, a Commenter noted that regarding TTS, the ranges to effect provided in Table 25 of the **Federal Register** notice of the 2018 HSTT proposed rule and Table 6–4 of the 2017 Navy application appear to be incorrect. The ranges for LF cetaceans should increase with increasing sonar emission time. Therefore, the Commenter recommended that NMFS determine what the appropriate ranges to TTS for bin LF5 should be and amend

the ranges for the various functional hearing groups in the tables accordingly.

Response: The table regarding the *Range to Temporary Threshold Shift for sonar bin LF5 over a representative range of environments within the HSTT Study Area* (Table 25 in the Proposed and Final Rules) is correct. The reason the values in the tables in the rules and the 2018 HSTT FEIS/OEIS do not change over the indicated interval (1 sec, 30 sec, 60 sec, 120 sec) is that the LF5 pulse interval is longer than these values, hence the same range to TTS in the table. The values are consistent across the board because the max source level of LF5 (<180 dB SPL) is so close to the LF cetacean TTS threshold 179 dB SEL. At such small range to effects, the resolution of NAEMO comes into play, and such small changes in range to effects cannot be discerned between the example durations.

Mitigation and Avoidance Calculations

Comment 18: In a comment on the 2018 HSTT proposed rule, Commenters cited concerns that there was not enough information by which to evaluate the Navy's post-modeling calculations to account for mitigation and avoidance and imply that Level A takes and mortality takes may be underestimated. One Commenter recommended that NMFS (1) authorize the total numbers of model-estimated Level A harassment (PTS) and mortality takes rather than reduce the estimated numbers of takes based on the Navy's post-model analyses and (2) use those numbers, in addition to the revised Level B harassment takes, to inform its negligible impact determination analyses.

Response: The consideration of marine mammal avoidance and mitigation effectiveness is integral to the Navy's overall analysis of impacts from sonar and explosive sources. NMFS has independently evaluated the method and agrees that it is appropriately applied to augment the model in the prediction and authorization of injury and mortality as described in the rule. Details of this analysis are provided in the Navy's 2018 technical report titled ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing''; additional information on the mitigation analysis also was included in the 2018 HSTT final rule.

Sound levels diminish quickly below levels that could cause PTS. Studies have shown that all animals observed avoid areas well beyond these zones; therefore, the vast majority of animals are likely to avoid sound levels that could cause injury to their ear. As discussed in the Navy's 2018 technical report titled ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing,'' animats in the Navy's acoustic effects model do not move horizontally or ''react'' to sound in any way. However, the current best available science based on a growing body of behavioral response research shows that animals do in fact avoid the immediate area around sound sources to a distance of a few hundred meters or more depending upon the species (see Appendix B of the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles Technical Report'' (U.S. Department of the Navy, 2017a)) and Southall *et al.* (2019a). Avoidance to this distance greatly reduces the likelihood of impacts to hearing such as TTS and PTS. Accordingly, NMFS and the Navy's analysis appropriately applies a quantitative adjustment to the exposure results calculated by the model (which does not consider avoidance or mitigation).

Specifically, behavioral response literature, including the recent 3S and SOCAL BRS studies, indicate that the multiple species from different cetacean suborders do in fact avoid approaching sound sources by a few hundred meters or more, which would reduce received sound levels for individual marine mammals to levels below those that could cause PTS. The ranges to PTS for most marine mammal groups are within a few tens of meters and the ranges for the most sensitive group, the HF cetaceans, average about 200 m, to a maximum of 270 m in limited cases. For blue whales and other LF cetaceans, the range to PTS is 65 m for MF1 30 sec duration exposure, which is well within the mitigation zones for hull-mounted MFAS.

As discussed in the Navy's 2018 technical report titled ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing'' and the 2018 HSTT final rule, the Navy's acoustic effects model does not consider procedural mitigations (*i.e.,* power-down or shut-down of sonars, or pausing explosive activities when animals are detected in specific zones adjacent to the source), which necessitates consideration of these factors in the Navy's overall acoustic analysis. Credit taken for mitigation effectiveness is extremely conservative. For example, if Lookouts can see the whole area, they get credit for it in the calculation; if they can see more than half the area, they get half credit; if they can see less than half the area, they get no credit. Not considering animal avoidance and mitigation effectiveness would lead to a great overestimate of injurious impacts. NMFS concurs with the analytical approach used, *i.e.,* we believe the estimated Level A take numbers represent the maximum number of these takes that are likely to occur and it would not be appropriate to authorize a higher number or consider a higher number in the negligible impact analysis. Lastly, the Navy's 2018 technical report titled ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing'' very clearly explains in detail how species sightability, the Lookout's ability to observe the range to PTS (for sonar and other transducers) and mortality (for explosives), the portion of time when mitigation could potentially be conducted during periods of reduced daytime visibility (to include inclement weather and high sea state) and the portion of time when mitigation could potentially be conducted at night, and the ability for sound sources to be positively controlled (powered down) are considered in the post-modeling calculation to account for mitigation and avoidance. It is not necessary to view the many tables of numbers generated in the assessment to evaluate the method.

Comment 19: In a comment on the 2019 HSTT proposed rule, Commenters noted that the Navy and NMFS failed to consider the maximum amount of take that is likely to occur because the Navy's computer modeled take is reduced based on unsubstantiated assumptions concerning the effectiveness of the Navy's procedural mitigation measures (primarily Lookouts with some passive acoustic monitoring) and the rates at which mammals avoid permanent threshold shift (PTS) exposure levels. Therefore, they assert that the PTS and injury (Level A) take estimates are low, and the negligible impact analysis is invalid because the numbers considered by NMFS are arbitrary. They provide the following example to illustrate their point: 2013 model-estimated PTS for blue whales was 116 individual instances of take (see Navy Marine Mammal Program, Space and Naval Warfare Systems Center Pacific, Post-Model Quantitative Analysis of Animal Avoidance Behavior and Mitigation Effectiveness for Hawaii-Southern California Training and Testing, 39

(Table 5–1) (August 27, 2013)). After implementation of mitigation, the estimated instances of PTS were reduced to 9 instances, and after assumed rates of animal avoidance were added, the estimated instances of take were reduced to 0. The Commenters asserted that in other words, the Navy assumed that it would be able to reduce 92 percent of modeled PTS for blue whales based on the effectiveness of its Lookouts and that PTS take estimates for other cetaceans are reduced at similar rates. The Commenters noted that there is no apparent rational basis for the extremely high rates of effectiveness (over 90 percent) the Navy claims for its procedural mitigation. They asserted that it is difficult to assess these claims, as neither the Navy nor NMFS has disclosed the actual numbers used to assess mitigation effectiveness for cetaceans along the four factors (species sightability, observation area, visibility, positive control). The Commenters requested that NMFS disclose those numbers and justify its reliance on them. The Commenters also incorporated the critiques raised by the Marine Mammal Commission in its 2017 comment letter concerning: (i) The comparative ineffectiveness of marine observers compared to line-transect observers; and (ii) the assumed 95 percent animal avoidance rate for PTS. In particular, they assert that references cited by NMFS and the Navy do not support the conclusion that cetaceans (other than beaked whales) regularly avoid sonar sources so as to mitigate PTS.

Response: As noted in response to a similar comment on the 2018 HSTT proposed rule (see Comment 18 above), the consideration of marine mammal avoidance and mitigation effectiveness is integral to the Navy's overall analysis of impacts from sonar and explosive sources. NMFS has independently evaluated the method and agrees that it is appropriately applied to augment the model in the prediction and authorization of injury and mortality as described in the rule. The example presented by the Commenters is based on the analysis conducted during the 2013–2018 rulemaking (Phase II), rather than the current Phase III analysis used for this rule, so it is not applicable to this final rule. See the response to Comment 20 below for more information on how avoidance and mitigation effectiveness are evaluated.

Comment 20: In a comment on the 2018 HSTT proposed rule, a Commenter stated in regard to the method in which the Navy's post-model calculation considers avoidance specifically (*i.e.,* assuming animals present beyond the range of PTS for the first few pings will be able to avoid it and incur only TTS, which results in a 95 percent reduction in the number of estimated PTS takes predicted by the model), given that sound sources are moving, it may not be until later in an exercise that the animal is close enough to experience PTS, and it is those few close pings that contribute to the potential to experience PTS. An animal being beyond the PTS zone initially has no bearing on whether it will come within close range later during an exercise since both sources and animals are moving. In addition, Navy vessels may move faster than the ability of the animals to evacuate the area. The Navy should have been able to query the dosimeters of the animats to verify whether its 5-percent assumption was valid. The Commenter expressed concerned that this method underestimates the number of PTS takes.

Response: The consideration of marine mammals avoiding the area immediately around the sound source is provided in the Navy's 2018 technical report titled ''Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles.'' As the Commenter correctly articulates: ''For avoidance, the Navy assumed that animals present beyond the range to onset PTS for the first three to four pings are assumed to avoid any additional exposures at levels that could cause PTS. That equated to approximately 5 percent of the total pings or 5 percent of the overall time active; therefore, 95 percent of marine mammals predicted to experience PTS due to sonar and other transducers were instead assumed to experience TTS.'' In regard to the comment about vessels moving faster than animals' ability to get out of the way, as discussed in the Navy's 2018 technical report titled ''Quantitative Analysis for Estimating Acoustic and Explosive Impacts to Marine Mammals and Sea Turtles,'' animats in the Navy's acoustic effects model do not move horizontally or ''react'' to sound in any way, necessitating the additional step of considering animal avoidance of close-in PTS zones. NMFS independently reviewed this approach and concurs that it is supported by the best available science. Based on a growing body of behavioral response research, animals do in fact avoid the immediate area around sound sources to a distance of a few hundred meters or more depending upon the species. Avoidance to this distance greatly reduces the likelihood of impacts to hearing such as TTS and PTS, respectively. Specifically, the ranges to PTS for most marine mammal groups are within a few tens of meters and the ranges for the most sensitive group, the HF cetaceans, average about 200 m, to a maximum of 270 m in limited cases. Querying the dosimeters of the animats would not produce useful information since, as discussed previously, the animats do not move in the horizontal and are not programmed to ''react'' to sound or any other stimulus. The Commenter referenced comments that they have previously submitted on the Navy's Gulf of Alaska incidental take regulations and we refer the Commenter to NMFS' responses, which were included in the **Federal Register** document announcing the issuance of the final regulations (82 FR 19572, April 27, 2017).

Underestimated Beaked Whale Injury and Mortality

Comment 21: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the Navy and NMFS both underestimate take for Cuvier's beaked whales because they are extremely sensitive to sonar. A new study of Cuvier's beaked whales in Southern California exposed to mid and high-power sonar confirmed that they modify their diving behavior up to 100-km away (Falcone *et al.,* 2017). The Commenter asserted that this science disproves NMFS' assumption that beaked whales will find suitable habitat nearby within their small range. This modified diving behavior, which was particularly strong when exposed to mid-power sonar, indicates disruption of feeding. Accordingly, impacts on Cuvier's beaked whales could include interference with essential behaviors that will have more than a negligible impact on this species. In addition, Lookouts and shutdowns do not protect Cuvier's beaked whales from Navy sonar because this is a deep-diving species that is difficult to see from ships.

Response: Takes of Cuvier's beaked whales are not underestimated. The behavioral harassment threshold for beaked whales has two components, both of which consider the sensitivity of beaked whales. First, the biphasic behavioral harassment function for beaked whales, which is based on data on beaked whale responses, has a significantly lower mid-point than other groups and also reflects a significantly higher probability of ''take'' at lower levels (*e.g.,* close to 15 percent at 120 dB). Additionally, the distance cut-off used for beaked whales is farther than for any other group (50 km, for both the MF1 and MF4 bins, acknowledging the fact that the unpredictability of dipping sonar likely results in takes at greater

distances than other more predictable sources of similar levels). Regarding the referenced article, the Commenter has cited only part of it. The study, which compiles information from multiple studies, found that *shallow* dives were predicted to increase in duration as the distance to both high-and mid-power MFAS sources decreased, beginning at approximately 100 km away and, specifically, the differences only varied from approximately 20 minutes without MFAS to about 24 minutes with MFAS at the closest distance (*i.e.,* the dive time varied from 20 to 24 minutes over the distance of 100 km away to the closest distance measured). Further, the same article predicted that deep dive duration (which is more directly associated with feeding and linked to potential energetic effects) was predicted to increase with proximity to mid-power MFAS from approximately 60 minutes to approximately 90 minutes beginning at around 40 km (10 dives). There were four deep dives exposed to high-power MFAS within 20 km, the distance at which deep dive durations increased with the lower power source types. Other responses to MFAS included deep dives that were shorter than typical and shallower, and instances where there were no observed responses at closer distances. The threshold for Level B harassment is higher than just ''any measurable response'' and NMFS and the Navy worked closely together to identify behavioral response functions and distance cut-offs that reflect the best available science to identify when marine mammal behavioral patterns will be disrupted to a point where they are abandoned or significantly altered. Further, the take estimate is in no way based on an assumption that beaked whales will always be sighted by Lookouts—and adjustment to account for Lookout effectiveness considers the variable detectability of different species. In this rule, both the take estimate and the negligible impact analysis appropriately consider the sensitivity of, and scale of impacts to (we address impacts to feeding and energetics), Cuvier's (and all) beaked whales. Finally, new passive acoustic monitoring in the HSTT Study Area documents more extensive beaked whale distribution across the entire Study Area, wherever sensors are deployed (Griffiths and Barlow 2016, Rice *et al.* 2020).

Comment 22: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS underestimated serious injury and mortality for beaked whales. They noted the statement in the proposed rule that because a causal relationship between Navy MFAS use and beaked whale strandings has not been established in all instances, and that, in some cases, sonar was considered to be only one of several factors that, in aggregate, may have contributed to the stranding event, NMFS does ''not expect strandings, serious injury, or mortality of beaked whales to occur as a result of training activities.'' (83 FR 30007). The Commenter asserted that this opinion is inconsistent with best available science and does not take into account the fact that the leading explanation for the mechanism of sonar-related injuries—that whales suffer from bubble growth in organs that is similar to decompression sickness, or ''the bends'' in human divers—has now been supported by numerous papers. At the same time, the Commenter argued that NMFS fails to seriously acknowledge that sonar can seriously injure or kill marine mammals at distances well beyond those established for permanent hearing loss (83 FR 29916) and dismisses the risk of stranding and other mortality events (83 FR 30007) based on the argument that such effects can transpire only under the same set of circumstances that occurred during known sonar-related events—an assumption that is arbitrary and capricious. In conclusion, the Commenter argued that none of NMFS' assumptions regarding the expected lack of serious injury and mortality for beaked whales are supported by the record, and all lead to an underestimation of impacts.

Response: The Commenter's characterization of NMFS' analysis is incorrect. NMFS does not disregard the fact that it is possible for naval activities using hull-mounted tactical sonar to contribute to the death of marine mammals in certain circumstances via strandings resulting from behaviorally mediated physiological impacts or other gas-related injuries. NMFS discussed these potential causes and outlined the few cases where active naval sonar (in the United States or, largely, elsewhere) had either potentially contributed to or (as with the Bahamas example) been more definitively causally linked with marine mammal strandings in the proposed rule. As noted, there are a suite of factors that have been associated with these specific cases of strandings directly associated with sonar (steep bathymetry, multiple hull-mounted platforms using sonar simultaneously, constricted channels, strong surface ducts, *etc.*) that are not present together in the HSTT Study Area and during the specified activities (and which the Navy takes care across the world not to operate under without additional monitoring). There have been no documented beaked whale mortalities from Navy activities within the HSTT Study Area. Further, none of the beaked whale strandings causally associated with Navy sonar stranding are in the Pacific. For these reasons, NMFS does not anticipate that the Navy's HSTT training or testing activities will result in beaked whale marine mammal strandings, and none are authorized. Furthermore, ongoing Navy funded beaked whale monitoring at a heavily used training and testing area in SOCAL has not documented mortality or habitat abandonment by beaked whales. Passive acoustic detections of beaked whales have not significantly changed over ten years of monitoring (DiMarzio *et al.,* 2018, 2019, 2020). From visual surveys in the area since 2006 there have been repeated sightings of: The same individual beaked whales, beaked whale mother-calf pairs, and beaked whale mother-calf pairs with mothers on their second calf (Schorr *et al.,* 2018, 2020). Satellite tracking studies of beaked whale documented high site fidelity to this area even though the study area is located in one of the most used Navy areas in the Pacific (Schorr *et al.,* 2018, 2020).

Comment 23: In a comment on the 2019 HSTT proposed rule, Commenters noted that NMFS did not propose to authorize beaked whale mortalities subsequent to MFA sonar use for any of the Navy's Phase III activities and states that that approach is inconsistent with the tack taken for both TAP I and Phase II activities. The Commenters noted that for the 2013–2018 final rule for HSTT, NMFS authorized up to 10 beaked whale mortality takes during the five-year period of the final rule (78 FR 78153; December 24, 2013). They noted that NMFS justified authorizing those mortalities by stating that, although NMFS does not expect injury or mortality of any beaked whales to occur as a result of active sonar training exercises, there remains the potential for the operation of mid-frequency active sonar to contribute to the mortality of beaked whales (78 FR 78149; December 24, 2013). The Commenters stated that this justification is still applicable. The Commenters state that previously unrecognized sensitivities have been elucidated since the previous final rule was authorized (December 24, 2013), noting that Falcone *et al.,* (2017) indicated that responses of Cuvier's beaked whales to mid-frequency active sonar within and near the Navy's Southern California Anti-submarine

Warfare Range (SOAR) were more pronounced during mid-power (*i.e.,* helicopter-dipping sonar, MF4) than high-power (*i.e.,* hull-mounted sonar, MF1) sonar use. The Commenters state that this indicates lower received levels from a less predictable source caused more marked responses than higher received levels from a predictable source traveling along a seemingly consistent course. The Commenters noted that since multiple species of beaked whales are regularly observed on the Navy's ranges in both Hawaii and Southern California, including its instrumented ranges, those species have been a priority for the Navy's monitoring program and that this indicates that research involving beaked whales continues to be a priority for the Navy and some of the whales' sensitivities to anthropogenic sound are just being discovered. The Commenters assert that until such time that NMFS can better substantiate its conclusion that the Navy's activities do not have the potential to kill beaked whales, taking by mortality should be included in all related rulemakings.

The Commenters asserted that NMFS indicated that steep bathymetry, multiple hull-mounted platforms using sonar simultaneously, constricted channels, and strong surface ducts are not all present together in the HSTT Study Area during the specified activities (83 FR 66882; December 27, 2018), and that NMFS specified that it did not authorize beaked whale mortalities in the 2018 HSTT final rule based on the lack of those factors and the lack of any strandings associated with Navy sonar use in the HSTT Study Area (83 FR 66882; December 27, 2018). The Commenters stated that this does not comport with NMFS' acknowledgement in the 2018 HSTT proposed rule that all five of those factors are not necessary for a stranding to occur (83 FR 29930; June 26, 2018). They go on to state that ''NMFS cannot ignore that there remains the potential for the operation of MFA sonar to contribute to the mortality of beaked whales.'' Given that the potential for beaked whale mortalities cannot be obviated, the Commenters recommend that NMFS authorize at least 10 mortality takes of beaked whales subsequent to MFA sonar use, consistent with the HSTT Phase II final rule.

Response: NMFS does not disregard the fact that it is possible for naval activities using hull-mounted tactical sonar to contribute to the death of marine mammals in certain circumstances via strandings resulting from behaviorally mediated physiological impacts or other gas-related injuries. However, the Commenters are incorrect that NMFS must either obviate the potential for mortality or authorize it. If the best available science indicates that a take is reasonably likely to occur, then NMFS should analyze it, and will authorize it if the necessary findings can be made. Sometimes, especially where there is greater uncertainty, NMFS will analyze and authorize (where appropriate) impacts with a smaller likelihood of occurring to be precautionary and/or where an applicant specifically requests the legal coverage. However, the MMPA does not require NMFS to authorize impacts that are unlikely to occur. For example, any marine vessel has the potential of striking and killing a marine mammal—however, the probability is so low for any particular vessel that authorization for ship strike is neither requested nor authorized by NMFS except in cases where the aggregated impacts of large fleets of vessels are under consideration and the probability of a strike is high enough to meaningfully consider and to expect it could occur within the period of the authorization. In this case, the likelihood of a stranding resulting from the Navy's activity is so low as to be discountable. In an excess of caution, NMFS included authorization for beaked whale mortality by stranding in the 2013–2018 HSTT rule. However, there is no evidence that any such strandings subsequently actually occurred as a result of the Navy's activities. Each rulemaking involves review of the best available science independent of take that was authorized during previous periods based on the science available at that time. Upon consideration in this rulemaking of the statutory standards and the best available science, including full consideration of Falcone *et al.,* (2017), we have determined that mortality of beaked whales is unlikely to occur and it is therefore not appropriate to authorize beaked whale mortality.

As described in Comment 22, NMFS included a full discussion in the 2018 HSTT proposed rule of these potential causes of mortality and specifically discussed the few cases where active naval sonar (in the U.S. or, largely, elsewhere) has either potentially contributed to or (as with the Bahamas example) been more definitively causally linked with marine mammal strandings. As noted, there are a suite of factors that have been associated with these specific cases of strandings directly associated with sonar (steep bathymetry, multiple hull-mounted platforms using sonar simultaneously, constricted channels, and strong surface ducts). The Commenters are incorrect, however, in implying that NMFS found that all these features must be present together—rather, we have suggested that all else being equal, the fewer of these factors that are present, the less likely they are, in combination, to lead to a stranding. Further, in addition to the mitigation and monitoring measures in place (visual monitoring, passive acoustic monitoring when practicable, mitigation areas including the Hawaii Island Mitigation Area, *etc.;* see the 2018 HSTT final rule *Mitigation Measures* and *Monitoring* sections for a full description of these measures) the Navy minimizes active sonar military readiness activities when these features are present to the maximum extent practicable to meet specific training or testing requirements. Additionally, as noted above, there have never been any strandings associated with Navy sonar use in the HSTT Study Area, including in the six years of Navy activities since the 2013 authorizations referenced by the Commenters were issued.

The Navy acknowledges that it has funded research on the impacts of their activities on beaked whales in the HSTT Study Area since 2008 and plans to continue to do so during the seven years covered by this rule (DiMarzio *et al.,* 2019, 2020; Falcone *et al.,* 2012, 2017; Rice *et al.,* 2019, 2020; Schorr *et al.,* 2014, 2019, 2020). NMFS also acknowledges the Commenters' statements that beaked whales have been documented through Navy-funded studies responding to active sonar sources. However, these are behavioral responses with animals eventually returning after the sources have departed (DiMarzio *et al.* 2019, 2020; Schorr *et al.* 2019, 2020). Further, controlled exposure experiments have not documented any beaked whale mortalities (Falcone *et al.,* 2017). Additionally, while beaked whales have shown avoidance responses to active sonar sources, to date, no population impacts have been detected on two of the most heavily used anti-submarine warfare training areas in the HSTT Study Area. This includes no significant change in beaked whale foraging echolocation levels on a monthly or annual basis as determined from over ten years of passive acoustic monitoring (DiMarzio *et al.,* 2019, 2020). Furthermore, visual, photo-identification, and satellite tagging studies at a Navy range in Southern California have documented repeated sightings of the same beaked whale individuals, sightings of new beaked

whale individuals, sightings of beaked whale mother-calf pairs, and most importantly, repeated sighting of beaked whale mothers with their second calf (Falcone *et al.,* 2012; Schorr *et al.,* 2014, 2019, 2020). New passive acoustic monitoring in the HSTT Study Area documents more extensive beaked whale distribution across the entire Study Area, wherever sensors are deployed (Griffiths and Barlow 2016, Rice *et al.,* 2019, 2020).

For these reasons as well as the other reasons discussed more fully in the 2018 HSTT final rule (*e.g.,* mitigation measures, monitoring, *etc.*), NMFS does not anticipate that the Navy's HSTT training and testing activities will result in beaked whale strandings and mortality, and therefore, no takes are authorized.

Ship Strike

Comment 24: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the Navy's current approach to determine the risk of a direct vessel collision with marine mammals is flawed and fails to account for the likelihood that ship strikes since 2009 were unintentionally underreported. The Commenter noted that vessel collisions are generally underreported in part because they can be difficult to detect, especially for large vessels and that the distribution, being based on reported strikes, does not account for this problem. Additionally, the Commenter asserted that the Navy's analysis does not address the potential for increased strike risk of non-Navy vessels as a consequence of acoustic disturbance. For example, some types of anthropogenic noise have been shown to induce near-surfacing behavior in right whales, increasing the risk of ship-strike—by not only the source vessel but potentially by third-party vessels in the area—at relatively moderate levels of exposure (Nowacek *et al.,* 2004). An analysis based on reported strikes by Navy vessels per se does not account for this additional risk. In assessing ship-strike risk, the Navy should include offsets to account for potentially undetected and unreported collisions.

Response: While NMFS agrees that broadly speaking the number of total ship strikes may be underestimated due to incomplete information from other sectors (shipping, *etc.*), NMFS is confident that whales struck by Navy vessels are detected and reported, and Navy strikes are the numbers used in NMFS' analysis to support the authorized number of strikes. Navy ships have multiple Lookouts, including on the forward part of the ship that can visually detect a hit whale (which has occasionally occurred), in the unlikely event ship personnel do not feel the strike. The Navy's strict internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Navy's discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes actually get reported. Accordingly, NMFS is confident that the information used to support the analysis is accurate and complete.

There is no evidence that Navy training and testing activities (or other acoustic activities) increase the risk of nearby non-Navy vessels (or other nearby Navy vessels not involved in the referenced training or testing) striking marine mammals. More whales are struck by non-Navy vessels off California in areas outside of the HSTT Study Area such as approaches to Los Angeles and San Francisco.

Comment 25: Commenters noted that between publication of the 2018 HSTT proposed rule and the 2018 HSTT final rule, NMFS removed seven whale stocks from the list of whales the Navy determined were likely to be struck and killed by a vessel in the initial five-year period, including sei whales from the Hawaii and Eastern North Pacific stocks, and sperm whales from the California/Oregon/Washington (CA/OR/WA) stock. The Commenters asserted that NMFS has not sufficiently justified its decision to remove the Eastern North Pacific stock of sei whales and the CA/OR/WA stock of sperm whales from the list of whale stocks the Navy initially determined had the potential to be struck and killed by a vessel. They noted that while NMFS cited purportedly new considerations in its decision (relative likelihood of hitting one stock versus another and whether the Navy has ever definitively struck an individual from a particular stock), the underlying data doesn't support its conclusions as the strike probability for both stocks is the same as for the Eastern North Pacific Blue whale which remains on the list of whales that the Commenters characterize as those likely to die from a vessel strike. The Commenters further noted that unlike the other five stocks that NMFS removed from the list, individuals from both the Eastern North Pacific stock of sei whales and CA/OR/WA stock of sperm whales have been hit by a vessel in the past, and that the CA/OR/WA stock of sperm whales is as relatively abundant as other stocks included in the final strike list. The Commenters asserted that the fact that the Navy itself has not previously hit whales from either stock does not alone justify removal, especially when the Navy admits that it was unable to identify the species of over one-third (36 percent) of the whales it struck during the relevant time period. The Commenters stated that given the historic strike data and calculated percent likelihood of being struck as indicated in Table 43 of the 2018 HSTT final rule, NMFS had no valid basis to conclude that Navy vessels are not likely to strike sei whales from the Eastern North Pacific stock or sperm whales from the CA/OR/WA stock.

Response: The Commenters are correct that the probabilities calculated for vessel strike for each stock were considered in combination with the information indicating the species that the Navy has definitively hit in the HSTT Study Area since 1991 (since they started tracking vessel strikes consistently), as well as the information on relative abundance, total recorded strikes (by any vessel), and the overlay of all of this information with the Navy's area of testing and training activities. In Navy strikes over the last 11 years in the HSTT Study Area (2009–2019), the species struck has been identified. The Eastern North Pacific stock of sei whales have never been struck by the Navy, have rarely been struck by other vessels (only one other vessel strike is known), have a low percent likelihood of being struck based on the SAR calculations (2.3 percent), and a very low relative abundance (0.007). The CA/OR/WA stock of sperm whales have also never been struck by the Navy, have rarely been struck by other vessels (only one other vessel strike is known, even given their higher relative abundance, as noted by the Commenter), and have a low percent likelihood of being struck based on the SAR calculations (2.3 percent). Because of these reasons, these stocks are unlikely to be struck by the Navy during the seven years covered by this rule.

Comment 26: In a comment on the 2019 HSTT proposed rule, Commenters stated that the Navy arbitrarily failed to increase its vessel strike estimate upwards to account for the greater number of at-sea days. They stated that applying the historic strike rate of 0.00006 whales per day by the increased number of at-sea days over seven years (assumed by the Commenters to be 31,728) the new base strike estimate should be 1.9 whales rather than 1.34 whales. They further state that applying the Poisson distribution to this new base strike estimate indicates that there is an 8 percent chance that 4 large whales

will be hit during the extended seven-year time period. They asserted that NMFS neither considers nor explains why the chance of striking 4 whales is not considered likely during the extended seven-year period of authorization, and how this may impact overall strike probability assessments for individual whale stocks and that NMFS' reliance on a total vessel strike number derived for only five years of HSTT activities to authorize those activities to continue for seven years is arbitrary and capricious.

Response: Based on the revised seven-year ship strike analysis that was used in the 2019 HSTT proposed rule (which incorporates all ship strike data in the HSTT Study Area from 2009 through 2018, rather than 2016 as previously analyzed for the 2017 Navy application), the strike rate is 0.000047 whales strikes per day at sea. Over a seven year period the number of at-sea days is 31,729, leading to an estimate of 1.5 whales over seven years. When applying the Poisson distribution to this strike estimate, as reported in the *Vessel Strike* section, the probability analysis concluded that there was a 22 percent chance that zero whales would be struck by Navy vessels over the seven-year period, and a 33.5, 25.1, 12.5, and 4.7 percent chance that one, two, three, or four whales, respectively, would be struck over the seven-year period. The probability of the Navy striking up to three large whales over the seven-year period (which is a 12.5 percent chance) as analyzed for this final rule using updated Navy vessel strike data and at-sea days is very close to the probability of the Navy striking up to three large whales over five years (which was a 10 percent chance). As the probability of striking three large whales does not differ significantly from the 2018 HSTT final rule, and the probability of striking four large whales over seven years remains very low to the point of being unlikely (less than 5 percent), the Navy has requested, and we are authorizing, no change in the number of takes by serious injury or mortality due to vessel strikes over the seven-year period of this rule. Furthermore, these are statistical calculations of probabilities of strike that do not factor in Navy operating procedures and mitigations to avoid large whales. There has not been an actual Navy ship strike to a large whale in the HSTT Study Area since 2010. This lack of vessel strikes is factored into the revised seven-year statistical calculation and is reflected in the probabilities shown above.

Comment 27: In a comment on the 2019 HSTT proposed rule, Commenters asserted that it was arbitrary and capricious for NMFS to assume that the annualized strike rate for each of the six large whales species that NMFS determined have the potential to be struck would decrease over the seven-year extension period as compared to the initial five-year period. They asserted that given that the same level of training and testing activities will continue under the proposed extension rule for a longer amount of time, at minimum, the annual strike rate should remain constant at the levels authorized in the 2018 HSTT final rule. They asserted that NMFS' arbitrary reduction of the annual strike rate precludes reasoned analysis of whether vessel strikes will inflict non-negligible impacts on whale stocks. The Commenters noted of particular concern were the CA/OR/WA stock of humpback whales and the Eastern North Pacific stock of blue whales, both of which suffer annual human-caused mortality at levels much higher than the established PBR (Potential Biological Removal; as represented by the negative residual PBR numbers). They asserted that by definition, any mortality above PBR will decrease a marine mammal stock below its optimum sustainable population, thereby inducing population level, non-negligible impacts. The Commenters asserted that NMFS' analysis does not sufficiently consider the effects of further increasing mortality above established PBR levels, especially in light of the fact that annual take estimates have been arbitrarily reduced. They noted that an additional 0.2 mortalities per year is a potentially significant stressor for the populations of both the CA/OR/WA stock of humpback whales and the Eastern North Pacific stock of blue whales, and that NMFS failed to adequately consider this potential through population viability analyses or other accepted method for determining long-term population level effects. They further asserted that NMFS does not separately address the possibility of striking and killing a reproductive female. They stated that NMFS's failure to adequately consider the effects of these additional mortalities, including the potential death of a reproductive female, is arbitrary and capricious.

Response: In the 2018 HSTT final rule, potential mortalities of three whales due to ship strike were spread over five years and therefore, the annual average of 0.4 gray whales (Eastern North Pacific stock), fin whales (CA/OR/WA stock), and humpback whales (Central North Pacific stock) and an annual average of 0.2 blue whales (Eastern North Pacific stock), humpback whales (CA/OR/WA stock, Mexico DPS), and sperm whales (Hawaii stock) (*i.e.,* one, or two, take(s) over five years divided by five to get the annual number) were expected to potentially occur and were authorized. NMFS did not arbitrarily reduce the annualized strike rate in the seven-year analysis. Following these same methods, as the three total potential mortalities are now spread over seven years rather than five, an annual average of 0.29 gray whales (Eastern North Pacific stock), fin whales (CA/OR/WA stock), and humpback whales (Central North Pacific stock) and an annual average of 0.14 blue whales (Eastern North Pacific stock), humpback whales (CA/OR/WA stock, Mexico DPS), and sperm whales (Hawaii stock) as described in Table 16 (*i.e.,* one, or two, take(s) over seven years divided by seven to get the annual number) are expected to potentially occur and are authorized.

As explained in the *Serious Injury or Mortality* subsection of the *Negligible Impact Analysis and Determination* section of the 2018 HSTT final rule and this rule, in the commercial fisheries setting for ESA-listed marine mammals (which is similar to the non-fisheries incidental take setting, in that a negligible impact determination is required that is based on the assessment of take caused by the activity being analyzed), NMFS may find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.,* other than the specified activities covered by the incidental take authorization in consideration). When those considerations are applied in the section 101(a)(5)(A) context here, the authorized lethal take (0.14 annually) of humpback whales from the CA/OR/WA stock, and blue whales from the Eastern North Pacific stock are less than 10 percent of PBR (33.4 for humpback whales from the CA/OR/WA stock and 2.1 for blue whales from the Eastern North Pacific stock) and there are management measures in place to address the mortality and serious injury from the activities other than those the Navy is conducting. For the complete discussion of how NMFS carefully considered potential mortalities from the Navy's activities in light of PBR levels, including an explanation for why mortality above PBR will not necessarily induce population-level non-negligible

impacts, see the discussion in this rule and the 2018 HSTT final rule.

NMFS acknowledges that the removal of a reproductive female (or any female) could be more impactful to the status of a population than the removal of a male. However, the PBR framework that supports the negligible impact finding inherently considers the likelihood that the human-caused mortalities being considered may consist of a random distribution of individuals of different sex in different life stages. Also, beyond the low likelihood of striking a whale at all, the likelihood of hitting a reproductive female is even lower.

Mitigation and Monitoring

Least Practicable Adverse Impact Determination

Comment 28: In a comment on the 2018 HSTT proposed rule, a Commenter stated that deaths of, or serious injuries to marine mammals that occur pursuant to activities conducted under an incidental take authorization, while perhaps negligible to the overall health and productivity of the species or stock and of little consequence at that level, nevertheless are clearly adverse to the individuals involved and results in some quantifiable (though negligible) adverse impact on the population; it reduces the population to some degree. Under the least practicable adverse impact requirement, and more generally under the purposes and policies of the MMPA, the Commenter asserted that Congress embraced a policy to minimize, whenever practicable, the risk of killing or seriously injuring a marine mammal incidental to an activity subject to section 101(a)(5)(A), including providing measures in an authorization to eliminate or reduce the likelihood of lethal taking. The Commenter recommended that NMFS address this point explicitly in its analysis and clarify whether it agrees that the incidental serious injury or death of a marine mammal always should be considered an adverse impact for purposes of applying the least practicable adverse impact standard.

Response: NMFS disagrees that it is necessary or helpful to explicitly address the point the Commenter raises in the discussion on the least practicable adverse impact standard. It is always NMFS' practice to mitigate mortality to the greatest degree possible, as death is the impact that is most easily linked to reducing the probability of adverse impacts to populations. However, we cannot agree that one mortality will always decrease any population in a quantifiable or meaningful way. For example, for very large populations, one mortality may fall well within typical known annual variation and not have any effect on population rates. Further, we do not understand the problem that the Commenter's recommendation is attempting to fix. Applicants generally do not express reluctance to mitigate mortality, and we believe that modifications of this nature would confuse the issue.

Comment 29: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS address the habitat component of the least practicable adverse impact provision in greater detail. It asserted that NMFS' discussion of critical habitat, marine sanctuaries, and BIAs in the proposed rule is not integrated with the discussion of the least practicable adverse impact standard. It would seem that, under the least practicable adverse impact provision, adverse impacts on important habitat should be avoided whenever practicable. Therefore, to the extent that activities would be allowed to proceed in these areas, NMFS should explain why it is not practicable to constrain them further.

Response: Marine mammal habitat value is informed by marine mammal presence and use and, in some cases, there may be overlap in measures for the species or stock directly and for use of habitat. In this rule, we have required time-area mitigations based on a combination of factors that include higher densities and observations of specific important behaviors of marine mammals themselves, but also that clearly reflect preferred habitat (*e.g.,* calving areas in Hawaii, feeding areas in SOCAL). In addition to being delineated based on physical features that drive habitat function (*e.g.,* bathymetric features among others for some BIAs), the high densities and concentration of certain important behaviors (*e.g.,* feeding) in these particular areas clearly indicate the presence of preferred habitat. The Commenter seems to suggest that NMFS must always consider separate measures aimed at marine mammal habitat; however, the MMPA does not specify that effects to habitat must be mitigated in separate measures, and NMFS has clearly identified measures that provide significant reduction of impacts to both ''marine mammal species and stocks and their habitat,'' as required by the statute.

Comment 30: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS rework its evaluation criteria for applying the least practicable adverse impact standard to separate the factors used to determine whether a potential impact on marine mammals or their habitat is adverse and whether possible mitigation measures would be effective. In this regard, the Commenter asserted that it seems as though the proposed ''effectiveness'' criterion more appropriately fits as an element of practicability and should be addressed under that prong of the analysis. In other words, a measure not expected to be effective should not be considered a practicable means of reducing impacts.

Response: In the *Mitigation Measures* section, NMFS has explained in detail our interpretation of the least practicable adverse impact standard, the rationale for our interpretation, and our approach for implementing our interpretation. The ability of a measure to reduce effects on marine mammals is entirely related to its ''effectiveness'' as a measure, whereas the effectiveness of a measure is not connected to its practicability. The Commenter provides no support for its argument, and NMFS has not implemented the suggestion.

Comment 31: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS recast its conclusions to provide sufficient detail as to why additional measures either are not needed (*i.e.,* there are no remaining adverse impacts) or would not be practicable to implement. The Commenter stated that the most concerning element of NMFS' implementation of the least practicable adverse impact standard is its suggestion that the mitigation measures proposed by the Navy will ''sufficiently reduce impacts on the affected mammal species and stocks and their habitats'' (83 FR 11045). That phrase suggests that NMFS is applying a ''good-enough'' standard to the Navy's activities. Under the statutory criteria, however, those proposed measures are ''sufficient'' only if they have either (1) eliminated all adverse impacts on marine mammal species and stocks and their habitat or (2) if adverse impacts remain, it is not practicable to reduce them further.

Response: The statement that the Commenter references does not indicate that NMFS applies a ''good-enough'' standard to determining least practicable adverse impact. Rather, it indicates that the mitigation measures are sufficient to meet the statutory legal standard. In addition, as NMFS has explained in our description of the least practicable adverse impact standard, NMFS does not view the necessary analysis through the yes/no lens that the Commenter seeks to prescribe. Rather, NMFS' least practicable adverse impact analysis considers both the reduction of adverse effects and their practicability.

Further, since the 2018 HSTT proposed rule was published, the Navy and NMFS evaluated additional measures in the context of both their practicability and their ability to further reduce impacts to marine mammals and have determined that the addition of several measures (see *Mitigation Measures* section) is appropriate. Regardless, beyond these new additional measures, where the Navy's HSTT activities are concerned, the Navy has indicated that further procedural or area mitigation of any kind (beyond that prescribed in this final rule) would be impracticable. NMFS has reviewed documentation and analysis provided by the Navy explaining how and why specific procedural and geographic based mitigation measures impact practicability, and NMFS concurs with these assessments and has determined that the mitigation measures outlined in the final rule satisfy the statutory standard and that any adverse impacts that remain cannot practicably be further mitigated.

Comment 32: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that any ''formal interpretation'' of the least practicable adverse impact standard by NMFS be issued in a stand-alone, generally applicable rulemaking (*e.g.,* in amendments to 50 CFR 216.103 or 216.105) or in a separate policy directive, rather than in the preambles to individual proposed rules.

Response: We appreciate the Commenter's recommendation and may consider the recommended approach in the future. We note, however, that providing relevant explanations in a proposed incidental take rule is an effective and efficient way to provide information to the reader and solicit focused input from the public, and ultimately affords the same opportunities for public comment as a stand-alone rulemaking would. NMFS has provided similar explanations of the least practicable adverse impact standard in other recent section 101(a)(5)(A) rules, including: U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar; Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico; and the final rule for U.S. Navy Training and Testing Activities in the Atlantic Fleet Study Area.

Comment 33: In a comment on the 2018 HSTT proposed rule, a Commenter cited two judicial decisions and commented that the ''least practicable adverse impact'' standard has not been met. The Commenter stated that contrary to the *Pritzker* Court decision, NMFS, while clarifying that population-level impacts are mitigated ''through the application of mitigation measures that limit impacts to individual animals,'' has again set population-level impact as the basis for mitigation in the proposed rule. Because NMFS' mitigation analysis is opaque, it is not clear what practical effect this position may have on its rulemaking. The Commenter stated that the proposed rule is also unclear in its application of the ''habitat'' emphasis in the MMPA's mitigation standard, and that while NMFS' analysis is opaque, its failure to incorporate or even, apparently, to consider viable time-area measures suggests that the agency has not addressed this aspect of the *Pritzker* decision. The Commenter argued that the MMPA sets forth a ''stringent standard'' for mitigation that requires the agency to minimize impacts to the lowest practicable level, and that the agency must conduct its own analysis and clearly articulate it: It ''cannot just parrot what the Navy says.''

Response: NMFS disagrees with much of what the Commenter asserts. First, we have carefully explained our interpretation of the least practicable adverse impact standard and how it applies to both stocks and individuals, including in the context of the *Pritzker* decision, in the *Mitigation Measures* section. Further, we have applied the standard correctly in this rule in requiring measures that reduce impacts to individual marine mammals in a manner that reduces the probability and/or severity of population-level impacts. Regarding the comment about mitigation of habitat impacts, it has been addressed above in the response to Comment 29.

When a suggested or recommended mitigation measure is not practicable, NMFS has explored variations of that mitigation to determine if a practicable form of related mitigation exists. This is clearly illustrated in NMFS' independent mitigation analysis process explained in the *Mitigation Measures* section of the 2018 HSTT final rule. First, the type of mitigation required varies by mitigation area, demonstrating that NMFS has engaged in a site-specific analysis to ensure mitigation is tailored when practicability demands, *i.e.,* some forms of mitigation were practicable in some areas but not others. Examples of NMFS' analysis on this issue appear throughout the rule. For instance, while it was not practicable for the Navy to include a mitigation area for the Tanner-Cortes blue whale BIA, the Navy did agree to expand mitigation protection to all of the other blue whale BIAs in the SOCAL region. Additionally, while the Navy cannot alleviate all training in the mitigation areas that protect small resident odontocete populations in Hawaii, it has further expanded the protections in those areas such that it does not use explosives or MFAS in the areas (MF1 bin in both areas, MF4 bin in the Hawaii Island area).

Nonetheless, NMFS agrees that the agency must conduct its own analysis, which it has done here, and not just accept what is provided by the Navy. That does not mean, however, that NMFS cannot review the Navy's analysis of effectiveness and practicability, and concur with those aspects of the Navy's analysis with which NMFS agrees. The Commenter seems to suggest that NMFS must describe in the rule in detail the rationale for not adopting every conceivable permutation of mitigation, which is neither reasonable nor required by the MMPA. NMFS has described our well-reasoned process for identifying the measures needed to meet the least practicable adverse impact standard in the *Mitigation Measures* section in this rule, and we have followed the approach described there when analyzing potential mitigation for the Navy's activities in the HSTT Study Area. Discussion regarding specific recommendations for mitigation measures provided by the Commenter on the proposed rule are discussed separately.

Procedural Mitigation Effectiveness and Recommendations

Comment 34: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the Navy's proposed mitigation zones are similar to the zones previously used during Phase II activities and are intended, based on the Phase III HSTT DEIS/OEIS, to avoid the potential for marine mammals to be exposed to levels of sound that could result in injury (*i.e.,* PTS). However, the Commenter believed that Phase III proposed mitigation zones would not protect various functional hearing groups from PTS. For example, the mitigation zone for an explosive sonobuoy is 549 m but the mean PTS zones range from 2,113–3,682 m for HF. Similarly, the mitigation zone for an explosive torpedo is 1,920 m but the mean PTS zones range from 7,635–10,062 m for HF, 1,969–4,315 m for LF, and 3,053–3,311 for PW. The appropriateness of such zones is further complicated by platforms firing munitions (*e.g.,* for missiles and rockets) at targets that are 28 to 139 km away from the firing platform. An aircraft would clear the target area well before it positions itself at the launch location and launches the missile or rocket.

Ships, on the other hand, do not clear the target area before launching the missile or rocket. In either case, marine mammals could be present in the target area unbeknownst to the Navy at the time of the launch.

Response: NMFS is aware that some mitigation zones do not fully cover the area in which an animal from a certain hearing group may incur PTS. For this small subset of circumstances, NMFS discussed potential enlargement of the mitigation zones with the Navy, but concurred with the Navy's assessment that further enlargement would be impracticable. Specifically, the Navy explained that, as discussed in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS, for explosive mitigation zones any additional increases in mitigation zone size (beyond what is depicted for each explosive activity), or additional observation requirements, would be impracticable to implement due to implications for safety, sustainability, the Navy's ability to meet Title 10 requirements to successfully accomplish military readiness objectives, and the Navy's ability to conduct testing associated with required acquisition milestones or as required to meet operational requirements. Additionally, Navy Senior Leadership has approved and determined that the mitigation detailed in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS provides the greatest extent of protection that is practicable to implement. NMFS has analyzed the fact that despite these mitigation measures, some Level A harassment may occur in some circumstances; the Navy is authorized for these takes by Level A harassment.

Comment 35: In a comment on the 2018 HSTT proposed rule, a Commenter made several comments regarding visual and acoustic detection as related to mitigating impacts that can cause injury. The Commenter noted that the Navy indicated in the 2018 HSTT DEIS/OEIS that Lookouts would not be 100 percent effective at detecting all species of marine mammals for every activity because of the inherent limitations of observing marine species and because the likelihood of sighting individual animals is largely dependent on observation conditions (*e.g.,* time of day, sea state, mitigation zone size, observation platform). The Navy has been collaborating with researchers at the University of St. Andrews to study Navy Lookout effectiveness and the Commenter anticipates that the Lookout effectiveness study will be very informative once completed, but notes that in the interim, the preliminary data *do* provide an adequate basis for taking a precautionary approach. The Commenter believed that rather than simply reducing the size of the mitigation zones it plans to monitor, the Navy should supplement its visual monitoring efforts with other monitoring measures including passive acoustic monitoring.

The Commenter suggested that sonobuoys could be deployed with the target in the various target areas prior to the activity. This approach would allow the Navy to better determine whether the target area is clear and remains clear until the munition is launched.

Although the Navy indicated that it was continuing to improve its capabilities for using range instrumentation to aid in the passive acoustic detection of marine mammals, it also stated that it didn't have the capability or resources to monitor instrumented ranges in real time for the purpose of mitigation. That capability clearly exists. While available resources could be a limiting factor, the Commenter notes that personnel who monitor the hydrophones on the operational side do have the ability to monitor for marine mammals as well. The Commenter has supported the use of the instrumented ranges to fulfill mitigation implementation for quite some time and contends that localizing certain species (or genera) provides more effective mitigation than localizing none at all.

The Commenter recommended that NMFS require the Navy to use passive and active acoustic monitoring, whenever practicable, to supplement visual monitoring during the implementation of its mitigation measures for all activities that have the potential to cause injury or mortality beyond those explosive activities for which passive acoustic monitoring already was proposed, including those activities that would occur on the Southern California Offshore Range (SCORE) and Pacific Missing Range Facility (PMRF) ranges.

Response: For explosive mitigation zones, any additional increases in mitigation zone size (beyond what is depicted for each explosive activity) or observation requirements would be impracticable to implement due to implications for safety, sustainability, and the Navy's ability to meet Title 10 requirements to successfully accomplish military readiness objectives. We do note, however, that since the 2018 HSTT proposed rule, the Navy has committed to implementing pre-event observations for all in-water explosives events (including some that were not previously monitored) and to using additional platforms if available in the vicinity of the detonation area to help with this monitoring.

As discussed in the comment (referencing the use of sonobuoys or hydrophones), the Navy does employ passive acoustic monitoring when practicable to do so (*i.e.,* when assets that have passive acoustic monitoring capabilities are already participating in the activity). For other explosive events, there are no platforms participating that have passive acoustic monitoring capabilities. Adding a passive acoustic monitoring capability (either by adding a passive acoustic monitoring device (*e.g.,* hydrophone) to a platform already participating in the activity, or by adding a platform with integrated passive acoustic monitoring capabilities to the activity, such as a sonobuoy) for mitigation is not practicable. As discussed in Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the 2018 HSTT FEIS/OEIS, there are significant manpower and logistical constraints that make constructing and maintaining additional passive acoustic monitoring systems or platforms for each training and testing activity impracticable. Additionally, diverting platforms that have passive acoustic monitoring platforms would impact their ability to meet their Title 10 requirements and reduce the service life of those systems.

Regarding the use of instrumented ranges for real-time mitigation, the Commenter is correct that the Navy continues to develop the technology and capabilities on its Ranges for use in marine mammal monitoring, which can be effectively compared to operational information after the fact to gain information regarding marine mammal response. However, the Navy's instrumented ranges were not developed for the purpose of mitigation. As discussed above, the manpower and logistical complexity involved in detecting and localizing marine mammals in relation to multiple fast-moving sound source platforms in order to implement real-time mitigation is significant. A more detailed discussion of the limitations for on-range passive acoustic detection as real-time mitigation is provided in Comment 42 and is not practicable for the Navy. For example, beaked whales produce highly directed echolocation clicks that are difficult to simultaneously detect on multiple hydrophones within the instrumented range at PMRF; therefore, there is a high probability that a vocalizing animal would be assigned a false location on the range (*i.e.,* the Navy would not be able to verify its presence in a mitigation zone). Although the Navy is continuing to improve its

capabilities to use range instrumentation to aid in the passive acoustic detection of marine mammals, at this time it would not be effective or practicable for the Navy to monitor instrumented ranges for the purpose of real-time mitigation for the reasons discussed in Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the 2018 HSTT FEIS/OEIS.

Comment 36: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS require the Navy to conduct additional pre-activity overflights before conducting any activities involving detonations barring any safety issues (*e.g.,* low fuel), as well as post-activity monitoring for activities involving medium- and large caliber projectiles, missiles, rockets, and bombs.

Response: The Navy has agreed to implement pre-event observation mitigation, as well as post-event observation, for all in-water explosive event mitigation measures. If there are other platforms participating in these events and in the vicinity of the detonation area, they will also visually observe this area as part of the mitigation team.

Comment 37: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that the Navy implement larger shutdown zones.

Response: The Navy mitigation zones represent the maximum surface area the Navy can effectively observe based on the platform involved, number of personnel that will be involved, and the number and type of assets and resources available. As mitigation zone sizes increase, the potential for observing marine mammals and thus reducing impacts decreases, because the number of observers cannot increase although the area to observe increases. For instance, if a mitigation zone increases from 1,000 to 2,000 yd, the area that must be observed increases four-fold. NMFS has analyzed the Navy's required mitigation and found that it will effect the least practicable adverse impact. The Navy's mitigation measures consider both the need to reduce potential impacts and the ability to provide effective observations throughout a given mitigation zone. To implement these mitigation zones, Navy Lookouts are trained to use a combination of unaided eye and optics as they search the surface around a vessel, detonation location, or applicable sound source. In addition, there are other Navy personnel on a given bridge watch (in addition to designated Lookouts), who are also constantly watching the water for safety of navigation and marine mammals. Takes that cannot be mitigated are analyzed and authorized provided the necessary findings can be made.

Comment 38: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS should cap the maximum level of activities each year.

Response: The Commenters offer no rationale for why a cap is needed and nor do they suggest what an appropriate cap might be. The Navy is responsible under Title 10 for conducting the needed amount of testing and training to maintain military readiness, which is what they have proposed and NMFS has analyzed. Further, the MMPA states that NMFS shall issue MMPA authorizations if the necessary findings can be made, as they have been here. Importantly, as described in the *Mitigation Areas* section, the Navy will limit activities (active sonar, explosive use, *etc.*) to varying degrees in multiple areas that are important to sensitive species or for critical behaviors in order to minimize impacts that are more likely to lead to adverse effects on rates of recruitment or survival.

Comment 39: In a comment on the 2018 HSTT proposed rule, a Commenter suggested the Navy could improve observer effectiveness through the use of NMFS-certified marine mammal observers.

Response: The Navy currently requires at least one qualified Lookout on watch at all times a vessel is underway. In addition, on surface ships with hull-mounted sonars during sonar events, the number increases with two additional Lookouts on the forward portion of the vessel (*i.e.,* total of three Lookouts). Furthermore, unlike civilian commercial ships, there are additional bridge watch standers on Navy ships viewing the water during all activities. The Navy's Marine Species Awareness training that all bridge watchstanders including Lookouts take has been reviewed and approved by NMFS. This training is conducted annually and prior to MTEs. In addition, unit-based passive acoustic detection is used when available and appropriate.

As we understand from the Navy, mandating NMFS-certified marine mammal observers on all platforms would require setting up and administering a certification program, providing security clearance for certified people, ensuring that all platforms are furnished with these individuals, and housing these people on ships for extended times from weeks to months. This would be an extreme logistical burden on realistic training. The requirement for additional non-Navy observers would provide little additional benefit, especially at the near ship mitigation ranges for mid-frequency active sonars on surface ships (<1,000 yds), and would not be significantly better than the current system developed by the Navy in consultation with NMFS.

The purpose of Navy Lookouts is to provide sighting information for marine mammals and other protected species, as well as other boats and vessels in the area, in-water debris, and other safety of navigation functions. During active sonar use, additional personnel are assigned for the duration of the sonar event. In addition, the other Navy personnel on a given bridge watch along with designated Lookouts are also constantly watching the water for safety of navigation and marine mammals.

Navy training and testing activities often occur simultaneously and in various regions throughout the HSTT Study Area, with underway time that could last for days or multiple weeks at a time. The pool of certified marine mammal observers across the U.S. West Coast is rather limited, with many already engaged in regional NMFS survey efforts. Relative to the number of dedicated MMOs that would be required to implement this condition, as of July 2018, there are approximately 22 sonar-equipped Navy ships (*i.e.,* surface ships with hull-mounted active sonars) stationed in San Diego. Six additional vessels from the Pacific Northwest also transit to Southern California for training (28 ships times 2 observers per watch times 2 watches per day = minimum of 112 observers). There are currently not enough certified marine mammal observers to cover these Navy activities, even if it were practicable for the other reasons explained above.

Senior Navy commands in the Pacific continuously reemphasize the importance of Lookout responsibilities to all ships. Further, the Navy has an ongoing study in which certified Navy civilian scientist observers embark periodically on Navy ships in support of a comparative Lookout effectiveness study. Results from this study will be used to make recommendations for further improvements to Lookout training.

Additionally, we note that the necessity to include trained NMFS-approved PSOs on Navy vessels, while adding little or no additional protective or data-gathering value, would be very expensive and those costs would need to be offset—most likely through reductions in the budget for Navy monitoring, through which invaluable data is gathered.

Comment 40: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS should consider

increasing the exclusion zone to the 120 dB isopleth because some animals are sensitive to sonar at low levels of exposure.

Response: First, it is important to note that the Commenters are suggesting that NMFS require mitigation that would eliminate all take, which is not what the applicable standard requires. Rather, NMFS is required to put in place measures that effect the ''least practicable adverse impact.'' Separately, NMFS acknowledges that some marine mammals may respond to sound at 120 dB in some circumstances; however, based on the best available data, only a subset of those exposed at that low level respond in a manner that would be considered harassment under the MMPA. NMFS and the Navy have quantified those individuals of certain stocks where appropriate, analyzed the impacts, and authorized take where needed. Further, NMFS and the Navy have identified exclusion zone sizes that are best suited to minimize impacts to marine mammal species and stocks and their habitat while also being practicable (see *Mitigation Measures* section).

Comment 41: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS should impose a 10-kn ship speed limit in biologically important areas and critical habitat for marine mammals to reduce vessel strikes. The Commenter also specifically referenced this measure in regard to humpback whales and blue whales.

Response: This issue also is addressed elsewhere in the *Comments and Responses* section for specific mitigation areas. However, generally speaking, it is impracticable (because of impacts to mission effectiveness) to further reduce ship speeds for Navy activities, and, moreover, given the maneuverability of Navy ships at higher speeds and the presence of effective Lookouts, any further reduction in speed would reduce the already low probability of ship strike little, if any. The Navy is unable to impose a 10-kn ship speed limit because it would not be practical to implement and would impact the effectiveness of Navy's activities by putting constraints on training, testing, and scheduling. The Navy requires flexibility in use of variable ship speeds for training, testing, operational, safety, and engineering qualification requirements. Navy ships typically use the lowest speed practical given individual mission needs. NMFS has reviewed the Navy's analysis of these additional restrictions and the impacts they would have on military readiness and concurs with the Navy's assessment that they are impracticable.

The main driver for ship speed reduction is reducing the possibility and severity of ship strikes to large whales. However, even given the wide ranges of speeds from slow to fast that Navy ships must use to meet training and testing requirements, the Navy has a very low strike history to large whales in Southern California and Hawaii, with no whales struck by the Navy from 2010–2019. There have been no whales struck in Hawaii since 2008 (4 whales were struck between 2000 and 2008). Current Navy Standard Operating Procedures and mitigations require a minimum of at least one Lookout on duty while underway (in addition to bridge watch personnel) and, so long as safety of navigation is maintained, to keep 500 yards away from large whales and 200 yards away from other marine mammals (except for bow-riding dolphins and pinnipeds hauled out on shore or man-made navigational structures, port structures, and vessels). Furthermore, there is no Navy ship strike of a marine mammal on record in SOCAL that has occurred in the coastal area (~40 nmi from shore), which is where speed restrictions are most requested. Finally, the most recent model estimate of the potential for civilian ship strike risk to blue, humpback, and fin whales off the coast of California found the highest risk near San Francisco and Long Beach associated with commercial ship routes to and from those ports (Rockwood *et al.,* 2017). There was no indication of a similar high risk to these species off San Diego, where the HSTT Study Area occurs.

Previously, the Navy commissioned a vessel density and speed report based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015. Median speed of all Navy vessels within the HSTT Study Area is typically already low, with median speeds between 5 and 12 knots. Further, the presence and transits of commercial and recreational vessels, annually numbering in the thousands, poses a more significant risk to large whales than the presence of Navy vessels. The *Vessel Strike* subsection of the *Estimated Take of Marine Mammals* section of this rule and the 2018 HSTT FEIS/OEIS Chapter 3 (Affected Environment and Environmental Consequences) Section 3.7.3.4.1 (Impacts from Vessels and In-Water Devices) and Appendix K, Section K.4.1.6.2 (San Diego (Arc) Blue Whale Feeding Area Mitigation Considerations), explain the important differences between most Navy vessels and their operation and commercial ships that make Navy vessels much less likely to strike a whale.

When developing Phase III mitigation measures, the Navy analyzed the potential for implementing additional types of mitigation, such as vessel speed restrictions within the HSTT Study Area. The Navy determined that based on how the training and testing activities will be conducted within the HSTT Study Area, vessel speed restrictions would be incompatible with practicability criteria for safety, sustainability, and training and testing missions, as described in Chapter 5 (Mitigation), Section 5.3.4.1 (Vessel Movement) of the 2018 HSTT FEIS/OEIS. NMFS fully reviewed this analysis and concurs with the Navy's conclusions.

Comment 42: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS should improve detection of marine mammals with restrictions on low-visibility activities and alternative detection such as thermal or acoustic methods.

Response: The Navy has compiled information related to the effectiveness of certain equipment to detect marine mammals in the context of their activities, as well as the practicality and effect on mission effectiveness of using various equipment. NMFS has reviewed this evaluation and concurs with the characterizations and the conclusions below.

Low visibility—Anti-submarine warfare training involving the use of mid-frequency active sonar typically involves the periodic use of active sonar to develop the ''tactical picture,'' or an understanding of the battle space (*e.g.,* area searched or unsearched, presence of false contacts, and an understanding of the water conditions). Developing the tactical picture can take several hours or days, and typically occurs over vast waters with varying environmental and oceanographic conditions. Training during both high visibility (*e.g.,* daylight, favorable weather conditions) and low visibility (*e.g.,* nighttime, inclement weather conditions) is vital because sonar operators must be able to understand the environmental differences between day and night and varying weather conditions and how they affect sound propagation and the detection capabilities of sonar. Temperature layers move up and down in the water column and ambient noise levels can vary significantly between night and day, affecting sound propagation and how sonar systems are operated. Reducing or securing power in low-visibility conditions as a mitigation would affect a commander's ability to develop the tactical picture and would

prevent sonar operators from training in realistic conditions. Further, during integrated training multiple vessels and aircraft may participate in an exercise using different dimensions of warfare simultaneously (*e.g.,* submarine warfare, surface warfare, air warfare, *etc.*). If one of these training elements were adversely impacted (*e.g.,* if sonar training reflecting military operations were not possible), the training value of other integrated elements would also be degraded. Additionally, failure to test such systems in realistic military operational scenarios increases the likelihood these systems could fail during military operations, thus unacceptably placing Sailors' lives and the Nation's security at risk. Some systems have a nighttime testing requirement; therefore, these tests cannot occur only in daylight hours. Reducing or securing power in low visibility conditions would decrease the Navy's ability to determine whether systems are operationally effective, suitable, survivable, and safe for their intended use by the fleet even in reduced visibility or difficult weather conditions.

Thermal detection—Thermal detection systems are more useful for detecting marine mammals in some marine environments than others. Current technologies have limitations regarding water temperature and survey conditions (*e.g.,* rain, fog, sea state, glare, ambient brightness), for which further effectiveness studies are required. Thermal detection systems are generally thought to be most effective in cold environments, which have a large temperature differential between an animal's temperature and the environment. Current thermal detection systems have proven more effective at detecting large whale blows than the bodies of small animals, particularly at a distance. The effectiveness of current technologies has not been demonstrated for small marine mammals. Thermal detection systems exhibit varying degrees of false positive detections (*i.e.,* incorrect notifications) due in part to their low sensor resolution and reduced performance in certain environmental conditions. False positive detections may incorrectly identify other features (*e.g.,* birds, waves, boats) as marine mammals. In one study, a false positive rate approaching one incorrect notification per 4 min of observation was noted.

The Navy has been investigating the use of thermal detection systems with automated marine mammal detection algorithms for future mitigation during training and testing, including on autonomous platforms. Thermal detection technology being researched by the Navy, which is largely based on existing foreign military grade hardware, is designed to allow observers and eventually automated software to detect the difference in temperature between a surfaced marine mammal (*i.e.,* the body or blow of a whale) and the environment (*i.e.,* the water and air). Although thermal detection may be reliable in some applications and environments, the current technologies are limited by their: (1) Low sensor resolution and a narrow fields of view, (2) reduced performance in certain environmental conditions, (3) inability to detect certain animal characteristics and behaviors, and (4) high cost and uncertain long term reliability.

Thermal detection systems for military applications are deployed on various Department of Defense (DoD) platforms. These systems were initially developed for night time targeting and object detection such as a boat, vehicle, or people. Existing specialized DoD infrared/thermal capabilities on Navy aircraft and surface ships are designed for fine-scale targeting. Viewing arcs of these thermal systems are narrow and focused on a target area. Furthermore, sensors are typically used only in select training events, not optimized for marine mammal detection, and have a limited lifespan before requiring expensive replacement. Some sensor elements can cost upward of $300,000 to $500,000 per device, so their use is predicated on a distinct military need. One example of trying to use existing DoD thermal system is being proposed by the U.S. Air Force. The Air Force agreed to attempt to use specialized U.S. Air Force aircraft with military thermal detection systems for marine mammal detection and mitigation during a limited at-sea testing event. It should be noted, however, these systems are specifically designed for and integrated into a small number of U.S. Air Force aircraft and cannot be added or effectively transferred universally to Navy aircraft. The effectiveness remains unknown in using a standard DoD thermal system for the detection of marine mammals without the addition of customized system-specific computer software to provide critical reliability (enhanced detection, cueing for an operator, reduced false positive, *etc.*)

Finally, current DoD thermal sensors are not always optimized for marine mammal detections versus object detection, nor do these systems have the automated marine mammal detection algorithms the Navy is testing via its ongoing research program. The combination of thermal technology and automated algorithms are still undergoing demonstration and validation under Navy funding.

Thermal detection systems specifically for marine mammal detection have not been sufficiently studied both in terms of their effectiveness within the environmental conditions found in the HSTT Study Area and their compatibility with Navy training and testing (*i.e.,* polar waters vs. temperate waters). The effectiveness of even the most advanced thermal detection systems with technological designs specific to marine mammal surveys is highly dependent on environmental conditions, animal characteristics, and animal behaviors. At this time, thermal detection systems have not been proven to be more effective than, or equally effective as, traditional techniques currently employed by the Navy to observe for marine mammals (*i.e.,* naked-eye scanning, hand-held binoculars, high-powered binoculars mounted on a ship deck). The use of thermal detection systems instead of traditional techniques would compromise the Navy's ability to observe for marine mammals within its mitigation zones in the range of environmental conditions found throughout the Study Area. Furthermore, thermal detection systems are designed to detect marine mammals and do not have the capability to detect other resources for which the Navy is required to implement mitigation, including sea turtles. Focusing on thermal detection systems could also provide a distraction from and compromise to the Navy's ability to implement its established observation and mitigation requirements. The mitigation measures discussed in Chapter 5 (Mitigation), Section 5.3 (Procedural Mitigation to be Implemented) of the 2018 HSTT FEIS/OEIS include the maximum number of Lookouts the Navy can assign to each activity based on available manpower and resources; therefore, it would be impractical to add personnel to serve as additional Lookouts. For example, the Navy does not have available manpower to add Lookouts to use thermal detection systems in tandem with existing Lookouts who are using traditional observation techniques.

The Defense Advanced Research Projects Agency funded six initial studies to test and evaluate infrared-based thermal detection technologies and algorithms to automatically detect marine mammals on an unmanned surface vehicle. Based on the outcome of these initial studies, the Navy is pursuing additional follow-on research efforts. Additional studies are currently being planned for 2020+ but additional

information on the exact timing and scope of these studies is not currently available (still in development stage).

The Office of Naval Research Marine Mammals and Biology program also funded a project (2013–2019) to test the thermal limits of infrared-based automatic whale detection technology. That project focused on capturing whale spouts at two different locations featuring subtropical and tropical water temperatures, optimizing detector/classifier performance on the collected data, and testing system performance by comparing system detections with concurrent visual observations. Results indicated that thermal detection systems in subtropical and tropical waters can be a valuable addition to marine mammal surveys within a certain distance from the observation platform (*e.g.,* during seismic surveys, vessel movements), but have challenges associated with false positive detections of waves and birds (Boebel, 2017). While Zitterbart *et al.* (2020) reported on the results of land-based thermal imaging of passing whales, their conclusion was that thermal technology under the right conditions and from land can detect a whale within 3 km although there could also be lots of false positives, especially if there are birds, boats, and breaking waves at sea.

The Navy plans to continue researching thermal detection systems for marine mammal detection to determine their effectiveness and compatibility with Navy applications. If the technology matures to the state where thermal detection is determined to be an effective mitigation tool during training and testing, NMFS and the Navy will assess the practicability of using the technology during training and testing events and retrofitting the Navy's observation platforms with thermal detection devices. The assessment will include an evaluation of the budget and acquisition process (including costs associated with designing, building, installing, maintaining, and manning the equipment); logistical and physical considerations for device installment, repair, and replacement (*e.g.,* conducting engineering studies to ensure there is no electronic or power interference with existing shipboard systems); manpower and resource considerations for training personnel to effectively operate the equipment; and considerations of potential security and classification issues. New system integration on Navy assets can entail up to 5 to 10 years of effort to account for acquisition, engineering studies, and development and execution of systems training. The Navy will provide information to NMFS about the status and findings of Navy-funded thermal detection studies and any associated practicability assessments at the annual adaptive management meetings.

Passive Acoustic Monitoring—The Navy does employ passive acoustic monitoring when practicable to do so (*i.e.,* when assets that have passive acoustic monitoring capabilities are already participating in the activity). For other explosive events, there are no platforms participating that have passive acoustic monitoring capabilities. Adding a passive acoustic monitoring capability (either by adding a passive acoustic monitoring device to a platform already participating in the activity, or by adding a platform with integrated passive acoustic monitoring capabilities to the activity, such as a sonobuoy) for mitigation is not practicable. As discussed in Chapter 5 (Mitigation), Section 5.5.3 (Active and Passive Acoustic Monitoring Devices) of the 2018 HSTT FEIS/OEIS, there are significant manpower and logistical constraints that make constructing and maintaining additional passive acoustic monitoring systems or platforms for each training and testing activity impracticable. Additionally, diverting platforms that have passive acoustic monitoring platforms would impact their ability to meet their Title 10 requirements and reduce the service life of those systems.

The use of real-time passive acoustic monitoring (PAM) for mitigation at the Southern California Anti-submarine Warfare Range (SOAR) exceeds the capability of current technology. The Navy has a significant research investment in the Marine Mammal Monitoring on Navy Ranges (M3R) system at three ocean locations including SOAR. However, this system was designed and intended to support marine mammal research for select species, and not as a mitigation tool. Marine mammal PAM using instrumented hydrophones is still under development and while it has produced meaningful results for marine species monitoring, abundance estimation, and research, it was not developed for nor is it appropriate for real-time mitigation. The ability to detect, classify, and develop an estimated position (and the associated area of uncertainty) differs across species, behavioral context, animal location vs. receiver geometry, source level, *etc.* Based on current capabilities, and given adequate time, vocalizing animals within an indeterminate radius around a particular hydrophone are detected, but obtaining an estimated position for all individual animals passing through a predetermined area is not assured. Detecting vocalizations on a hydrophone does not determine whether vocalizing individuals would be within the established mitigation zone in the timeframes required for mitigation. Since detection ranges are generally larger than current mitigation zones for many activities, this would unnecessarily delay events due to uncertainty in the animal's location and put at risk event realism.

Furthermore, PAM at SOAR does not account for animals not vocalizing. For instance, there have been many documented occurrences during PAM verification testing at SOAR of small boats on the water coming across marine mammals such as baleen whales that were not vocalizing and therefore not detected by the range hydrophones. Animals must vocalize to be detected by PAM; the lack of detections on a hydrophone may give the false impression that the area is clear of marine mammals. The lack of vocalization detections is not a direct measure of the absence of marine mammals. If an event were to be moved based upon low-confidence localizations, it may inadvertently be moved to an area where non-vocalizing animals of undetermined species are present.

To develop an estimated position for an individual, it must be vocalizing and its vocalizations must be detected on at least three hydrophones. The hydrophones must have the required bandwidth, and dynamic range to capture the signal. In addition, calls must be sufficiently loud so as to provide the required signal to noise ratio on the surrounding hydrophones. Typically, small odontocetes echolocate with a directed beam that makes detection of the call on multiple hydrophones difficult. Developing an estimated position of selected species requires the presence of whistles which may or may not be produced depending on the behavioral state. Beaked whales at SOAR vocalize only during deep foraging dives which occur at a rate of approximately 10 per day. They produce highly directed echolocation clicks that are difficult to simultaneously detect on multiple hydrophones. Current real-time systems cannot follow individuals and at best produce sparse positions with multiple false locations. The position estimation process must occur in an area with hydrophones spaced to allow the detection of the same echolocation click on at least three hydrophones. Typically, a spacing of less than 4 km in water depths of approximately 2 km is preferred. In the absence of detection,

the analyst can only determine with confidence if a group of beaked whales is somewhere within 6 km of a hydrophone. Beaked whales produce stereotypic click trains during deep (<500 m) foraging dives. The presence of a vocalizing group can be readily detected by an analyst by examining the click structure and repetition rate. However, estimating position is possible only if the same train of clicks is detected on multiple hydrophones which is often precluded by the animal's narrow beam pattern. Currently, this is not an automated routine.

In summary, the analytical and technical capabilities required to use PAM such as M3R at SOAR as a required mitigation tool are not sufficiently robust to rely upon due to limitations with near real-time classification and determining estimated positions. The level of uncertainty as to a species presence or absence and location are too high to provide the accuracy required for real-time mitigation. As discussed in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS, existing Navy visual mitigation procedures and measures, when performed by individual units at-sea, still remain the most effective and practical means of protection for marine species.

Comment 43: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS should add mitigation for other marine mammal stressors such as dipping sonar, pile driving, and multiple exposures near homeports.

Response: The Navy implements a 200-yd shutdown for dipping sonar and a 100-yd exclusion zone for pile-driving. It is unclear what the Commenter means by adding mitigation for ''multiple exposures'' near homeports, and therefore no explanation can be provided.

Mitigation Areas

Introduction

The Navy included a comprehensive proposal of mitigation measures in their 2017 application that included procedural mitigations that reduce the likelihood of mortality, injury, hearing impairment, and more severe behavioral responses for most species. The Navy also included time/area mitigation that further protects areas where important behaviors are conducted and/or sensitive species congregate, which reduces the likelihood of takes that are likely to impact reproduction or survival (as described in the *Mitigation Measures* section of the final rule and the Navy's application). As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the application indicates that the measures are practicable, and it is not necessary for NMFS to conduct a detailed analysis of the measures the applicant proposed (rather, they are simply included). However, it is necessary for NMFS to consider whether there are additional practicable measures that could also contribute to effecting the least practicable adverse impact on the species or stocks and their habitat. In the case of the Navy's HSTT application, we worked with the Navy prior to the publication of the 2018 HSTT proposed rule and ultimately the Navy agreed to increase geographic mitigation areas adjacent to the island of Hawaii to more fully encompass specific biologically important areas and the Alenuihaha Channel and to limit additional anti-submarine warfare mid-frequency active sonar (ASW) source bins (MF4) within some geographic mitigation areas.

During the public comment period on the 2018 HSTT proposed rule, NMFS received numerous recommendations for the Navy to implement additional mitigation measures, both procedural and time/area limitations. Extensive discussion of the recommended mitigation measures in the context of the factors considered in the least practicable adverse impact analysis (considered in the *Mitigation Measures* section of the final rule and described below), as well as considerations of alternate iterations or portions of the recommended measures considered to better address practicability concerns, resulted in the addition of several procedural mitigations and expansion of multiple time/area mitigations (see the *Mitigation Measures* section in the final rule). These additional areas reflect, for example, concerns about blue whales in SOCAL and small resident odontocete populations in Hawaii (which resulted in expanded time/area mitigation), focus on areas where important behaviors and habitat are found (*e.g.,* in BIAs), and enhancement of the Navy's ability to detect and reduce injury and mortality (which resulted in expanded monitoring before and after explosive events). Through extensive discussion, NMFS and the Navy worked to identify and prioritize additional mitigation measures that are likely to reduce impacts on marine mammal species or stocks and their habitat and are also possible for the Navy to implement.

Following the publication of the 2013 HSTT MMPA incidental take rule, the Navy and NMFS were sued and the resulting settlement agreement prohibited or restricted Navy activities within specific areas in the HSTT Study Area. These provisional prohibitions and restrictions on activities within the HSTT Study Area were derived pursuant to negotiations with the plaintiffs in that lawsuit and were specifically not evaluated or selected based on the type of thorough examination of best available science that occurs through the rulemaking process under the MMPA, or through related analyses conducted under the National Environmental Policy Act (NEPA) or the ESA. The agreement did not constitute a concession by the Navy as to the potential impacts of Navy activities on marine mammals or any other marine species, or to the practicability of the measures. The Navy's adoption of restrictions on its HSTT activities as part of a relatively short-term settlement did not mean that those restrictions were necessarily supported by the best available science, likely to reduce impacts to marine mammal species or stocks and their habitat, or practicable to implement from a military readiness standpoint over the longer term in the HSTT Study Area. Accordingly, as required by statute, NMFS analyzed the Navy's activities, impacts, mitigation and potential mitigation (including the settlement agreement measures) pursuant to the least practicable adverse impact standard to determine the appropriate mitigation to include in these regulations. Some of the measures included in the settlement agreement are included in the final rule, while some are not. Other measures that were not included in the settlement agreement are included in the final rule.

Ultimately, the Navy adopted all mitigation measures that are practicable without jeopardizing its mission and Title 10 responsibilities. In other words, a comprehensive assessment by Navy leadership of the final, entire list of mitigation measures concluded that the inclusion of any further mitigation beyond those measures identified here in the final rule would be impracticable. NMFS independently reviewed the Navy's practicability determinations for specific mitigation areas and concurs with the Navy's analysis.

As we outlined in the *Mitigation Measures* section of the 2018 HSTT final rule, NMFS reviewed Appendix K (Geographic Mitigation Assessment) in the 2018 HSTT FEIS/OEIS and the information contained there reflects the best available science as well as a robust evaluation of the practicability of different measures. NMFS used Appendix K to support our independent

least practicable adverse impact analysis. Below is additional discussion regarding specific recommendations for mitigation measures.

Comment 44: With respect to the national security exemption related to mitigation areas, in a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS should specify that authorization may be given only by high-level officers, consistent with the Settlement Agreement or with previous HSTT rulings.

Response: The Navy provided the technical analyses contained in Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS that included details regarding changing the measure to the appropriate delegated Command designee (see specifically Appendix K, Section K.2.2.1 (Proposed Mitigation Areas within the HSTT Study Area), for each of the proposed areas). The Commenter proposed ''authorization may be given only by high-level officers'' and therefore appears to have missed the designations made within the cited sections since those do constitute positions that could only be considered ''high level officers.'' The decision would be delegated to high-level officers. This delegation has been clarified in this rule as ''permission from the appropriate designated Command authority.''

SOCAL Areas

Comment 45: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that the Navy consider units of the National Park Service (NPS) system and similar areas that occur near the Navy's training and testing locations in Southern California and which may be affected by noise, including Channel Islands National Park and Cabrillo National Monument, as it plans its activities in the HSTT Study Area.

Response: Both NMFS and the Navy did consider the effects of Navy activities on NPS sites and National Monuments. National Parks (NP) and National Monuments are addressed in Chapter 6 of the 2018 HSTT FEIS/OEIS. The Channel Islands NP consists of the five islands and surrounding ocean environment out to 1 nmi of Anacapa Island, Santa Cruz Island, Santa Rosa Island, San Miguel Island, and Santa Barbara Island. Similarly, the Channel Islands National Marine Sanctuary (NMS) consists of the ocean waters within an area of 1,109 nmi^2 that also surround the same islands of Anacapa Island, Santa Cruz Island, Santa Rosa Island, San Miguel Island and Santa Barbara Island to the south. The Channel Islands NMS waters extend from mean high tide to 6 nmi offshore around each of these five islands which would also encompass the surrounding ocean waters of the Channel Islands NP. Only 92 nmi^2 of Santa Barbara Island, or about 8 percent of the Channel Islands NMS, occurs within the SOCAL portion of the HSTT Study Area, but the entirety of that piece is included in the Santa Barbara Mitigation Area. The Navy will continue to implement a mitigation area out to 6 nmi of Santa Barbara Island, which includes a portion of the Channel Islands NMS (inclusive of the Channels Island NP portion) where the Navy will restrict the use of MF1 sonar sources and some explosives during training. Therefore, no impacts are expected to occur within the waters of the Channel Islands NP. Please refer to Figure 5.4–4 in the 2018 HSTT FEIS/OEIS, which shows the spatial extent of the Santa Barbara Island Mitigation Area. Cabrillo National Monument in San Diego only contains some intertidal areas, but no marine waters. No Navy activities overlap with the Cabrillo National Monument; therefore, no impacts are expected.

Comment 46: In a comment on the 2018 HSTT proposed rule, a Commenter recommended to extend the seasonality of the San Diego Arc Mitigation Area to December 31 for blue whales that are present off southern California almost year round, and relatively higher levels from June 1 through December 31.

Response: Analysis of the San Diego Arc Mitigation Area and its consideration for additional geographic mitigation is provided in the 2018 HSTT FEIS/OEIS in Appendix K (Geographic Mitigation Assessment), Section K.4.1.6 (San Diego (Arc) Blue Whale Feeding Area; Settlement Areas 3–A through 3–C, California Coastal Commission 3 nmi Shore Area, and San Diego Arc Area), Section K.5.5 (Settlement Areas within the Southern California Portion of the HSTT Study Area), and Section K.6.2 (San Diego Arc: Area Parallel to the Coastline from the Gulf of California Border to just North of Del Mar). This analysis included consideration of seasonality and the potential effectiveness of restrictions to use of MFAS by the Navy in the area. Based on further discussion between NMFS and the Navy in consideration of the Appendix K (Geographic Mitigation Assessment) analyses, with the 2018 HSTT final rule the Navy implemented additional mitigation within the San Diego Arc Mitigation Area, as detailed in this 2020 rule and Chapter 5 (Mitigation) Section 5.4.3 (Mitigation Areas for Marine Mammals in the Southern California Portion of the Study Area) of the 2018 HSTT FEIS/OEIS, to further avoid or reduce impacts on marine mammals from acoustic and explosive stressors and vessel strikes from Navy training and testing in this location. The Navy is limiting MF1 surface ship hull-mounted MFAS even further in the San Diego Arc Mitigation Area. The Navy will not conduct more than 200 hrs of MF1 MFAS in the combined areas of the San Diego Arc Mitigation Area and newly added San Nicolas Island and Santa Monica/Long Beach Mitigation Areas. As described in the 2018 rule and this rule, the Navy will not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-in rockets) activities during training and testing in the San Diego Mitigation Area. Regarding the recommended increase in seasonality to December 31, the San Diego Arc current seasonality is based on the Biologically Important Area associated with this mitigation area (Calambokidis *et al.,* 2015), which identifies the primary months for feeding. While blue whale calls have been detected in Southern California through December (Rice *et al.,* 2017, Lewis and Širović, 2018), given a large propagation range (10–50 km or more) for low-frequency blue whale vocalization, blue whale call detection from a Navy-funded single passive acoustic device near the San Diego Arc may not be a direct correlation with blue whale presence within the San Diego Arc from November through December. In addition, passive acoustic call detection data does not currently allow for direct abundance estimates. Calls may indicate some level of blue whale presence, but not abundance or individual residency time. In the most recent Navy-funded passive acoustic monitoring report including the one site in the northern San Diego Arc from June 2015 to April 2016, blue whale call detection frequency near the San Diego Arc started declining in November after an October peak (Rice *et al.,* 2017, Širović, personal communication). The Navy-funded research on blue whale movements from 2014 to 2017 along the U.S. West Coast based on satellite tagging, has shown that individual blue whale movement is wide ranging with large distances covered daily (Mate *et al.,* 2017). Nineteen (19) blue whales were tagged in 2016, the most recent reporting year available (Mate *et al.,* 2017). Only 5 of the 19 blue whales spent time in the SOCAL portion of the HSTT Study Area, and only spent a few days within the range complex (2–13 days). Average distance from shore for

blue whales was 113 km. None of the 19 blue whales tagged in 2016 spent time within the San Diego Arc. From previous year efforts (2014–2015), only a few tagged blue whales passed through the San Diego Arc. In addition, Navy and non-Navy-funded blue whale satellite tagging studies started in the early 1990s and have continued irregularly through 2017. In general, most blue whales start a south-bound migration from the ''summer foraging areas'' in the mid- to late-fall time period, unless food has not been plentiful, which can lead to a much earlier migration south. Therefore, while blue whales have been documented within the San Diego Arc previously, individual use of the area is variable, likely of short duration, and declining after October. Considering the newest passive acoustic and satellite tagging data, there is no scientific justification for extending the San Diego Arc Mitigation Area period from October 31 to December 31.

Comment 47: In a comment on the 2018 HSTT proposed rule, a Commenter recommended limiting all MF1 use within the San Diego Arc Mitigation Area. A Commenter also recommended NMFS should carefully consider prohibiting use of other LFAS and MFAS during the time period the San Diego Arc Mitigation Area is in place, and for the MTEs to be planned for other months of the year.

Response: Based on further discussion between NMFS and the Navy in consideration of the proposed mitigation presented in the 2018 HSTT proposed rule, the Navy is now limiting MF1 surface ship hull-mounted MFAS even further in the San Diego Arc Mitigation Area. The Navy will not conduct more than 200 hrs of MF1 MFAS in the *combined* areas of the San Diego Arc Mitigation Area and newly added San Nicolas Island and Santa Monica/Long Beach Mitigation Areas. The *Mitigation Measures* section of the 2018 HSTT final rule and Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS discuss MFAS restrictions within the San Diego Arc Mitigation Area. Other training MFAS systems are likely to be used less frequently in the vicinity of the San Diego Arc area than surface ship MFAS. Given water depths, the San Diego Arc area is not conducive for large scale anti-submarine warfare exercises, nor is it near areas where other anti-submarine warfare training and testing occurs. Due to the presence of existing Navy subareas in the southern part of the San Diego Arc, a limited amount of helicopter dipping MFAS could occur. These designated range areas are required for proximity to airfields in San Diego such as Naval Air Station North Island and for airspace management. However, helicopters only use these areas in the Arc for a Kilo Dip. A Kilo Dip is a functional check of approximately 1–2 pings of active sonar to confirm the system is operational before the helicopter heads to more remote offshore training areas. This ensures proper system operation and avoids loss of limited training time, expenditure of fuel, and cumulative engine use in the event of equipment malfunction. The potential effects of dipping sonar have been accounted for in the rule's analysis. Dipping sonar is further discussed below in Comment 48.

Comment 48: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting the use of air-deployed MFAS in the San Diego Arc Mitigation Area.

Response: The 2018 HSTT FEIS/OEIS and specifically Appendix K (Geographic Mitigation Assessment) analyze MFAS and LFAS restrictions within the San Diego Arc. Other sonar systems are used less frequently in the vicinity of the San Diego Arc than surface ship MFAS. In regard to the recommendation to prohibit ''air-deployed'' or dipping MFAS, the only helicopter dipping sonar activity that would likely be conducted in the San Diego Arc area is a Kilo Dip, which occurs relatively infrequently and involves a functional check of approximately 1–2 pings of active sonar before moving offshore beyond the San Diego Arc to conduct the training activity. During use of this sonar, the Navy will implement the procedural mitigation described in the *Mitigation Measures* section of this rule. The Kilo Dip functional check needs to occur close to Naval Air Station North Island in San Diego to ensure all systems are functioning properly, before moving offshore. This ensures proper system operation and avoids loss of limited training time, expenditure of fuel, and cumulative engine use in the event of equipment malfunction. The potential effects of dipping sonar have been accounted for in the rule's analysis. Further, due to lower power settings for dipping sonar, potential behavioral impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to temporary threshold shift of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m (2018 HSTT FEIS/OEIS Table 3.7–7). This range is easily monitored for large whales by a hovering helicopter and is accounted for in the mitigation ranges for dipping sonars. Limited ping time and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species. It should be pointed out that the Commenter's recommendation is based on new behavioral response research specific to beaked whales (Falcone *et al.,* 2017). The Navy relied upon the best science that was available to develop behavioral response functions in consultation with NMFS for the 2018 HSTT FEIS/OEIS. The article cited in the comment (Falcone *et al.,* 2017) was not available at the time the 2017 HSTT DEIS/OEIS was published. NMFS and the Navy have reviewed the article and concur that neither this article nor any other new information that has been published or otherwise conveyed since the 2018 HSTT proposed rule was published would fundamentally change the assessment of impacts or conclusions in the 2018 HSTT FEIS/OEIS or in this rulemaking. Nonetheless, the new information and data presented in the new article were thoroughly reviewed by the Navy and will be quantitatively incorporated into future behavioral response functions, as appropriate, when and if other new data that would meaningfully change the functions would necessitate their revision. The new information and data presented in the article was thoroughly reviewed when it became available and further considered in discussions with some of the paper's authors. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2023. The small portion of designated Kilo Dip areas that overlap the southern part of the San Diego Arc is not of sufficient depth for preferred habitat of beaked whales (see Figure 2.1–9 in the 2018 HSTT FEIS/OEIS). Further, passive acoustic monitoring for the past several years in the San Diego Arc confirms a lack of beaked whale detections (Rice *et al.,* 2017). Also, behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other species including blue whales. Navy-funded behavioral response studies of blue whales to simulated surface ship sonar has demonstrated there are distinct individual variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013).

Comment 49: In a comment on the 2018 HSTT proposed rule, a Commenter recommended requiring vessel speed

restrictions within the San Diego Arc Mitigation Area.

Response: Previously, the Navy commissioned a vessel density and speed report for the HSTT Study Area (CNA, 2016). Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CNA, 2016). Slowest speeds occurred closer to the coast including the general area of the San Diego Arc and approaches to San Diego Bay. The presence and transits of commercial and recreational vessels, numbering in the many hundreds, far outweighs the presence of Navy vessels. Regarding strikes by vessels other than Navy vessels, two blue whale ship strike deaths were observed during the most recent five-year period of 2013–2017 (Carretta *et al.* 2019, final 2018 SARs). There were no reported ship-strike related serious injuries during this time period (Carretta *et al.* 2019). Observations of blue whale ship strikes have been highly-variable in previous five-year periods, with as many as 10 observed (nine deaths and one serious injury) during 2007–2011 (Carretta *et al.,* 2013). The highest number of blue whale ship strikes observed in a single year (2007) was five whales (Carretta *et al.* 2013). Additionally, ship strike mortality was estimated for blue whales in the U.S. West Coast EEZ (Rockwood *et al.,* 2017), using an encounter theory model (Martin *et al.,* 2016) that combined species distribution models of whale density (Becker *et al.,* 2016), vessel traffic characteristics (size, speed, and spatial use), along with whale movement patterns obtained from satellite-tagged whales in the region to estimate encounters that would result in mortality and predicted higher annual numbers of mortality. But as discussed in this final rule, the SAR further cites to Monnahan *et al.* (2015), which used a population dynamics model to estimate that the Eastern North Pacific blue whale population was at 97 percent of carrying capacity in 2013 and to suggest that the observed lack of a population increase since the early 1990s was explained by density dependence, not impacts from ship strike. Ship strike in the West Coast EEZ continues to be complex with vessel speeds, types, and routes of travel all contributing to variability in ship traffic and animal vulnerability. That said, there has been no confirmed Navy ship strike to a blue whale in the entire Pacific over the 14-year period from 2005 to 2019. To minimize the possibility of ship strike in the San Diego Arc Mitigation Area, the Navy will implement procedural mitigation for vessel movements based on guidance from NMFS for vessel strike avoidance. The Navy will also issue seasonal awareness notification messages to all Navy vessels of blue, fin, and gray whale occurrence to increase ships awareness of marine mammal presence as a means of improving detection and avoidance of whales in SOCAL. When developing the mitigation for the 2018 HSTT final rule, NMFS and the Navy analyzed the potential for implementing additional types of mitigation, such as developing vessel speed restrictions within the HSTT Study Area. The Navy determined that based on how the training and testing activities will be conducted within the HSTT Study Area under the planned activities, vessel speed restrictions would be incompatible with the practicability assessment criteria for safety, sustainability, and Title 10 requirements, as described in Section 5.3.4.1 (Vessel Movement) of the 2018 HSTT FEIS/OEIS.

Comment 50: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting the use of air-deployed MFAS in the Santa Barbara Island Mitigation Area.

Response: The Commenter's request to prohibit ''air-deployed'' MFAS is based on one paper (Falcone *et al.,* 2017), which is a Navy-funded project designed to study behavioral responses of a single species, Cuvier's beaked whales, to MFAS. The Navy in consultation with NMFS relied upon the best science that was available to develop behavioral response functions for beaked whales and other marine mammals for the 2018 HSTT FEIS/OEIS. NMFS and the Navy have reviewed the article and concur that neither this article (Falcone *et al.,* 2017) nor any other new information that has been published or otherwise conveyed since the 2018 HSTT proposed rule was published would fundamentally change the assessment of impacts or conclusions in the 2018 HSTT FEIS/OEIS or in this rulemaking. Nonetheless, the new information and data presented in the new article were thoroughly reviewed by the Navy and will be quantitatively incorporated into future behavioral response functions, as appropriate, when and if other new data that would meaningfully change the functions would necessitate their revision. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2023.

Behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other marine mammal species. For example, Navy-funded behavioral response studies of blue whales to simulated surface ship sonar has demonstrated there are distinct individual variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013). The same conclusion on the importance of exposure and behavioral context was stressed by Harris *et al.* (2017). Therefore, it is expected that other species would also have highly variable individual responses ranging from some response to no response to any anthropogenic sound. This variability is accounted for in the current behavioral response curves described in the 2018 HSTT FEIS/OEIS and supporting technical reports, and used by NMFS in the MMPA rule.

The potential effects of dipping sonar have been rigorously accounted for in the analysis. Parameters such as power level and propagation range for typical dipping sonar use are factored into HSTT acoustic impact analysis along with guild specific criteria and other modeling variables as detailed in the 2018 HSTT FEIS/OEIS and associated technical reports for criteria and acoustic modeling. Due to lower power settings for dipping sonar, potential impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to temporary threshold shift of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m, and for mid-frequency cetaceans including beaked whales is 22 m (2018 HSTT FEIS/OEIS Table 3.7–7). This range is monitored for marine mammals by a hovering helicopter and is accounted for in the mitigation ranges for dipping sonars (200 yd or 183 m). Limited ping time and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species.

For other marine mammal species, the small area around Santa Barbara Island does not have resident marine mammals, identified biologically important areas, nor is it identified as a breeding or persistent foraging location for cetaceans. Instead, the same marine mammals that range throughout the offshore Southern California area could pass at some point through the marine waters of Santa Barbara Island. As discussed in the mitigation section of the rule, the Navy will implement (and is currently implementing) year-round limitations to MFAS and larger

explosive use. The Navy will not use MF1 surface ship hull-mounted MFAS during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-in rockets) activities during training in the Santa Barbara Island Mitigation Area. Other MFAS systems within SOCAL are used less frequently than surface ship sonars, and more importantly are of much lower power with correspondingly lower propagation ranges and reduced potential behavioral impacts.

Comment 51: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting other sources of MFAS in the Santa Barbara Mitigation Area.

Response: Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, which NMFS reviewed, concurred with, and used to support our MMPA least practicable adverse impact analysis, discusses the Navy's analysis of MFAS restrictions around Santa Barbara Island. Other training MFAS systems are likely to be used less frequently in the vicinity of Santa Barbara Island than surface ship MFASs. Although not prohibiting the use of other sources of MFAS, the Navy will not use MF1 surface ship hull-mounted MFAS during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-in rockets) activities during training in the Santa Barbara Island Mitigation Area.

The relatively small area surrounding the Santa Barbara Island Mitigation Area represents less than 0.08 percent of the entire HSTT SOCAL area. An even smaller portion of this area meets the scientifically accepted minimum depth criteria expected for beaked whale habitat, in Southern California usually greater than 800 m. The bathymetric area greater than 800 m depth and within the Santa Barbara Island Mitigation Area is approximately 24 square Nmi (26 percent of the total Mitigation Area spatial extent or only 0.02 percent of the total HSTT SOCAL area). Beaked whale monitoring at other locations within SOCAL have shown that even in ocean basins thought to have Cuvier's beaked whale sub-population, there is still quite a bit of variation in occurrence and movement of beaked whales within a given basin (Schorr *et al.,* 2017, 2018, 2020). The small area around Santa Barbara Island is not known to have resident marine mammals, formally identified biologically important areas, nor is it identified as a breeding or persistent foraging location for cetaceans. Instead, the same marine mammals that range throughout the offshore Southern California area could pass at some point through the marine waters of Santa Barbara Island. As discussed in this rule the Navy is implementing year-round limitations to MFAS and larger explosive use. Other MFAS systems for which the Navy sought coverage within SOCAL are used less frequently than surface ship sonars, and more importantly are of much lower power with correspondingly lower propagation ranges and reduced potential behavioral impacts. Therefore, further limitations of active sonars within this area are not anticipated to be meaningfully more protective to marine mammal populations than existing mitigation measures within the entire SOCAL portion of the HSTT Study Area.

Comment 52: In a comment on the 2018 HSTT proposed rule, a Commenter recommended implementing vessel speed restrictions in the Santa Barbara Island Mitigation Area (Channel Islands Sanctuary Cautionary Area).

Response: The Channel Islands Sanctuary Cautionary Area was renamed the Santa Barbara Island Mitigation Area for the rule. All locations within the HSTT Study Area have been used for Navy training and testing for decades. There has not been any Navy ship strike to marine mammals in SOCAL over the 10-year period from 2010–2019, and there has never been a Navy strike within the boundary of the Channel Islands National Marine Sanctuary over the course of strike record collection dating back 20 years. Therefore, ship strike risk to marine mammals transiting the Santa Barbara Island Mitigation Area is minimal. Additionally, as discussed in this rule, the 2018 HSTT final rule, and the 2018 HSTT FEIS/OEIS Section 3.7.3.4.1 (Impacts from Vessels and In-Water Devices) and Appendix K (Geographic Mitigation Assessment), there are important differences between most Navy vessels and their operation and commercial ships that individually make Navy vessels much less likely to strike a whale. Navy vessels already operate at lower speeds given a particular transit or activity need. Mitigation measures include a provision to avoid large whales by 500 yd, so long as safety of navigation and safety of operations is maintained. Previously, the Navy commissioned a vessel density and speed report for HSTT (CNA, 2016). Based on an analysis of Navy ship traffic in HSTT between 2011 and 2015, the average speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CNA, 2016). Slowest speeds occurred closer to the coast and islands. Given the history of no documented Navy ship strikes over the last 10 years (2010–2019) throughout SOCAL during Navy activities, lack of significant and repeated use of the small portion of waters within the Santa Barbara Island Mitigation Area by marine mammals, anticipated low individual residency times within the Santa Barbara Island Mitigation Area, application of mitigation and protective measures as outlined in this rule and the 2018 HSTT final rule, documented lower speeds Navy vessels already navigate by, detailed assessments of realistic training and testing requirements, and potential impacts of further restrictions, NMFS has determined that vessel speed restrictions in the Santa Barbara Island Mitigation Area are not warranted.

Comment 53: In a comment on the 2018 HSTT proposed rule, a Commenter recommended additional mitigation areas for important beaked whale habitat in the Southern California Bight. The Commenter asserted that it is important to focus substantial management efforts on beaked whales within the Navy's SOCAL Range Complex, which sees the greatest annual amount of sonar and explosives activity of any Navy range in the Pacific.

Response: The basis for this comment includes incorrect or outdated information or information that does not reflect the environment present in the HSTT Study Area, such as, ''. . . beaked whale populations in the California Current have shown significant, possibly drastic declines in abundance over the last twenty years.'' The citation provided in the footnote to the comment and postulated ''decline'' was for beaked whales up until 2008 (which does not take into account information from the last 10 years) and was a postulated trend for the entire U.S. West Coast, not data which is specific to the HSTT Study Area. As noted in Section 3.7.3.1.1.7 (Long-Term Consequences) of the 2018 HSTT FEIS/OEIS, the postulated decline was in fact not present within the SOCAL portion of the HSTT Study Area, where abundances of beaked whales have remained higher than other locations off the U.S. West Coast. In addition, the authors of the 2013 citation (Moore and Barlow, 2013) have published trends based on survey data gathered since 2008 for beaked whales in the California Current, which now includes the highest abundance estimate in the history of these surveys (Barlow 2016; Carretta *et al.,* 2017; Moore and Barlow,

2017). Also, when considering the portion of the beaked whale population within the SOCAL portion of the HSTT Study Area and as presented in the 2018 HSTT FEIS/OEIS, multiple studies have documented continued high abundance of beaked whales and the long-term residency of documented individual beaked whales, specifically where the Navy has been training and testing for decades (see for example Debich *et al.,* 2015a, 2015b; Dimarzio *et al.,* 2018, 2020; Falcone and Schorr, 2012, 2014, 2018, 2020; Hildebrand *et al.,* 2009; Moretti, 2016; Širović *et al.,* 2016; Smultea and Jefferson, 2014). There is no evidence that there have been any population-level impacts to beaked whales resulting from Navy training and testing in the SOCAL portion of the HSTT Study Area. NMFS and the Navy considered additional geographic mitigation for beaked whales in the Southern California Bight, as described in Appendix K (Geographic Mitigation Assessment), Section K.7.2 (Southern California Public Comment Mitigation Area Assessment) and specifically Section K.7.2.7 (Northern Catalina Basin and the San Clemente Basin) of the 2018 HSTT FEIS/OEIS, which NMFS used in support of this rule. See Chapter 5 (Mitigation), Section 5.4.1.2 (Mitigation Area Assessment) of the 2018 HSTT FEIS/OEIS for additional details regarding the assessments of areas considered for mitigation.

Comment 54: In a comment on the 2018 HSTT proposed rule, a Commenter recommended additional mitigation areas in the San Nicolas Basin. The Commenter noted that the settlement agreement established a ''refuge'' from sonar and explosives activities in a portion of the whales' secondary habitat, outside the Southern California Anti-submarine Warfare Range (SOAR), with more management effort being necessary in the long term. The Commenter recommended at a minimum that NMFS should prescribe the ''refuge'' during the next five-year operation period and should consider all possible habitat-based management efforts, including but not limited to the expansion of this area further south towards SOAR, to address impacts on the small population of Cuvier's beaked whales associated with San Clemente Island.

Response: NMFS and the Navy considered additional geographic mitigation for beaked whales in the San Nicolas Basin, as described in Appendix K (Geographic Mitigation Assessment), Section K.7.2 (Southern California Public Comment Mitigation Area Assessment), and specifically Section K.7.2.1 (San Nicolas Basin) of the 2018 HSTT FEIS/OEIS, which NMFS reviewed, concurred with, and used to support the mitigation analysis in the rule. See Chapter 5 (Mitigation), Section 5.4.1.2 (Mitigation Area Assessment) of the 2018 HSTT FEIS/OEIS for additional details regarding the assessments of areas considered for mitigation. Further, the *Mitigation Measures, Brief Comparison of 2015 Settlement Mitigation and Final HSTT Mitigation in the Rule* section of the 2018 HSTT final rule explicitly discusses NMFS consideration of mitigation that was included in the settlement agreement versus what was included in the final rule in the context of the MMPA least practicable adverse impact standard.

Within the San Nicolas Basin, there is a documented, recurring number of Cuvier's beaked whales strongly indicating that the Navy's activities are not having a population-level impact on this species. This is supported by repeated visual re-sighting rates of individuals, sightings of calves and, more importantly, reproductive females, and passive acoustic assessments of steady vocalization rates and abundance over at least the most recent seven-year interval. It is incorrect to conclude that there is a ''population sink,'' such as has been seen on the Navy's AUTEC range. In the citation provided (Claridge, 2013), that statement is merely a hypothesis, yet to be demonstrated.

The Navy has been funding Cuvier's beaked whale research specifically in the San Nicolas Basin since 2006. This research is planned to continue through the duration of this MMPA authorization. Cumulative from 2006 to 2016, over 170 individual Cuvier's beaked whales have been catalogued within the San Nicolas Basin. Schorr *et al.* (2018) stated for the field season from 2016 to 2017 that: Identification photos of suitable quality were collected from 69 of the estimated 81 individual Cuvier's beaked whales encountered in 2016–2017. These represented 48 unique individuals, with eight of these whales sighted on two different days, and another three on three different days during the study period. Nineteen (39 percent) of these whales had been sighted in previous years. Many more whales identified in 2016 had been sighted in a previous year (16/28 individuals, 57 percent), compared to 2017 (5/22 individuals, 23 percent), though both years had sightings of whales seen as early as 2007. There were three adult females photographed in 2016 that had been sighted with calves in previous years, one of which was associated with her second calf. Additionally, a fourth adult female, first identified in 2015 without a calf, was subsequently sighted with a calf. The latter whale was sighted for a third consecutive year in 2017, this time without a calf, along with two other adult females with calves who had not been previously sighted. These sightings of known reproductive females with and without calves over time (n = 45) are providing critically needed calving and weaning rate data for Population Consequences of Disturbance (PcoD) models currently being developed for this species on SOAR.

From August 2010 through October 2019, an estimate of overall abundance of Cuvier's beaked whales at the Navy's instrumented range in San Nicolas Basin was obtained using new dive-counting acoustic methods and an archive of passive acoustic M3R data representing 49,855 hours of data (DiMarzio *et al.,* 2020). Over the 10-year interval from 2010–2019, there was no observed change and perhaps a slight increase in annual Cuvier's beaked whale abundance within San Nicolas Basin (DiMarzio *et al.,* 2020). There does appear to be a repeated dip in population numbers and associated echolocation clicks during the fall centered around August and September (DiMarzio *et al.,* 2020; Moretti, 2017). A similar August and September dip was noted by researchers using stand-alone off-range bottom passive acoustic devices in Southern California (Rice *et al.,* 2017, 2019, 2020; Širović *et al.,* 2016). This dip in abundance documented over 10 years of monitoring may be tied to some as of yet unknown population dynamic or oceanographic and prey availability dynamic. It is unknown scientifically if this represents a movement to different areas by parts of the population, or a change in behavioral states without movement (*i.e.,* breeding versus foraging). Navy training and testing events are spatially and temporally spread out across the SOCAL portion of the HSTT Study Area. In some years events occur in the fall, yet in other years events do not. Yet, the same dip has consistently been observed lending further evidence this is likely a population biological function.

Comment 55: In a comment on the 2018 HSTT proposed rule, a Commenter recommended additional mitigation areas in the Santa Catalina Basin. A Commenter commented that there is likely a small, resident population of Cuvier's beaked whales that resides in the Santa Catalina Basin and that this population is subject to regular acoustic disturbance due to the presence of the Shore Bombardment Area (SHOBA) and 3803XX. The population may also be exposed to training activities that

occupy waters between Santa Catalina and San Clemente Islands. Similar to the San Nicolas population, the settlement agreement established a ''refuge'' from sonar and explosives activities in the northern portion of the Santa Catalina Basin. A Commenter recommended that, at a minimum, the Navy should carefully consider implementing the ''refuge'' during the next five-year authorization period and should continue to consider all possible habitat-based management efforts to address impacts on the population.

Response: The water space areas mentioned in the comment as ''(SHOBA)'' off the southern end of San Clemente Island are waters designated as Federal Danger and Safety Zones via formal rulemaking (Danger Zone—33 CFR 334.950 and Safety Zone—33 CFR 165.1141) because they are adjacent to the shore bombardment impact area that is on land at the southern end of San Clemente Island. Waters designated as ''3803XX,'' which are associated with the Wilson Cove anchorages and moorings, where ship calibration tests, sonobuoy lot testing, and special projects take place, are designated as Federal Safety and Restricted Zones via formal rulemaking (Safety Zone—33 CFR 165.1141 and Restricted Zone—33 CFR 334.920).

The comment states a concern that a population of Cuvier's beaked whale is, ''subject to regular acoustic disturbance due to the presence of the Shore Bombardment Area,'' is not correct. The SHOBA is a naval gun impact area located on land at the southern end of San Clemente Island. This area is an instrumented land training range used for a variety of bombardment training and testing activities. The in-water administrative boundary for SHOBA does not delineate the locations where a ship firing at land targets must be located and does not represent where gunfire rounds are targeted. The water area in Santa Catalina Basin is a controlled safety zone in the very unlikely event a round goes over the island and lands in the water. With the modern advent of better precision munitions, computers, and advanced fire control, that probability is very remote. Navy vessels use the waters south of San Clemente Island (SHOBA West and SHOBA East) from which to fire into land targets on southern San Clemente Island (see the 2018 HSTT FEIS/OEIS Figure 2.1–7). Therefore, there would not be any underwater acoustic disturbance to Cuvier's beaked whales located within the Santa Catalina Basin from in-water explosives or ship firing. Further, the *Mitigation Measures* subsection, *Brief Comparison of 2015 Settlement Mitigation and Final HSTT Mitigation in the Rule section,* of the 2018 HSTT final rule explicitly discusses NMFS' consideration of mitigation that was included in the settlement agreement versus what was included in the final rule in the context of the MMPA least practicable adverse impact standard.

Comment 56: In a comment on the 2018 HSTT proposed rule, a Commenter recommended additional mitigation areas for the southernmost edge of the California Current, west of Tanner and Cortes Banks. In light of the importance of the Southernmost edge of the California Current, west of Tanner and Cortes banks, Commenters recommend assessing the designation of the southern offshore waters of the Southern California Bight as a seasonal time-area management area for Cuvier's beaked whales between November and June. The approximate coordinates are 32.75 N., 119.46 W (referenced as Site E). As part of this assessment, the Commenter recommended that the boundaries be refined via expert consideration of acoustic and other relevant information pertaining to beaked whale biology and bathymetric and oceanographic data.

Response: Baumann-Pickering *et al.* (2014a, b, 2015), as the Commenter referenced, did not specify this area as biologically important and the author's data only indicated there have been detections of the Cuvier's beaked whales within this area. Further, the species is widely distributed within Southern California and across the Pacific with almost all suitable deep water habitat greater than 800 m in Southern California conceivably containing Cuvier's beaked whales. Only limited population vital rates exist for beaked whales, covering numbers of animals, populations vs. subpopulations determination, and residency time for individual animals (Schorr *et al.,* 2017, 2018). The science of passive acoustic monitoring is positioned to answer some questions on occurrence and seasonality of beaked whales, but cannot as of yet address all fundamental population parameters including individual residency time.

Furthermore, while passive acoustic monitoring within Southern California has been ongoing for 28 years, with many sites funded by the Navy, not all sites have been consecutively monitored for each year. All of the single bottom-mounted passive acoustic devices used for the analysis by Baumann-Pickering *et al.* (2014a, b, 2015), and used in the comment to support its argument, are not continuous and have various periodicities from which data have been collected. Specifically, devices have been deployed and removed from various locations with some sites having multiple years of data, and others significantly less, with perhaps just a few months out of a year. For instance, Site E, located west of Tanner and Cortes Banks and used by the Commenter to justify restrictions in this area, was only monitored for 322 days from September 2006 through July 2009 (obtaining slightly less than a full year's worth of data).

Site E was also used again for another 63 days from Dec 2010 through February 2011. During this second monitoring period at Site E, Gassman *et al.* (2015) reported detection of only three Cuvier's beaked whales over six separate encounters with time intervals of 10–33 minutes. As sources of data associated with a single monitoring point, the two monitoring episodes conducted at Site E may not be indicative of Cuvier's beaked whale presence at other locations within Southern California, which lack comparable monitoring devices. Nor would they be indicative of overall importance or lack of importance of the area west of Tanner and Cortes Banks. Further, more recent acoustic sampling of bathymetrically featureless areas off Southern California with drifting hydrophones conducted by NMFS, detected many beaked whales over abyssal plains and not associated with slope or seamount features. This counters a common misperception that beaked whales are primarily found over slope waters, in deep basins, or over seamounts (Griffins and Barlow, 2016).

Most importantly, older passive acoustic data prior to 2009 may not be indicative of current or future occurrence of beaked whales, especially in terms of potential impact of climate change on species distributions within Southern California. To summarize, these limited periods of monitoring (322 days in a three-year period prior to 2010 and 63 days in 2011) may or may not be reflective of current beaked whale distributions within Southern California and into the future. Furthermore, passive acoustic-only detection of beaked whales, without additional population parameters, can only determine relative occurrence, which could be highly variable over sub-regions and through time.

While Cuvier's beaked whales have been detected west of Tanner and Cortes Banks, as noted above this species is also detected in most all Southern California locations greater than 800 m in depth. Furthermore, the Navy has been training and testing in and around Tanner and Cortes Banks with the same

basic systems for over 40 years, with no evidence of any adverse impacts having occurred. Further, there are no indications that Navy training and testing in the SOCAL portion of the HSTT Study Area has had any adverse impacts on populations of beaked whales in Southern California. In particular, a reoccurring population of Cuvier's beaked whales co-exists within San Nicolas Basin to the east, an area with significantly more in-water sonar use than west of Tanner and Cortes Banks.

To gain further knowledge on the presence of beaked whales in Southern California, the Navy continues to fund additional passive acoustic field monitoring, as well as research advancements for density derivation from passive acoustic data. For the five-year period from 2013 to 2019, U.S. Pacific Fleet on behalf of the U.S. Navy funded $18 million in marine species monitoring within Hawaii and Southern California. Specifically, in terms of beaked whales, the Navy has been funding beaked whale population dynamics, tagging, and passive acoustic studies within the HSTT Study Area since 2007 (DiMarzio *et al.,* 2018, 2019, 2020; Moretti, 2017; Rice *et al.,* 2017, 2018, 2019, 2020; Schorr *et al.,* 2017, 2018, 2019, 2020; Širović, *et al.,* 2017). Variations of these efforts are planned to continue through the duration of the seven-year rule using a variety of passive acoustic, visual, tagging, photo ID, and genetics research tools. This Navy effort is in addition and complementary to any planned NMFS efforts for beaked whales and other marine mammals. For instance, the Navy co-funded with NMFS and the Bureau of Ocean Energy Management a summer-fall 2018 visual and passive acoustic survey along the U.S. West Coast and off Baja Mexico (Henry *et al.* in press). New passive detection technologies focusing on beaked whales were deployed during these surveys (similar to Griffiths and Barlow, 2016). The Navy continues SOCAL beaked whale occurrence and impact studies with additional effort anticipated through 2020.

Analysis of the southernmost edge of the California Current, west of Tanner-Cortes Bank and the presence of Cuvier's beaked whales was addressed in Appendix K (Geographic Mitigation Assessment), Section K.7.2.4 (Southernmost Edge of California Current, West of Tanner-Cortes Bank), and Section K.7.2.6 (Cuvier's Beaked Whale Habitat Areas Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, which NMFS used to support its mitigation analysis described in this final rule. Also see Chapter 3, Section 3.7.2.3.24 (Cuvier's Beaked Whale (*Ziphius cavirostris*)) of the 2018 HSTT FEIS/OEIS for additional information regarding this species.

As noted in Appendix K (Geographic Mitigation Assessment), the waters west of Tanner and Cortes Banks are also critical to the Navy's training and testing activities; therefore, it is not practicable to preclude activities within that water space in the SOCAL portion of the HSTT Study Area. Reasonable mitigation measures, as discussed in Appendix K (Geographic Mitigation Assessment), would limit the impact of training and testing on marine mammals, and especially beaked whales, in this area. In addition, with new deployments of HARP buoys from 2019–2021, the Navy has expanded passive acoustic monitoring for beaked whales to include new areas west of Tanner Bank and areas off Baja Mexico.

Given that there is no evidence that Navy training and testing activities are having significant impacts to populations of beaked whales anywhere in the SOCAL portion of the HSTT Study Area, the uncertainty of current use by Cuvier's beaked whales of the area west of Tanner and Cortes Banks, the fact that general occurrence of beaked whales in Southern California may not necessarily equate to factors typically associated with biologically important areas, and consideration of the importance of Navy training and testing activities in the areas around Tanner and Cortes Banks discussed in Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, additional geographic mitigation specifically for the area west of Tanner and Cortes Banks is not warranted.

As noted in Appendix K (Geographic Mitigation Assessment) and Chapter 5 (Mitigation), Section 5.3 (Procedural Mitigation to be Implemented) of the 2018 HSTT FEIS/OEIS, the Navy will continue to implement procedural mitigation measures throughout the HSTT Study Area.

Comment 57: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the same long-term passive acoustic study of the Southern California Bight as discussed for Cuvier's beaked whales above in Comment 56 also suggests that southern-central waters represent biologically important habitat for Perrin's beaked whale. The Commenter recommended that the Northern Catalina Basin and the waters southeast of Santa Catalina Island (approximate coordinates of 33.28 N, –118.25 W), and the San Clemente Basin (approximate coordinates of 32.52 N, –118.32 W), both based on location of HARP deployments (referenced as sites ''A'' and ''S''), be considered as management areas for Perrin's beaked whales. The Commenter recommended that the boundaries of any restrictions be established via expert consideration.

Response: All of the single bottom-mounted passive acoustic devices used for the analysis by Baumann-Pickering *et al.* (2014b) and used by the Commenter to support their argument are not continuous and have various periodicities for which data have been collected. As single point sources of data, these passive acoustic devices may not be indicative of Perrin's beaked whale presence at other locations within Southern California without comparable devices. Nor would older data prior to 2009 be indicative of current or future occurrence especially in terms of potential impact of climate change on species distributions.

Navy-funded passive acoustic monitoring within the SOCAL portion of the HSTT Study Area has been ongoing for the past 21 years, but not all areas are monitored continuously, and devices have been deployed and removed from various locations. Santa Catalina Basin was only monitored from August 2005 to July 2009. Santa Catalina Basin has not been monitored under Navy funding since 2009 because other areas in Southern California were prioritized for passive acoustic device placement by the researchers. For San Clemente Island, the single monitoring site ''S'' used in Baumann-Pickering *et al.* (2014b) and cited as the source of the comment's claim for San Clemente Basin was only deployed for a limited time of approximately 1.5 years, resulting in 409 days of data (September 2009–May 2011). For both sites combined, only 41 hours of BW43 signal types were detected over a cumulative approximately five-and-a-half years of monitoring. The 41 hours of BW43 detections therefore only represents a small fraction of overall recording time (less than 1 percent).

The beaked whale signal type detected called BW43 has been suggested as coming from Perrin's beaked whales (Baumann-Pickering *et al.,* 2014b), but not yet conclusively and scientifically confirmed.

A different Navy-funded single site south of San Clemente Island within the San Clemente Basin has had a passive acoustic device in place from July 2014 through current. Širović *et al.* (2016) and Rice *et al.* (2017) contain the most current results from San Clemente Basin site ''N.'' While Širović *et al.* (2016) and Rice *et al.* (2017) do report periodic passive acoustic detections of

Mesoplodon beaked whales thought to be Perrin's beaked whale in San Clemente Basin, the overall detection rate, periodicity, and occurrence has not been high. Between May 2015 and June 2016, there were only seven weeks in which potential Perrin's beaked whale echolocation clicks were detected, with each week having less than 0.14 hours/week of detections. Acoustic sampling of bathymetrically featureless areas off Southern California with drifting hydrophones by NMFS detected many beaked whales over abyssal plains and not always associated with slope or seamount features, which counters a common misperception that beaked whales are primarily found over slope waters, in deep basins, or over seamounts (Griffins and Barlow, 2016). One of these devices was deployed within the SOCAL portion of the HSTT Study Area. In addition, analysis of NMFS visual survey data from 2014, the most recent year available, showed an increase in *Mesoplodon* beaked whales along the entire U.S. West Coast, which the authors attributed to an influx of tropical species of *Mesoplodon* during the unusually warm water condition that year (Barlow, 2016; Moore and Barlow, 2017). Perrin's beaked whale, part of the *Mesoplodon* guild, could be part of these sightings. In summary, San Clemente Basin and Santa Catalina Basin with similar low passive acoustic detection rates are likely to be part of Perrin beaked whale's general distribution along the U.S. West Coast and in particular Southern California and Baja Mexico. This distribution is likely to be wide ranging for Perrin's beaked whales as a species and highly correlated to annual oceanographic conditions. Santa Catalina and San Clemente basins do have infrequent suspected Perrin's beaked whale passive acoustic detections from a limited number of devices, but these areas may not specifically represent unique high occurrence locations warranting geographic protection beyond existing Navy protective measures. Current funded Navy passive acoustic monitoring for beaked whales continues to report limited BW43 detections (Rice *et al.* 2017, 2018, 2019, 2020).

The Navy has been training and testing in and around the Northern Catalina Basin and waters southeast of Santa Catalina Island with the same systems for over 40 years, and there is no evidence of any adverse impacts having occurred and no indications that Navy training and testing has had any adverse impacts on populations of beaked whales in Southern California. The main source of anthropogenic noise in the Catalina Basin and waters south of San Clemente Island are associated with commercial vessel traffic concentrated in the northbound and southbound lanes of the San Pedro Channel that runs next to Santa Catalina Island and leads to and from the ports of Los Angeles/Long Beach and other commercial traffic from San Diego and ports to the north and south of Southern California. These waters in and around Northern Catalina Basin and waters southeast of Santa Catalina Island are critical to the Navy's training and testing activities, and so it is not practicable to limit or reduce access or preclude activities within that water space in the SOCAL portion of the HSTT Study Area.

NMFS and the Navy considered the Santa Catalina Basin area and Perrin's beaked whales, as described in Appendix K (Geographic Mitigation Assessment), Section K.7.2.3 (Catalina Basin) and K.7.2.7 (Northern Catalina Basin and the San Clemente Basin) of the 2018 HSTT FEIS/OEIS. Also see Appendix K (Geographic Mitigation Assessment), Section K.7.2.7.2 (Northern Catalina Basin and Waters Southeast of Catalina Island Perrin's Beaked Whale Habitat Mitigation Considerations) of the 2018 HSTT FEIS/OEIS for additional information regarding this species. Additional limitations as discussed in Appendix K (Geographic Mitigation Assessment) would limit training and impact readiness. Given that there is no evidence of impacts to the population of beaked whales in the area, and low potential occurrence of Perrin's beaked whales in the Southern California portion of the HSTT Study Area, geographic mitigation would not effectively balance a reduction of biological impacts with an acceptable level of impact on military readiness activities and, as described in the *Mitigation Measures* section of this final rule, NMFS has included the mitigation requirements necessary to achieve the least practicable adverse impact on the affected species or stocks and their habitat. As noted in Appendix K (Geographic Mitigation Assessment) and Chapter 5, Section 5.3 (Procedural Mitigation to be Implemented) of the 2018 HSTT FEIS/OEIS, the Navy will continue to implement procedural mitigation measures throughout the HSTT Study Area.

Comment 58: In a comment on the 2018 HSTT proposed rule, Commenters recommended additional mitigation areas for important fin whale habitat off Southern California. The Commenters recommended that the waters between the 200 m and 1,000 m isobaths be assessed for time-area management so that, at minimum, ship strike awareness measures for fin whales can be implemented during the months of November through February, when the whales aggregate in the area.

Response: As described and detailed in the 2018 HSTT FEIS/OEIS, the Navy implements a number of ship-strike risk reduction measures for all vessels, in all locations and seasons, and for all marine mammal species. New research by Širović *et al.* (2017) supports a hypothesis that between the Gulf of California and Southern California, there could be up to four distinct sub-populations based on fin whale call types, including a Southern California resident population. There is also evidence that there can be both sub-population shifts and overlap within Southern California (Širović *et al.,* 2017). Scales *et al.* (2017) also postulated two Southern California sub-populations of fin whales based on satellite tagging and habitat modeling. Scales *et al.* (2017) stated that some fin whales may not follow the typical baleen whale migration paradigm, with some individuals found in both warm, shallow nearshore waters less than 500 m, and deeper cool waters over complex seafloor topographies. Collectively, the author's spatial habitat models with highest predicted occurrence for fin whales cover the entire core training and testing portion of the SOCAL portion of the HSTT Study Area, not just areas between 200 and 1,000 m. Results from Navy-funded long-term satellite tagging of fin whales in Southern and Central California still shows some individual fin whales engage in wide-ranging movements along the U.S. West Coast, as well as large daily movements well within subareas (Mate *et al.,* 2017; Schorr *et al.,* 2020). In support of further refining the science on Southern California fin whales, Falcone and Schorr (2014) examined fin whale movements through photo ID and short-to-medium term (days-to-several weeks) satellite tag tracking under funding from the Navy. The authors conducted small boat surveys from June 2010 through January 2014, approximately three-and-a-half years. Of interest in terms of the comment and the 200–1,000 m isobaths occurrence, more fin whale tag locations were reported off the Palos Verdes Peninsula and off of the Los Angeles/Long Beach commercial shipping ports in fall, both areas north of and outside of the Navy's SOCAL Range Complex. Compared to the above areas, there were not as many tag locations in the similar isobaths region off San Diego associated

with the Navy range area. Falcone and Schorr (2014) did document an apparent inshore-offshore distribution between Winter-Spring and Summer-Fall. Given the apparent resident nature of some fin whales in Southern California as discussed in Falcone and Schorr (2014), Scales *et al.* (2017), and Širović *et al.* (2017), it remains uncertain if the inshore-offshore seasonal pattern as well as sub-population occurrence will persist into the future, or if fin whales will change distribution based on oceanographic impacts on available prey (*e.g.* El Nino, climate change, *etc.*). The efforts from Falcone and Schorr on fin whales began in 2010, and Navy monitoring funding to further refine fin whale population structure and occurrence within Southern California is planned to continue for the duration of this rule.

The data from the various single bottom-mounted passive acoustic devices used in the analysis to support this comment are not continuous and have various periodicities for which data have been collected. Many of these devices are purposely placed in 200–1,000 m of water. Given these are point sources of data, they may or may not be indicative of fin whale calling or presence at other locations within Southern California without devices. Passive acoustic analysis is only useful for those individuals that are calling and may not indicate total population occurrence. Low-frequency fin whale calls by their very nature have relatively long underwater propagation ranges so detections at a single device could account for individuals 10–50 miles away if not further, depending on local propagation conditions. This would mean calling whales are not in the 200–1,000 m area. Širović *et al.* (2015) acknowledge in discussing their data biases, that their use of ''call index'' may best indicate a period of peak calling. But fin whales produce multiple call types depending on behavioral state. Based on technology limitations, some fin whale call types were not included in Širović *et al.* (2015). The following are factors supporting NMFS' determination that ship speed reduction is specifically not warranted in this area.

1. The study cited by a Commenter (Širović *et al.,* 2015) and used as the basis for ''Figure 3'' concerns trends seen within the Southern California Bight, not exclusively the SOCAL Range Complex;

2. The research used as the basis for Figure 3 was funded by the Navy to develop baseline information for the areas where Navy trains and tests and was by no means designed to or otherwise intended as a representative sample of all waters off California or the entire habitat of the fin whale population in the area;

3. It is not correct to assume detected vocalizations (a ''call index'') reported in Širović *et al.* (2015) for fin whales equates with where fin whales are aggregated in the Southern California Bight. For example, the acoustic monitoring data did not pick up or otherwise correspond to the observed seasonal distribution shift of fin whales indicated by visual survey data covering the same time periods (Campbell *et al.,* 2015; Douglas *et al.,* 2014);

4. Širović *et al.* (2015) make no such claim of aggregations during the winter months but instead compare call index rates and state that the purpose for the paper was to demonstrate that passive acoustics can be a powerful tool to monitor population trends, not relative abundances;

5. There is no science to support the contention that fin whales are ''at particular risk of ship-strike on the naval range.'' Two fin whales were struck by the Navy in 2009 in the SOCAL portion of the HSTT Study Area as Navy noted in Appendix K (Geographic Mitigation Assessment), but since that time there have been no fin whales struck or any species of whales struck despite a documented increase in the fin whale population inhabiting the area (Barlow, 2016; Moore and Barlow, 2011; Smultea and Jefferson, 2014). Furthermore, one of those vessel strikes occurred at the end of the recommended mitigation timeframe (February) and the other well outside the time period (May), so the proposed mitigation would only have been marginally effective, if at all. Neither of these Navy fin whale strike locations were close to shore (both >50–60 Nmi from shore), or associated with coastal shipping lanes. Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CNA, 2016). This includes areas within and outside of 200–1,000 m within Southern California, with slowest speeds closer to the coast; and

6. As presented in the 2018 HSTT FEIS/OEIS, fin whales are present off all the waters of Southern California year-round (Širović *et al.,* 2015, 2017). Using available quantitative density and distribution mapping, the best available science, and expert elicitation, definitive areas of importance for fin whales could not be determined by a panel of scientists specifically attempting to do so (Calambokidis *et al.,* 2015).

Navy vessels already operate at slower speeds given a particular transit or activity need. This also includes a provision to avoid large whales by 500 yd, so long as safety of navigation and safety of operations is maintained. Previously, the Navy commissioned a vessel density and speed report for HSTT (CNA, 2016). Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Southern California is typically already low, with median speeds between 5 and 12 kn (CNA, 2016). The slowest speeds occurred closer to the coast and islands.

Therefore, NMFS has determined that vessel speed restrictions within 200–1,000 m are not warranted given the wide range of fin whale movements along the U.S. West Coast including areas within and outside of 200–1,000 m contours, sometimes large-scale daily movements within regional areas as documented from Navy-funded satellite tagging, the current lack of ship strike risk from Navy vessels in Southern California (as well as throughout the HSTT Study Area) (2010–2019), the lower training and testing ship speeds Navy uses within the HSTT Study Area, and existing Navy mitigation measures including provisions to avoid large whales by 500 yds where safe to do so.

In addition, the Navy agreed to send out seasonal awareness messages of fin, blue, and gray whale occurrence to improve awareness of all vessels operating to the presence of these species in SOCAL from November through May (fin whales), November through March (gray whales), and June through October (blue whales). The Navy will also review WhaleWatch, a program coordinated by NMFS' West Coast Region as an additional information source to inform the drafting of the seasonal awareness message to alert vessels in the area to the possible presence of concentrations of large whales, including fin whales in SOCAL.

Hawaii Areas

Comment 59: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that the Navy consider the following as it plans to conduct activities in the HSTT Study Area. The Commenter notes units of the NPS system that occur near training and testing areas around Hawaii and identifies which may be affected by noise. The Units are: Kaloko-Honokohau National Historical Park (NHP), Pu'uhonua o Honaunau NHP,

Pu'ukolhola Heiau National Historic Site, Kalaupapa NHP, Hawaii Volcanoes NP, Haleakala NP, and the World War II Valor in the Pacific National Monument.

Response: National Parks and National Monuments are addressed in Chapter 6 of the 2018 HSTT FEIS/OEIS. Kalaupapa NHP is discussed in Comment 60 below. No planned activities overlap with Kaloko-Honokohau NHP; therefore, no impacts are expected within the Kaloko-Honokohau NHP. The Pu'uhonua o Honaunau NHP, Haleakala NP, and Pu'ukolhola Heiau National Historic Site are not specifically addressed in Chapter 6 of the 2018 HSTT FEIS/OEIS, but none of these sites appear to contain any marine waters. The Navy's planned activities do not occur on land except in designated training areas on Navy properties (*i.e.,* for amphibious assaults, *etc.*); therefore, there are no activities that overlap with these sites and no impacts are expected. For the Hawaii Volcanoes NP, the Navy's planned activities addressed in the 2018 HSTT FEIS/OEIS do not include aircraft or unmanned aerial systems flights over or near the Hawaii Volcanoes National Park; therefore, no impacts are expected. The World War II Valor in the Pacific Monument is for the USS Arizona, which is a Navy war memorial. No activities occur within the boundary of the site itself, and the monument was not designated to protect marine species. There are training and testing activities that occur within Pearl Harbor as a whole, and impacts to marine mammals in the waters of Pearl Harbor were included in the Navy's proposed activities and therefore analyzed by NMFS in the final rule.

Comment 60: In a comment on the 2018 HSTT proposed rule, a Commenter noted the presence of marine mammal species in the Kalaupapa NHP (on the north shore of Molokai), and is concerned about potential take of protected species that inhabit water out to 1,000 fathoms, and recommended the Navy consider alternate training areas to avoid impacts to these species. Species that occur year-round include the false killer whale, sperm whale, pygmy sperm whale, spinner dolphin, and bottlenose dolphin. Humpback whales are seasonal visitors from November to April. The Hawaiian monk seal pups are within the Kalaupapa NHP during the spring and summer.

Response: Part of the Kalaupapa NHP (northern portion) is protected by the measures employed inside the 4-Islands Region Mitigation Area such as year-round prohibition on explosives and no use of MF1 surface ship hull mounted mid-frequency active sonar from November 15 through April 15.

We note, however, that the majority of the Kalaupapa NHP is not in the 4-Islands Region Mitigation Area as it is mainly land-based, but just outside it. The Kalaupapa NHP was designated to protect the two historic leper colonies on the property and was not designated with the purpose of protecting marine species. The boundaries of the Kalaupapa NHP extend a quarter mile offshore. The Navy does propose conducting activities associated with the planned activities in the boundary of the Kalaupapa NHP. There would be no effect to Hawaiian monk seal pupping on NHP land as the Navy does not have any planned activities in the boundary of the Kalaupapa NHP, especially on land. The Navy's planned activities do not include any land-based activities except for a few activities which are conducted on designated Navy property (*i.e.,* amphibious assaults on Silver Strand, *etc.*). Further, as the sea space adjacent to the Kalaupapa NHP is not an established training or testing area, it is unlikely naval activity would occur in this area.

Comment 61: In a comment on the 2018 HSTT proposed rule, a Commenter recommended expanding the Hawaii Island Mitigation Area westward to protect resident Cuvier's beaked whales and rough-toothed dolphins. The boundaries of the Hawaii Island Mitigation Area should be expanded westward to remain consistent with the boundaries of the BIAs defined in Baird *et al.* (2015), which informed the boundaries of Conservation Council Settlement Areas 1–C and 1–D. This expansion will cover habitat for Cuvier's beaked whales and toothed dolphins that are resident around the Big Island.

Response: Please see the *Mitigation Measures, Brief Comparison of 2015 Settlement Mitigation and Final HSTT Mitigation in the Rule* section of the 2018 HSTT final rule, which discusses NMFS analysis and decisions in regard to required mitigation areas with explicit consideration of areas that were previously required by the settlement agreement. Analyses of the marine mammal species mentioned in the comment and considered within the Hawaii Island Mitigation Area are discussed in Appendix K (Geographic Mitigation Assessment), Section K.3 (Biologically Important Areas within the Hawaii Range Complex Portion of the HSTT Study Area) and Sections K.5.1 (Settlement Areas Within the Hawaii Portion of the HSTT Study Area) through K.5.4 (Proposed Mitigation Areas that Overlap the Hawaii Portion of the HSTT Settlement Agreement Areas) of the 2018 HSTT FEIS/OEIS. NMFS concurs with the analysis included in this document and has used it to support our findings in this rule. Additional information on the marine mammals mentioned in the comment is also provided in the species-specific sub-sections in Chapter 3, Section 3.7.2 (Affected Environment) of the 2018 HSTT FEIS/OEIS. Based on these analyses, the Navy will implement additional mitigation within the Hawaii Island Mitigation Area (year-round), as described in the *Mitigation Measures* section in the 2018 HSTT final rule and this rule, to further avoid or reduce impacts on marine mammals from acoustic and explosive stressors from the planned activities.

The mitigation requirement of prohibiting the use of explosives year-round during training and testing across the entire Hawaii Island Mitigation Area satisfies the previous mitigation requirement of a prohibition on the use of in-water explosives for training and testing activities of the Settlement Agreement for Areas 1–A, 1–C, and 1–D, and further extends that requirement to the Alenuihāhā Channel (Area 1–B). The Hawaii Island Mitigation Area still includes 100 percent of Settlement Areas 1–C and 1–D and includes a large majority of the BIAs for Cuvier's beaked whale (Hawaii Island BIA) and rough-toothed Dolphins (Hawaii Island BIA) (the areas in question by this comment). Particularly, it covers 93.30 percent of the Cuvier's beaked whale BIA westward of Hawaii Island and 83.58 percent of rough-toothed dolphins Hawaii Island BIA westward of Hawaii Island.

Only the northern portion of the Cuvier's beaked whale BIA in Alenuihaha Channel and a smaller offshore portion of the BIA west of Hawaii are not covered by mitigations included in the Hawaii Island Mitigation Area on the west and east of Hawaii Island. The BIA is based on the known range of the island-associated population, and the authors suggest that ''the range of individuals from this population is likely to increase as additional satellite-tag data become available'' (Baird *et al.,* 2015). Cuvier's beaked whales are not expected to be displaced from their habitat due to training and testing activities further offshore in these small areas of the biologically important area, given that the BIA covers 23,583 km^2, is unbroken and continuous surrounding the island, and the BIA likely underrepresents their range. The small portion of the BIA that does not overlap the Hawaii Island Mitigation Area is offshore, and according to the most recent stock

assessment approximately 95 percent of all sighting locations were within 45 km of shore. Additionally, consequences to individuals or populations are not unknown. No PTS is estimated or authorized. A small number of TTS and Level B behavioral harassment takes for Cuvier's beaked whales are estimated across the entire Hawaii portion of the HSTT Study Area due to acoustic stressors. Most of the TTS and Level B behavioral harassment takes for Cuvier's beaked whales are associated with testing in the Hawaii Temporary Operating Area, impacting the pelagic population (see Figure 3.7–36 of the 2018 HSTT FEIS/OEIS). It is extremely unlikely that any modeled takes would be of individuals in this small portion of the BIA that extends outside the Hawaii Island Mitigation Area.

Long-term and relatively comprehensive research has found no evidence of any apparent effects while documenting the continued existence of multiple small and resident populations of various species as well as long-term residency by individual beaked whales spanning the length of the current studies that exceed a decade. Further, the Navy has considered research showing that in specific contexts (such as associated with urban noise, commercial vessel traffic, eco-tourism, or whale watching, Chapter 3, Section 3.7.2.1.5.2 (Commercial Industries)) of the 2018 HSTT FEIS/OEIS that chronic repeated displacement and foraging disruption of populations with residency or high site fidelity can result in population-level effects. As also detailed in the 2018 HSTT FEIS/OEIS, however, the Navy training and testing activities do not equate with the types of disturbance in this body of research, nor do they rise to the level of chronic disturbance where such effects have been demonstrated because Navy activities are typically sporadic and dispersed. There is no evidence to suggest there have been any population-level effects in the waters around Oahu, Kauai, and Niihau or anywhere in the HSTT Study Area. In the waters around Oahu, Kauai, and Niihau, documented long-term residency by individuals and the existence of multiple small and resident populations are precisely where Navy training and testing have been occurring for decades, strongly suggesting a lack of significant impact to those individuals and populations from the continuation of Navy training and testing.

Mark-recapture estimates derived from photographs of rough-toothed dolphins taken between 2003 and 2006 resulted in a small and resident population estimate of 198 around the island of Hawaii (Baird *et al.,* 2008), but those surveys were conducted primarily with 40 km of shore and may underestimate the population. Data do suggest high site fidelity and low population size for the island-associated population. There are no tagging data to provide information about the range of the island-associated population; the BIA is based on sighting locations and encompasses 7,175 km^2. Generally, this species is typically found close to shore around oceanic islands. Only approximately half of the BIA offshore is not covered by the Hawaii Island Mitigation Area, where the BIA overlaps with special use airspace. Consequences to individuals or populations are not unknown. No PTS is estimated or authorized. Some TTS and Level B behavioral harassment takes due to acoustic stressors are authorized for this species across the entire HSTT Study Area (see Figure 3.7–66 of the 2018 HSTT FEIS/OEIS). Significant impacts on rough-toothed dolphin natural behaviors or abandonment due to training with sonar and other transducers are unlikely to occur within the small and resident population area. A few minor to moderate TTS or Level B behavioral harassment takes to an individual over the course of a year are unlikely to have any significant costs or long-term consequences for that individual, and nothing in the planned activities is expected to cause a ''catastrophic event.'' The Navy operating areas west of Hawaii Island are used commonly for larger events for a variety of reasons described further in Section K.3 (Appendix K of the 2018 HSTT FEIS/OEIS, Biologically Important Areas Within the Hawaiian Range Complex Portion of the HSTT Study Area) (*e.g.,* the relatively large group of seamounts in the open ocean offers challenging bathymetry in the open ocean far away from civilian vessel traffic and air lanes where ships, submarines, and aircraft are completely free to maneuver) and sonar may be used by a variety of platforms. Enlarging the Hawaii Island Mitigation Area is not anticipated to realistically reduce adverse impacts. Expanding the Hawaii Island Mitigation Area has a limited likelihood of further reducing impacts on marine mammal species or stocks and their habitat, while these open ocean operating areas are important for training and testing and, in consideration of these factors (and the broader least practicable adverse impact considerations discussed in the introduction), NMFS has determined that requiring this additional mitigation is not appropriate.

Comment 62: In a comment on the 2018 HSTT proposed rule, a Commenter recommended limiting MTEs to reduce cumulative exposure in the Hawaii Island Mitigation Area.

Response: Prohibiting MTEs outright or spatially separating them within the Hawaii Island Mitigation Area was proposed as additional mitigation to ensure that ''marine mammal populations with highly discrete site fidelity . . . are not exposed to MTEs within a single year.'' The goal of geographic mitigation is not to be an absolute, outright barrier and stop exposing animals to exercises per se; it is to reduce adverse impacts to the maximum extent practicable. Impacts associated with MTEs, including cumulative impacts, are addressed in the 2018 HSTT proposed and final rules, as well as in Chapters 3 (Affected Environment and Environmental Consequences) and Chapter 4 (Cumulative Impacts) of the 2018 HSTT FEIS/OEIS. The Navy's quantitative analysis using the best available science has determined that training and testing activities will not have population-level impacts on any species, and the operational and time/area mitigation measures required by the MMPA rule further reduce impacts on marine mammals and their habitat. As determined in Chapter 3, Section 3.7.4 (Summary of Potential Impacts on Marine Mammals) of the 2018 HSTT FEIS/OEIS, it is not anticipated that the planned activities will result in significant impacts to marine mammals. To date, the findings from research and monitoring and the regulatory conclusions from previous analyses by NMFS are that the majority of impacts from Navy training and testing activities are not expected to have deleterious impacts on the fitness of any individuals or long-term consequences to populations of marine mammals the Commenter references.

MTEs cannot be further limited in space or time within the Hawaii Island Mitigation Area, given that those activities are specifically located to leverage particular features like the Alenuihaha Channel and the approaches to Kawaihae Harbor. This recommendation is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

To limit impacts, the Navy will not conduct more than 300 hrs of MF1 surface ship hull-mounted MFAS or 20 hrs of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing in the Hawaii Island Mitigation Area.

Comment 63: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting or restricting other sources of MFAS in the Hawaii Island Mitigation Area including prohibiting the use of helicopter-deployed MFAS in the Hawaii Island Mitigation Area.

Response: The Navy is already limiting other sources of MFAS. Between the application and the proposed rule, the Navy added new mitigation that includes a limit to the annual use of helicopter dipping sonar in the Hawaii Island Mitigation Area. Specifically, the Navy will not conduct more than 20 hrs of MF4 dipping sonar that could potentially result in takes of marine mammals during training and testing. Helicopters deploy MFAS from a hover position in bouts generally lasting under 20 minutes, moving rapidly between sequential deployment and their duration of use and source level (217 dB) are generally well below those of hull-mounted frequency sonar (235 dB). All locations within the HSTT Study Area have been used for Navy training and testing for decades. There has been no scientific evidence to indicate the Navy's activities are having adverse effects on populations of marine mammals, many of which continue to increase in number or are maintaining populations based on what regional conditions can support. Navy research and monitoring funding continues within the HSTT Study Area under current NMFS MMPA and ESA permits, and is planned through the duration of any future permits. Given the lack of effects to marine mammal populations in the HSTT Study Area from larger, more powerful surface ship sonars, the effects from intermittent, less frequent use of lower powered MF dipping sonar or other MFAS would also not significantly affect small and resident populations.

Comment 64: In a comment on the 2018 HSTT proposed rule, a Commenter recommended extending the 4-Islands Region Mitigation Area westward to encompass the Humpback Whale Special Reporting Area in Kaiwi Channel. Additionally, they argue that the 4-Island Region Mitigation Area is inadequate to protect endangered Main Hawaiian Island insular false killer whales as the Main Hawaiian Island insular false killer whale is highly range-restricted to certain high-use areas, one of which includes the ESA critical habitat and the BIA north of Maui and Molokai (''False killer whale Hawaii Island to Niihau'' BIA).

Response: In regard to extending the 4-Islands Region Mitigation Area westward to encompass the Humpback Whale Special Reporting Area in Kaiwi Channel, reducing or limiting Navy training and testing in the Southeast Oahu area is not likely to be effective in reducing or avoiding impacts given that the Navy does not routinely conduct activities that involve sonar or other transducers or explosives in this portion of the Humpback Whale Reproduction Area (included in the Humpback Whale Special Reporting Area in Kaiwi Channel). The portion of the special reporting area that extends into Kaiwi Channel over Penguin Bank (equivalent to settlement area 2A) is generally not a higher use area for Main Hawaiian Island insular false killer whales and does not overlap significantly with the BIA. As presented in Chapter 3 of the 2018 HSTT FEIS/OEIS (Affected Environment and Environmental Consequences), which supports NMFS' analysis for the rule, the Navy's quantitative analysis indicates that significant impacts on false killer whale natural behaviors or abandonment due to training with sonar and other transducers are unlikely to occur within the entire small and resident population area, let alone in the small sub-portion of the biologically important area that overlaps the proposed extension. Additionally, most of the modeled takes are for the Hawaii pelagic population of false killer whale (see Figure 3.7–46 and Table 3.7–31 in the 2018 HSTT FEIS/OEIS). Also, as described in more detail in Appendix K of the 2018 HSTT FEIS/OEIS, due to training and testing needs, the expansion of this area is considered impracticable.

Comment 65: In a comment on the 2018 HSTT proposed rule, a Commenter recommended extending the seasonal restrictions to year-round restrictions in the 4-Islands Region Mitigation Area and proposed extending the Mitigation Area into the Kaiwi Channel Humpback Whale Special Reporting Area.

Response: The proposed extension of the 4-Islands Region Mitigation Area into Kaiwi Channel was addressed above in Comment 64. The additional expansion requested in the comment is not expected to reduce adverse impacts to an extent that would outweigh the negative impacts if unit commanders were unable to conduct unit-level training and testing, especially as they pass over Penguin Bank while transiting between Pearl Harbor and other parts of the Study Area. Prohibiting mid-frequency active sonar would preclude the Submarine Command Course from meeting its objectives and leveraging the important and unique characteristics of the 4-Islands Region, as described in multiple sections of Appendix K of the 2018 HSTT FEIS/OEIS (*e.g.,* Section K.3.1.6 (4-Islands Region and Penguin Bank Humpback Whale Reproduction Area, and Settlement Area 2–A and 2–B)), which NMFS concurs with and used to support the mitigation analysis for the rule. Penguin Bank is particularly used for shallow water submarine testing and anti-submarine warfare training because of its large expanse of shallow bathymetry. The conditions in Penguin Bank offer ideal bathymetric and oceanographic conditions allowing for realistic training and testing and serve as surrogate environments for active theater locations.

Additionally, this mitigation would further increase reporting requirements. As discussed in Chapter 5 (Mitigation) Section 5.5.2.6 (Increasing Reporting Requirements) of the 2018 HSTT FEIS/OEIS, the Navy developed its reporting requirements in conjunction with NMFS, balancing the usefulness of the information to be collected with the practicability of collecting it. An increase in reporting requirements as a mitigation would draw the event participants' attention away from the complex tactical tasks they are primarily obligated to perform (such as driving a warship), which would adversely impact personnel safety, public health and safety, and the effectiveness of the military readiness activity. Expanding the Mitigation Area and extending the restrictions is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Comment 66: In a comment on the 2018 HSTT proposed rule, a Commenter recommended implementing vessel speed restrictions within the 4-Islands Region Mitigation Area.

Response: This mitigation measure was proposed to address impacts on humpback whales due to both ship noise and ship strikes. As described and detailed in the *Mitigation Measures* section of the 2018 HSTT final rule, this rule, and the 2018 HSTT FEIS/OEIS, the Navy already implements a number of ship-strike risk reduction measures for all vessels, in all locations and seasons, and for all marine mammal species. The Navy cannot implement mitigation that restricts vessel speed during training or testing in the HSTT Study Area because it is not practicable. Vessels must be able to maneuver freely as required by their tactics in order for training events to be effective. Imposition of vessel speed restrictions would interfere with the Navy's ability to complete tests that must occur in specific bathymetric and oceanic conditions and at specific speeds. Navy vessel operators must test and train with vessels in such a manner that ensures their ability to operate

vessels as they would in military missions and combat operations (including being able to react to changing tactical situations and evaluate system capabilities). Furthermore, testing of new platforms requires testing at the full range of propulsion capabilities and is required to ensure the delivered platform meets requirements. Based on an analysis of Navy ship traffic in the HSTT Study Area between 2011 and 2015, median speed of all Navy vessels within Hawaii is typically already low, with median speeds between 8–16 kn (CNA, 2016). Speed restrictions in the Cautionary Area (renamed the 4-Islands Region Mitigation Area) are unwarranted given the movement of all social groups throughout the islands outside the Mitigation Area, the current lack of ship strike risk from Navy vessels in Hawaii (2010–2017), the already safe training and testing ship speeds the Navy uses within the HSTT Study Area, and existing Navy mitigation measures, including provisions to avoid large whales by 500 yards where safe to do so. Implementing speed restrictions in the Mitigation Area is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Information on the response of baleen whales to vessel noise is presented in Section 3.7.3.1.1.5 (Behavioral Reactions) and Section 3.7.3.1.5 (Impacts from Vessel Noise) of the 2018 HSTT FEIS/OEIS, which supports NMFS analyses. Impacts, if they did occur, would most likely be short-term masking and minor behavioral responses. Therefore, significant impacts on humpback whale reproductive behaviors from vessel noise associated with training activities are not expected. Navy vessels are intentionally designed to be quieter than civilian vessels, and ship speed reductions are not expected to reduce adverse impacts on humpback whales due to vessel noise.

Comment 67: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting the use of in-water explosives in the 4-Islands Region Mitigation Area.

Response: The Navy has agreed to implement a year-round restriction on the use of in-water explosives that could potentially result in takes of marine mammals during training and testing. Should national security present a requirement to use explosives that could potentially result in the take of marine mammals during training or testing, naval units will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

Comment 68: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting other sources of MFAS in the 4-Islands Region Mitigation Area.

Response: NMFS fully assessed the mitigation for the 4-Islands Region Mitigation Area (see the *Mitigation Measures* section in the 2018 HSTT final rule). As the Navy has described, this area provides a unique and irreplaceable shallow water training capability for units to practice operations in littoral areas that are both shallow and navigationally constrained (2018 HSTT FEIS/OEIS Appendix K (Geographic Mitigation Assessment), Section K.3.3.1.6). The 4-Islands Region provides an environment for anti-submarine warfare search, tracking and avoidance of opposing anti-submarine warfare forces. The bathymetry provides unique attributes and unmatched opportunity to train in searching for submarines in shallow water. Littoral training allows units to continue to deploy improved sensors or tactics in littoral waters. In the Hawaii portion of the HSTT Study Area specifically, anti-submarine warfare training in shallow water is vitally important to the Navy since diesel submarines typically hide in that extremely noisy and complex marine environment (Arabian Gulf, Strait of Malacca, Sea of Japan, and the Yellow Sea all contain water less than 200 m deep). There is no other area in this portion of the HSTT Study Area with the bathymetry and sound propagation analogous to seas where the Navy conducts real operations that this training could relocate to. The Navy cannot conduct realistic shallow water training exercises without training in and around the 4-Islands Region Mitigation Area. In addition, this area includes unique shallow water training opportunities for unit-level training, including opportunity to practice operations in littoral areas that are both shallow, and navigationally constrained, and in close proximity to deeper open ocean environments. While MFAS is used infrequently in this area, a complete prohibition of all active sonars would impact Navy training readiness in an area identified as important for the Navy based on its unique bathymetry. However, the Navy recognizes the biological importance of this area to humpback whales during the reproductive season and in the 4-Islands Region Mitigation Area the Navy will not use MF1 surface hull-mounted MFAS (the source that results in, by far, the highest numbers of take) from November 15 through April 15 or use explosives in this area at any time of the year. While the Navy has been training and testing in the area with the same basic systems for over 40 years, there is no evidence of any adverse impacts having occurred, and there are multiple lines of evidence demonstrating the small odontocete population high site fidelity to the area.

Comment 69: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting the use of helicopter-deployed mid-frequency active sonar in the 4-Islands Region Mitigation Area.

Response: The Commenter's request to prohibit ''air-deployed'' MFAS is based on one paper (Falcone *et al.,* 2017), which is a Navy-funded project designed to study the behavioral responses of a single species, Cuvier's beaked whales, to MFAS. The Navy relied upon the best science that was available to develop behavioral response functions for beaked whales and other marine mammals in consultation with NMFS for the 2018 HSTT FEIS/OEIS. NMFS and the Navy have reviewed the article and concur that neither this article nor any other new information that has been published or otherwise conveyed since the 2018 HSTT proposed rule was published would fundamentally change the assessment of impacts or conclusions in the 2018 HSTT FEIS/OEIS or in this rulemaking. Nonetheless, the new information and data presented in the new article were thoroughly reviewed by the Navy and will be quantitatively incorporated into future behavioral response functions, as appropriate, when and if other new data that would meaningfully change the functions would necessitate their revision. The new information and data presented in the article was thoroughly reviewed when it became available and further considered in discussions with some of the paper's authors following its first presentation in October 2017 at a recent scientific conference. Many of the variables requiring further analysis for beaked whales and dipping sonar impact assessment are still being researched under continued Navy funding through 2023.

There are no beaked whale biologically important areas in the 4-Islands Region Mitigation Area, and the Mitigation Area is generally shallower than beaked whales' preferred habitat. Behavioral responses of beaked whales from dipping and other sonars cannot be universally applied to other marine mammal species. Research indicates that there are distinct individual

variations as well as strong behavioral state considerations that influence any response or lack of response (Goldbogen *et al.,* 2013; Harris *et al.,* 2017). Therefore, it is expected that other species would have highly variable individual responses ranging from some response to no response to any anthropogenic sound. This variability is accounted for in the Navy's current behavioral response curves described in the 2018 HSTT FEIS/OEIS and supporting technical reports.

Furthermore, the potential effects of dipping sonar have been rigorously accounted for in the Navy's analysis. Parameters such as power level and propagation range for typical dipping sonar use are factored into HSTT acoustic impact analysis along with guild specific criteria and other modeling variables, as detailed in the 2018 HSTT FEIS/OEIS and associated technical reports for criteria and acoustic modeling. Further, due to lower power settings for dipping sonar, potential impact ranges of dipping sonar are significantly lower than surface ship sonars. For example, the HSTT average modeled range to TTS of dipping sonar for a 1-second ping on low-frequency cetacean (*i.e.,* blue whale) is 77 m, and for mid-frequency cetaceans including beaked whales is 22 m (2018 HSTT FEIS/OEIS Table 3.7–7). This range is easily monitored for marine mammals by a hovering helicopter and is accounted for in the Navy's proposed mitigation ranges for dipping sonars (200 yds or 183 m). Limited ping time (*i.e.,* less dipping sonar use as compared to typical surface ship sonar use) and lower power settings therefore would limit the impact from dipping sonar to any marine mammal species.

This is an area of extremely low use for air-deployed MFAS. Prohibiting air-deployed MFAS in the Mitigation Area would not be any more protective to marine mammal populations generally, or the Main Hawaiian Islands insular false killer whale in particular, than currently implemented procedural mitigation measures for air-deployed MFAS and is not, therefore, appropriate in consideration of NMFS' least practicable adverse impact standard.

Comment 70: In a comment on the 2018 HSTT proposed rule, a Commenter recommended prohibiting use of LFAS in the 4-Islands Region Mitigation Area.

Response: The Commenter suggested that ''Baleen whales are vulnerable to the impacts of LFAS, particularly in calving areas where low-amplitude communication calls between mothers and calves can be easily masked.'' As described in Chapter 3, Section 3.7.2.3.1 (Humpback Whale (*Megaptera novaeangliae*), Hawaii DPS) of the 2018 HSTT FEIS/OEIS, the best available science has demonstrated humpback whale population increases and an estimated abundance greater than some pre-whaling estimates. This data does not indicate any population-level impacts from decades of ongoing Navy training and testing in the Hawaiian Islands. The LFAS sources used in the HSTT Study Area are typically low powered (less than 200 dB source level). Restrictions on the use of LFAS would have a significant impact on the testing of current systems and the development of new systems. This would deny research, testing, and development program managers the flexibility to rapidly field or develop necessary systems requiring testing in the area and the ability to conduct these activities in the unique bathymetric environment of the 4-Islands Region.

Comment 71: In a comment on the 2018 HSTT proposed rule, a Commenter recommended additional mitigation areas including critical habitat for the Main Hawaiian Islands insular false killer whale. NMFS issued the Final Rule designating critical habitat under the ESA on July 24, 2018. The Commenter stated that in light of the 2018 listing under the ESA, NMFS must protect this species from the noise and other disturbance resulting from naval activities, including by mitigating impacts within its critical habitat. The Commenter recommended that, at minimum, the Navy establish protective Mitigation Areas in all the BIAs identified for this species by NOAA and that NMFS should revisit and revise its Mitigation Areas and mitigation requirements based on the final critical habitat designation.

Response: Critical habitat includes waters from the 45-m depth contour to the 3,200-m depth contour around the main Hawaiian Islands from Niihau east to Hawaii (82 FR 51186). With regard to the analysis of the identified Biologically Important Areas for the Main Hawaiian Islands insular false killer whales, see Section K.3.3 in the 2018 HSTT FEIS/OEIS (False Killer Whale Small and Resident Population Area: Main Hawaiian Island Insular stock), which NMFS used to support our analysis for the MMPA rule. With regard to the identified threats to the species, see Section 3.7.2.2.7.5 in the 2018 HSTT FEIS/OEIS (Species-Specific Threats) and specifically the documented incidental take by commercial fisheries (Bradford and Forney, 2016; Oleson *et al.,* 2010; Reeves *et al.,* 2009; West, 2016).

The Navy is implementing the Hawaii Island Mitigation Area which encompasses all of the BIA for Main Hawaiian Islands insular false killer whales around that island, and the 4-Islands Region Mitigation Area (which captures approximately 40 percent of the BIAs in the 4-Islands area). As discussed in the *Mitigation Areas in Hawaii* section of the 2018 HSTT final rule, these mitigation areas are expected to significantly reduce impacts to this stock and its habitat. NMFS has determined that the Navy's current training and testing activities are not expected to have fitness consequences for individual Main Hawaiian Islands insular false killer whales and are not likely to reduce the viability of the populations those individual whales represent. Further limitation of activities in the area identified by the commenter would not be practicable and is not included as a measure.

Comment 72: In a comment on the 2018 HSTT proposed rule, Commenters recommended additional mitigation areas for important habitat areas off Oahu, Kauai, and Niihau, providing mitigation measures for select activities during even a limited season within some important habitat areas. The waters off Oahu, Kauai, and Niihau include a number of important habitat areas for a variety of species, including false killer whale critical habitat (see above), five NOAA-identified BIAs off Oahu (false killer whale, humpback whale, pantropical spotted dolphin, bottlenose dolphin, and spinner dolphin) and three BIAs off Kauai and Niihau (humpback whale, spinner dolphin, and bottlenose dolphin) (Baird *et al.,* 2012).

Response: The 2018 HSTT FEIS/OEIS considered the science, the Navy requirements, and the mitigation value of identified habitat areas off Oahu, Kauai, and Niihau as presented in Appendix K (Geographic Mitigation Assessment) Section K.3 (Biologically Important Areas within the Hawaii Range Complex Portion of the HSTT Study Area), which NMFS used to support our analysis for the MMPA rule. This includes the five identified BIAs off Oahu (false killer whale, humpback whale, pantropical spotted dolphin, bottlenose dolphin, and spinner dolphin) and three BIAs off Kauai and Niihau (humpback whale, spinner dolphin, and bottlenose dolphin) as well as a discussion in Appendix K (Geographic Mitigation Assessment), Section K.1.1.5 (Mitigation Areas Currently Implemented) regarding the 4-Islands Region Mitigation Area. See aslo the discussion in Appendix K (Geographic Mitigation Assessment), Section K.2.1.2 (Biological Effectiveness

Assessment) of the 2018 HSTT FEIS/OEIS.

The *Mitigation Areas in Hawaii* section of the 2018 HSTT final rule describes in detail the significant reduction of impacts afforded by the required 4-Islands Region Mitigation Area and Hawaii Island Mitigation Area to the species and stocks cited by the Commenters. Together, these two areas significantly reduce impacts in this important calving and breeding area for Humpback whales—please see the response to Comment 74 for additional details regarding why additional mitigation areas for humpback whales off Oahu, Niihua, or Kauai are not included. Further, the Hawaii Island Mitigation Area overlaps multiple small resident populations (BIAs) of odontocetes that span multiple islands, and this mitigation area overlaps all of the stock's range around the island of Hawaii for false killer whales (Main Hawaiian Island insular stock) and spinner dolphins (Hawaiian Islands stock), and approximately 90 percent of the range around the island of Hawaii for pantropical spotted dolphins (Hawaii stock). Additionally, critical habitat has been designated, pursuant to the ESA, for false killer whales (Main Hawaiian Island insular stock) in waters between 45 and 3,200 m depth around all of the Main Hawaiian Islands, and this mitigation area captures more than 95 percent of this area around the island of Hawaii. The 4-Islands Region Mitigation Area also overlaps multiple small resident populations of marine mammals (BIAs) that span multiple islands, including about 80 percent of the pantropical spotted dolphin (Hawaii stock) area adjacent to these four islands (one of three discrete areas of the BIA), about 40 percent of the portion of the false killer whale's (Main Hawaiian Island insular stock) range that spans an area north of Molokai and Maui (one of the two significantly larger areas that comprise the false killer whale BIA), and a good portion of the BIA for spinner dolphins (Hawaiian Islands stock), which spans the Main Hawaiian Islands in one large continuous area. As noted above, the ESA-designated critical habitat for false killer whales extends fairly far offshore (to 3,200 m depth) around all the Main Hawaiian Islands. As described in the Hawaii Island Mitigation Area section noted above, by limiting exposure to the most impactful sonar source and explosives for these stocks in this 4-Islands Region Mitigation Area, in addition to the Hawaii Island Mitigation Area, both the magnitude and severity of both behavioral impacts and potential hearing impairment are greatly reduced. See the responses to comments 71 and 64 for additional discussion of false killer whale mitigation.

The Commenters cite concerns for population-level effects. As detailed in the 2018 HSTT FEIS/OEIS and indicated in this final rule, the planned Navy training and testing activities are not likely to result in impacts on reproduction or survival. There is no evidence to suggest there have been any population-level effects in the waters around Oahu, Kauai, and Niihau or in the HSTT Study Area resulting from the training and testing activities that have been ongoing for decades, which the Commenters recommend the need to stop, or at a minimum, be mitigated. In the waters around Oahu, Kauai, and Niihau, documented long-term residency by individuals and the existence of multiple small and resident populations precisely where Navy training and testing have been occurring for decades strongly suggests a lack of significant impact to those individuals and populations from the continuation of Navy training and testing. Appendix K of the 2018 HSTT FEIS/OEIS further describes the importance of these areas for Navy training and testing and why implementation of additional mitigation areas would be impracticable.

Last, as discussed previously, the Navy adopted all mitigation measures that are practicable without jeopardizing its mission and Title 10 responsibilities. In other words, a comprehensive assessment by Navy leadership of the final, entire list of mitigation measures concluded that the inclusion of any further mitigation beyond those measures identified here in the final rule would be impracticable. NMFS independently reviewed the Navy's practicability determinations for specific mitigation areas and concurs with the Navy's analysis. Given the significant protection already afforded by the required measures, and the impracticability of further geographic restrictions, NMFS has determined that these measures are not warranted.

Comment 73: In a comment on the 2018 HSTT proposed rule, a Commenter recommended an additional mitigation area for Cross Seamount, as Cross Seamount represents important foraging habitat for a potentially rare or evolutionary distinct species of beaked whale. The Commenter strongly recommended that the 2018 HSTT EIS/OEIS assess the designation of a year-round management area to protect the seamount. Such a designation would have secondary benefits for a variety of other odontocete species foraging at Cross Seamount seasonally between November and May. NMFS should also consider habitat-based management measures for other nearby seamounts.

Response: NMFS and the Navy considered Cross Seamount and ''other nearby seamounts'' for additional geographic mitigation as described in Appendix K (Geographic Mitigation Assessment), Section K.7.1 (Hawaii Public Comment Mitigation Area Assessment), including sub-sections K.7.1.1 (General Biological Assessment of Seamounts in the Hawaii Portion of the Study Area) and K.7.1.2 (Cross Seamount) of the 2018 HSTT FEIS/OEIS, which was used to support NMFS mitigation evaluation for this rule.

As discussed in Appendix K (Geographic Mitigation Assessment), Section 4.7.1.3 (Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, implementing new geographic mitigation measures in addition to ongoing procedural mitigation within the vicinity of Cross Seamount would not be effective at reducing adverse impacts on beaked whales or other marine mammal populations. The Navy has been training and testing in the broad ocean area around Cross Seamount with the same basic systems for over 40 years, and there is no evidence of any adverse impacts to marine species. Additionally, the suggested mitigation would not be practicable for the Navy to implement. The broad ocean area around Cross Seamount and the seamounts to the north are unique in that there are no similar broad ocean areas in the vicinity of the Hawaiian Islands that are not otherwise encumbered by commercial vessel traffic and commercial air traffic routes. In addition, beaked whales may be more widely distributed than currently believed. For example, Martin *et al.* (2019) detected Cross Seamount beaked whale vocalizations at PMRF. Ongoing passive acoustic efforts from NMFS and Navy within the Pacific have documented beaked whale detections at many locations beyond slopes and seamounts to include areas over abyssal plains (Klinck *et al.* 2015, Griffiths and Barlow 2016, Rice *et al.,* 2018).

Comment 74: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS must ensure that the activities are having the least practicable adverse impact, so it must do a comprehensive analysis of whether the proposed mitigation areas sufficiently protect marine mammals. They asserted that NMFS must require the Navy to implement additional, practicable measures to mitigate further the adverse impacts of its activities. To ensure least practicable adverse impacts, NMFS must consider additional mitigation

time/area restrictions, including but not limited to: (1) Expanded areas in Southern California to include all of the biologically important areas for whales; (2) add a Cuvier's beaked whale mitigation area in Southern California to protect that small, declining population that has high site fidelity; (3) add mitigation areas for the biologically important areas off of Oahu and Kauai; (4) the entire Humpback National Marine Sanctuary should be afforded protections from Navy activities because it is an important habitat for breeding, calving and nursing; and (5) limits on sonar and explosives should be adopted in the designated critical habitat for the Hawaiian monk seal and false killer whale.

Response: In regard to expanded areas in Southern California to include all of the biologically important areas for whales, the Navy has agreed to expanded areas in SOCAL, a portion of the San Nicolas Island BIA and the Santa Monica/Long Beach BIA are now included as part of the San Diego Arc Mitigation Area but also named the San Nicolas Island Mitigation Area and the Santa Monica/Long Beach Mitigation Area. The Santa Monica Bay/Long Beach and San Nicolas Island BIA only partially overlaps a small portion of the northern part of the SOCAL portion of the HSTT Study Area. The Santa Monica Bay/Long Beach BIA overlap in SOCAL is 13.9 percent. The San Nicolas Island BIA overlap in SOCAL is 23.5 percent.

The Navy will limit surface ship sonar and not exceed 200 hours of MFAS sensor MF1 June 1 through October 31 during unit-level training and MTEs in the Santa Monica Bay/Long Beach BIA and San Nicolas Island Mitigation Areas (as well as San Diego Arc Mitigation Area). The Navy has also agreed to limit explosives. Specifically, within the San Nicolas Island Mitigation Area, the Navy will not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75 in rockets) activities during training. Within the Santa Monica/Long Beach Mitigation Area, the Navy will not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-in rockets) activities during training and testing.

For the Tanner–Cortes Bank BIA, NMFS and the Navy have discussed this extensively, and the Navy is unable to incorporate this area into geographic mitigation because it is impracticable. Specifically, it would not be practical for the Navy to implement and would prevent the Navy from meeting training and testing missions. As discussed in detail in Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, during the Navy's practicability and biological review of the Tanner Bank BIA, it was concluded that implementation of a mitigation area was not practical for this species. The area in and around Tanner Banks is a core high priority training and testing venue for SOCAL combining unique bathymetry and existing infrastructure. This includes an existing bottom training minefield adjacent to Tanner Banks, future Shallow Water Training Range (SWTR West) expansion as well as proximity to critical tactical maneuver areas to the south and the Navy's underwater instrumented range to the northeast. Furthermore, the general area is in or adjacent to critical Navy training that cannot occur at other locations due to available, existing infrastructure, operationally relevant bathymetry, sea space, proximity to San Clemente Island and San Diego, *etc.* Of all the blue whale BIAs designated, the Tanner Banks BIA had the fewest blue whale sighting records supporting its designation. New science since designation funded by the Navy further highlights how infrequently Tanner Bank is used by blue whales as compared to the rest of their movements in SOCAL. Out of 73 blue whales tagged with satellite transmitters, only a few transits through Tanner Banks were documented between 2014 and 2017. The longest cumulative time any individual whale stayed within the boundaries of the Tanner Banks BIA was less than one-and-a-half days. Typical average blue whale daily movement along the U.S. West Coast is often up to 13–27 nautical miles a day (Oregon State University, unpublished data). Most blue whale area restricted foraging occurred around the northern Channel Islands, north of and outside of the HSTT SOCAL Study Area.

The feeding areas as recommended by the Commenter north of Los Angeles for humpbacks (Santa Barbara Channel—San Miguel BIA and Morro Bay to Pt Sal) and blue whales (Santa Barbara Channel to San Miguel BIA, Pt Conception/Arguello to Pt Sal) are outside of the HSTT Study Area; therefore, they are not applicable for inclusion.

In regard to adding a Cuvier's beaked whale mitigation area in Southern California to protect that small, declining population that has high site fidelity, NMFS is assuming the Commenter is referring to the area west of San Clemente Island as the comment letter did not specify an exact location. The beaked whale species detected most frequently in Southern California is Cuvier's beaked whale. Cuvier's beaked whales are widely distributed within Southern California and across the Pacific with almost all suitable deep water habitat >800 m conceivably containing Cuvier's beaked whales. In new unpublished Navy funded data, beaked whales have even been detected over deep water, open abyssal plains (>14,000 ft). The Commenter's declining beaked whale statement does not fully represent the current state of the science. Moore and Barlow (2013) noted a decline in the overall beaked whale population in a broad area of the Pacific Ocean along the U.S. West Coast. New data has been published raising uncertainties over whether a decline in the beaked whale population occurred off the U.S. West Coast between 1996 and 2014 (Barlow, 2016). Moore and Barlow (2017) have since incorporated information from the entire 1991 to 2014 time series, which suggests an increasing abundance trend and a reversal of the declining trend along the U.S. West Coast that had been noted in their previous (2013) analysis. Furthermore, there is no evidence of any declining beaked whale populations in Southern California. Schorr *et al.* (2020) and DiMarzio *et al.* (2020) continue to document repeated sightings of the same beaked whales and steady if not increasing population in SOAR. Only limited population vital rates exist for beaked whales, covering numbers of animals, populations vs. subpopulations determination, and residency time for individual animals. While Cuvier's beaked whales have been detected north and west of Tanner and Cortes Banks, as noted above this species is also detected in most all Southern California locations 800 m in depth. The Navy's Marine Mammal Monitoring on Navy Ranges (M3R) program has documented continual Cuvier's beaked whale presence on SOAR over ten years from 2010–2019 with slight abundance increases through 2019 (DiMarzio *et al.,* 2018, 2019, 2020).

Navy-funded research on Cuvier's beaked whales within the SOCAL Range Complex began in 2006. In 2008, researchers began deploying satellite tags as a part of this research. To date, 27 Low-Impact Minimally-Percutaneous External-electronics Transmitting (LIMPET) tags have been deployed within the complex. Twenty-five of those whales were tagged within the San Nicolas Basin and two were tagged in the Catalina Basin. Average transmission duration was 36.6 days (sd

= 29.8), with the longest transmitting for 121.3 days. Movement data suggest that Cuvier's beaked whales have a high degree of site-fidelity to the Southern California Range Complex, and the San Nicolas basin in particular. Overall, there were 3,207 filtered location estimates from the 27 tagged whales, 91 percent of which were within the SoCal Range Complex. 54 percent of all location estimates were within the San Nicolas Basin, with twelve tagged whales spending more than 80 percent of their transmission duration within the basin. The two whales tagged in the Catalina Basin never entered the San Nicolas Basin. Only three whales tagged in the San Nicolas Basin crossed into the Catalina Basin (1.3 percent of all locations); two of those whales had just one Catalina Basin location each, though the remaining whale had 28 percent of its locations there. Five whales tagged in the San Nicolas Basin moved into the Santa Cruz Basin for anywhere from 1–62 percent of their time (6 percent of all locations). In contrast, 20 of 25 whales tagged in the San Nicolas Basin moved south of the basin at some point. Of these 20 whales, most remained within either Tanner Canyon or the San Clemente Basin immediately to the south, but one traveled north to near San Miguel Island and four traveled south towards Guadalupe Island. Three of these whales have not been documented in the San Nicolas basin since, though to date at least six whales tagged in the San Nicolas Basin have been re-sighted there a year or more after the deployment. Additionally, one of the whales that was south of San Nicolas when the tag stopped transmitting has since been sighted three times since.

Given the uncertainty regarding residence of Cuvier's beaked whales in the areas north and west of SOAR, the fact that general occurrence of beaked whales in Southern California may not necessarily relate to factors typically associated with biologically important areas (*i.e.,* one area not being more important than another), the likely increasing abundance trend in Cuvier's beaked whales in the area, and consideration of the importance of Navy training and testing in the areas around SOAR and Tanner and Cortes Banks (*i.e.,* the impracticability of additional area mitigation in this area; see Appendix K (Geographic Mitigation Assessment)), additional geographic mitigation to create a ''refuge'' in the recommended area is not scientifically supported or warranted.

In regard to the comment proposing that the entire Humpback Whale National Marine Sanctuary should be afforded protections from Navy activities because it is an important habitat for breeding, calving and nursing, the Humpback National Marine Sanctuary largely overlaps both the Hawaii Island Mitigation Area as well as the 4-Islands Region Mitigation Area. In the Hawaii Island Mitigation Area (year-round), the Navy will not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing. In the 4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives), the Navy will not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing. This seasonal limitation is specifically during important breeding, calving, and nursing times/habitat for humpback whales and was expanded for humpback whales as the previous season for this mitigation area was December 15–April 15.

There are areas of the Humpback Whale National Marine Sanctuary around the islands of Niihau, Kauai, Oahu, and west of Molokai (Penguin Bank) that are outside of the Navy's mitigation areas. However, none of the Navy's training and testing areas for explosives around Kauai and Niihau are within the Hawaiian Islands Humpback Whale National Marine Sanctuary. There may be limited sonar use as units transit to/from PMRF ranges.

Part of the Humpback Whale National Marine Sanctuary, west of the island of Molokai, Penguin Bank, is not included in the 4-Islands Region Mitigation Area. Penguin Bank particularly is used for shallow water submarine testing and anti-submarine warfare training because of its large expanse of shallow bathymetry. While submarines do not typically use mid-frequency active sonar, relying primarily on passive sonar (listening mode) to avoid detection from adversaries, submarines are required to train in counter detection tactics, techniques and procedures against threat surface vessels, airborne anti-submarine warfare units and other threat submarines using mid-frequency active sonar as part of both their perspective Commanding Officers qualification course and pre-deployment certification. The ability for surface vessels and air assets to simulate opposing forces, using mid-frequency active sonar when training with submarines, is critical to submarine crew training for deployed and combat operations. Surface ships and aircraft mimicking opposition forces present submarines with a realistic and complicated acoustic and tactical environment. The Navy expects real-world adversaries to target our submarines with active sonar. Without active sonar from opposition forces, submarines do not get a realistic picture regarding if they successfully evaded detection. Surface warfare training is designed to support unit-level training requirements and group cross-platform events in 28 mission areas for surface ship certification prior to deployment.

Additionally, the Navy will implement the Humpback Whale Special Reporting Area (December 15 through April 15), comprised of additional areas of high humpback whale densities that overlap the Humpback Whale National Marine Sanctuary. This reporting is included in the exercise and monitoring reports that are an ongoing Navy requirement and are submitted to NMFS annually. Special reporting data, along with all other reporting requirements, are considered during adaptive management to determine if additional mitigation may be required. The Navy currently reports to NMFS the total hours (from December 15 through April 15) of all hull-mounted mid-frequency active sonar usage occurring in the Humpback Whale Special Reporting Area, plus a 5 km buffer, but not including the Pacific Missile Range Facility. The Navy will continue this reporting for the Humpback Whale Special Reporting Area.

In regard to the comment that limits on sonar and explosives should be adopted in the ESA-designated critical habitat for the Hawaiian monk seal and false killer whale, the Navy will cap MFAS for the entire false killer whale BIA adjacent to the island of Hawaii and a portion of the false killer whale BIA north of Maui and Molokai as follows. The Navy already will limit explosive use in the entire false killer whale BIA adjacent to the island of Hawaii. Per the 2018 HSTT final rule, the Navy currently implements year-round limitation on explosives to the 4-Islands Region Mitigation Area, which includes a portion of the false killer whale BIA north of Maui and Molokai.

For the Hawaii Island Mitigation Area (year-round): The Navy will not conduct more than 300 hours of surface ship hull-mounted MFAS sonar MF1 (MF1) or 20 hours of MFAS dipping sonar MF4 (MF4), or use explosives during training and testing year-round.

For the 4-Islands Region Mitigation Area (November 15–April 15 for active sonar, year-round for explosives): The

Navy will not use surface ship hull-mounted MFAS sonar MF1 from November 15–April 15 and explosives year-round during training or testing activities. The remaining false killer whale BIA overlaps with areas (*e.g.,* Kaiwi Channel) where additional mitigations were found to be impractical.

In regard to limits on sonar and explosives in ESA-designated critical habitat for Hawaiian monk seal, the Navy's training and testing activities do occur in a portion of the ESA-designated critical habitat for Hawaiian monk seals, which is of specific importance to the species. However, monk seals in the main Hawaiian Islands have increased while the Navy has continued its activities, even though the Hawaiian monk seal overall population trend has been on a decline from 2004 through 2013, with the total number of Hawaiian monk seals decreasing by 3.4 percent per year (Carretta *et al.,* 2017). While the decline has been driven by the population segment in the northwestern Hawaiian Islands, the number of documented sightings and annual births in the main Hawaiian Islands has increased since the mid-1990s (Baker, 2004; Baker *et al.,* 2016). In the main Hawaiian Islands, the estimated population growth rate is 6.5 percent per year (Baker *et al.,* 2011; Carretta *et al.,* 2017). Of note, in the 2013 HRC Monitoring Report, tagged monk seals did not show any behavioral changes during periods of MFAS.

The Hawaii Island Mitigation Area overlaps all of their critical habitat around the Island of Hawaii (as well as the southern end of Maui) and, by not using explosives or the most impactful sonar sources in this, thereby reduces the likelihood that take might impact reproduction or survival by interfering with important feeding or resting behaviors (potentially having adverse impacts on energy budgets) or separating mothers and pups in times when pups are more susceptible to predation and less able to feed or otherwise take care of themselves. The 4-Islands Mitigation Area overlaps with ESA-designated critical habitat around Maui, Lanai, and Molokai.

Comment 75: In a comment on the 2018 HSTT proposed rule, a Commenter noted that in the 2018 HSTT proposed rule, NMFS estimates 588 takes annually will cause multiple instances of exposure to insular false killer whales, taking 400 percent of the population. As the potential biological removal (PBR) is 0.18 animals, the loss of a single individual, or an impairment to its health and fitness, could place the species on an extinction trajectory. The Commenter asserted NMFS must consider additional mitigation in the designated critical habitat, as well as excluded areas, to ensure a negligible impact on false killer whales.

Response: The Commenter is conflating expected numbers of Level B behavioral harassment take with the PBR number presented in the SAR. There are no insular false killer whale mortality takes modeled, anticipated, or authorized. Four hundred percent of the population would mean that all animals would be behaviorally harassed an average of four times per year, or once per season. The short term biological reaction of an animal for periods of minutes to hours a few times a year would not have any fitness impacts to the individual let alone any population level impacts. NMFS confirms that these impacts are negligible. Additionally, much of the Navy's mitigations on Hawaii and the 4 islands region encompass areas that overlap with high use insular false killer whale habitat and thus already mitigate impacts. From the Navy consultation with NMFS under the ESA for insular false killer whale critical habitat, less than 12 percent of modeled takes would take place in or near insular false killer whale critical habitat. These takes as explained previously would be transitory (short-duration), and spread out in time and space.

Comment 76: In a comment on the 2018 HSTT proposed rule, a Commenter recommended establishing stand-off distances around the Navy's mitigation areas to the greatest extent practicable, allowing for variability in size given the location of the area, the type of operation at issue, and the species of concern.

Response: Mitigation areas are typically developed in consideration of both the area that is being protected and the distance from the stressor in question that is appropriate to maintain to ensure the protection. Sometimes this results in the identification of the area plus a buffer, and sometimes both the protected area and the buffer are considered together in the designation of the edge of the area. We note that the edges of a protected area are typically of less importance to a protected stock or behavior, since important areas often have a density gradient that lessens towards the edge. Also, while a buffer of a certain size may be ideal to alleviate all impacts of concern, a lessened buffer does not mean that the protective value is significantly reduced, as the core of the area is still protected. Also, one should not assume that activities are constantly occurring in the area immediately adjacent to the protected area.

These issues were considered here, and the Navy has indicated that the mitigation included in the final rule represents the maximum mitigation within mitigation areas and the maximum size of mitigation areas that are practicable to implement under the specified activities. The Navy has communicated (and NMFS concurs with the assessment) that implementing additional mitigation (*e.g.,* stand-off distances that would extend the size of the mitigation areas) beyond what is described here would be impracticable due to implications for safety (the ability to avoid potential hazards), sustainability (based on the amount and type of resources available, such as funding, personnel, and equipment), and the Navy's ability to continue meeting its Title 10 requirements.

Comment 77: In a comment on the 2019 HSTT proposed rule, Commenters noted that Southall *et al.* (2019c) investigated Cuvier's beaked whale prey dynamics on SOAR and found that Cuvier's beaked whales, as well as their prey, were concentrated on the western side of SOAR. They stated that if beaked whales were to leave their preferred habitat on SOAR due to disturbance, Southall *et al.* (2019c) stipulated that the animals could encounter both the energetic costs of moving and substantially poorer foraging options in the alternative areas (both offshore of SOAR and on the eastern side of SOAR). Given the very large differences in prey quality measured between those areas, the researchers asserted that it may prove challenging for individual beaked whales to meet basic energetic requirements in some of those areas, which could have population-level consequences (Southall *et al.* 2019c). The Commenters note that it is unclear the timescale over which the prey surveys were conducted by Southall *et al.* (2019) and whether the prey dynamics were reflective of seasonal or year-round patterns. However, they noted that the researchers' contention that mitigation measures that would concentrate MFA sonar operations to the eastern rather than western side of SOAR would be beneficial for reducing the potential consequences of disturbance, particularly for those operations that use higher-intensity sonar. Commenters asserted that the findings of Southall *et al.* (2019c) suggest that the off-range refuge areas established by consent order in *Conservation Council for Hawaii* v. *NMFS,* while presenting foraging habitat that is superior to that on the eastern side of the range, are markedly inferior

to the whales' preferred foraging habitat on the western side. Commenters recommended NMFS investigate whether the findings of Southall *et al.* (2019) are applicable to seasonal or year-round conditions at SOAR and whether implementation of mitigation areas on the western side of SOAR would be a prudent approach for meeting its negligible impact and least practicable adverse impact determinations under the MMPA.

Response: Prey data analyzed by Southall *et al.* (2019c) were published in Benoit-Bird *et al.* (2016) and collected in 2013. The field effort only encompassed four days of survey in September 2013 to include five transits in Western SOAR, five transits in eastern SOAR, and two transits off-range. Southern, western, and eastern SOAR, areas also used by beaked whales as shown by satellite tracking, were not surveyed. Furthermore, based on passive acoustic monitoring from two different sensor types, there is a repeated dip in Southern California beaked whale occurrence in the August and September timeframes. Therefore, there appears to be a factor, such as oceanography, prey availability, or other biological parameter from August to September that influences beaked whale occurrence unrelated to Navy activities. Given ocean basin level oceanographic fluctuations since 2013, it is also unclear if the 2013 prey results from Benoit-Bird *et al.* (2016) remain unchanged as of 2019. Recent research has also suggested that Cuvier's beaked whales tend to be visually sighted and passively acoustically detected more frequently in the western portion of SOAR (DiMarzio *et al.,* 2020, Schorr *et al.,* 2020). An important fact remains that cumulatively throughout the entire year, beaked whale occurrence and overall population abundance remains consistently stable in a heavily used training area as discussed previously (DiMarzio *et al.,* 2020; Schorr *et al.,* 2020). Given the parameters of Southall *et al.* (2019) and Benoit-Bird *et al.* (2016) which include short-term seasonal sampling and limited sampling throughout SOAR, as well as potential variations in oceanographic parameters, it is premature and speculative to designate additional mitigation areas specifically for western SOAR. Also, current and ongoing beaked whale research on SOAR appears to demonstrate a stable beaked whale population using SOAR (DiMarzio *et al.,* 2020; Schorr *et al.,* 2020). Further, as noted in Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, the waters in SOAR are critical to the Navy's training and testing activities and it is not practicable to preclude activities within that water space. Given the lack of sufficient evidence to support the specific significance of the western side of SOAR and the stability of beaked whale populations across SOAR, which suggests that Navy training and testing activities are not having significant impacts to the population of beaked whales anywhere in SOAR (DiMarzio *et al.,* 2020, Schorr *et al.,* 2020), and in consideration of the importance of Navy training and testing activities in this area discussed in Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, additional geographic mitigation specifically for SOAR is not warranted.

Comment 78: In a comment on the 2019 HSTT proposed rule, Commenters stated that the California (or Eastern North Pacific) gray whale is presently experiencing a major die-off which was declared an Unusual Mortality Event (UME). They asserted that it is well established that animals already exposed to one stressor may be less capable of responding successfully to another, and that stressors can combine to produce adverse synergistic effects (Wright *et al.,* 2007). They noted that disruption in gray whale behavior can act adversely with the inanition caused by lack of food, increasing the risk of stranding and lowering the risk of survival in compromised animals. The Commenters further asserted that starving gray whales may travel into unexpected areas in search of food—a likely contributing cause of some of the ship-strikes observed in recently stranded animals.

Due to the circumstances for gray whales, the Commenters recommended that NMFS strengthen the geographic protections proposed by the Navy to reduce activities in habitat used seasonally by gray whales. They noted that new scientific information on spatial and temporal interannual changes in the eastern North Pacific gray whale migration across seven migration seasons (2008–2009 to 2014–2015) indicates that an increasing proportion of the population is using the nearshore migration corridor in the Southern California Bight, especially near Los Angeles (Guazzo *et al.,* 2019). In addition, the time period over which gray whales are detected visually off Los Angeles, and acoustically across the broader region, is extending into April (for acoustic detections) and May (for visual observations) (Guazzo *et al.,* 2019). The Commenters strongly recommended that a Mitigation Area excluding sonar and explosives activities be established in, at minimum, the Gray Whale Awareness Notification Message Area, and that the mitigation period be extended from November–March (the current period of operations for the Message Area) to November–May.

Response: The Gray Whale Awareness Notification Message Area includes all waters in the SOCAL portion of the HSTT Study Area. As discussed in Appendix K (Geographic Mitigation Assessment Section K4.2) of the 2018 HSTT FEIS/OEIS, the gray whale migration BIA overlaps with a significant portion of the SOCAL portion of the HSTT Study Area out to 100 nmi from shore over 10 months of the year. There is no indication that infrequent behavioral disruptions from Navy activities interrupt or significantly delay transit, and gray whales are not anticipated to be foraging in this area. Therefore, creating a new mitigation area excluding sonar and explosive activities for the SOCAL portion of the HSTT Study Area is not warranted. The Navy's current awareness notification message includes information that gray whales may be present in the SOCAL portion of the HSTT Study Area from mid-October through mid-July every year, which includes the November–May timeframe suggested by the Commenters.

Comment 79: In a comment on the 2019 HSTT proposed rule, Commenters noted that long-term passive acoustic monitoring conducted in the Navy's SOCAL Range Complex from January 2013 to January 2017 detected a peak in Northeast Pacific blue whale B calls from summer through late winter with a peak from September through December, and a peak in Northeast Pacific blue whale D calls in May and June (Baumann-Pickering *et al.,* 2018; Rice *et al.,* 2017). They further asserted that the fall peak in blue whale vocalizations coincides with a peak in detections of mid-frequency active sonar in September through November. Resulting maximum cumulative sound exposure levels of wave trains during these times were greater than 170 dB re: 1 μPa2 -s, and the majority of mid-frequency active sonar wave trains occurred in November 2016 during a major training exercise (Rice *et al.,* 2017). Explosions (including those associated with Naval training exercises and fishing activity) occurred relatively constantly throughout the monitoring period at the sites where Northeast Pacific blue whale vocalizations were detected most frequently (Rice *et al.,* 2017). The Commenters asserted that this new information demonstrates a peak in Northeast Pacific blue whale

presence in the late fall, a time that has historically coincided with heightened periods of MFA sonar deployment and explosives use. The Commenters recommended that the seasonality of the San Diego Arc Mitigation Area and the Blue Whale Awareness Notification Message Area be extended from June–October to May–December, and again urge the Navy to strengthen its restrictions on activities during this period.

Response: Rice *et al.* 2020 (the most recent report referenced by the Commenters was Rice *et al.* 2017) reports on Navy supported monitoring at various locations within the Southern California Range Complex portion of the HSTT Study Area. While the blue whale switch from D calls to B calls has been documented by Rice *et al.* 2018 and others, call detection may not be representative of the total blue whale population or relative proportion in the SOCAL area. Nor do the call data collected by offshore passive acoustic devices necessarily reflect the amount of time or number of animals that would be in the San Diego Arc Mitigation Area. For example, over four years of blue whale tagging in SOCAL, most whales with long-term satellite tracking tags typically have begun their southern migration by October (Mate *et al.* 2018). The amount of time blue whales spent in the San Diego Arc as a proportion of the total tag attachment time was very small. Based on 90 blue whales tagged from 2014–2017, blue whales spent an average total of 1.2 days in the San Diego Mitigation Area (1.5 days 2014, 1.0 days 2015, 0 days 2016, 0.3 days 2017) (Mate *et al.,* 2018). Furthermore, the Navy reports that MTEs and unit level training spread throughout the year. There is no basis for the Commenters' statement of heightened sonar and explosive use in the fall. Rice *et al.* (2017) captured a MTE in November in one year's data at one of the recording sites (Site N). Site N is where trains with cSELs >170 dB were observed (not the other sites in Rice *et al.* 2017), however, Site N is not near the San Diego Arc Mitigation Area—it is south of San Clemente Island. Therefore, extending the timeframe of these mitigation areas is not warranted.

Comment 80: In a comment on the 2019 HSTT proposed rule, Commenters stated that the least practicable adverse impact requirement imposes a ''stringent standard'' on NMFS to ensure that marine mammals are protected to the greatest extent practical without interfering with military readiness. The Commenters noted that the Navy's agreement to restrict the use of sonar and explosives in specified habitat areas around the Hawaiian Islands and off Southern California demonstrates the practicability of implementing those specific time/area restrictions. The Navy implemented these measures for over three years during which time it never invoked its right under the settlement agreement to train in these areas if necessary for national security. The Commenters asserted that the Navy has a heavy burden to show these areas are now required for training and testing activities when it successfully maintained military readiness subject to the settlement agreement restrictions for over three years and that NMFS has not held the Navy to its burden.

The Commenters note that of particular concern are areas to the northeast and southeast of Moloka'i leading into the Ka'iwi Channel as this area includes biologically important areas (BIAs) for the humpback whale, the Main Hawaiian Island Insular (MHI) stock of false killer whales, and spinner dolphins. This area was partially protected as part of settlement areas 2A, 2C, and 2D, all of which included a year-round ban on the use of explosives, as well as a prohibition on use of mid-frequency active sonar during multi-unit training exercises (areas 2A and 2C). They asserted that the 2018 HSTT final rule and the proposed extension rule provide no protections for the BIAs located to the northeast and southeast of Moloka'i. They noted that the Navy admits that the primary use of the northeast Ka'iwi Channel is for transit, and some limited unit-level straits training when ships are transiting through the area, however, straits training is primarily conducted in the 'Alenuihāhā channel and the Pailolo and Kalohi channels. The Commenters asserted that the inconvenience associated with longer transit times around northeast Moloka'i and Ka'iwi Channel which the Navy invoked to explain the alleged impracticability of additional protections for this area does not meet the ''stringent standard'' test imposed by courts. The Commenters also noted that the Penguin Bank training area, which is located wholly in previous settlement area 2A and to the southeast of Moloka'i, is used for specific submarine training and testing activities identified by the Navy. However, the Navy proffers no explanation why sonar and explosive restriction cannot be imposed for a limited five-month period annually, as in the rest of the 4-Islands Region Mitigation Area, leaving the remaining seven months free for military readiness activities. The Commenters noted that an increased reporting burden is exactly the type of inconvenience that the Court considered insufficient to meet the stringent practicability standard during the last round of HSTT authorizations. They asserted that NMFS cannot simply ''summarize the Navy's indication of impracticality without analyzing it all,'' but that is exactly what it has done here. The Commenters state that NMFS should reinstate additional protections around eastern Moloka'i and other biologically important marine habitat included in the 2015 settlement agreement, and expand protections throughout the Ka'iwi Channel area as described above.

Response: Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS described the comprehensive method for analyzing potential geographic mitigation that included consideration of both a biological assessment of how the potential time/area limitation would benefit the species or stock and its habitat (*e.g.,* is a key area of biological importance or would result in avoidance or reduction of impacts) in the context of the stressors of concern in the specific area and an operational assessment of the practicability of implementation (*e.g.,* including an assessment of the specific importance of that area for training, considering proximity to training ranges and emergency landing fields and other issues). The analysis included an extensive list of areas, including areas in which certain Navy activities were limited under the terms of the 2015 HSTT settlement agreement, areas identified by the California Coastal Commission, and areas suggested during scoping. As discussed in the 2018 HSTT final rule and applicable to this rule, NMFS also specifically considered the measures from the 2015 settlement agreement and how they compared to both new procedural mitigation measures and mitigation areas (see the section *Brief Comparison of 2015 Settlement Mitigation and Final HSTT Mitigation in the Rule* in the 2018 HSTT final rule). For those areas that were previously covered under the 2015 settlement agreement, it is essential to understand that: (1) The measures were developed pursuant to negotiations with the plaintiffs and were specifically not selected and never evaluated based on an examination of the best available science that NMFS otherwise applies to a mitigation assessment and (2) the Navy's agreement to restrictions on its activities as part of a relatively short-term settlement (which did not extend beyond the expiration of the 2013 regulations) did not mean that those

restrictions were practicable to implement over the longer term. The 2018 HSTT final rule then provided the rationale, again applicable to this final rule, for not adopting the relatively small subset of measures that were not carried forward (*i.e.,* why some areas from the 2015 settlement agreement were fully or partially retained, and others were not, based upon the standards of the MMPA).

As explained in more detail in the 2018 HSTT final rule and in the full analysis in Section 3 of Appendix K (Geographic Mitigation Assessment) of the 2018 HSTT FEIS/OEIS, Penguin Bank offers critical shallow and constrained conditions for Navy training (especially submarines) that are not available anywhere else in Hawaii. The areas north of Molokai and Maui that are not included in the current 4-Islands Mitigation Area are similarly critical for certain exercises that specifically include torpedo exercises, deliberately conducted in this area north of the islands to avoid the other suitable training areas between the four islands where humpback whale density is higher. The 2015 settlement agreement mitigation restricted all MFAS and explosive use on Penguin Bank (area 2–A), however, as the Navy explained, this MFAS restriction is impracticable for the period covered by this rule because it would have unacceptable impacts on their training and testing capabilities. In addition, the Navy does not typically use explosives in this area. For the settlement areas north of Molokai and Maui that are not covered in the rule (area 2–B and part of area 2–C), the settlement agreement restricted explosive use but did not restrict MFAS in the 2–B area. Explosive use in these areas is also already rare, but for the reasons described in Appendix K of the 2018 HSTT FEIS/OEIS, restricting MFAS use is impracticable and would have unacceptable impacts on training and testing. We also note that while it is not practicable to restrict MFAS use on Penguin Bank, MFAS use is relatively low and we have identified it as a special reporting area for which the Navy reports the MFAS use in that area to inform adaptive management discussions in the future. Additionally, some of the areas that the 2015 settlement agreement identified included language regarding extra vigilance intended to avoid vessel strikes. Neither NMFS nor the Navy thought that inclusion of this term as written would necessarily reduce the probability of a vessel strike, so instead we have included the Humpback Whale Awareness Notification provision, which sends out a message to all Navy vessels in Hawaii during the time that humpback whales are present. Last, we note that the 2015 settlement mitigation areas with MFAS restrictions sometimes excluded all MFAS, while sometimes they limited the number of MTEs that could occur (with no limit on any particular type of sonar, meaning that hull-mounted surface ship sonar could be operated), whereas the sonar restrictions in this final rule limit the use of surface ship hull-mounted sonar, which is the source that results in the vast majority of incidental takes.

Additional Mitigation Research

Comment 81: In a comment on the 2018 HSTT proposed rule, a Commenter recommended NMFS consider additional mitigation measures to prescribe or research including: (1) Research into sonar signal modifications; (2) mitigation and research on Navy ship speeds (the Commenter recommended that the agency require the Navy to collect and report data on ship speed as part of the EIS process); and (3) compensatory mitigation for the adverse impacts of the activities on marine mammals and their habitat that cannot be prevented or mitigated.

Response: NMFS consulted with the Navy regarding potential research into additional mitigation measures and discussion is included below.

1. Research into sonar signal modification—Sonar signals are designed explicitly to provide optimum performance at detecting underwater objects (*e.g.,* submarines) in a variety of acoustic environments. The Navy acknowledges that there is very limited data, and some suggest that up or down sweeps of the sonar signal may result in different animal reactions; however, this is a very small data sample, and this science requires further development. If future studies indicate this could be an effective approach, then NMFS and the Navy will investigate the feasibility and practicability to modify signals, based on tactical considerations and cost, to determine how it will affect the sonar's performance.

2. Mitigation and research on Navy ship speeds inclusive of Navy collecting and reporting data on ship speed as part of the EIS—The Navy conducted an operational analysis of potential mitigation areas throughout the entire Study Area to consider a wide range of mitigation options, including but not limited to vessel speed restrictions. As discussed in Chapter 3, Section 3.0.3.3.4.1 (Vessels and In-Water Devices) of the HSTT FEIS/OEIS, Navy ships transit at speeds that are optimal for fuel conservation or to meet operational requirements. Operational input indicated that implementing additional vessel speed restrictions beyond what is identified in Chapter 5 (Mitigation), Section 5.4 (Mitigation Areas to be Implemented) of the 2018 HSTT FEIS/OEIS would be impracticable to implement due to implications for safety and sustainability. In its assessment of potential mitigation, the Navy considered implementing additional vessel speed restrictions (*e.g.,* expanding the 10 kn restriction to other activities). The Navy determined that implementing additional vessel speed restrictions beyond what is described in Chapter 5 (Mitigation), Section 5.5.2.2 (Restricting Vessel Speed) of the 2018 HSTT FEIS/OEIS would be impracticable due to implications for safety (the ability to avoid potential hazards), sustainability (maintain readiness), and the Navy's ability to continue meeting its Title 10 requirements to successfully accomplish military readiness objectives. Additionally, as described in Chapter 5 (Mitigation), Section 5.5.2.2 (Restricting Vessel Speed) of the HSTT FEIS/OEIS, any additional vessel speed restrictions would prevent vessel operators from gaining skill proficiency, would prevent the Navy from properly testing vessel capabilities, or would increase the time on station during training or testing activities as required to achieve skill proficiency or properly test vessel capabilities, which would significantly increase fuel consumption. NMFS thoroughly reviewed and considered this information and determined that additional vessel speed restrictions would be impracticable. As discussed in Chapter 5 (Mitigation), Section 5.3.4.1 (Vessel Movement) of the HSTT FEIS/OEIS, the Navy implements mitigation to avoid vessel strikes throughout the Study Area. As directed by the Chief of Naval Operations Instruction (OPNAVINST) 5090.1D, Environmental Readiness Program and as discussed in this rule and the 2018 HSTT final rule, Navy vessels report all marine mammal incidents worldwide, including ship speed. Therefore, the data required for ship strike analysis discussed in the comment is already being collected. Any additional data collection required would create an unnecessary and impracticable administrative burden on the Navy.

3. Compensatory mitigation—For years, the Navy has implemented a very broad and comprehensive range of measures to mitigate potential impacts to marine mammals from military

readiness activities. As described in this rule, the 2018 HSTT final rule, and the 2018 HSTT FEIS/OEIS documents in Chapter 5 (Mitigation), NMFS and the Navy have expanded these measures further where practicable. Aside from direct mitigation, as noted by the Commenter, the Navy engages in an extensive spectrum of other activities that greatly benefit marine species in a more general manner that is not necessarily tied to just military readiness activities. As noted in Chapter 3, Section 3.0.1.1 (Marine Species Monitoring and Research Programs) of the HSTT FEIS/OEIS, the Navy provides extensive investment for research programs in basic and applied research. The U.S. Navy is one of the largest sources of funding for marine mammal research in the world, which has greatly enhanced the scientific community's understanding of marine species more generally. The Navy's support of marine mammal research includes: Marine mammal detection, including the development and testing of new autonomous hardware platforms and signal processing algorithms for detection, classification, and localization of marine mammals; improvements in density information and development of abundance models of marine mammals; and advancements in the understanding and characterization of the behavioral, physiological (hearing and stress response), and potentially population-level consequences of sound exposure on marine life. Compensatory mitigation is not required to be imposed upon LOA holders under the MMPA. Importantly, the Commenter did not recommend any specific measure(s), rendering it impossible to conduct any meaningful evaluation of its recommendation. Finally, many of the methods of compensatory mitigation that have proven successful in terrestrial settings (purchasing or preserving land with important habitat, improving habitat through plantings, *etc.*) are not applicable in a marine setting with such far-ranging species. Thus, any presumed conservation value from such an idea would be purely speculative at this time.

Comment 82: In a comment on the 2019 HSTT proposed rule, Commenters asserted that NMFS should consider source-based approaches to mitigate impacts on frequently exposed populations. They stated that several recent studies (described in their comments on the 2018 HSTT proposed rule) suggest that modifying the sonar signal might reduce behavioral response in at least some species of marine mammals, and certain promising types of modifications, such as converting upsweeps to downsweeps—which would not alter the signal's spectral output in any way—may well be practicable and should be studied further, especially for reducing impacts in cases where spatial conflicts are unavoidable.

Response: As described in the 2018 HSTT final rule, sonar signals are designed explicitly to provide optimum performance at detecting underwater objects (*e.g.,* submarines) in a variety of acoustic environments. NMFS and the Navy acknowledge that there is very limited data available on behavioral responses to modified sonar signals, and some suggest that up or down sweeps of the sonar signal may result in different animal reactions; however, this science requires further development. Further, the references cited by the Commenter pertain to harbor porpoises and harbor seals. Harbor porpoises are not found in the HSTT Study Area. The reaction of these two more coastal species may not be indicative of how all other species may react to the same stimuli. The Navy's research programs continue to support new hearing and response studies and results of these studies will be incorporated into future analyses. If future studies indicate this could be an effective approach, then NMFS and the Navy will investigate the feasibility and practicability to modify signals, based on tactical considerations and cost, to determine how it will affect the sonar's performance.

Comment 83: In a comment on the 2019 HSTT proposed rule, Commenters asserted that NMFS should require the Navy, through the Center for Naval Analyses or a similar organization, to study whether active sonar activities in the HSTT Study Area can be reduced through the use of simulators.

Response: The Navy has extensively studied and evaluated the degree to which simulations can be utilized to meet their mission requirements, and NMFS and the Navy have further considered the information in the context of measures that could potentially reduce impacts to marine mammals. We disagree that NMFS should require additional study.

As described by the Navy, it already uses simulators, and the proposed activities were specifically built with the assumption that a certain percentage of training activities would be accomplished through simulation versus live training. The Navy currently uses, and will continue to use, computer simulation to augment training whenever possible. Simulators and synthetic training are critical elements that provide early skill repetition and enhance teamwork; however, they cannot duplicate the complexity faced by Navy personnel during military missions and combat operations for the types of active sonar used for the proposed activities (*e.g.,* hull-mounted mid-frequency active sonar). Simulators are used at unit-level training for basic system familiarity and refresher training. In addition, several annual exercises in the Pacific Ocean, simulating many hundreds of hours of sonar use are conducted virtually for command staff training.

As described in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS, the Navy needs to train and test in the conditions in which it fights—and these types of modifications would fundamentally change the activity in a manner that would not support the purpose and need for the training and testing (*i.e.,* are entirely impracticable). NMFS finds the Navy's explanation for why adoption of these recommendations would unacceptably undermine the purpose of the testing and training persuasive. As described in the *Mitigation Measures* section of the 2018 HSTT final rule, after independent review, NMFS finds Navy's judgment on the impacts of potential mitigation measures, including simulators, to personnel safety, practicality of implementation, and the undermining of the effectiveness of training and testing persuasive.

Comment 84: In a comment on the 2019 HSTT proposed rule, due to the circumstances for gray whales (described in Comment 78) Commenters recommended that consistent with its responsibilities under the MMPA's provisions on UMEs (*e.g.,* 16 U.S.C. 1421c), as well as with the requirements under NEPA to obtain information essential to its analysis of reasonable alternatives (40 CFR 1502.22), that NMFS urgently fund research to assess the extent of prey availability loss for California gray whales and to determine the cause of that loss of prey.

Response: Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America, from Mexico to Canada. This event has been declared an Unusual Mortality Event (UME). As part of the UME investigation process, NOAA has assembled an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, and determine the next steps for the investigation. The investigative team has not as of yet identified a primary cause for the UME. The team is investigating various causes that could

be contributing to the increased strandings including disease, biotoxins, human interactions, environmental drivers, carrying capacity, *etc.* For the environmental and oceanographic impacts, the team is working with (and in part, financially supporting) a subgroup of researchers (both internal and external to NMFS) that are currently researching changes in oceanographic temperatures, primary productivity, and prey impacts (and other indicators) during the UME to help us understand what if any environmental drivers may be impacting the whales.

Comment 85: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that given the paucity of information on marine mammal habitat currently available for the HSTT Study Area, efforts should be undertaken in an iterative manner by NMFS, and the Navy, to identify additional important habitat areas across the HSTT Study Area, using the full range of data and information available to the agencies (*e.g.,* habitat-based density models, NOAA-recognized BIAs, survey data, oceanographic and other environmental data, *etc.*).

Response: NMFS and the Navy used the best available scientific information (*e.g.,* SARs and numerous study reports from Navy-funded monitoring and research in the specific geographic region) in assessing density, distribution, and other information regarding marine mammal use of habitats in the HSTT Study Area. In addition, NMFS consulted LaBrecque *et al.* (2015), which provides a specific, detailed assessment of known BIAs. These BIAs may be region-, species-, and/or time-specific, include reproductive areas, feeding areas, migratory corridors, and areas in which small and resident populations are concentrated. While the science of marine mammal occurrence, distribution, and density resides as a core NMFS mission, the Navy does provide extensive support to the NMFS mission via ongoing HSTT specific monitoring as detailed in this final rule. The Navy also provides funding support to NMFS for programmatic marine mammal surveys in Hawaii and the U.S. West Coast, and spatial habitat model improvements. NMFS and the Navy in collaboration with experts are currently working to assess and update current BIAs, and identify new BIAs for marine mammals.

Comment 86: In a comment on the 2018 HSTT proposed rule, a Commenter recommended integration of important habitat areas to improve resolution of operations. The delineation of BIAs by NOAA, the updates made by the Navy to its predictive habitat models, and evidence of additional important habitat areas within the HSTT Study Area provide the opportunity for the agencies to improve upon their current approach to the development of alternatives by improving resolution of their analysis of operations. The Commenter offered the following thoughts for consideration.

They state that recognizing that important habitat areas imply the non-random distribution and density of marine mammals in space and time, both the spatial location and the timing of training and testing events in relation to those areas is a significant determining factor in the assessment of acoustic impacts. Levels of acoustic impact derived from the NAEMO model are likely to be under- or over-estimated depending on whether the location of the modeled event is further from the important habitat area, or closer to it, than the actual event. Thus, there is a need for the Navy to compile more information regarding the number, nature, and timing of testing and training events that take place within, or in close proximity to, important habitat areas, and to refine its scale of analysis of operations to match the scale of the habitat areas that are considered to be important. While the 2018 HSTT proposed rule, in assessing environmental impacts on marine mammals, breaks down estimated impacts by general region (*i.e.,* HRC and SOCAL), the resolution is seldom greater than range complex or homeport and is not specifically focused on areas of higher biological importance. Current and ongoing efforts to identify important habitat areas for marine mammals should be used by NMFS and by the Navy as a guide to the most appropriate scale(s) for the analysis of operations.

Response: In their take request and effects analysis provided to NMFS, the Navy considered historic use (number and nature of training and testing activities) and locational information of training and testing activities when developing modelling boxes. The timing of training cycles and testing needs varies based on deployment requirements to meet current and emerging threats. Due to the variability, the Navy's description of its specified activities is structured to provide flexibility in training and testing locations, timing, and number. In addition, information regarding the exact location of sonar usage is classified. Due to the variety of factors, many of which influence locations that cannot be predicted in advance (*e.g.,* weather), the analysis is completed at a scale that is necessary to allow for flexibility. The purpose of the Navy's quantitative acoustic analysis is to provide the best estimate of impact/take to marine mammals and ESA listed species for the MMPA regulatory and ESA section 7 consultation analyses. Specifically, the analysis must take into account multiple Navy training and testing activities over large areas of the ocean for multiple years; therefore, analyzing activities in multiple locations over multiple seasons produces the best estimate of impacts/take to inform the 2018 HSTT FEIS/OEIS and NMFS. Also, the scale at which spatially explicit marine mammal density models are structured is determined by the data collection method and the environmental variables that are used to build the model. Therefore, altogether, given the variables that determine when and where the Navy trains and tests, as well as the resolution of the density data, the analysis of potential impacts is scaled to the level that the data fidelity will support. NMFS has worked with the Navy over the years to increase the spatio-temporal specificity of the descriptions of activities planned in or near areas of biological importance (*e.g.,* in BIAs or national marine sanctuaries), when possible, and NMFS is confident that the granularity of information provided sufficiently allows for an accurate assessment of both the impacts of the Navy's activities on marine mammal populations and the protective measures evaluated to mitigate those impacts.

Monitoring Recommendations

Comment 87: In a comment on the 2018 HSTT proposed rule, a Commenter recommended that NMFS require that the Navy continue to conduct long-term monitoring with the aim to provide baseline information on occurrence, distribution, and population structure of marine mammal species and stocks, and baseline information upon which the extent of exposure to disturbance from training and testing activities at the individual, and ultimately, population level-impacts, and the effectiveness of mitigation measures, can be evaluated. The Commenter recommended individual-level behavioral-response studies, such as focal follows and tagging using DTAGs, be carried out before, during, and after Navy training and testing activities. The Commenter recommended prioritizing DTAG studies that further characterize the suite of vocalizations related to social interactions. The Commenter recommends the use of unmanned aerial vehicles. The Commenter recommended that NMFS require the Navy to use these

technologies for assessing marine mammal behavior before, during, and after Navy training and testing (*e.g.,* swim speed and direction, group cohesion). Additionally, the Commenter recommended that the Navy support studies to explore how these technologies can be used to assess body condition, as this can provide an important indication of energy budget and health, which can inform the assessment of population-level impacts.

Response: Broadly speaking, in order to ensure that the monitoring the Navy conducts satisfies the requirements of the MMPA, NMFS works closely with the Navy in the identification of monitoring priorities and the selection of projects to conduct, continue, modify, and/or stop through the Adaptive Management process, which includes annual review and debriefs by all scientists conducting studies pursuant to the MMPA authorization. The process NMFS and the Navy have developed allows for comprehensive and timely input from the Navy and other stakeholders that is based on rigorous reporting out from the Navy and the researchers doing the work. Further, the Navy is pursuing many of the topics that the Commenter identifies, either through the Navy monitoring required under the MMPA and ESA, or through Navy-funded research programs (ONR and LMR). We are confident that the monitoring conducted by the Navy satisfies the requirements of the MMPA.

With extensive input from NMFS, the Navy established the Strategic Planning Process under the marine species monitoring program to help structure the evaluation and prioritization of projects for funding. Chapter 5 (Mitigation), Section 5.1.2.2.1.3 (Strategic Planning Process) of the 2018 HSTT FEIS/OEIS provides a brief overview of the Strategic Planning Process. More detail, including the current intermediate scientific objectives, is available on the monitoring portal as well as in the Strategic Planning Process report. The Navy's evaluation and prioritization process is driven largely by a standard set of criteria that help the steering committee evaluate how well a potential project would address the primary objectives of the monitoring program. NMFS has opportunities to provide input regarding the Navy's intermediate scientific objectives as well as providing feedback on individual projects through the annual program review meeting and annual report. For additional information, please visit: *https://www.navymarinespeciesmonitoring.us/about/strategic-planning-process/.*

Details on the Navy's involvement with future research will continue to be developed and refined by the Navy and NMFS through the consultation and adaptive management processes, which regularly consider and evaluate the development and use of new science and technologies for Navy applications. The Navy has indicated that it will continue to be a leader in funding of research to better understand the potential impacts of Navy training and testing activities and to operate with the least possible impacts while meeting training and testing requirements. (1) Individual-level behavioral-response studies—In addition to the Navy's marine species monitoring program, investments for individual-level behavioral-response studies, the Office of Naval Research Marine Mammals and Biology program and the Navy's Living Marine Resources program continue to heavily invest in this topic. For example, as of March, 2020 the following representative studies are currently being funded:

- Behavioral Responses of Cetaceans to Naval Sonar 2016–2021 (Organizations: Norwegian Defense Research Establishment, Forsvarets forskningsinstitutt, University of St. Andrews Sea Mammal Research Unit);
- ACCURATE: ACoustic CUe RATEs for Passive Acoustics Density Estimation 2019–2023 (Organization: University of St. Andrews);
- Acoustic Metadata Management for Navy Fleet Operations 2015–2020 (Organization: San Diego State University);
- Acoustic startle responses as aversive reactions and hearing indicators in cetaceans 2016–2020 (Organization: University of St. Andrews);
- Analytical Methods to Support the Development of Noise Exposure Criteria for Behavioral Response 2018–2022 (Organizations: University of St. Andrews Centre for Research into Ecological and Environmental Modelling and Harris);
- Assessing resilience of beaked whale populations to human impacts: Population structure and genetic diversity in impacted and semi-pristine areas 2016–2020 (Organization: University of La Laguna);
- Behavioral and physiological response studies (BPRS) with social delphinid cetaceans using operational and simulated military mid-frequency active sonar 2019–2022 (Organization: Southall Environmental Associates Inc.);
- Behavioral Assessment of Auditory Sensitivity in Hawaiian Monk Seals 2018–2020 (Organization: University of California Santa Cruz);
- Behavioral response evaluations employing robust baselines and actual Navy training (BREVE) 2016–2020 (Organizations: Naval Information Warfare Center Pacific, National Marine Mammal Foundation Inc.);
- Blue and Fin Whale Density Estimation in the Southern California Offshore Range Using PAM Data 2015–2020 (Organization: Texas A&M University Galveston);
- Cetaceans, pinnipeds, and humans: Monitoring marine mammals in the Arctic and characterizing their acoustic spaces 2018–2021 (Organization: University of Washington);
- Collection of auditory evoked potential hearing thresholds in minke whales 2019–2023 (Organization: National Marine Mammal Foundation Inc.) [in partnership with Subcommittee on Ocean Science and Technology (SOST)];
- Cuvier's Beaked Whale and Fin Whale Behavior During Military Sonar Operations: Using Medium-term Tag Technology to Develop Empirical Risk Functions 2017–2021 (Organization: Marine Ecology and Telemetry Research);
- Demographics and diving behavior of Cuvier's beaked whales at Guadalupe Island, Mexico: A comparative study to better understand sonar impacts at SCORE 2018–2021 (Organization: Marine Ecology and Telemetry Research);
- Demonstration and Validation of Passive Acoustic Density Estimation for Right Whales 2019–2022 (Organization: Syracuse University, University of St. Andrews Centre for Research into Ecological and Environmental Modelling);
- DenMod: Working Group for the Advancement of Marine Species Density Surface Modeling 2017–2021 (Organization: University of St. Andrews Centre for Research into Ecological and Environmental Modelling);
- Dynamic marine mammal distribution estimation using coupled acoustic propagation, habitat suitability and soundscape models 2018–2020 (Organization: Woods Hole Oceanographic Institution);
- Environmentally influenced Behavioral Response Evaluations (E–BREVE) 2019–2022 (Organization: Naval Information Warfare Center Pacific);
- Frequency-dependent Growth and Recovery of TTS in Bottlenose Dolphins 2017–2020 (Organization: Naval Information Warfare Center Pacific);
- Integrating information on displacement caused by mid-frequency

active sonar and measurements of prey field into a population consequences of disturbance model for beaked whales 2018–2021 (Organizations: Naval Undersea Warfare Center Newport, University of St. Andrews, Monterey Bay Aquarium Research Institute);

- Investigating bone conduction as a pathway for mysticete hearing 2019–2023 (Organization: San Diego State University);
- Measuring the Effect of Range on the Behavioral Response of Marine Mammals Through the Use of Navy Sonar 2017–2021 (Organization: Naval Undersea Warfare Center Newport);
- Multi-spaced Measurement of Underwater Sound Fields from Explosive Sources 2019–2020 (Organization: University of Washington);
- Off-range beaked whale study: Behavior and demography of Cuvier's beaked whale at the Azores 2017–2020 (Organization: Kelp);
- Passive and active acoustic tracking mooring 2019–2020 (Organization: Scripps Institution of Oceanography);
- Single sensor and compact array localization methods 2016–2020 (Organization: University of Hawaii);
- Standardizing Methods and Nomenclature for Automated Detection of Navy Sonar 2018–2021 Project #LMR–34 (Organization: Naval Information Warfare Center Pacific, Naval Undersea Warfare Center Newport);
- The diet composition of pilot whales, dwarf sperm whales and pygmy sperm whales in the North Pacific 2017–2020 (Organization: University of Hawaii);
- The use of Navy range bottom-mounted, bi-directional transducers for long-term, deep-ocean prey mapping 2017–2020 (Organization: Monterey Bay Aquarium Research Institute);
- Towards a mysticete audiogram using humpback whales' behavioral response thresholds 2019–2023 (Organization: University of Queensland Cetacean Ecology and Acoustics Laboratory) [in partnership with SOST];
- Unifying modeling approaches for better understanding and characterizing the effects of sound on marine mammals 2019–2022 (Organization: University of California Santa Cruz);
- Use of 'Chirp' Stimuli for Non-invasive, Low-frequency Measurement of Marine Mammal Auditory Evoked Potentials 2019–2021 Project #LMR–39 (Organization: Naval Information Warfare Center Pacific); and
- Using context to improve marine mammal classification 2017–2020 (Organization: San Diego State University).

(2) Tags and other detection technologies to characterize social communication between individuals of a species or stock, including mothers and calves—DTAGs are just one example of animal movement and acoustics tag. From the Navy's Office of Naval Research and Living Marine Resource programs, Navy funding is being used to improve a suite of marine mammal tags to increase attachment times, improve data being collected, and improve data satellite transmission. The Navy has funded a variety of projects that are collecting data that can be used to study social interactions amongst individuals. For example, as of March 2020 the following studies are currently being funded:

- Assessing performance and effects of new integrated transdermal large whale satellite tags 2018–2021 (Organization: Marine Ecology and Telemetry Research);
- Autonomous Floating Acoustic Array and Tags for Cue Rate Estimation 2019–2020 (Organization: Texas A&M University Galveston);
- Development of the next generation automatic surface whale detection system for marine mammal mitigation and distribution estimation 2019–2021 (Organization: Woods Hole Oceanographic Institution);
- High Fidelity Acoustic and Fine-scale Movement Tags 2016–2020 (Organization: University of Michigan);
- Improved Tag Attachment System for Remotely-deployed Medium-term Cetacean Tags 2019–2023 (Organization: Marine Ecology and Telemetry Research);
- Next generation sound and movement tags for behavioral studies on whales 2016–2020 (Organization: University of St. Andrews);
- On-board calculation and telemetry of the body condition of individual marine mammals 2017–2021 (Organization: University of St. Andrews, Sea Mammal Research Unit); and
- The wide-band detection and classification system 2018–2020 (Organization: Woods Hole Oceanographic Institution).

(3) Unmanned Aerial Vehicles to assess marine mammal behavior before, during, and after Navy training and testing activities (*e.g.,* swim speed and direction, group cohesion)—Studies that use unmanned aerial vehicles to assess marine mammal behaviors and body condition are being funded by the Office of Naval Research Marine Mammals and Biology program. Although the technology shows promise (as reviewed by Verfuss *et al.,* 2019), the field limitations associated with the use of this technology have hindered its useful application in behavioral response studies in association with Navy training and testing events. For safety, research vessels cannot remain in close proximity to Navy vessels during Navy training or testing events, so battery life of the unmanned aerial vehicles has been an issue. However, as the technology improves, the Navy will continue to assess the applicability of this technology for the Navy's research and monitoring programs. An example project is integrating remote sensing methods to measure baseline behavior and responses of social delphinids to Navy sonar 2016–2019 (Organization: Southall Environmental Associates Inc.).

(4) Modeling methods that could provide indicators of population-level effects—NMFS asked the Navy to expand funding to explore the utility of other, simpler modeling methods that could provide at least an indicator of population-level effects, even if each of the behavioral and physiological mechanisms are not fully characterized. The Office of Naval Research Marine Mammals and Biology program has invested in the Population Consequences of Disturbance (PCoD) model, which provides a theoretical framework and the types of data that would be needed to assess population level impacts. Although the process is complicated and many species are data poor, this work has provided a foundation for the type of data that is needed. Therefore, in the future, relevant data that is needed for improving the analytical approaches for population level consequences resulting from disturbances will be collected during projects funded by the Navy's marine species monitoring program. General population level trend analysis is conducted by NMFS through its stock assessment reports and regulatory determinations. The Navy's analysis of effects to populations (species and stocks) of all potentially exposed marine species, including marine mammals and sea turtles, is based on the best available science as discussed in Sections 3.7 (Marine Mammals) and 3.8 (Reptiles) of the 2018 HSTT FEIS/OEIS. PCoD models, similar to many fisheries stock assessment models, once developed will be powerful analytical tools when mature. However, currently they are dependent on too many unknown factors for these types of models to produce a reliable answer. Current ONR and LMR projects supporting improved modeling include (as of March, 2020):

- A model for linking physiological measures of individual health to population vital rates for cetaceans

2017–2020 (Organization: National Marine Mammal Foundation Inc.);

- Body condition as a predictor of behavioral responses of cetaceans to sonar 2019–2021 (Organization: University of St. Andrews);
- Integrating the results of behavioral response studies into models of the population consequences of disturbance 2019–2021 (Organizations: University of Washington, Naval Undersea Warfare Center Newport);
- Developing metrics of animal condition and their linkage to vital rates: Further development of the PCoD model 2018–2021 (Organization: University of California Santa Cruz);
- Development of an index to measure body condition of free-ranging cetaceans 2016–2020 (Organization: University of California Santa Cruz);
- Double Mocha: Phase II Multi-Study Ocean acoustic Human effects Analysis 2018–2021 (Organization: University of St. Andrews Centre for Research into Ecological and Environmental Modelling);
- Dynamics of eDNA 2018–2020 (Organization: Oregon State University);
- Further investigation of blow or exhaled breath condensate as a non-invasive tool to monitor the physiological response to stressors in cetaceans 2018–2020 (Organization: Mystic Aquarium);
- Heart rate logging in deep diving toothed whales: A new tool for assessing responses to disturbance 2016–2020 (Organization: San Jose State University);
- Measuring heart rate to assess the stress response in large whales 2019–2021 (Organization: Stanford University);
- Measuring stress hormone levels and reproductive rates in two species of common dolphins relative to mid-frequency active sonar within the greater region of the SOAR range, San Clemente Island, California 2017–2020 (Organization: Southwest Fisheries Science Center);
- MSM4PCoD: Marine Species Monitoring for the Population Consequences of Disturbance 2019–2023 (Organization: University of St. Andrews, Sea Mammal Research Unit);
- Neurobiological and physiological measurements from free swimming marine mammals 2019–2022 (Organization: Fundacion Oceanografic);
- Physiological consequences of flight responses in diving mammals: Critical metrics for assessing the impacts of novel environmental stimuli on cetaceans and other marine living species 2017–2020 (Organization: University of California Santa Cruz); and
- Reconstructing stress and stressor profiles in baleen whale earplugs 2017–2020 (Organization: Baylor University).

As discussed in the *Monitoring* section of the final rule, the Navy's marine species monitoring program typically supports 10–15 projects in the Pacific at any given time. Current projects cover a range of species and topics from collecting baseline data on occurrence and distribution, to tracking whales, to conducting behavioral response studies on beaked whales and pilot whales. The Navy's marine species monitoring web portal provides details on past and current monitoring projects, including technical reports, publications, presentations, and access to available data and can be found at: *https://www.navymarinespeciesmonitoring.us/regions/atlantic/current-projects/.* A list of the monitoring studies that the Navy will be conducting under this rule are listed at the bottom of the *Monitoring* section of the 2018 HSTT final rule.

In summary, NMFS and the Navy work closely together to prioritize, review, and adaptively manage the extensive suite of monitoring that the Navy conducts in order to ensure that it satisfies the MMPA requirements. NMFS has laid out a broad set of goals that are appropriate for any entity authorized under the MMPA to pursue, and then we have worked with the Navy to manage their projects to best target the most appropriate goals given their activities, impacts, and assets in the HSTT Study Area. Given the scale of the HSTT Study Area and the variety of activities conducted, there are many possible combinations of projects that could satisfy the MMPA standard for the rule. The Commenter has recommended more and/or different monitoring than NMFS is requiring and the Navy is conducting or currently plans to conduct, but has in no way demonstrated that the monitoring currently being conducted does not satisfy the MMPA standard. NMFS appreciates the Commenter's input, and will consider it as appropriate in the context of our adaptive management, but is not recommending any changes at this time.

Negligible Impact Determination

General

Comment 88: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS' analytical approach for negligible impact determination is not transparent and that the methods and resulting data cannot be substantiated with the information provided. Commenters stated that in general, NMFS has based negligible impact determinations associated with incidental take authorizations on abundance estimates provided either in its Stock Assessment Reports (SARs) or other more recent published literature. For the HSTT proposed rule, NMFS used abundance estimates as determined by the Navy's underlying density estimates rather than abundance estimates from either the SARs or published literature. NMFS also did not specify how it determined the actual abundance given that many of the densities differ on orders of kilometers. Interpolation or smoothing, and potentially extrapolation, of data likely would be necessary to achieve NMFS' intended goal—it is unclear whether any such methods were implemented. In addition, it is unclear whether NMFS estimated the abundances in the same manner beyond the U.S. EEZ as it did within the U.S. EEZ for HRC and why it did not compare takes within the U.S. EEZ and beyond the U.S. EEZ for SOCAL, given that a larger proportion of the Navy's SOCAL action area is beyond the U.S.EEZ than HRC. Furthermore, NMFS did not specify how it determined the proportion of total takes that would occur beyond the U.S. EEZ. Moreover, the ''instances'' of the specific types of taking (*i.e.,* mortality, Level A and B harassment) do not match the total takes ''inside and outside the EEZ'' in Tables 69–81 (where applicable) or those take estimates in Tables 41–42 and 67–68 of the 2018 HSTT proposed rule. It also appears the ''instances'' of take columns were based on only those takes in the U.S. EEZ for HRC rather than the area within and beyond the U.S. EEZ. It further is unclear why takes were not apportioned within and beyond the U.S. EEZ for SOCAL. Given that the negligible impact determination is based on the total taking in the entire study area, NMFS should have partitioned the takes in the ''instances'' of take columns in Tables 69–81 of the 2018 HSTT proposed rule for all activities that occur within *and* beyond the U.S. EEZ. One Commenter further asserts that any ''small numbers'' determination that relies on abundance estimates derived simplistically from modeled densities is both arbitrary and capricious. The Commenters assert that NMFS should, at least for data rich species, derive its absolute abundance estimates from NMFS' SARs or more recently published literature.

Response: NMFS' *Analysis and Negligible Impact Determination* section was updated and expanded in the 2018 HSTT final rule to clarify the issues the

Commenters raised here (as well as others). Specifically, though, NMFS uses both the Navy-calculated abundance (based on the Navy-calculated densities described in detail in the *Estimated Take of Marine Mammal* section) and the SARs abundances, where appropriate, in the negligible impact analysis—noting that the nature of the overlap of the Navy Study Area with the U.S. EEZ is different in Hawaii versus SOCAL, supporting different analytical comparisons.

NMFS acknowledges that there were a few small errors in the take numbers in the proposed rule; however, they have been corrected (*i.e.,* the take totals in Tables 41 and 42 of the 2018 HSTT proposed rule for a given stock now equal the ''in and outside the U.S. EEZ'' take totals in Tables 41 and 42 (of the HSTT final rule) and the minor changes do not affect the analysis or determinations in the rule.

Also, the Commenters are incorrect that the instances of take for HRC do not reflect the take both within and outside the U.S. EEZ. They do. Lastly, the Commenter mentions the agency making a ''small numbers'' determination, but such a determination is not applicable in the context of military readiness activities.

Comment 89: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the activities proposed by the Navy include high-intensity noise pollution, vessel traffic, explosions, pile driving, and more at a massive scale. According to the Commenter, NMFS has underestimated the amount of take and the adverse impact that it will have on marine mammals and their habitat.

Response: NMFS has provided extensive information demonstrating that the best available science has been used to estimate the amount of take, and further to analyze the impacts that all of these takes combined will have on the affected species and stocks. As described in the *Analysis and Negligible Impact Determination* section, this information and our associated analyses support the negligible impact determinations necessary to issue these regulations.

Comment 90: In a comment on the 2018 HSTT proposed rule, a Commenter stated that blue whales exposed to mid-frequency sonar (with received levels of 110 to 120 dB re: 1 μPa) are less likely to produce calls associated with feeding behavior. They cite the Goldbogen *et al.* (2013) study (and a subsequent study) as extremely concerning because of the potential impacts of sonar on the essential life functions of blue whales as it found that sonar can disrupt feeding and displace blue whales from high-quality prey patches, significantly impacting their foraging ecology, individual fitness, and population health. They also state that mid-frequency sonar has been associated with several cases of blue whale stranding events and that low-frequency anthropogenic noise can mask calling behavior, reduce communication range, and damage hearing. These impacts from sonar on blue whales suggest that the activities' impacts would have long-term, non-negligible impacts on the blue whale population.

Response: As described in this final rule in the *Analysis and Negligible Impact Determination* section, NMFS has fully considered the effects that exposure to sonar can have on blue whales, including impacts on calls and feeding and those outlined in the Goldbogen study. However, as discussed, any individual blue whale is not expected to be exposed to sonar and taken on more than several days per year. Thus, while vocalizations may be impacted or feeding behaviors temporarily disrupted, this small scale of impacts is not expected to affect reproductive success or survival of any individuals, especially given the limitations on sonar and explosive use within blue whale BIAs. Of additional note, while the blue whale behavioral response study (BRS) in Southern California documented some foraging responses by blue whales to simulated Navy sonar, any response was highly variable by individual and context of the exposure. There were, for instance, some individual blue whales that did not respond. Recent Navy-funded blue whale tracking has documented wide ranging movements through Navy areas such that any one area is not used extensively for foraging. More long-term blue whale residency occurs north of and outside of the HSTT Study Area. Further, we disagree with the assertion that MFAS has been causally associated with blue whale strandings. This topic was discussed at length in the proposed rule and there is no data causally linking MFAS use with blue whale strandings.

Comment 91: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS cannot consider the additional mortality/serious injury, including the 0.2 in the proposed authorization for ship strike for blue whales in the 2018 HSTT proposed rule, to have a negligible impact for this stock. They also state that counts of mortality/serious injury do not account for the additional takes proposed to be authorized that cumulatively can have population level impacts from auditory injury and behavioral disturbance. Similarly, the Commenter stated that NMFS cannot consider the proposed authorization for 0.4 annual mortality/serious injury to have a negligible impact on the CA/OR/WA stock of humpback whales in the 2018 HSTT proposed rule because take is already exceeding the potential biological removal, and especially concerning is any take authorized for the critically endangered Central America population that would have significant adverse population impacts.

Response: As described in detail in the *Estimated Take of Marine Mammals* section, the Navy and NMFS revisited and re-analyzed the Navy's initial request of takes by mortality of blue and humpback whales from vessel strike and determined that only one strike of either would be possible over the course of five years in the 2018 HSTT final rule, and therefore authorized the lesser amount. Further, NMFS has expanded and refined the discussion of mortality take, PBR, and our negligible impact finding in the *Serious Injury and Mortality* subsection of the *Analysis and Negligible Impact Determination* section and does not repeat it here.

Comment 92: In a comment on the 2018 HSTT proposed rule, a Commenter stated that the estimated population size for the Hawaii stock of sei whales is only 178 animals, and the potential biological removal is 0.2 whales per year. According to the Commenter, NMFS admits that the mortality for the Hawaii stock of sei whales is above potential biological removal. The Commenter asserted that the conclusion that the action will have a negligible impact on this stock is arbitrary and capricious.

Response: As described in detail in the *Estimated Take of Marine Mammals* section, the Navy and NMFS revisited and re-analyzed the Navy's initial request for the take of a sei whale from vessel strike and determined that this take is unlikely to occur and, therefore, it is not authorized.

Comment 93: In a comment on the 2018 HSTT proposed rule, a Commenter stated that any take of Hawaiian monk seal by the proposed activities will have a non-negligible impact given the precarious status of this species.

Response: NMFS' rationale for finding that the Navy's activity will have a negligible impact on monk seals is included in the *Pinniped* subsection of the *Analysis and Negligible Impact Determination* section and is not re-printed here. Nonetheless, we reiterate that no mortality or injury due to tissue damage is anticipated or authorized, only one instance of PTS is estimated

and authorized, and no individual monk seal is expected to be exposed to stressors that would result in take more than a few days a year. Further, the Hawaii Island and 4-Island Region mitigation areas provide significant protection of monk seal critical habitat in the Main Hawaiian Islands, reducing impacts from sonar and explosives around a large portion of pupping beaches and foraging habitat, as described in the *Mitigation Measures* section.

Comment 94: In a comment on the 2019 HSTT proposed rule, Commenters stated that satellite telemetry data and eight years' worth of photo-identification and mark-recapture data, representing the best available science, indicate that San Nicolas Basin represents an area of high site fidelity, and residency, for a small population of Cuvier's beaked whales associated with San Clemente Island (Falcone *et al.,* 2009; Falcone *et al.,* 2014; Schorr *et al.,* 2014). They stated that the population's primary habitat overlaps directly with the SOAR Range. They asserted that many factors—their repeated exposure to Navy activities, their clear foraging-related responses to both controlled sonar playbacks (DeRuiter *et al.,* 2013) and live exercises (Falcone *et al.,* 2017), and their small abundance and apparently limited range—raise obvious concerns about population-level consequences for these whales (Claridge and Dunn, 2014, Moretti *et al.,* 2015). The Commenters asserted that without meaningful additional mitigation, they do not see how NMFS can conclude that population-level harm would not occur or, ultimately, how NMFS can credibly reach a finding of negligible impact with respect to this population.

Response: As noted in our response to a similar comment (Comment 97 below) on the 2018 HSTT proposed rule, NMFS acknowledges the sensitivity of small resident populations both in our analyses and in the identification of mitigation measures, where appropriate. However, we are required to make our negligible impact determination in the context of the MMPA-designated stock, which, in the case of the CA/OR/WA stock of Cuvier's beaked whale, spans the U.S. EEZ off the U.S. West Coast. As described in our responses to previous comments, NMFS and the Navy have fully accounted for the sensitivity of Cuvier's beaked whales in the behavioral thresholds and the estimation of take. NMFS has also considered the potential impacts of repeated takes on individuals that show site fidelity. Nonetheless, in 2020, an estimate of overall abundance of Cuvier's beaked whales at the Navy's instrumented range in San Nicolas Basin was obtained using new dive-counting acoustic methods and an archive of passive acoustic M3R data representing 49,855 hrs of data (DiMarzio *et al.,* 2020; Moretti, 2017). Over the ten-year period from 2010–2019, there was no observed decrease and perhaps a slight increase in annual Cuvier's beaked whale abundance within San Nicolas Basin (DiMarzio *et al.,* 2020). There does appear to be a repeated dip in population numbers and associated echolocation clicks during the fall centered around August and September (Moretti, 2017, DiMarzio *et al.,* 2020). A similar August and September dip was noted by researchers using stand-alone off-range bottom passive acoustic devices in Southern California (Širović *et al.,* 2016; Rice *et al.,* 2017, 2019, 2020). This dip in abundance may be tied to some as of yet unknown population dynamic or oceanographic and prey availability dynamics.

Comment 95: In a comment on the 2019 HSTT proposed rule, due to the circumstances for gray whales (described in Comment 78) Commenters asserted that in considering the effects of acoustic exposure on gray whales, NMFS cannot presume that the consequences of the Navy's behavioral disruption will be ''minor'' or ''short-term.'' They asserted that NMFS must carefully consider the biological context of behavioral disruption on that species and evaluate the meaningful risk of serious or severe consequences, including mortality.

Response: NMFS acknowledges that individual marine mammals that are emaciated or have underlying health issues, such as some gray whales have experienced, may be impacted more severely by exposure to additional stressors than healthy animals. However, the expected nature and short duration of any individual gray whale's exposure to Navy activity is still such that impacts would not be expected to be compounded to the point where individual fitness is affected. Specifically, gray whales seasonally migrate through the Southern California portion of the HSTT Study Area and are not known to forage in the HSTT Study Area. Most gray whales spend only brief periods of time (days) in the HSTT Study Area and we have no reason to expect that the anticipated incremental, short term, and predominately low-level behavioral responses to transitory stressors such as Navy training and testing activities will have impacts on individual gray whale fitness, much less adversely affect the stock at the population level. Also, as noted previously, both the Eastern Pacific stock (not ESA listed) and the Western Pacific stock of gray whales is described as increasing in the 2018 final SARs (the most recent SARs for these stocks). The population size of the Eastern North Pacific gray whale stock has increased over several decades despite an UME in 1999 and 2000.

Cumulative and Aggregate Effects

Comment 96: In a comment on the 2018 HSTT proposed rule, a Commenter asserted that NMFS has not apparently considered the impact of Navy activities on a population basis for many of the marine mammal populations within the HSTT Study Area. Instead, it has lodged discussion for many populations within broader categories, most prominently ''mysticetes'' (14 populations) and ''odontocetes'' (37 populations), that in some cases correspond to general taxonomic groups. Such grouping of stocks elides important differences in abundance, demography, distribution, and other population-specific factors, making it difficult to assume ''that the effects of an activity on the different stock populations'' are identical. That is particularly true where small, resident populations are concerned, and differences in population abundance, habitat use, and distribution relative to Navy activities can be profoundly significant. Additionally, the Commenter stated that NMFS assumed that all of the Navy's estimated impacts would not affect individuals or populations through repeated activity—even though the takes anticipated each year would affect the same populations and, indeed, would admittedly involve extensive use of some of the same biogeographic areas.

Response: NMFS provides information regarding broader groups in order to avoid repeating information that is applicable across multiple species or stocks, but analyses have been conducted and determinations made specific to each stock. The method used to avoid repeating information applicable to a number of species or stocks while also presenting and integrating all information applicable to particular species or stocks is described in the rule. Also, NMFS' analysis does address the fact that some individuals may be repeatedly impacted and how those impacts may or may not accrue to more serious effects. The *Analysis and Negligible Impact Determination* section has been expanded and refined to better explain this.

Comment 97: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS' negligible impact analysis for Cuvier's beaked whales is

predicated on a single take estimate for the CA/OR/WA stock. This is deeply problematic as the species is known to occur in small, resident populations within the SOCAL Range Complex. These populations are acutely vulnerable to Navy sonar. Cuvier's beaked whales have repeatedly been associated with sonar-related pathology, are known to react strongly to sonar at distances up to 100 kilometers, and are universally regarded to be among the most sensitive of all marine mammals to anthropogenic noise (Falcone *et al.,* 2017). Some populations, such as the one in San Nicolas Basin that coincides with the Navy's much-used Southern California ASW Range (SOAR), are repeatedly exposed to sonar, posing the same risk of population-wide harm documented on a Navy range in the Bahamas (Falcone and Schorr, 2013). The broad take estimates presented in the 2018 HSTT proposed rule, and the negligible impact analysis that they are meant to support, provide no insight into the specific impacts proposed for these small populations.

Response: NMFS acknowledges the sensitivity of small resident populations both in our analyses and in the identification of mitigation measures, where appropriate. However, we are required to make our negligible impact determination in the context of the MMPA-designated stock, which, in the case of the CA/OR/WA stock of Cuvier's beaked whale, spans the U.S. EEZ off the West Coast. As described in our responses to previous comments, NMFS and the Navy have fully accounted for the sensitivity of Cuvier's beaked whales in the behavioral thresholds and the estimation of take. Further, contrary to the assertions of the Commenter, NMFS has absolutely considered the potential impacts of repeated takes on individuals that show site fidelity and that analysis can be found in the *Analysis and Negligible Impact Determination s*ection, which has been refined and updated since the proposed rule based on public input. Nonetheless, in 2020, an estimate of overall abundance of Cuvier's beaked whales at the Navy's instrumented range in San Nicolas Basin was obtained using new dive-counting acoustic methods and an archive of passive acoustic M3R data representing 49,855 hrs of data (DiMarzio *et al.,* 2020; Moretti, 2017). Over the ten-year period from 2010–2019, there was no observed decrease and perhaps a slight increase in annual Cuvier's beaked whale abundance within San Nicolas Basin (DiMarzio *et al.,* 2020). There does appear to be a repeated dip in population numbers and associated echolocation clicks during the fall centered around August and September (Moretti, 2017, DiMarzio *et al.,* 2020). A similar August and September dip was noted by researchers using stand-alone off-range bottom passive acoustic devices in Southern California (Širović *et al.,* 2016; Rice *et al.,* 2017, 2019, 2020). This dip in abundance may be tied to some as of yet unknown population dynamic or oceanographic and prey availability dynamics.

Comment 98: In a comment on the 2018 HSTT proposed rule, a Commenter asserted that with respect to mortalities and serious injuries, NMFS' application of potential biological removal (PBR) is unclear and may not be consistent with its prior interpretations. The agency recognizes that PBR is a factor in determining whether the negligible impact threshold has been exceeded, but argues that, since PBR and negligible impact are different statutory standards, NMFS might find that an activity that kills marine mammals beyond what PBR could support would not necessarily exceed the negligible impact threshold. Regardless, however, of whether Congress intended PBR as a formal constraint on NMFS' ability to issue incidental take permits under section 101(a)(5), NMFS' own definition of ''negligible impact'' prevents it from authorizing mortalities or other takes that would threaten the sustainability of marine mammal stocks. Mortalities and serious injuries exceeding potential biological removal levels would do just that.

Additionally, in assessing the consequences of authorized mortality below PBR, NMFS applies an ''insignificance'' standard, such that any lethal take below 10 percent of residual PBR is presumed not to exceed the negligible impact threshold. This approach seems inconsistent, however, with the regulatory thresholds established for action under the commercial fisheries provision of the Act, where bycatch of 1 percent of total PBR triggers mandatory take reduction procedures for strategic marine mammal stocks. See 16 U.S.C. 1387(f)(1); 83 FR 5349, 5349 (Feb. 7, 2018). NMFS should clarify why it has chosen 10 percent rather than, for example, 1 percent as its ''insignificance'' threshold, at least for endangered species and other populations designated as strategic under the MMPA.

Response: NMFS disagrees that the consideration of PBR is unclear and notes that the narrative describing the application of PBR has been updated in this final rule to further explain how the agency considers this metric in the context of the negligible impact determination under section 101(a)(5)(A) (see the *Serious Injury and Mortality* sub-section of the *Analysis and Negligible Impact Determination* section) and is not repeated here. That discussion includes how PBR is calculated and therefore how it is possible for anticipated M/SI to exceed PBR or residual PBR and yet not adversely affect a particular species or stock through effects on annual rates of recruitment and survival.

Regarding the insignificance threshold, as explained in the rule, residual PBR is a metric that can be used to inform the assessment of M/SI impacts, and the insignificance threshold is an analytical tool to help prioritize analyst effort. But the insignificance threshold is not applied as a strict presumption as described by the Commenter. Although it is true that as a general matter M/SI that is less than 10 percent of residual PBR should have no effect on rates of recruitment or survival, the agency will consider whether there are other factors that should be considered, such as whether an UME is affecting the species or stock.

The 10 percent insignificance threshold is an analytical tool that indicates that the potential mortality or serious injury is an insignificant incremental increase in anthropogenic mortality and serious injury that alone (in the absence of any other take and any other unusual circumstances) would clearly not affect rates of recruitment or survival. As such, potential mortality and serious injury at the insignificance-threshold level or below is evaluated in light of other relevant factors (such as an ongoing UME) and then considered in conjunction with any anticipated Level A or Level B harassment take to determine if the total take would affect annual rates of recruitment or survival. Ten percent was selected because it corresponds to the insignificance threshold under the MMPA framework for authorizing incidental take of marine mammals resulting from commercial fisheries. There the insignificance threshold, which also is 10 percent of PBR, is ''the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate'' (see 50 CFR 229.2). A threshold that represents an insignificant level of mortality or serious injury approaching a zero mortality and serious injury rate was thought to be an appropriate level to indicate when, absent other factors, the

agency can be confident that expected mortality and serious injury will not affect annual rates of recruitment and survival, without the need for significant additional analysis.

Regarding the claim that NMFS' interpretation of PBR may be inconsistent with prior interpretations, we disagree. Rather, NMFS' interpretation of PBR has been utilized appropriately within the context of the different MMPA programs and associated statutory standards it has informed. The application of PBR under section 101(a)(5)(A) also has developed and been refined in response to litigation and as the amount of and nature of M/SI requested pursuant to this section has changed over time, thereby calling for the agency to take a closer look at how M/SI relative to PBR relates to effects on rates of recruitment and survival.

Specifically, until recently, NMFS had used PBR relatively few times to support determinations outside of the context of MMPA commercial fisheries assessments and decisions. Indeed, in *Georgia Aquarium, Inc.* v. *Pritzker,* 135 F. Supp.3d 1280 (N.D. Ga. 2015), in ruling on a lawsuit in which the plaintiffs sought to use PBR as the reason they should be allowed to import animals from the Sahklin-Amur stock of beluga whales for public display, the Court summarized a ''handful'' of cases where NMFS had used PBR to support certain agency findings. The Court agreed that the agency does not have a ''practice and policy'' of applying PBR in all circumstances. Importantly, the Court stated that ''NMFS has shown that where the Agency has considered PBR outside of the U.S. commercial fisheries context, it has treated PBR as only one 'quantitative tool' and that it is not used as the sole basis for its impact analyses,'' just as NMFS has done here for its negligible impact analyses.

The examples considered by the *Georgia Aquarium* Court involved scientific research permits or subsistence harvest decisions where reference to PBR was one consideration among several. Thus, in one of the examples referenced by the Court, PBR was included to evaluate different alternatives in a 2007 EIS developed in support of future grants and permits related to research on northern fur seals and Steller sea lions (*available at https://repository.library.noaa.gov/view/noaa/17331*). Similarly, in the 2015 draft EIS on the Makah Tribe's request to hunt gray whales, different levels of harvest were compared against PBR along with other considerations in the various alternatives (*available at https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/cetaceans/gray_whales/makah_deis_feb_2015.pdf*). Consistent with what the *Georgia Aquarium* Court found, in both of those documents PBR was one consideration in developing alternatives for the agency's EIS and not determinative in any decision-making process.

After 2013 in response to an incidental take authorization request from NMFS' Southwest Fisheries Science Center that contained PBR analysis and more particularly in response to a District Court's March 2015 ruling that NMFS' failure to consider PBR when evaluating lethal take under section 101(a)(5)(A) violated the requirement to use the best available science (see *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp.3d 1210 (D. Haw. 2015)), NMFS began to systematically consider the role of PBR when evaluating the effects of M/SI during section 101(a)(5)(A) rulemakings. Previously, in 1996 shortly after the PBR metric was first introduced, NMFS denied a request from the U.S. Coast Guard for an incidental take authorization for their vessel and aircraft operations, seemingly solely on the basis of the potential for ship strike in relation to PBR. The decision did not appear to consider other factors that might also have informed the potential for ship strike of a North Atlantic right whale in relation to the negligible impact standard.

During the following years and until the Court's decision in *Conservation Council* and the agency issuing the proposed incidental take authorization for the Southwest Fisheries Science Center, NMFS issued incidental take regulations without referencing PBR. Thereafter, however, NMFS began considering and articulating the appropriate role of PBR when processing incidental take requests for M/SI under section 101(a)(5)(A). Consistent with the interpretation of PBR across the rest of the agency, NMFS' Permits and Conservation Division has been using PBR as a tool to inform the negligible impact analysis under section 101(a)(5)(A), recognizing that it is not a dispositive threshold that automatically determines whether a given amount of M/SI either does or does not exceed a negligible impact on the affected species or stock.

Comment 99: In a comment on the 2018 HSTT proposed rule, a Commenter stated that NMFS failed to adequately assess the aggregate effects of all of the Navy's activities included in the rule. The Commenter alleges that NMFS' lack of analysis of these aggregate impacts, which is essential to any negligible impact determination, represents a glaring omission from the proposed rule. While NMFS states that Level B behavioral harassment (aside from those caused by masking effects) involves a stress response that may contribute to an animal's allostatic load, it assumes without further analysis that any such impacts would be insignificant.

Response: NMFS did analyze the potential for aggregate effects from mortality, injury, masking, habitat effects, energetic costs, stress, hearing loss, and behavioral harassment from the Navy's activities in reaching the negligible impact determinations. Significant additional discussion has been added to the *Analysis and Negligible Impact Determination* section of the final rule to better explain the potential for aggregate or cumulative effects on individuals as well as how these effects on individuals relate to potential effects on annual rates of recruitment and survival for each species or stock.

In addition, NMFS fully considers the potential for aggregate effects from all Navy activities. We also consider UMEs and previous environmental impacts, where appropriate, to inform the baseline levels of both individual health and susceptibility to additional stressors, as well as stock status. Further, the species and stock-specific assessments in the *Analysis and Negligible Impact Determination* section (which have been updated and expanded) pull together and address the combined mortality, injury, behavioral harassment, and other effects of the aggregate HSTT activities (and in consideration of applicable mitigation) as well as other information that supports our determinations that the Navy activities will not adversely affect any species or stocks via impacts on rates of recruitment or survival. We refer the reader to the *Analysis and Negligible Impact Determination* section for this analysis.

Widespread, extensive monitoring since 2006 on Navy ranges that have been used for training and testing for decades has demonstrated no evidence of population-level impacts. Based on the best available research from NMFS and Navy-funded marine mammal studies, there is no evidence that ''population-level harm'' to marine mammals, including beaked whales, is occurring in the HSTT Study Area. The presence of numerous small, resident populations of cetaceans, documented high abundances, and populations trending to increase for many marine mammals species in the area suggests there are not likely population-level

consequences resulting from decades of ongoing Navy training and testing activities. Through the process described in the rule and the LOAs, the Navy will work with NMFS to assure that the aggregate or cumulative impacts remain at the negligible impact level.

Regarding the consideration of stress responses, NMFS does not assume that the impacts are insignificant. There is currently neither adequate data nor a mechanism by which the impacts of stress from acoustic exposure can be reliably and independently quantified. However, stress effects that result from noise exposure likely often occur concurrently with behavioral harassment and many are likely captured and considered in the quantification of other takes by harassment that occur when individuals come within a certain distance of a sound source (behavioral harassment, PTS, and TTS).

Comment 100: In a comment on the 2018 HSTT proposed rule, Commenters asserted that in reaching our MMPA negligible impact finding, NMFS did not adequately consider the cumulative impacts of the Navy's activities when combined with the effects of other non-Navy activities.

Response: Both the statute and the agency's implementing regulations call for analysis of the effects of the applicant's activities on the affected species and stocks, not analysis of other unrelated activities and their impacts on the species and stocks. That does not mean, however, that effects on the species and stocks caused by other non-Navy activities are ignored. The preamble for NMFS' implementing regulations under section 101(a)(5) (54 FR 40338; September 29, 1989) explains in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the environmental baseline. Consistent with that direction, NMFS has factored into its negligible impact analyses the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors (such as incidental mortality in commercial fisheries or UMEs)). See the *Analysis and Negligible Impact Determination* section of this rule and the 2018 HSTT final rule.

Our 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There we stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. We indicated that NMFS would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis and also that reasonably foreseeable cumulative effects would be considered under section 7 of the ESA for ESA-listed species.

Also, as described further in the *Analysis and Negligible Impact Determination* section of the final rule, NMFS evaluated the impacts of HSTT authorized mortality on the affected stocks in consideration of other anticipated human-caused mortality, including the mortality predicted in the SARs for other activities along with other NMFS-permitted mortality (*i.e.,* authorized as part of the Southwest Fisheries Science Center rule), using multiple factors, including PBR. As described in more detail in the *Analysis and Negligible Impact Determination* section, PBR was designed to identify the maximum number of animals that may be removed from a stock (not including natural mortalities) while allowing that stock to reach or maintain its OSP and is also helpful in informing whether mortality will adversely affect annual rates of recruitment or survival in the context of a section 101(a)(5)(A).

NEPA

Comment 101: In a comment on the 2018 HSTT proposed rule, Commenters stated that NMFS cannot rely on the 2018 HSTT FEIS/OEIS to fulfill its obligations under NEPA because the purpose and need is too narrow and does not support NMFS' MMPA action, and therefore the 2018 HSTT FEIS/OEIS does not explore a reasonable range of alternatives.

Response: The proposed action at issue is the Navy's proposal to conduct testing and training activities in the HSTT Study Area. NMFS is a cooperating agency for that proposed action, as it has jurisdiction by law and special expertise over marine resources impacted by the proposed action, including marine mammals and federally-listed threatened and endangered species. Consistent with the regulations published by the Council on Environmental Quality (CEQ), it is common and sound NEPA practice for NOAA to adopt a lead agency's NEPA analysis when, after independent review, NOAA determines the document to be sufficient in accordance with 40 CFR 1506.3. Specifically here, NOAA must be satisfied that the EIS adequately addresses the impacts of issuing the MMPA incidental take authorization and that NOAA's comments and concerns have been adequately addressed. There is no requirement in CEQ regulations that NMFS, as a cooperating agency, issue a separate purpose and need statement in order to ensure adequacy and sufficiency for adoption. Nevertheless, the Navy, in coordination with NMFS, has clarified the statement of purpose and need in the 2018 HSTT FEIS/OEIS to more explicitly acknowledge NMFS' action of issuing an MMPA incidental take authorization. NMFS also clarified how its regulatory role under the MMPA related to the Navy's activities. NMFS' early participation in the NEPA process and role in shaping and informing analyses using its special expertise ensured that the analysis in the 2018 HSTT FEIS/OEIS is sufficient for purposes of NMFS' own NEPA obligations related to its issuance of incidental take authorization under the MMPA.

Regarding the alternatives, NMFS' early involvement in development of the 2018 HSTT FEIS/OEIS and role in evaluating the effects of incidental take under the MMPA ensured that the 2018 HSTT FEIS/OEIS would include adequate analysis of a reasonable range of alternatives. The 2018 HSTT FEIS/OEIS includes a No Action Alternative specifically to address what could happen if NMFS did not issue an MMPA authorization. The other two Alternatives address two action options that the Navy could potentially pursue while also meeting their mandated Title 10 training and testing responsibilities. More importantly, these alternatives fully analyze a comprehensive variety of mitigation measures. This mitigation analysis supported NMFS' evaluation of our options in potentially issuing an MMPA authorization, which, if the authorization may be issued, primarily revolves around the appropriate mitigation to prescribe. This approach to evaluating a reasonable range of alternatives is consistent with NMFS policy and practice for issuing MMPA incidental take authorizations. NOAA has independently reviewed and evaluated the EIS, including the purpose and need statement and range of alternatives, and determined that the 2018 HSTT FEIS/OEIS fully satisfies NMFS' NEPA obligations related to its decision to issue the MMPA final rule and associated LOAs, and we have adopted it.

Endangered Species Act

Comment 102: In a comment on the 2018 HSTT proposed rule, a Commenter stated that under the ESA NMFS has the discretion to impose terms, conditions, and mitigation on any authorization.

They believe the proposed action clearly affects listed whales, sea turtles, and Hawaiian monk seals, triggering the duty to consult. The Commenter urged NMFS to fully comply with the ESA and implement robust reasonable and prudent alternatives and conservation measures to avoid harm to endangered species and their habitats.

Response: NMFS has fully complied with the ESA. The agency consulted pursuant to section 7 of the ESA and NMFS' ESA Interagency Cooperation Division provided a biological opinion concluding that NMFS' action of issuing MMPA incidental take regulations for the Navy HSTT activities would not jeopardize the continued existence of any threatened or endangered species and nor would it adversely modify any designated critical habitat. The biological opinion may be viewed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species and their associated stocks that have the potential to occur in the HSTT Study Area are presented in Table 10 along with the best/minimum abundance estimate and associated coefficient of variation value. The Navy anticipates the take of individuals from 38 marine mammal species [3] by Level A harassment and Level B harassment incidental to training and testing activities from the use of sonar and other transducers, in-water detonations, air guns, and impact pile driving/vibratory extraction activities. The Navy requested authorization for 13 serious injuries or mortalities combined of two marine mammal stocks from explosives, and three takes of large whales by serious injury or mortality from vessel strikes over the seven-year period. Two marine mammal species, the Hawaiian monk seal and the Main Hawaiian Islands Insular Distinct Population Segment (DPS) of false killer whale, have critical habitat designated under the Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA) in the HSTT Study Area.

We presented a detailed discussion of marine mammals and their occurrence in the HSTT Study Area, inclusive of important marine mammal habitat (*e.g.,* ESA-designated critical habitat, biologically important areas (BIAs), national marine sanctuaries (NMSs)), and unusual mortality events (UMEs) in the 2018 HSTT proposed rule and 2018 HSTT final rule; please see these rules and the 2017 and 2019 Navy applications for complete information. There have been no changes to important marine mammal habitat, BIAs, NMSs, or ESA designated critical habitat since the issuance of the 2018 HSTT final rule; therefore the information that supports our determinations here can be found in the 2018 HSTT proposed and final rules. However, since publication of the 2018 HSTT final rule, NMFS published a proposed rule to designate ESA critical habitat for the Central America and Mexico DPSs of humpback whales on October 9, 2019 (84 FR 54354). In the proposed rule only critical habitat Unit 19 overlapped with the HSTT Study Area, and NMFS proposed to exclude this unit from the critical habitat designation based on consideration of national security. A final rule designating critical habitat for these two DPSs of humpback whales has not been published.

NMFS also has reviewed the most recent 2019 draft Stock Assessment Reports (SARs) and 2018 final SARs (Carretta *et al.,* 2019, which can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*); information on relevant UMEs; and new scientific literature (see the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section), and determined that none of these nor any other new information changes our determination of which species or stocks have the potential to be affected by the Navy's activities or the pertinent information in the *Description of Marine Mammals and Their Habitat in the Area of the Specified Activities* section in the 2018 HSTT proposed and final rules. Therefore, the information presented in those sections of the 2018 HSTT proposed and final rules remains current and valid.

The species considered but not carried forward for analysis are two American Samoa stocks of spinner dolphins—(1) the Kure and Midway stock and (2) the Pearl and Hermes stock. There is no potential for overlap with any stressors from Navy activities and therefore there would be no incidental takes, in which case, these stocks are not considered further.

TABLE 10—MARINE MAMMAL OCCURRENCE WITHIN THE HSTT STUDY AREA

Common name	Scientific name	Stock	Status [1]		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population [2]
			MMPA	ESA			
Blue whale	*Balaenoptera musculus*	Eastern North Pacific.	Strategic, Depleted	Endangered	Southern California		1,496 (0.44)/1,050
		Central North Pacific.	Strategic, Depleted	Endangered	Hawaii	Summer	133 (1.09)/63
Bryde's whale	*Balaenoptera brydei/edeni*	Eastern Tropical Pacific.			Southern California		unknown
		Hawaii			Hawaii		1,751 (0.29)/1,378
Fin whale	*Balaenoptera physalus*	CA/OR/WA	Strategic, Depleted	Endangered	Southern California		9,029 (0.12)/8,127
		Hawaii	Strategic, Depleted	Endangered	Hawaii	Summer	154 (1.05)/75
Gray whale	*Eschrichtius robustus*	Eastern North Pacific.			Southern California		26,960 (0.05)/25,849
		Western North Pacific.	Strategic, Depleted	Endangered	Southern California		290 (NA)/271
Humpback whale	*Megaptera novaeangliae*	CA/OR/WA	Strategic, Depleted	Threatened/ Endangered [3].	Southern California		2,900 (0.05)/2,784
		Central North Pacific.	Strategic		Hawaii	Summer	10,103 (0.30)/7,891
Minke whale	*Balaenoptera acutorostrata*	CA/OR/WA			Southern California		636 (0.72)/369
		Hawaii			Hawaii	Summer	unknown
Sei whale	*Balaenoptera borealis*	Eastern North Pacific.	Strategic, Depleted	Endangered	Southern California		519 (0.40)/374
		Hawaii	Strategic, Depleted	Endangered	Hawaii	Summer	391 (0.90)/204
Sperm whale	*Physeter macrocephalus*	CA/OR/WA	Strategic, Depleted	Endangered	Southern California		1,997 (0.57)/1,270
		Hawaii	Strategic, Depleted	Endangered	Hawaii		4,559 (0.33)/3,478
Pygmy sperm whale	*Kogia breviceps*	CA/OR/WA			Southern California	Winter and Fall	4,111 (1.12)/1,924
		Hawaii			Hawaii		unknown

[3] In the 2018 HSTT final rule the number of species was unintentionally presented incorrectly as 39 and is corrected here. This transcription error does not affect the analysis or conclusions reached in the 2018 HSTT final rule.

TABLE 10—MARINE MAMMAL OCCURRENCE WITHIN THE HSTT STUDY AREA—Continued

Common name	Scientific name	Stock	Status [1]		Occurrence	Seasonal absence	Stock abundance (CV)/minimum population [2]
			MMPA	ESA			
Dwarf sperm whale	*Kogia sima*	CA/OR/WA			Southern California		unknown
		Hawaii			Hawaii		unknown
Baird's beaked whale.	*Berardius bairdii*	CA/OR/WA			Southern California		2,697 (0.60)/1,633
Blainville's beaked whale.	*Mesoplodon densirostris*	Hawaii			Hawaii		2,105 (1.13)/980
Cuvier's beaked whale.	*Ziphius cavirostris*	CA/OR/WA			Southern California		3,274 (0.67)/2,059
		Hawaii			Hawaii		723 0.69/428
Longman's beaked whale.	*Indopacetus pacificus*	Hawaii			Hawaii		7,619 (0.66)/4,592
Mesoplodon beaked whales.	*Mesoplodon spp.*	CA/OR/WA			Southern California		3,044 (0.54)/1,967
Common Bottlenose dolphin.	*Tursiops truncatus*	California Coastal			Southern California		453 (0.06)/346
		CA/OR/WA Offshore			Southern California		1,924 (0.54)/1,255
		Hawaii Pelagic			Hawaii		21,815 (0.57)/13,957
		Kauai and Niihau			Hawaii		NA NA/97
		Oahu			Hawaii		NA
		4-Islands			Hawaii		NA
		Hawaii Island			Hawaii		NA NA/91
False killer whale	*Pseudorca crassidens*	Main Hawaiian Islands Insular.	Strategic, Depleted	Endangered	Hawaii		167 (0.14)/149
		Hawaii Pelagic			Hawaii		1,540 (0.66)/928
		Northwestern Hawaiian Islands.			Hawaii		617 (1.11)/290
Fraser's dolphin	*Lagenodelphis hosei*	Hawaii			Hawaii		51,491 (0.66)/31,034
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.			Southern California		300 (0.1)/276
		West Coast Transient.			Southern California		243 unknown/243
		Hawaii			Hawaii		146 (0.96)/74
Long-beaked common dolphin.	*Delphinus capensis*	California			Southern California		101,305 (0.49)/68,432
Melon-headed whale	*Peponocephala electra*	Hawaiian Islands			Hawaii		8,666 (1.00)/4,299
		Kohala Resident			Hawaii		447 (0.12)/404
Northern right whale dolphin.	*Lissodelphis borealis*	CA/OR/WA			Southern California		26,556 (0.44)/18,608
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens*	CA/OR/WA			Southern California		26,814 (0.28)/21,195
Pantropical spotted dolphin.	*Stenella attenuata*	Oahu			Hawaii		unknown
		4-Islands			Hawaii		unknown
		Hawaii Island			Hawaii		unknown
		Hawaii Pelagic			Hawaii		55,795 (0.40)/40,338
Pygmy killer whale	*Feresa attenuata*	Tropical			Southern California	Winter & Spring	unknown
		Hawaii			Hawaii		10,640 (0.53)/6,998
Risso's dolphins	*Grampus griseus*	CA/OR/WA			Southern California		6,336 (0.32)/4,817
		Hawaii			Hawaii		11,613 (0.43)/8,210
Rough-toothed dolphin.	*Steno bredanensis*	NSD[4]			Southern California		unknown
		Hawaii			Hawaii		72,528 (0.39)/52,833
Short-beaked common dolphin.	*Delphinus delphis*	CA/OR/WA			Southern California		969,861 (0.17)/839,325
Short-finned pilot whale.	*Globicephala macrorhynchus.*	CA/OR/WA			Southern California		836 (0.79)/466
		Hawaii			Hawaii		19,503 (0.49)/13,197
Spinner dolphin	*Stenella longirostris*	Hawaii Pelagic			Hawaii		unknown
		Hawaii Island			Hawaii		665 (0.09)/617
		Oahu and 4-Islands			Hawaii		NA
		Kauai and Niihau			Hawaii		NA
		Kure and Midway			Hawaii		unknown
		Pearl and Hermes			Hawaii		unknown
Striped dolphin	*Stenella coeruleoalba*	CA/OR/WA			Southern California		29,211 (0.20)/24,782
		Hawaii			Hawaii		61,021 (0.38)/44,922
Dall's porpoise	*Phocoenoides dalli*	CA/OR/WA			Southern California		25,750 (0.45)/17,954
Harbor seal	*Phoca vitulina*	California			Southern California		30,968 (NA)/27,348
Hawaiian monk seal	*Neomonachus schauinslandi*	Hawaii	Strategic, Depleted	Endangered	Hawaii		1,351 (0.03)/1,325
Northern elephant seal.	*Mirounga angustirostris*	California			Southern California		179,000 (NA)/81,368
California sea lion	*Zalophus californianus*	U.S. Stock			Southern California		257,606 (NA)/233,515
Guadalupe fur seal	*Arctocephalus townsendi*	Mexico to California	Strategic, Depleted	Threatened	Southern California		34,187 (NA)/31,019
Northern fur seal	*Callorhinus ursinus*	California			Southern California		14,050 (NA)/7,524

[1] Endangered Species Act (ESA) status: Endangered, Threatened. MMPA status: Strategic, Depleted. A dash (-) indicates that the species/stock is not listed under the ESA or designated as depleted/strategic under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds potential biological removal (PBR) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance.

[3] The two humpback whale Distinct Population Segments (DPSs) making up the California/Oregon/Washington (CA/OR/WA) stock present in Southern California are the Mexico DPS, listed under the ESA as Threatened, and the Central America DPS, which is listed under the ESA as Endangered.

[4] NSD—No stock designation. Rough-toothed dolphin has a range known to include the waters off Southern California, but there is no recognized stock or data available for the U.S West Coast.

Unusual Mortality Events (UMEs)

An UME is defined under Section 410(6) of the MMPA as a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response. From 1991 to the present, there have been 17 formally recognized UMEs affecting marine mammals in California and Hawaii and involving species under NMFS' jurisdiction. Three UMEs with ongoing or recently closed investigations in the HSTT Study Area that inform our analysis are discussed below. The California sea lion UME in California was closed on May 6, 2020. The Guadalupe fur seal UME in California and the gray whale UME along the west coast of North America are active and involve ongoing investigations.

California Sea Lion UME

From January 2013 through September 2016, a greater than expected number of young malnourished California sea lions (*Zalophus californianus*) stranded along the coast of California. Sea lions stranding from an early age (6–8 months old) through two years of age (hereafter referred to as juveniles) were consistently underweight without other disease processes detected. Of the 8,122 stranded juveniles attributed to the UME, 93 percent stranded alive (n=7,587, with 3,418 of these released after rehabilitation) and 7 percent (n=531) stranded dead. Several factors are hypothesized to have impacted the ability of nursing females and young sea lions to acquire adequate nutrition for successful pup rearing and juvenile growth. In late 2012, decreased anchovy and sardine recruitment (CalCOFI data, July 2013) may have led to nutritionally stressed adult females. Biotoxins were present at various times throughout the UME, and while they were not detected in the stranded juvenile sea lions (whose stomachs were empty at the time of stranding), biotoxins may have impacted the adult females' ability to support their dependent pups by affecting their cognitive function (*e.g.,* navigation, behavior towards their offspring). Therefore, the role of biotoxins in this UME, via its possible impact on adult females' ability to support their pups, is unclear. The proposed primary cause of the UME was malnutrition of sea lion pups and yearlings due to ecological factors. These factors included shifts in distribution, abundance and/or quality of sea lion prey items around the Channel Island rookeries during critical sea lion life history events (nursing by adult females, and transitioning from milk to prey by young sea lions). These prey shifts were most likely driven by unusual oceanographic conditions at the time due to the ''Warm Water Blob'' and El Niño. This investigation closed on May 6, 2020. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2013-2017-california-sea-lion-unusual-mortality-event-california* for more information on this UME.

Guadalupe Fur Seal UME

Increased strandings of Guadalupe fur seals began along the entire coast of California in January 2015 and were eight times higher than the historical average (approximately 10 seals/yr). Strandings have continued since 2015 and remained well above average through 2019. Numbers by year are as follows: 2015 (98), 2016 (76), 2017 (62), 2018 (45), 2019 (116), 2020 (3 as of 3/6/2020). The total number of Guadalupe fur seals stranding in California from January 1, 2015, through March 6, 2020, in the UME is 400. While outside the HSTT Study Area, strandings of Guadalupe fur seals became elevated in the spring of 2019 in Washington and Oregon; subsequently, strandings for seals in these two states have been added to the UME starting from January 1, 2019. The current total number of strandings in Washington and Oregon is 94 seals, including 91 in 2019 and 3 in 2020 as of March 6, 2020. Strandings are seasonal and generally peak in April through June of each year. The Guadalupe fur seal strandings have been mostly weaned pups and juveniles (1–2 years old) with both live and dead strandings occurring. Current findings from the majority of stranded animals include primary malnutrition with secondary bacterial and parasitic infections. The California portion of this UME was occurring in the same area as the 2013–2016 California sea lion UME. This investigation is ongoing. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2019-guadalupe-fur-seal-unusual-mortality-event-california* for more information on this UME.

Gray Whale UME

Since January 1, 2019, elevated gray whale strandings have occurred along the west coast of North America, from Mexico to Canada. As of March 13, 2020, there have been a total of 264 strandings along the coasts of the United States, Canada, and Mexico, with 129 of those strandings occurring along the U.S. coast. Of the strandings on the U.S. coast, 48 have occurred in Alaska, 35 in Washington, 6 in Oregon, and 40 in California. Partial necropsy examinations conducted on a subset of stranded whales have shown evidence of poor to thin body condition. As part of the UME investigation process, NOAA is assembling an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, and determine the next steps for the investigation. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-gray-whale-unusual-mortality-event-along-west-coast* for more information on this UME.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a full discussion of the potential effects of the specified activities on marine mammals and their habitat in our 2018 HSTT proposed and final rules. In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of the 2018 HSTT proposed and final rules, NMFS provided a description of the ways marine mammals may be affected by the same activities that the Navy will be conducting during the seven-year period analyzed in this rule in the form of serious injury or mortality, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects. Therefore, we do not repeat the information here, all of which remains current and applicable, but refer the reader to those rules and the 2018 HSTT FEIS/OEIS (Chapter 3, Section 3.7 *Marine Mammals*), which NMFS participated in the development of via our cooperating agency status and adopted to meet our National Environmental Policy Act (NEPA) requirements.

NMFS has reviewed new relevant information from the scientific literature since publication of the 2018 HSTT final rule. Summaries of new scientific literature since publication of the 2018 HSTT final rule are presented below.

Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing

during prolonged exposures or if conditioned to anticipate intense sounds. Finneran (2018) recommends further investigation of the mechanisms of hearing sensitivity reduction in order to understand the implications for interpretation of existing TTS data obtained from captive animals, notably for considering TTS due to short duration, unpredictable exposures. No modification of the 2018 HSTT EIS/OEIS analysis of auditory impacts is necessary based on this research, as these findings suggest additional research is required to understand implications on TTS data, and the current auditory impact thresholds are based on best available data for both impulsive and non-impulsive exposures to marine mammals.

Several publications described models developed to examine the long-term effects of environmental or anthropogenic disturbance of foraging on various life stages of selected species (sperm whale, Farmer *et al.* (2018); California sea lion, McHuron *et al.* (2018); and blue whale, Pirotta, *et al.* (2018a)). These models, taken into consideration with similar models described in the 2018 HSTT EIS/OEIS, continue to add to refinement to the approaches to the population consequences of disturbance (PCOD) framework. Such models also help identify what data inputs require further investigation. Pirotta *et al.* (2018b) provides a review of the PCOD framework with details on each step of the process and approaches to applying real data or simulations to achieve each step. As described in the 2018 HSTT EIS/OEIS, many of the inputs required by such models are not yet known for acoustic and explosive impacts. NMFS will continue to assess the applicability of population consequences models in our analyses.

Southall *et al.* (2019a) evaluated Southall *et al.* (2007) and used updated scientific information to propose revised noise exposure criteria to predict onset of auditory effects in marine mammals (*i.e.,* PTS and TTS onset). Southall *et al.* (2019a) note that the quantitative processes described and the resulting exposure criteria (*i.e.,* thresholds and auditory weighting functions) are largely identical to those in Finneran (2016) and NOAA (2016 and 2018). However, they differ in that the Southall *et al.* (2019a) exposure criteria are more broadly applicable as they include all marine mammal species (rather than those only under NMFS jurisdiction) for all noise exposures (both in air and underwater for amphibious species), and that while the hearing group compositions are identical they renamed the hearing groups.

In continued investigations of pinniped hearing, Kastelein *et al.* (2019a) exposed two female captive harbor seals to 6.5 kHz continuous, sinusoidal tones for 60 minutes (cumulative sound exposure levels (SELs) of 159–195 dB re: 1 μPa^2s), then measured TTS using behavioral (psychoacoustic) methods at the center frequency of the fatiguing sound (6.5 kHz) and 0.5 and 1 octave above that frequency (9.2 and 13 kHz). Susceptibility to TTS was similar in both individuals tested. At cumulative SELs below 179 dB re: 1 μPa^2s, maximum TTS was induced at the center frequency (6.5 kHz), and at cumulative SELs above 179 dB re: 1 μPa^2s, maximum TTS was induced at 0.5 octave above the center frequency (9.2 kHz). The highest TTSs were produced in the one-half octave band above the exposure frequency. Both seals recovered within 1–2 hours for up to 6 dB of TTS. One seal showed 19 dB of TTS after a dB re: 1 μPa^2s exposure and recovered within 24 hours. Overall, this study combined with previous work showed that for harbor seals, recovery times are consistent for similar-magnitude TTS, regardless of the type of fatiguing sound exposure (impulsive, continuous noise band, or sinusoidal wave), and that susceptibility to TTS in the fatiguing frequency range tested (2.5–6.5 kHz) varies little with hearing frequency. The two harbor seals in this study (and Kastelein *et al.,* 2012) had similar susceptibility to TTS as the seal in Kastak *et al.* (2005). The authors note that more fatiguing sound frequencies need to be tested in harbor seals to produce equal TTS curves, for generating weighting functions that can be used to develop exposure criteria for broadband sounds in the marine environment (Houser *et al.,* 2017).

To determine the distances at which Helicopter Long Range Active Sonar (HELRAS) signals (~1.3–1.4 kHz) can be detected, Kastelein *et al.* (2019b) measured hearing thresholds using behavioral (psychoacoustic) techniques to simulated HELRAS signals in two captive harbor seals. Both seals showed similar thresholds (51 dB re: 1 µPa rms, approximately 4 dB lower than the detection thresholds for the same individuals in Kastelein *et al.,* 2009) to previously obtained data for stimuli having the same center frequencies, which suggests that the harmonics present within HELRAS sources do not impact hearing threshold and that a tonal audiogram can be used to estimate the audibility of more complex narrow-band tonal signals in harbor seals.

Accomando *et al.* (2020) examined the directional dependence of hearing thresholds for 2, 10, 20 and 30 kHz in two adult bottlenose dolphins. They observed that source direction (*i.e.,* the relative angle between the sound source location and the dolphin) impacted hearing thresholds for these frequencies. Sounds projected from directly behind the dolphins resulted in frequency-dependent increases in hearing thresholds of up to 18.5 dB when compared to sounds projected from in front of the dolphins. Sounds projected directly above the dolphins resulted in thresholds that were approximately 8 dB higher than those obtained when sounds were projected below the dolphins. These findings suggest that dolphins may receive lower source levels when they are oriented 180 degrees away from the sound source, and dolphins are less sensitive to sound projected from above (likely leading to some spatial release from masking). Directional or spatial hearing also allows animals to locate sound sources. This study indicates dolphins can detect source direction at lower frequencies than previously thought, allowing them to successfully avoid or approach biologically significant or anthropogenic sound sources at these frequencies.

Recent studies on the behavioral responses of cetaceans to sonar examine and continue to demonstrate the importance of not only sound source parameters, but exposure context (*e.g.,* behavioral state, presence of other animals and social relationships, prey abundance, distance to source, presence of vessels, environmental parameters) in determining or predicting a behavioral response.

- Kastelein *et al.* (2018) examined the role of sound pressure level (SPL) and duty cycle on the behavior of two captive harbor porpoises when exposed to simulated Navy mid-frequency sonar (53C, 3.5 to 4.1 kHz). Neither harbor porpoise responded to the low duty cycle (2.7 percent) at any of the five SPLs presented, even at the maximum received SPL (143 dB re: 1 µPa). At the higher duty cycle (96 percent), one porpoise responded by increasing his respiration rate at a received SPL of greater than or equal to 119 dB re: 1 µPa, and moved away from the transducer at a received SPL of 143 dB re: 1 µPa. Kastelein *et al.* (2018) observed that at the same received SPL and duty cycle, harbor porpoises respond less to 53C sonar sounds than 1–2 kHz, 6–7 kHz, and 25 kHz sonar signals observed in previous studies, but noted that when examining behavioral responses it is important to take into account the spectrum and temporal structure of the

signal, the duty cycle, and the psychological interpretation by the animal.

• To investigate the effect of signal to noise ratio (SNR) on behavioral responses, Kastelein *et al.* (2019c) observed respiration rates (an indicator of behavioral response) of two captive harbor porpoises when exposed to simulated 30-minute playbacks of Navy mid-frequency sonar (53C, 3.5 to 4.1 kHz, 96 percent duty cycle), in noise simulating sea state 6 conditions. No behavioral responses were observed when the porpoises were exposed to sonar signals at an SPL of 117 dB re: 1 µPa (SNR equal to 49 dB re: 1 Hz). Both porpoises responded when exposed to sonar signals at an SPL of 122 dB re: 1 µPa (SNR equal to 54 dB re: 1 Hz), however in quiet conditions one porpoise responded at similar levels (Kastelein *et al.* 2018), suggesting the behavioral responses of harbor porpoises to sonar signals are not affected in sea state 6 ambient noise conditions.

• To determine if sonar sounds with different harmonic contents and amplitude envelopes had different impacts on harbor porpoise behavior, Kastelein *et al.* (2019d) examined the behavioral responses of one male harbor porpoise to four different low-frequency HELRAS (1.33 to 1.43 kHz) sonar signals (1.25 s in duration, 107 dB re: 1 µPa SPL). The sonar sounds with sensation levels of approximately 21 dB (and 8 percent duty cycle) caused a very small displacement (mean increased distance of 0.11 m), slight increase in respiration rate, and a small increase in swimming speed, and these effects did not continue after the sound exposure ceased. The authors concluded that if porpoises at sea were exposed to sonar signals of similar SPLs, the effects would be expected to be minimal. The authors noted that harbor porpoises are relatively insensitive to low-frequency signals below 4 kHz, however high SPL harmonics of low-frequency sonar sound sounds can impact the behavior of harbor porpoises. They suggest new sonar systems be designed to reduce the level of harmonics.

• In an effort to examine potential mitigation measures to reduce impacts of seismic airguns on harbor porpoises, Kastelein *et al.* (2019e) examined the effect of a bubble screen on behavioral responses of two captive harbor porpoises exposed to airgun sounds. The bubble screen reduced the transmission of high-frequency airgun sounds by 20–30 dB above 250 Hz, however the broadband SELs-s was only ~3 dB lower when the bubble screen was present. The harbor porpoises responded differently to the airgun sounds, with one being more responsive than the other. When the bubble screen was deployed neither individual responded to the airgun sounds, supporting the hypothesis that the frequency content of impulsive sounds is an important factor in behavioral responses of harbor porpoises. The authors suggest that small bubble screens, such as those tested in this study, could be an important tool in improving living conditions for captive harbor porpoises by reducing background noise levels.

• Kastelein *et al.* (2019f) examined fish catching efficiency in two captive harbor porpoises exposed to pile-driving playback sound (single strike exposure levels between 125 and 143 dB re: 1 μPa^2s) and ambient (quiet) sound. They observed substantial individual variation in responses between the two harbor porpoises, with no change in fish catch success in one porpoise and decline in fish-catch success and trial termination in the second porpoise. These results suggest that high-amplitude pile driving sounds may negatively affect foraging behavior in some harbor porpoises. However, additional information is needed to determine the role of individual differences in responses to sound, termination rates, and fish-catching success to accurately estimate and quantify potential impacts.

• Wensveen *et al.* (2019) examined the role of sound source (simulated sonar pulses) distance and received level in northern bottlenose whales in an environment without frequent sonar activity using multi-scaled controlled exposure experiments. They observed behavioral avoidance of the sound source over a wide range of distances (0.8–28 km) and estimated avoidance thresholds ranging from modeled received SPLs of 117–126 dB re: 1 µPa as described by von Benda-Beckmann *et al.* (2019). The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, they did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL.

• Joyce *et al.* (2019) presented movement and dive behavior data from seven Blainville's beaked whales that were satellite tagged prior to naval sonar exercises using mid-frequency active sonar (MFAS, 3–8 kHz) at the Atlantic Undersea Test and Evaluation Center (AUTEC) in the Bahamas. Five of the seven tagged were displaced 28–68 km after the onset of sonar exposure and returned to the AUTEC range 2–4 days after exercises ended. Three of the individuals for which modeled received SPLs were available during this movement showed declining received SPLs from initial maxima of 145–172 dB re: 1 µPa to maxima of 70–150 dB re: 1 µPa after displacements. Tagged individuals exhibited a continuation of deep diving activity consistent with foraging during MFAS exposure periods, but data also suggested that time spent on deep dives during initial exposure periods was reduced. These findings provide additional data for ongoing Population Consequences of Acoustic Disturbance assessments of disturbance as authors note that previous studies have suggested foraging dives may be lost in response to MFAS exposure, which could cause a decrease in energy intake and have potential effects on vital parameters. The data presented by Joyce *et al.* (2019) support the initial potential loss of foraging time, however they also suggest that Blainville's beaked whales may have the ability to partially compensate for this loss (assuming they have ample recovery times between dives) by increasing time spent at foraging depths following displacement.

• When conducting controlled exposure experiments on blue whales, Southall *et al.* (2019b) observed that after exposure to simulated and operational mid-frequency active sonar, more than 50 percent of blue whales in deep-diving states responded to the sonar, while no behavioral response was observed in shallow-feeding blue whales. The behavioral responses they observed were generally brief, of low to moderate severity, and highly dependent on exposure context (behavioral state, source-to-whale horizontal range, and prey availability). Blue whale response did not follow a simple exposure-response model based on received sound exposure level.

• In an effort to compare behavioral responses to continuous active sonar (CAS) and pulsed (intermittent) active sonar (PAS), Isojunno *et al.* (2020) conducted at-sea experiments on 16 sperm whales equipped with animal-attached sound- and movement-recording tags in Norway. They examined changes in foraging effort and proxies for foraging success and cost during sonar and control exposures after accounting for baseline variation. They observed no reduction in time spent foraging during exposures to medium-level PAS transmitted at the same peak amplitude as CAS, however they observed similar reductions in foraging during CAS and PAS when they were received at similar energy levels (SELs).

The authors note that these results support the hypothesis that sound energy (SEL) is the main cause of behavioral responses rather than sound amplitude (SPL), and that exposure context and measurements of cumulative sound energy are important considerations for future research and noise impact assessments.

- Frankel and Stein (2020) used shoreline theodolite tracking to examine potential behavioral responses of southbound migrating eastern gray whales to a high-frequency active sonar system transmitted by a vessel located off the coast of California. The sonar transducer deployed from the vessel transmitted 21–25 kHz sweeps for half of each day (experimental period), and no sound the other half of the day (control period). In contrast to low-frequency active sonar tests conducted in the same area (Clark et al., 1999; Tyack and Clark, 1998), no overt behavioral responses or deflections were observed in field or visual data. However, statistical analysis of the tracking data indicated that during experimental periods at received levels of approximately 148 dB re: 1 μPa2 (134 dB re: 1 μPa2s) and less than 2 km of the transmitting vessel, gray whales deflected their migration paths inshore from the vessel. The authors indicate that these data suggest the functional hearing sensitivity of gray whales extends to at least 21 kHz. These findings agree with the predicted mysticete hearing curve and behavioral response functions used in the analysis to estimate take by Level A harassment (PTS) and Level B harassment (behavioral response) for this rule (see the Technical Report ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'').
- In a review of the previously published data (considered in the 2018 HSTT final rule and 2018 HSTT EIS/OEIS analysis) on the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of mid-frequency active sonar on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (such as decompression sickness).
- In an effort to improve estimates of behavioral responses to anthropogenic sound, Tyack and Thomas (2019) compared the approach of using a single threshold to newly developed dose-response functions. They demonstrated that the common approach of selecting the threshold at which half of the animals respond (RLp50) underestimates the number of individuals impacted. They suggest using a dose–response function to derive more accurate estimates of animals impacted and to set a threshold (the Effective Response Level) that corrects issues with the RLp50 estimate. The authors note that the Navy has calculated estimates of marine mammal takes using methods similar to the ones they recommend. Those methods were used to estimate take for this rule (see the Technical Report ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'').
- Houser *et al.* (2020) measured cortisol, aldosterone, and epinephrine levels in the blood samples of 30 bottlenose dolphins before and after exposure to simulated U.S. Navy mid-frequency sonar from 115–185 dB re: 1 μPa. They collected blood samples approximately one week prior to, immediately following, and approximately one week after exposures and analyzed for hormones via radioimmunoassay. Aldosterone levels were below the detection limits in all samples. While the observed severity of behavioral responses scaled (increased) with SPL, levels of cortisol and epinephrine did not show consistent relationships with received SPL. Authors note that it is still unclear whether intermittent, high-level acoustic stimuli elicit endocrine responses consistent with a stress response, and that additional research is needed to determine the relationship between behavioral responses and physiological responses.

Having considered this information, and information provided in public comments on the 2019 HSTT proposed rule, we have determined that there is no new information that substantively affects our analysis of potential impacts on marine mammals and their habitat that appeared in the 2018 HSTT proposed and final rules, all of which remains applicable and valid for our assessment of the effects of the Navy's activities during the seven-year period of this rule.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is authorizing, which are based on the amount of take that NMFS anticipates could occur or is likely to occur, depending on the type of take and the methods used to estimate it, as described below. NMFS coordinated closely with the Navy in the development of their incidental take applications, and agrees that the methods the Navy has put forth described herein and in the 2018 HSTT proposed and final rules to estimate take (including the model, thresholds, and density estimates), and the resulting numbers are based on the best available science and appropriate for authorization. The number and type of incidental takes that could occur or are likely to occur annually remain identical to those authorized in the 2018 HSTT regulations.

Takes are predominantly in the form of harassment, but a small number of serious injuries or mortalities are also authorized. For military readiness activities, the MMPA defines ''harassment'' as (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B harassment).

Authorized takes will primarily be in the form of Level B harassment, as use of the acoustic and explosive sources (*i.e.,* sonar, air guns, pile driving, explosives) is more likely to result in behavioral disruption (rising to the level of a take as described above) or temporary threshold shift (TTS) for marine mammals than other forms of take. There is also the potential for Level A harassment, however, in the form of auditory injury and/or tissue damage (the latter from explosives only) to result from exposure to the sound sources utilized in training and testing activities. No more than 13 serious injuries or mortalities (eight short-beaked common dolphins and five California sea lions over the seven-year period) are estimated as a result of exposure to explosive training and testing activities. Lastly, no more than three serious injuries or mortalities total (over the seven-year period) of mysticetes (except for sei whales, minke whales, Bryde's whales, Central North Pacific stock of blue whales, Hawaii stock of fin whales, and Western North Pacific stock of gray whales) and the Hawaii stock of sperm whales could occur through vessel collisions. Although we analyze the impacts of these potential serious injuries or mortalities that are authorized, the required mitigation and monitoring measures are expected to minimize the likelihood that ship strike or these high-level explosive exposures (and the associated serious injury or mortality) actually occur.

Generally speaking, for acoustic impacts we estimate the amount and

type of harassment by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by behavioral Level B harassment (in this case, as defined in the military readiness definition of Level B harassment included above) or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities or events.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered, or to incur TTS (equated to Level B harassment) or permanent threshold shift (PTS) of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur non-auditory injury from exposure to pressure waves from explosive detonation.

Despite the quickly evolving science, there are still challenges in quantifying expected behavioral responses that qualify as take by Level B harassment, especially where the goal is to use one or two predictable indicators (*e.g.,* received level and distance) to predict responses that are also driven by additional factors that cannot be easily incorporated into the thresholds (*e.g.,* context). So, while the new behavioral Level B harassment thresholds have been refined here to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still, accordingly, have some built-in conservative factors to address the challenge noted. For example, while duration of observed responses in the data are now considered in the thresholds, some of the responses that are informing take thresholds are of a very short duration, such that it is possible some of these responses might not always rise to the level of disrupting behavior patterns to a point where they are abandoned or significantly altered. We describe the application of this Level B harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered. In summary, we believe these behavioral Level B harassment thresholds are the most appropriate method for predicting behavioral Level B harassment given the best available science and the associated uncertainty.

We described these acoustic thresholds and the methods used to determine thresholds, none of which have changed, in detail in the *Acoustic Thresholds* section of the 2018 HSTT final rule; please see the 2018 HSTT final rule for detailed information.

Navy's Acoustic Effects Model

The Navy proposed no changes to the Acoustic Effects Model as described in the 2018 HSTT final rule and there is no new information that would affect the applicability or validity of the model. Please see the 2018 HSTT final rule and Appendix E of the 2018 HSTT FEIS/OEIS for detailed information.

Range to Effects

The Navy proposed no changes from the 2018 HSTT final rule to the type and nature of the specified activities to be conducted during the seven-year period analyzed in this final rule, including equipment and sources used and exercises conducted. There is also no new information that would affect the applicability or validity of the ranges to effects previously analyzed for these activities. Therefore, the ranges to effects in this final rule are identical to those described and analyzed in the 2018 HSTT final rule, including received sound levels that may cause onset of significant behavioral response and TTS and PTS in hearing for each source type or explosives that may cause non-auditory injury. Please see the *Range to Effects* section and Tables 24 through 40 of the 2018 HSTT final rule for detailed information.

Marine Mammal Density

The Navy proposed no changes to the methods used to estimate marine mammal density described in the 2018 HSTT final rule and there is no new information that would affect the applicability or validity of these methods. Please see the 2018 HSTT final rule for detailed information.

Take Requests

As in the 2018 HSTT final rule, in its 2019 application, the Navy determined that the three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate, and NMFS agrees that the following stressors have the potential to result in takes of marine mammals from the Navy's planned activities:

- Acoustics (sonar and other transducers; air guns; pile driving/extraction);
- Explosives (explosive shock wave and sound, assumed to encompass the risk due to fragmentation); and
- Vessel strike.

NMFS reviewed and agrees with the Navy's conclusion that acoustic and explosive sources have the potential to result in incidental takes of marine mammals by harassment, serious injury, or mortality. NMFS carefully reviewed the Navy's analysis and conducted its own analysis of vessel strikes, determining that the likelihood of any particular species of large whale being struck is quite low. Nonetheless, NMFS agrees that vessel strikes have the potential to result in incidental take from serious injury or mortality for certain species of large whales and the Navy specifically requested coverage for these species. Therefore, the likelihood of vessel strikes, and later the effects of the incidental take that is being authorized, has been fully analyzed and is described below.

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, *etc.,* of different activities and events) in a given year. In the 2018 HSTT final rule, take estimates across the five-years were based on the Navy conducting three years of a representative level of activity and two years of maximum level of activity. Consistent with the pattern set forth in the 2017 Navy application, the 2018 HSTT FEIS/OEIS, and the 2018 HSTT final rule, the Navy included one additional representative year and one additional maximum year to determine the predicted take numbers in this rule. Specifically, as in the 2018 HSTT final rule, the Navy uses the maximum annual level to calculate annual takes (which would remain identical to what was determined in the 2018 HSTT final rule), and the sum of all years (four representative and three maximum) to calculate the seven-year totals for this rule.

The quantitative analysis process used for the 2018 HSTT FEIS/OEIS and the 2017 and 2019 Navy applications to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled ''Quantifying

Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing'' (U.S. Department of the Navy, 2018). The Navy Acoustic Effects Model estimates acoustic and explosive effects without taking mitigation into account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. To account for mitigation for marine species in the take estimates, the Navy conducts a quantitative assessment of mitigation. The Navy conservatively quantifies the manner in which procedural mitigation is expected to reduce the risk for model-estimated PTS for exposures to sonars and for model-estimated mortality for exposures to explosives, based on species sightability, observation area, visibility, and the ability to exercise positive control over the sound source. Where the analysis indicates mitigation would effectively reduce risk, the model-estimated PTS are considered reduced to TTS and the model-estimated mortalities are considered reduced to injury. For a complete explanation of the process for assessing the effects of mitigation, see the 2017 Navy application and the *Take Requests* section of the 2018 HSTT final rule. The extent to which the mitigation areas reduce impacts on the affected species and stocks is addressed separately in the *Analysis and Negligible Impact Determination* sections of this rule and the 2018 HSTT final rule.

No changes have been made to the quantitative analysis process to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors and calculate take estimates. In addition, there is no new information that would call into question the validity of the Navy's quantitative analysis process. Please see the documents described in the paragraph above, the 2018 HSTT proposed rule, and the 2018 HSTT final rule for detailed descriptions of these analyses. In summary, we believe the Navy's methods, including the method for incorporating mitigation and avoidance, are the most appropriate methods for predicting PTS, tissue damage, TTS, and behavioral disruption. But even with the consideration of mitigation and avoidance, given some of the more conservative components of the methodology (*e.g.,* the thresholds do not consider ear recovery between pulses), we would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to be taken through PTS, tissue damage, TTS, or behavioral disruption.

Summary of Authorized Take From Training and Testing Activities

Based on the methods discussed in the previous sections and the Navy's model and quantitative assessment of mitigation, the Navy provided its take estimates and request for authorization of takes incidental to the use of acoustic and explosive sources for training and testing activities both annually (based on the maximum number of activities that could occur per 12-month period) and over the seven-year period covered by the 2019 Navy application. Annual takes (based on the maximum number of activities that could occur per 12-month period) from the use of acoustic and explosive sources are identical to those presented in Tables 41 and 42 and in the *Explosives* subsection of the *Take Requests* section of the 2018 HSTT final rule. The 2019 Navy application also includes the Navy's take estimate and request for vessel strikes due to vessel movement in the HSTT Study Area. The No Stock Designation stock of rough-toothed was modeled by the Navy and estimated to have 0 takes of any type from any activity source. NMFS has reviewed the Navy's data, methodology, and analysis and determined that it is complete and accurate. NMFS agrees that the estimates for incidental takes by harassment from all sources as well as the incidental takes by serious injury or mortality from explosives requested for authorization are the maximum number reasonably expected to occur. NMFS also agrees that the takes by serious injury or mortality as a result of vessel strikes could occur. The total amount of estimated incidental take from acoustic and explosive sources over the total seven-year period covered by the 2019 Navy application is less than the annual total multiplied by seven, because although the annual estimates are based on the maximum number of activities per year and therefore the maximum possible estimated takes, the seven-year total take estimates are based on the sum of three maximum years and four representative years. Not all activities occur every year. Some activities would occur multiple times within a year, and some activities would occur only a few times over the course of the seven-year period. Using seven years of the maximum number of activities each year would vastly overestimate the amount of incidental take that would occur over the seven-year period where the Navy knows that it will not conduct the maximum number of activities each and every year for the seven years.

Authorized Harassment Take from Training Activities

For training activities, Table 11 summarizes the Navy's take estimate and request and the maximum amount and type of Level A harassment and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock, and is therefore authorized. For the authorized amount and type of Level A harassment and Level B harassment annually, see Table 41 in the 2018 HSTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6–12 through 6–50 in Section 6 of the 2017 Navy application illustrate the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a modeled marine mammal was ''taken'' through exposure to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 11—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE AUTHORIZED FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES

Species	Stock	7-year total	
		Level B	Level A
Blue whale *	Central North Pacific	205	0
	Eastern North Pacific	7,116	6
Bryde's whale †	Eastern Tropical Pacific	167	0
	Hawaiian †	631	0
Fin whale *	CA/OR/WA	7,731	0
	Hawaiian	197	0
Humpback whale †	CA/OR/WA †	7,962	7

TABLE 11—SEVEN-YEAR TOTAL SPECIES- AND STOCK-SPECIFIC TAKE AUTHORIZED FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TRAINING ACTIVITIES—Continued

Species	Stock	7-year total	
		Level B	Level A
	Central North Pacific	34,437	12
Minke whale	CA/OR/WA	4,119	7
	Hawaiian	20,237	6
Sei whale *	Eastern North Pacific	333	0
	Hawaiian	677	0
Gray whale †	Eastern North Pacific	16,703	27
	Western North Pacific †	19	0
Sperm whale *	CA/OR/WA	8,834	0
	Hawaiian	10,341	0
Dwarf sperm whale	Hawaiian	84,232	215
Pygmy sperm whale	Hawaiian	33,431	94
Kogia whales	CA/OR/WA	38,609	149
Baird's beaked whale	CA/OR/WA	8,524	0
Blainville's beaked whale	Hawaiian	23,491	0
Cuvier's beaked whale	CA/OR/WA	47,178	0
	Hawaiian	7,898	0
Longman's beaked whale	Hawaiian	82,293	0
Mesoplodon species (beaked whale guild)	CA/OR/WA	25,404	0
Bottlenose dolphin	California Coastal	1,295	0
	CA/OR & WAOffshore	201,619	13
	Hawaiian Pelagic	13,080	0
	Kauai & Niihau	500	0
	Oahu	57,288	10
	4-Island	1,052	0
	Hawaii	291	0
False killer whale †	Hawaii Pelagic	4,353	0
	Main Hawaiian Islands Insular †	2,710	0
	Northwestern Hawaiian Islands	1,585	0
Fraser's dolphin	Hawaiian	177,198	4
Killer whale	Eastern North Pacific Offshore	460	0
	Eastern North Pacific Transient/West Coast Transient	855	0
	Hawaiian	513	0
Long-beaked common dolphin	California	784,965	99
Melon-headed whale	Hawaiian Islands	14,137	0
	Kohala Resident	1,278	0
Northern right whale dolphin	CA/OR/WA	357,001	57
Pacific white-sided dolphin	CA/OR/WA	274,892	19
Pantropical spotted dolphin	Hawaii Island	17,739	0
	Hawaii Pelagic	42,318	0
	Oahu	28,860	0
	4-Island	1,816	0
Pygmy killer whale	Hawaiian	35,531	0
	Tropical	2,977	0
Risso's dolphin	CA/OR/WA	477,389	45
	Hawaiian	40,800	0
Rough-toothed dolphin	Hawaiian	26,769	0
	NSD [1]	0	0
Short-beaked common dolphin	CA/OR/WA	5,875,431	307
Short-finned pilot whale	CA/OR/WA	6,341	6
	Hawaiian	53,627	0
Spinner dolphin	Hawaii Island	609	0
	Hawaii Pelagic	18,870	0
	Kauai & Niihau	1,961	0
	Oahu & 4-Island	10,424	8
Striped dolphin	CA/OR/WA	777,001	5
	Hawaiian	32,806	0
Dall's porpoise	CA/OR/WA	171,250	894
California sea lion	U.S.	460,145	629
Guadalupe fur seal*	Mexico	3,342	0
Northern fur seal	California	62,138	0
Harbor seal	California	19,214	48
Hawaiian monk seal*	Hawaiian	938	5
Northern elephant seal	California	241,277	490

* ESA-listed species (all stocks) within the HSTT Study Area.
† Only designated stocks are ESA-listed.
[1] NSD: No stock designation.

Authorized Harassment Take From Testing Activities

For testing activities, Table 12 summarizes the Navy's take estimate and request and the maximum amount and type of Level A harassment and Level B harassment for the seven-year period covered by the 2019 Navy application that NMFS concurs is reasonably expected to occur by species or stock, and is therefore authorized. For the estimated amount and type of Level A harassment and Level B harassment annually, see Table 42 in the 2018 HSTT final rule. Note that take by Level B harassment includes both behavioral disruption and TTS. Navy Figures 6–12 through 6–50 in Section 6 of the 2017 Navy application illustrate the comparative amounts of TTS and behavioral disruption for each species annually, noting that if a modeled marine mammal was ''taken'' through exposure to both TTS and behavioral disruption in the model, it was recorded as a TTS.

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE AUTHORIZED FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES

Species	Stock	7-year total	
		Level B	Level A
Blue whale *	Central North Pacific	93	0
	Eastern North Pacific	5,679	0
Bryde's whale †	Eastern Tropical Pacific	97	0
	Hawaiian †	278	0
Fin whale *	CA/OR/WA	6,662	7
	Hawaiian	108	0
Humpback whale †	CA/OR/WA†	4,961	0
	Central North Pacific	23,750	19
Minke whale	CA/OR/WA	1,855	0
	Hawaiian	9,822	7
Sei whale *	Eastern North Pacific	178	0
	Hawaiian	329	0
Gray whale †	Eastern North Pacific	13,077	9
	Western North Pacific †	15	0
Sperm whale *	CA/OR/WA	7,409	0
	Hawaiian	5,269	0
Dwarf sperm whale	Hawaiian	43,374	197
Pygmy sperm whale	Hawaiian	17,396	83
Kogia whales	CA/OR/WA	20,766	94
Baird's beaked whale	CA/OR/WA	4,841	0
Blainville's beaked whale	Hawaiian	11,455	0
Cuvier's beaked whale	CA/OR/WA	30,180	28
	Hawaiian	3,784	0
Longman's beaked whale	Hawaiian	41,965	0
Mesoplodon species (beaked whale guild)	CA/OR/WA	16,383	15
Bottlenose dolphin	California Coastal	11,158	0
	CA/OR & WA Offshore	158,700	8
	Hawaiian Pelagic	8,469	0
	Kauai & Niihau	3,091	0
	Oahu	3,230	0
	4-Island	1,129	0
	Hawaii	260	0
False killer whale †	Hawaii Pelagic	2,287	0
	Main Hawaiian Islands Insular †	1,256	0
	Northwestern Hawaiian Islands	837	0
Fraser's dolphin	Hawaiian	85,193	9
Killer whale	Eastern North Pacific Offshore	236	0
	Eastern North Pacific Transient/West Coast Transient	438	0
	Hawaiian	279	0
Long-beaked common dolphin	California	805,063	34
Melon-headed whale	Hawaiian Islands	7,678	0
	Kohala Resident	1,119	0
Northern right whale dolphin	CA/OR/WA	280,066	22
Pacific white-sided dolphin	CA/OR/WA	213,380	14
Pantropical spotted dolphin	Hawaii Island	9,568	0
	Hawaii Pelagic	24,805	0
	Oahu	1,349	0
	4-Island	2,513	0
Pygmy killer whale	Hawaiian	18,347	0
	Tropical	1,928	0
Risso's dolphin	CA/OR/WA	339,334	24
	Hawaiian	19,027	0
Rough-toothed dolphin	Hawaiian	14,851	0
	NSD [1]	0	0
Short-beaked common dolphin	CA/OR/WA	3,795,732	304
Short-finned pilot whale	CA/OR/WA	6,253	0
	Hawaiian	29,269	0
Spinner dolphin	Hawaii Island	1,394	0

TABLE 12—SEVEN-YEAR TOTAL SPECIES AND STOCK-SPECIFIC TAKE AUTHORIZED FROM ACOUSTIC AND EXPLOSIVE SOUND SOURCE EFFECTS FOR ALL TESTING ACTIVITIES—Continued

Species	Stock	7-year total	
		Level B	Level A
	Hawaii Pelagic	9,534	0
	Kauai & Niihau	9,277	0
	Oahu & 4-Island	1,987	0
Striped dolphin	CA/OR/WA	371,328	20
	Hawaiian	16,270	0
Dall's porpoise	CA/OR/WA	115,353	478
California sea lion	U.S.	334,332	36
Guadalupe fur seal *	Mexico	6,167	0
Northern fur seal	California	36,921	7
Harbor seal	California	15,898	12
Hawaiian monk seal *	Hawaiian	372	0
Northern elephant seal	California	151,754	187

* ESA-listed species (all stocks) within the HSTT Study Area.
† Only designated stocks are ESA-listed.
[1] NSD: No stock designation.

Authorized Take From Vessel Strikes and Explosives by Serious Injury or Mortality

Vessel Strike

Vessel strikes from commercial, recreational, and military vessels are known to affect large whales and have resulted in serious injury and occasional fatalities to cetaceans (Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Douglas *et al.,* 2008; Laggner 2009; Lammers *et al.,* 2003). Records of collisions date back to the early 17th century, and the worldwide number of collisions appears to have increased steadily during recent decades (Laist *et al.,* 2001; Ritter 2012).

Numerous studies of interactions between surface vessels and marine mammals have demonstrated that free-ranging marine mammals often, but not always (*e.g.,* McKenna *et al.,* 2015), engage in avoidance behavior when surface vessels move toward them. It is not clear whether these responses are caused by the physical presence of a surface vessel, the underwater noise generated by the vessel, or an interaction between the two (Amaral and Carlson, 2005; Au and Green, 2000; Bain *et al.,* 2006; Bauer 1986; Bejder *et al.,* 1999; Bejder and Lusseau, 2008; Bejder *et al.,* 2009; Bryant *et al.,* 1984; Corkeron, 1995; Erbe, 2002; Félix, 2001; Goodwin and Cotton, 2004; Lemon *et al.,* 2006; Lusseau, 2003; Lusseau, 2006; Magalhaes *et al.,* 2002; Nowacek *et al.,* 2001; Richter *et al.,* 2003; Scheidat *et al.,* 2004; Simmonds, 2005; Watkins, 1986; Williams *et al.,* 2002; Wursig *et al.,* 1998). Several authors suggest that the noise generated during motion is probably an important factor (Blane and Jaakson, 1994; Evans *et al.,* 1992; Evans *et al.,* 1994). Water disturbance may also be a factor. These studies suggest that the behavioral responses of marine mammals to surface vessels are similar to their behavioral responses to predators. Avoidance behavior is expected to be even stronger in the subset of instances during which the Navy is conducting training or testing activities using active sonar or explosives.

The marine mammals most vulnerable to vessel strikes are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* sperm whales). In addition, some baleen whales seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales.

Some researchers have suggested the relative risk of a vessel strike can be assessed as a function of animal density and the magnitude of vessel traffic (*e.g.,* Fonnesbeck *et al.,* 2008; Vanderlaan *et al.,* 2008). Differences among vessel types also influence the probability of a vessel strike. The ability of any ship to detect a marine mammal and avoid a collision depends on a variety of factors, including environmental conditions, ship design, size, speed, and ability and number of personnel observing, as well as the behavior of the animal. Vessel speed, size, and mass are all important factors in determining if injury or death of a marine mammal is likely due to a vessel strike. For large vessels, speed and angle of approach can influence the severity of a strike. For example, Vanderlaan and Taggart (2007) found that between vessel speeds of 8.6 and 15 knots, the probability that a vessel strike is lethal increases from 0.21 to 0.79. Large whales also do not have to be at the water's surface to be struck. Silber *et al.* (2010) found when a whale is below the surface (about one to two times the vessel draft), there is likely to be a pronounced propeller suction effect. This suction effect may draw the whale into the hull of the ship, increasing the probability of propeller strikes.

There are some key differences between the operation of military and non-military vessels, which make the likelihood of a military vessel striking a whale lower than some other vessels (*e.g.,* commercial merchant vessels). Key differences include:

- Many military ships have their bridges positioned closer to the bow, offering better visibility ahead of the ship (compared to a commercial merchant vessel).
- There are often aircraft associated with the training or testing activity (which can serve as Lookouts), which can more readily detect cetaceans in the vicinity of a vessel or ahead of a vessel's present course before crew on the vessel would be able to detect them.
- Military ships are generally more maneuverable than commercial merchant vessels, and if cetaceans are spotted in the path of the ship, could be capable of changing course more quickly.
- The crew size on military vessels is generally larger than merchant ships, allowing for stationing more trained Lookouts on the bridge. At all times when vessels are underway, trained Lookouts and bridge navigation teams are used to detect objects on the surface of the water ahead of the ship, including cetaceans. Additional Lookouts, beyond those already stationed on the bridge and on navigation teams, are positioned

as Lookouts during some training events.

- When submerged, submarines are generally slow moving (to avoid detection) and therefore marine mammals at depth with a submarine are likely able to avoid collision with the submarine. When a submarine is transiting on the surface, there are Lookouts serving the same function as they do on surface ships.

Vessel strike to marine mammals is not associated with any specific training or testing activity but is rather an extremely limited and sporadic, but possible, accidental result of Navy vessel movement within the HSTT Study Area or while in transit.

There have been two recorded Navy vessel strikes of large whales in the HSTT Study Area from 2009 through 2018, the period in which the Navy began implementing effective mitigation measures to reduce the likelihood of vessel strikes. Both strikes occurred in 2009 and both were to fin whales. In order to account for the accidental nature of vessel strikes to large whales in general, and the potential risk from any vessel movement within the HSTT Study Area within the seven-year period in particular, the Navy requested incidental takes based on probabilities derived from a Poisson distribution using ship strike data between 2009–2018 in the HSTT Study Area (the time period from when current mitigations were instituted until the Navy conducted the analysis for the 2019 Navy application), as well as historical at-sea days in the HSTT Study Area from 2009–2018 and estimated potential at-sea days for the period from 2018 to 2025 covered by the requested regulations. This distribution predicted the probabilities of a specific number of strikes (n=0, 1, 2, *etc.*) over the period from 2018 to 2025. The analysis for the period of 2018 to 2023 is described in detail in Chapter 6 of the 2017 Navy application and has been updated for this seven-year rulemaking.

For the same reasons listed above, describing why a Navy vessel strike is comparatively unlikely, it is highly unlikely that a Navy vessel would strike a whale, dolphin, porpoise, or pinniped without detecting it and, accordingly, NMFS is confident that the Navy's reported strikes are accurate and appropriate for use in the analysis. Specifically, Navy ships have multiple Lookouts, including on the forward part of the ship that can visually detect a hit animal, in the unlikely event ship personnel do not feel the strike. Unlike the situation for non-Navy ships engaged in commercial activities, NMFS and the Navy have no evidence that the Navy has struck a whale and not detected it. Navy's strict internal procedures and mitigation requirements include reporting of any vessel strikes of marine mammals, and the Navy's discipline, extensive training (not only for detecting marine mammals, but for detecting and reporting any potential navigational obstruction), and strict chain of command give NMFS a high level of confidence that all strikes actually get reported.

The Navy used the two fin whale strikes in their calculations to determine the number of strikes likely to result from their activities (although worldwide strike information, from all Navy activities and other sources, was used to inform the species that may be struck) and evaluated data beginning in 2009, as that was the start of the Navy's Marine Species Awareness Training and adoption of additional mitigation measures to address ship strike, which will remain in place along with additional mitigation measures during the seven years of this rule. The probability analysis concluded that there was a 22 percent chance that no whales would be struck by Navy vessels over the seven-year period, and a 33, 25, 13, and 5 percent chance that one, two, three, or four whales, respectively, would be struck over the seven-year period. All other alternatives (*i.e.* one, two, three, or more whales) represent a 78 percent chance that at least one whale would be struck over the seven-year period. Therefore, the Navy estimates, and NMFS agrees, that there is some probability that the Navy could strike, and take by serious injury or mortality, up to three large whales incidental to training and testing activities within the HSTT Study Area over the course of the seven years.

The probability of the Navy striking up to three large whales over the seven-year period (which is a 13 percent chance) as analyzed for this final rule using updated Navy vessel strike data and at-sea days is very close to the probability of the Navy striking up to three large whales over five years (which was a 10 percent chance). As the probability of striking three large whales does not differ significantly from the 2018 HSTT final rule, and the probability of striking four large whales over seven years remains very low to the point of being unlikely (less than 5 percent), the Navy has requested, and we are authorizing no change in the number of takes by serious injury or mortality due to vessel strikes.

Small whales, delphinids, porpoises, and pinnipeds are not expected to be struck by Navy vessels. In addition to the reasons listed above that make it unlikely that the Navy will hit a large whale (more maneuverable ships, larger crew, *etc.*), the following are the additional reasons that vessel strike of dolphins, small whales, porpoises, and pinnipeds is considered very unlikely. Dating back more than 20 years and for as long as it has kept records, the Navy has no records of individuals of these groups being struck by a vessel as a result of Navy activities and, further, these species' smaller size and maneuverability make a strike unlikely. Also, NMFS has never received any reports from other authorized activities indicating that these species have been struck by vessels. Worldwide ship strike records show little evidence of strikes of these groups from the shipping sector and larger vessels, and the majority of the Navy's activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid, porpoise, and pinniped densities are lower. Based on this information, NMFS concurs with the Navy's assessment and recognizes the potential for incidental take by vessel strike of large whales only (*i.e.,* no dolphins, small whales, porpoises, or pinnipeds) over the course of the seven-year regulations from training and testing activities as discussed further below.

As noted in the 2018 HSTT proposed and final rules, in the 2017 Navy application the Navy initially considered a weight of evidence approach that considered relative abundance, historical strike data over many years, and the overlap of Navy activities with the stock distribution in their request. NMFS and the Navy further discussed the available information and considered two factors in addition to those considered in the Navy's request: (1) The relative likelihood of hitting one stock versus another based on available strike data from all vessel types as denoted in the SARs and (2) whether the Navy has ever definitively struck an individual from a particular stock and, if so, how many times. For this seven-year rule, we have reconsidered these two factors and updated the analysis with the Navy's seven-year ship strike probability analysis and any new/updated ship strike data from the SARs.

To address number (1) above, NMFS compiled information from NMFS' SARs on detected annual rates of large whale serious injury or mortality from vessel collisions (Table 13). The annual rates of large whale serious injury or mortality from vessel collisions from the SARs help inform the relative susceptibility of large whale species to

vessel strike in SOCAL and Hawaii as recorded systematically over the last five years (the period used for the SARs). We summed the annual rates of serious injury or mortality from vessel collisions as reported in the SARs, then divided each species' annual rate by this sum to get the proportion of strikes for each species/stock. To inform the likelihood of striking a particular species of large whale, we multiplied the proportion of strikes for each species by the probability of striking a whale (*i.e.,* 78 percent, as described by the Navy's probability analysis above). We also estimated the percent likelihood of striking a particular species of large whale twice by squaring the value estimated for the probability of striking a particular species of whale once (*i.e.,* generally, to calculate the probability of an event occurring twice, multiply the probability of the first event by the second). We note that these probabilities vary from year to year as the average annual mortality for a given five-year window in the SAR changes (and we include the annual averages from 2017 and 2018 SARs in Table 13 to illustrate), however, over the years and through changing SARs, stocks tend to consistently maintain a relatively higher or relatively lower likelihood of being struck.

The probabilities calculated as described above are then considered in combination with the information indicating the species that the Navy has definitively hit in the HSTT Study Area since 1991 (since they started tracking consistently), as well as the information originally considered by the Navy in their 2017 application, which includes relative abundance, total recorded strikes, and the overlay of all of this information with the Navy's Study Area. We note that for all of the take of species specifically denoted in Table 13 below, 19 percent of the individuals struck overall by any vessel type remained unidentified and 36 percent of those struck by the Navy (5 of 14 in the Pacific) remain unidentified. However, given the information on known species or stocks struck, the analysis below remains appropriate. We also note that Rockwood *et al.* (2017) modeled the likely vessel strike of blue whales, fin whales, and humpback whales on the U.S. West Coast (discussed in more detail in the *Serious Injury or Mortality* subsection of the *Analysis and Negligible Impact Determination* section), and those numbers help inform the relative likelihood that the Navy will hit those stocks.

For each indicated stock, Table 13 includes the percent likelihood of hitting an individual whale once based on SAR data, total strikes from Navy vessels and from all other vessels, relative abundance, and modeled vessel strikes from Rockwood *et al.* (2017). The last column indicates the annual mortality that has the reasonable potential to occur and is authorized: Those stocks with one serious injury or mortality (M/SI) take authorized over the seven-year period of the rule are shaded lightly, while those with two M/SI takes that have the potential to occur and are authorized over the seven-year period of the rule are shaded more darkly.

Table 13 -- Summary of factors considered in determining the number of individuals in each stock potentially struck by a vessel.

ESA status	Species	Stock	Percent likelihood of hitting individual from stock once		Total Known *Navy* Strikes in HSTT Study Area	Summarized from compilation in Navy application[3]		Rockwood *et al.*, 2017 modeled vessel strikes[4]	MMPA Proposed Authorized Takes (from the 3 total)	Annual Authorized Take
			2017 SAR[1]	Draft 2019 SAR/2018 SAR		Review of all NMFS' strike data - # of total strikes[3]	Relative Abundance			
Listed	Blue whale	Central North Pacific	0	0	No	0	0.016	-	-	-
		Eastern North Pacific	6.5	4.6	1 in SOCAL	14	0.103	18	1	0.14
	Fin whale	CA/OR/WA	18.1	18.4	2 in SOCAL	21	0.46	43	2	0.29
		Hawaii	0	0	No	0	0.027	-	-	-
	Humpback whale[2]	CA/OR/WA stock, Mexico DPS	11.1[2]	25.2[2]	No	15[2]	0.041	22	1	0.14
	Sei whale	Eastern North Pacific	0	2.3	No	1	0.007	-	-	-
		Hawaii	0	0	No	0	0.041	-	-	-
	Gray whale	Western North Pacific	0	0	No	0	0	-	-	-
	Sperm whale	CA/OR/WA	2	0	No	1	0.107	-	-	-
		Hawaii	0	0	1 in HRC	2	0.487	-	1	0.14
Not listed	Gray whale	Eastern North Pacific	20.1	9.2	3 in SOCAL	35	0.25	-	2	0.29
	Bryde's whale	Eastern Tropical Pacific	2[5]	2.3	No	0	0	-	-	-
		Hawaii	0	0	No	0	0.048	-	-	-
	Minke whale	CA/OR/WA	0	0	No	0	0.032	-	-	-
		Hawaii	0	0	No	0	0.027	-	-	-
	Humpback whale	Central North Pacific[6]	18.1	16.1	2 in HRC	58	0.245	-	2	0.29

[1]Percent likelihood of Central North Pacific stock of humpback whales for the 2017 SAR was unintentionally presented incorrectly in Table 43 of the 2018 HSTT final rule. As the percent likelihood for all stocks are calculated together, correcting the Central North Pacific stock of humpback whale also corrects the values for other stocks for which ship strikes were reported in the SARs. Correct values are provided here. These transcription errors do not affect the analysis or conclusions in the 2018 HSTT final rule.

[2] Humpback information applies to CA/OR/WA stock, Mexico DPS only. Text explains why takes in SOCAL come from Mexico DPS.

[3] The Navy presented compiled information related to vessel strike in Section 5.2 of the 2017 Navy application, this column sums information presented on pg 5-11.

[4] Rockwood *et al.* modeled likely annual vessel strikes off the West Coast for these three species only.

[5] The percent likelihood of hitting an individual Bryde's whale from the Eastern North Pacific Stock in 2017 was unintentionally presented incorrectly as 0.2 in the 2018 HSTT final rule and is corrected here. This transcription error does not affect the analysis or conclusions reached in the 2018 HSTT final rule.

[6] The 2019 draft SAR reports ship strike data for the Central North Pacific stock of humpback whales in Alaska and Hawaii. Only ship strike data from Hawaii was incorporated into our analysis as Alaska is outside of the HSTT Study Area.

Accordingly, stocks that have no record of ever having been struck by any vessel are considered unlikely to be struck by the Navy in the seven-year period of the rule. Stocks that have never been struck by the Navy, have rarely been struck by other vessels, and have a low percent likelihood based on the SAR calculation and a low relative abundance are also considered unlikely to be struck by the Navy during the seven years covered by this rule. We note that while vessel strike records have not differentiated between Eastern North Pacific and Western North Pacific gray whales, given their small population size and the comparative rarity with which individuals from the Western North Pacific stock are detected off the U.S. West Coast, it is highly unlikely that they would be

encountered, much less struck. This rules out all but six stocks.

Three of the six stocks (CA/OR/WA stock of fin whale, Eastern North Pacific stock of gray whale, and Central North Pacific stock of humpback whale) are the only stocks to have been hit more than one time each by the Navy in the HSTT Study Area, have the three highest total strike records (21, 35, and 58 respectively), have three of the four highest percent likelihoods based on the SAR records, have three of the four significantly higher relative abundances, and have up to a 3.4 percent likelihood of being struck twice based on NMFS' SAR calculation (not shown in Table 13, but proportional to percent likelihood of being struck once). Based on all of these factors, it is considered reasonably likely that these stocks could be struck twice during the seven-year rule.

Based on the information summarized in Table 13, and the fact that there is the potential for up to three large whales to be struck, it is considered reasonably likely that one individual from the remaining three stocks could be one of the three whales struck. Sperm whales have only been struck a total of two times by any vessel type in the whole HSTT Study Area, however, the Navy struck a sperm whale once in Hawaii prior to 2009 and the relative abundance of sperm whales in Hawaii is the highest of any of the stocks present. Therefore, we consider it reasonably likely that the Hawaii stock of sperm whales could be struck once during the seven-year rule. The total strikes of Eastern North Pacific blue whales, the percent likelihood of striking one based on the SAR calculation, and their relative abundance can all be considered moderate compared to other stocks, and the Navy has struck one in the past prior to 2009 (with the likelihood of striking two based on the SAR calculation being below one percent). Therefore, we consider it reasonably likely that the Navy could strike one individual over the course of the seven-year rule. The Navy has not hit a humpback whale in the HSTT Study Area and the relative abundance of the CA/OR/WA stock is very low. However, a U.S. Coast Guard vessel escorting a Navy vessel struck a humpback whale in the Northwest (outside of the HSTT Study Area) and as a species, humpback whales have a moderate to high number of total strikes and percent likelihood of being struck. Although the likelihood of CA/OR/WA humpback whales being struck overall is moderate to high relative to other stocks, the distribution of the Mexico DPS versus the Central America DPS, as well as the distribution of overall vessel strikes inside versus outside of the SOCAL area (the majority are outside), supports the reasonable likelihood that the Navy could strike one individual humpback whale from the CA/OR/WA stock (not two), and that that individual would be highly likely to be from the Mexico DPS, as described below.

Specifically, regarding the likelihood of striking a humpback whale from a particular DPS, as suggested in Wade *et al.* (2016), the probability of encountering (which is thereby applied to striking) humpback whales from each DPS in the CA/OR area is 89.6 percent and 19.7 percent for the Mexico and Central America DPSs, respectively (note that these percentages reflect the upper limit of the 95 percent confidence interval to reduce the likelihood of underestimating take, and thereby do not total to 100). This suggests that the chance of striking a humpback whale from the Central America DPS is one tenth to one fifth of the overall chance of hitting a CA/OR/WA humpback whale in general in the SOCAL part of the HSTT Study Area, which in combination with the fact that no humpback whale has been struck in SOCAL makes it highly unlikely, and thereby no strikes of whales from the Central America DPS are anticipated or authorized. If a humpback whale were struck in SOCAL, it is likely it would be of the Mexico DPS. However, regarding the overall likelihood of striking a humpback whale at all and the likely number of times, we note that the majority of strikes of the CA/OR/WA humpback whale stock (*i.e.,* the numbers reflected in Table 13) take place outside of SOCAL. Whereas the comparative DPS numbers cited above apply in the California and Oregon feeding area and in the Washington and Southern British Columbia feeding area, Wade *et al.* (2016) suggest that 52.9, 41.9, and 14.7 percent of humpback whales encountered will come from the Hawaii, Mexico, and Central America DPSs, respectively. This means that the numbers in Table 13 indicating the overall strikes of CA/OR/WA humpback whales and SAR calculations based on average annual mortality over the last five years are actually lower than indicated for the Mexico DPS, which would only be a subset of those mortalities. Lastly, the Rockwood *et al.* paper supports a relative likelihood of 1:1:2 for striking blue whales, humpback whales, and fin whales off the U.S. West Coast, which supports the authorized take included in this rule, which is 1, 1, and 2, respectively over the seven-year period. For these reasons, one M/SI take of CA/OR/WA humpback whales, which would be expected to be of the Mexico DPS, could reasonably likely occur and is authorized.

Accordingly, the Navy has requested, and NMFS authorizes, take by M/SI from vessel strike of up to two of any of the following species/stocks in the seven-year period: Gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), humpback whale (Central North Pacific stock); and one of any of the following species/stocks in the seven-year period: Blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA stock, Mexico DPS), or sperm whale (Hawaii stock).

As described above, the Navy analysis suggests, and NMFS analysis concurs, that vessel strikes to the stocks below are very unlikely to occur due to the stocks' relatively low occurrence in the HSTT Study Area, particularly in core HSTT training and testing subareas, and the fact that the stocks have not been struck by the Navy and are rarely, if ever, recorded struck by other vessels. Therefore, the Navy is not requesting lethal take authorization, and NMFS is not authorizing lethal take, for the following stocks: Bryde's whale (Eastern Tropical Pacific stock), Bryde's whale (Hawaii stock), humpback whale (CA/OR/WA stock, Central America DPS), minke whale (CA/OR/WA stock), minke whale (Hawaii stock), sei whale (Hawaii stock), sei whale (Eastern North Pacific stock), and sperm whale (CA/OR/WA stock).

In conclusion, although it is generally unlikely that any whales will be struck in a year, based on the information and analysis above, NMFS anticipates that no more than three whales have the potential to be taken by M/SI over the seven-year period of the rule, and that those three whales may include no more than two of any of the following stocks: Gray whale (Eastern North Pacific stock), fin whale (CA/OR/WA stock), and humpback whale (Central North Pacific stock); and no more than one of any of the following stocks: Blue whale (Eastern North Pacific stock), humpback whale (CA/OR/WA, Mexico DPS), and sperm whale (Hawaii stock). Accordingly, NMFS has evaluated under the negligible impact standard the M/SI of 0.14 or 0.29 whales annually from each of these species or stocks (*i.e.,* 1 or 2 takes, respectively, divided by seven years to get the annual number), along with the expected incidental takes by harassment.

Explosives

The Navy's model and quantitative analysis process used for the 2018 HSTT FEIS/OEIS and in the Navy's 2017 and 2019 applications to estimate potential exposures of marine mammals to

explosive stressors is detailed in the technical report titled ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase III Training and Testing'' (U.S. Department of the Navy, 2018). Specifically, over the course of a modelled maximum year of training and testing, the Navy's model and quantitative analysis process estimates M/SI of two short-beaked common dolphins and one California sea lion as a result of exposure to explosive training and testing activities (please see Section 6 of the 2017 Navy application where it is explained how maximum annual estimates are calculated). Over the five-year period of the 2018 HSTT regulations, mortality of 6 short-beaked common dolphins and 4 California sea lions was estimated and authorized (10 marine mammals in total) as a result of exposure to explosive training and testing activities. In extending the same training and testing activities for an additional two years, over the seven-year period of the regulations M/SI of 8 short-beaked common dolphins and 5 California sea lions (13 marine mammals in total) is estimated as a result of exposure to explosive training and testing activities, and is therefore authorized. As explained in the aforementioned Analytical Approach technical report, expected impacts were calculated considering spatial and seasonal differences in model inputs, as well as the expected variation in the number of training and testing events from year to year, described as representative and maximum levels of activity. The summed impacts over any multi-year period, therefore, are the expected value for impacts over that time period rather than a multiple of a single maximum year's impacts. Therefore, calculating the seven-year total is not a matter of simply multiplying the annual estimate by seven, as the total amount of estimated mortalities over the seven years covered by the 2019 Navy application is less than the sum total of each year. As explained earlier, although the annual estimates are based on the maximum number of activities per year and therefore the maximum estimated takes, the seven-year total take estimates are based on the sum of three maximum years and four representative years. NMFS coordinated with the Navy in the development of their take estimates and concurs with the Navy's approach for estimating the number of animals from each species or stock that could be taken by M/SI from explosives.

Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stock(s) and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock(s) for subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. For the full discussion of how NMFS interprets least practicable adverse impact, including how it relates to the negligible-impact standard, see the *Mitigation Measures* section in the 2018 HSTT final rule.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[4] In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the Specified Activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

[4] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

Implementation of Least Practicable Adverse Impact Standard

Our evaluation of potential mitigation measures includes consideration of two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation; and

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, under section 101(a)(5)(A)(ii) specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks—and the best available science has been used here. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the

risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation could become available in the future and necessitate reevaluation of mitigation measures (which may be addressed through adaptive management) to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less firmly established biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy's ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (lower impact). A responsible evaluation of ''least practicable adverse impact'' will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or its habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure, and vice versa. In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two primary factors discussed above (expected reduction of impacts and practicability), and will be carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. For more detail on how we apply these factors, see the discussion in the *Mitigation Measures* section of the 2018 HSTT final rule.

NMFS fully reviewed the Navy's specified activities and the mitigation measures for the 2018 HSTT rulemaking and determined that the mitigation measures would result in the least practicable adverse impact on marine mammals. There is no change in either the activities or the mitigation measures for this rule. See the 2019 Navy application and the 2018 HSTT final rule for detailed information on the Navy's mitigation measures. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which were informed by years of implementation and monitoring. A complete discussion of the Navy's evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS. The process described in Chapter 5 (Mitigation) of the 2018 HSTT FEIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Navy has implemented the mitigation measures under the 2018 HSTT regulations and will be required to continue implementation of the mitigation measures identified in this rule for the full seven years it covers to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and ship strike stressors.

In its 2019 application, the Navy proposed no changes to the mitigation measures in the 2018 HSTT final rule and there is no new information that affects NMFS' assessment of the applicability or effectiveness of those measures over the new seven-year period. See the 2018 HSTT proposed rule and the 2018 HSTT final rule for our full assessment of these measures. In summary, the Navy has agreed to procedural mitigation measures that will reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, ship strike, and impacts to marine mammal habitat. Specifically, the Navy will use a combination of delayed starts, powerdowns, and shutdowns to minimize or avoid M/SI, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disruption caused by acoustic sources or explosives. The Navy will also implement multiple time/area restrictions (several of which were added in the 2018 HSTT final rule since the previous HSTT MMPA incidental take rule) that will reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as feeding or calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts. Summaries of the Navy's procedural mitigation measures and mitigation areas for the HSTT Study Area are provided in Tables 14 and 15.

TABLE 14—SUMMARY OF PROCEDURAL MITIGATION

Stressor or activity	Mitigation zone sizes and other requirements
Environmental Awareness and Education	• Afloat Environmental Compliance Training program for applicable personnel.
Active Sonar	Depending on sonar source: • 1,000 yd power down, 500 yd power down, and 200 yd shut down. • 200 yd shut down.
Air Guns	• 150 yd.
Pile Driving	• 100 yd.
Weapons Firing Noise	• 30 degrees on either side of the firing line out to 70 yd.
Explosive Sonobuoys	• 600 yd.
Explosive Torpedoes	• 2,100 yd.
Explosive Medium-Caliber and Large-Caliber Projectiles	• 1,000 yd (large-caliber projectiles). • 600 yd (medium-caliber projectiles during surface-to-surface activities). • 200 yd (medium-caliber projectiles during air-to-surface activities).
Explosive Missiles and Rockets	• 2,000 yd (21–500 lb net explosive weight).

TABLE 14—SUMMARY OF PROCEDURAL MITIGATION—Continued

Stressor or activity	Mitigation zone sizes and other requirements
Explosive Bombs	• 900 yd (0.6–20 lb net explosive weight). • 2,500 yd.
Sinking Exercises	• 2.5 nmi.
Explosive Mine Countermeasure and Neutralization Activities	• 2,100 yd (6–650 lb net explosive weight). • 600 yd (0.1–5 lb net explosive weight).
Explosive Mine Neutralization Activities Involving Navy Divers	• 1,000 yd (21–60 lb net explosive weight for positive control charges and charges using time-delay fuses). • 500 yd (0.1–20 lb net explosive weight for positive control charges).
Underwater Demolition Multiple Charge—Mat Weave and Obstacle Loading.	• 700 yd.
Maritime Security Operations—Anti-Swimmer Grenades	• 200 yd.
Vessel Movement	• 500 yd (whales). • 200 yd (other marine mammals).
Towed In-Water Devices	• 250 yd (marine mammals).
Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions.	• 200 yd.
Non-Explosive Missiles and Rockets	• 900 yd.
Non-Explosive Bombs and Mine Shapes	• 1,000 yd.

Notes: lb: pounds; nmi: nautical miles; yd: yards.

TABLE 15—SUMMARY OF MITIGATION AREAS FOR MARINE MAMMALS

Summary of mitigation area requirements [1]
Hawaii Island Mitigation Area (year-round)
• Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use explosives that could potentially result in takes of marine mammals during training and testing.[1]
4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives)
• Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing.[2]
Humpback Whale Special Reporting Areas (December 15–April 15)
• Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in the special reporting areas in its annual training and testing activity reports submitted to NMFS.
San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1—October 31)
• Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing.[1]
• Within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75 inch rockets) activities during training and testing.[1]
• Within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75 inch rockets) activities during training.[1]
• Within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75 inch rockets) activities during training and testing.[1]
Santa Barbara Island Mitigation Area (year-round)
• Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training and testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75 inch rockets) activities during training.[1]
Awareness Notification Message Areas (seasonal according to species)
• Navy personnel must issue awareness notification messages to alert ships and aircraft to the possible presence of humpback whales (November–April), blue whales (June–October), gray whales (November–March), or fin whales (November–May).

[1] In the 2018 HSTT Final Rule we inadvertently included ''Mitigation Areas for Shallow-water Coral Reefs and Precious Coral Beds (year-round)'' in this table. As this mitigation area does not relate to marine mammals we have not included it here.

[2] If Naval units need to conduct more than the specified amount of training or testing, they will obtain permission from the appropriate designated Command authority prior to commencement of the activity. The Navy will provide NMFS with advance notification and include the information in its annual activity reports submitted to NMFS.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations and none of which have changed since our evaluation during the 2018 HSTT rulemaking—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the 2018 HSTT FEIS/OEIS, which reflect many of the comments that have arisen via NMFS or public input in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and stocks and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation,

including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. There is no new information that affects our analysis from the 2018 HSTT rulemaking, all of which remains applicable and valid for our assessment of the appropriateness of the mitigation measures during the seven-year period of this rule.

Based on our evaluation of the Navy's measures (which are being implemented under the 2018 HSTT regulations), as well as other measures considered by the Navy and NMFS, NMFS has determined that the Navy's mitigation measures are appropriate means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Additionally, as described in more detail below, the 2018 HSTT final rule includes an adaptive management provision, which NMFS has extended for the additional two years of this rule, which ensures that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above, through modification as appropriate. Thus, NMFS concludes that the mitigation measures outlined in the final rule satisfy the statutory standard and that any adverse impacts that remain cannot practicably be further mitigated.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

In its 2019 application, the Navy proposed no changes to the monitoring described in the 2018 HSTT final rule. They would continue implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process described in the 2018 HSTT final rule. The Navy's monitoring strategy, currently required by the 2018 HSTT regulations and extended for two years under this final rule, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the seven-year regulations include identical adaptive management provisions and reporting requirements as the 2018 HSTT regulations. There is no new information to indicate that the monitoring measures put in place under the 2018 HSTT final rule do not remain applicable and appropriate for the seven-year period of this rule. See the *Monitoring* section of the 2018 HSTT final rule for more details on the monitoring that would be required under this rule. In addition, please see the 2019 Navy application, which references Chapter 13 of the 2017 Navy application for full details on the monitoring and reporting that will be conducted by the Navy.

Adaptive Management

The 2018 HSTT regulations governing the take of marine mammals incidental to Navy training and testing activities in the HSTT Study Area contain an adaptive management component. Our understanding of the effects of Navy training and testing activities (*e.g.,* acoustic and explosive stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of seven-year regulations. The 2019 Navy application proposed no changes to the adaptive management component included in the 2018 HSTT final rule.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes to existing mitigation and monitoring requirements are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring and if the measures are practicable. If the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of the planned LOA in the **Federal Register** and solicit public comment.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring and exercises reports, as required by MMPA authorizations; (2) compiled results of Navy funded R&D studies; (3) results from specific stranding investigations; (4) results from general marine mammal and sound research; and (5) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs. The results from monitoring reports and other studies may be viewed at *https://www.navymarinespeciesmonitoring.us.*

Reporting

In order to issue incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Reports from individual monitoring events, results of analyses, publications, and periodic progress reports for specific monitoring projects will be posted to the Navy's Marine Species Monitoring web portal: *http://www.navymarinespeciesmonitoring.us.* The 2019 Navy application proposed no changes to the reporting requirements. Except as discussed below, reporting requirements would remain identical to those described in the 2018 HSTT final rule, and there is no new information to indicate that the reporting requirements put in place under the 2018 HSTT final rule do not remain applicable and appropriate for the seven-year period of this final rule. See the *Reporting* section of the 2018 HSTT final rule for more details on the reporting that is required under this rule.

In addition, the 2018 HSTT proposed and final rules unintentionally failed to include the requirement for the Navy to submit a final activity ''close out'' report at the end of the regulatory period. That oversight is being corrected through this rulemaking. This comprehensive training and testing activity report will provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year

total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there are any changes to the sound source allowance, this report will include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the 2018 HSTT FEIS/OEIS and MMPA final rule.

Analysis and Negligible Impact Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through mortality, serious injury, and Level A or Level B harassment (as presented in Tables 11 and 12), NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, other ongoing sources of human-caused mortality, and ambient noise levels).

In the *Estimated Take of Marine Mammals* sections of this final rule and the 2018 HSTT final rule (where the activities, species and stocks, potential effects, and mitigation measures are the same as for this rule), we identified the subset of potential effects that would be expected to rise to the level of takes both annually and over the seven-year period covered by this rule, and then identified the number of each of those mortality takes that we believe could occur or the maximum number of harassment takes that are reasonably expected to occur based on the methods described. The impact that any given take will have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts to individuals, *etc.*). For this final rule we evaluated the likely impacts of the enumerated maximum number of harassment takes that were proposed for authorization and reasonably expected to occur, in the context of the specific circumstances surrounding these predicted takes. We also assessed M/SI takes that have the potential to occur, as well as considering the traits and statuses of the affected species and stocks. Lastly, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific assessments that support our negligible impact conclusions for each stock. Because all of the Navy's specified activities would occur within the ranges of the marine mammal stocks identified in the rule, all negligible impact analyses and determinations are at the stock level (*i.e.,* additional species-level determinations are not needed).

The Navy proposed no changes to the nature or level of the specified activities or the boundaries of the HSTT Study Area, and therefore the training and testing activities (*e.g.,* equipment and sources used, exercises conducted) are the same as those analyzed in the 2018 HSTT final rule. In addition, the mitigation, monitoring, and nearly all reporting measures are identical to those described and analyzed in the 2018 HSTT final rule. As described above, there is no new information since the publication of the 2018 HSTT final rule regarding the impacts of the specified activities on marine mammals, the status and distribution of any of the affected marine mammal species or stocks, or the effectiveness of the mitigation and monitoring measures that would change our analyses, except for one species. For that one species—gray whales—we have considered the effects of the new UME on the west coast of North America along with the effects of the Navy's activities in the negligible impact analysis.

Harassment

As described in the *Estimated Takes of Marine Mammals* section, the annual number of takes authorized and reasonably expected to occur by Level A harassment and Level B harassment (based on the maximum number of activities per 12-month period) are identical to those presented in Tables 41 through 42 in the *Take Requests* section of the 2018 HSTT final rule. As such, the negligible impact analyses and determinations of the effects of the estimated Level A harassment and Level B harassment takes on annual rates of recruitment or survival for each species and stock are nearly identical to and substantively unchanged from those presented in the 2018 HSTT final rule. The primary difference is that the annual levels of take and the associated effects on reproduction or survival would occur for the seven-year period of this rule instead of the five-year period of the 2018 HSTT final rule, which will make no difference in effects on annual rates of recruitment or survival. The other differences in the analyses include our consideration of the newly-declared gray whale UME and slightly modified explosive take estimates, neither of which, as described below, affect the results of the analyses or our determinations. For detailed discussion of the impacts that affected individuals may experience given the specific characteristics of the specified activities and required mitigation (*e.g.,* from behavioral disruption, masking, and temporary or permanent threshold shift), along with the effects of the expected Level A harassment and Level B harassment take on reproduction and survival, see the applicable subsections in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66977–67018; December 27, 2018).

Serious Injury or Mortality

Based on the information and methods discussed in the *Estimated Take of Marine Mammals* section (which are identical to those used in the 2018 HSTT final rule), the number of potential mortalities due to ship strike requested and authorized over the seven-year period of this rule is the same as those authorized in the 2018 HSTT final rule. As the potential mortalities are now spread over seven years rather than five, an annual average of 0.29 gray whales (Eastern North Pacific stock), fin whales (CA/OR/WA stock), and humpback whales (Central North Pacific stock) and an annual average of 0.14 blue whales (Eastern North Pacific stock), humpback whales (CA/OR/WA stock, Mexico DPS), and sperm whales (Hawaii stock) as described in Table 16 (*i.e.,* one, or two, take(s) over seven years divided by seven to get the annual number) are expected to potentially occur and are authorized. As this annual number is less than that analyzed and authorized in the 2018 HSTT final rule, which was

an annual average of 0.4 whales or 0.2 whales respectively for the same species and stocks, and with the exception of the new gray whale UME on the U.S. West Coast and updated abundance information for the Eastern North Pacific stock of blue whales (available in the 2019 draft SARs), no other relevant information about the status, abundance, or effects of M/SI on each species or stock has changed, the analysis of the effects of vessel strike mirrors that presented in the 2018 HSTT final rule.

TABLE 16—SUMMARY INFORMATION RELATED TO MORTALITIES REQUESTED FOR SHIP STRIKE, 2018–2025

Species (stock)	Stock abundance (Nbest) *	Annual authorized take by serious injury or mortality [1]	Total annual M/SI * [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	Vessel collisions (Y/N); annual rate of M/SI from vessel collision *	Potential biological removal (PBR) * [3]	Residual PBR (PBR minus annual M/SI) [4]	Stock trend * [5]	Recent UME (Y/N); number and year (since 2007)
Fin whale (CA/OR/WA stock).	9,029	0.29	≥43.5	Y; ≥0.5	Y, 43	81	37.5	↑	N.
Gray whale (Eastern North Pacific stock).	26,960	0.29	139	Y, 9.6	Y, 0.8	801	662	stable since 2003.	Y, 264, 2019.
Humpback whale (CA/OR/WA stock, Mexico DPS).	2,900	0.14	≥42.1	Y; ≥17.3	Y, 22	33.4	−8.7	↑ (historically); stable.	N.
Humpback whale (Central North Pacific stock) [6].	10,103	0.29	25	Y; 18	Y, 1.4	83	58	↑	N.
Sperm whale (Hawaii stock).	[7] 4,559	0.14	0.7	Y, 0.7	N	14	13.3	?	N.
Blue whale (Eastern North Pacific Stock).	1,496	0.14	≥19.4	≥1.44	Y, 18	2.1	−17.3	stable	Y; 3, 2007.

* Presented in the 2018 final SARs and draft 2019 SARs.
[1] This column represents the annual take by serious injury or mortality (M/SI) by vessel collision and was calculated by the number of mortalities for authorization divided by seven years (the length of the rule and LOAs).
[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either other Navy strikes or NMFS' Southwest Fisheries Science Center (SWFSC) takes in the SARs to ensure not double-counted against PBR. However, for these species, there were no takes from either other Navy activities or SWFSC in the SARs to deduct that would be considered double-counting.
[3] Potential biological removal (PBR) is defined in section 3 of the MMPA. See the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule for a description of PBR.
[4] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI, which is presented in the SARs). This value represents the residual PBR for the stock in the stock's entire range.
[5] See relevant SARs for more information regarding stock status and trends.
[6] Some values for the Central North Pacific stock of humpback whales were unintentionally presented incorrectly in Table 69 of the 2018 HSTT final rule. The correct values are provided here. These transcription errors do not affect the analysis or conclusions in the 2018 HSTT final rule, as the correct values were used in the analysis presented in the *Analysis and Negligible Impact Determination* section.
[7] The stock abundance for the Hawaii stock of sperm whales was unintentionally presented incorrectly as 5,559 in the 2018 HSTT final rule and has been corrected here. This transcription error does not affect the analysis or conclusions reached in the 2018 HSTT final rule.

The Navy has also requested a small number of takes by M/SI from explosives. To calculate the annual average of mortalities for explosives in Table 17 we used the same method as described for vessel strikes. The annual average is the total number of takes over seven years divided by seven. Specifically, NMFS is authorizing the following M/SI takes from explosives: 5 California sea lions and 8 short-beaked common dolphins over the seven-year period (therefore 0.71 mortalities annually for California sea lions and 1.14 mortalities annually for short-beaked common dolphins), as described in Table 17. As this annual number is less than that analyzed and authorized in the 2018 HSTT final rule, which was an annual average of 0.8 California sea lions and 1.2 short-beaked common dolphins, and no other relevant information about the status, abundance, or effects of mortality on each species or stock has changed, the analysis of the effects of explosives mirrors that presented in the 2018 HSTT final rule.

TABLE 17—SUMMARY INFORMATION RELATED TO MORTALITIES FROM EXPLOSIVES, 2018–2025

Species (stock)	Stock abundance (Nbest) *	Annual authorized take by serious injury or mortality [1]	Total annual M/SI * [2]	Fisheries interactions (Y/N); annual rate of M/SI from fisheries interactions *	PBR *	SWFSC authorized take (annual) [3]	Residual PBR-PBR minus annual M/SI and SWFSC [4]	Stock trend * [5]	UME (Y/N); number and year
California sea lion (U.S. stock).	257,606	0.71	319.4	Y;197	14,011	6.6	13,685	↑	Y; 8,112; 2013.
Short-beaked common dolphin (CA/OR/WA stock).	969,861	1.14	≥40	Y; ≥40	8,393	2.8	8,350.2	?	N.

* Presented in the 2018 final SARs. No changes for these stocks were included in the 2019 draft SARs.
[1] This column represents the annual take by serious injury or mortality (M/SI) during explosive detonations and was calculated by the number of mortalities planned for authorization divided by seven years (the length of the rule and LOAs).
[2] This column represents the total number of incidents of M/SI that could potentially accrue to the specified species or stock. This number comes from the SAR, but deducts the takes accrued from either other Navy activities or NMFS' SWFSC takes in the SARs to ensure they are not double-counted against PBR. In this case, for California sea lion 0.8 annual M/SI from the U.S. West Coast during scientific trawl and longline operations conducted by NMFS and 1.8 annual M/SI from marine mammal research related mortalities authorized by NMFS was deducted from total annual M/SI (322).
[3] This column represents annual take authorized through NMFS' SWFSC rulemaking/LOAs (80 FR 58982).
[4] This value represents the calculated PBR less the average annual estimate of ongoing anthropogenic mortalities (*i.e.,* total annual human-caused M/SI column and the annual authorized take from the SWFSC column). In the case of California sea lion the M/SI column (319.4) and the annual authorized take from the SWFSC (6.6) were subtracted from the calculated PBR of 14,011. In the case of Short-beaked common dolphin the M/SI column (40) and the annual authorized take from the SWFSC (2.8) were subtracted from the calculated PBR of 8,393.
[5] See relevant SARs for more information regarding stock status and trends.

See the *Serious Injury or Mortality* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66985–66993; December 27, 2018) for detailed discussions of the impacts of M/SI, including a description of how the agency uses the PBR metric and other factors to inform our analysis, and an analysis of the impacts on each species and stock for which M/SI was proposed for authorization, including

the relationship of potential mortality for each species to the insignificance threshold and residual PBR.

Stocks With M/SI Below the Insignificance Threshold

As noted in the *Serious Injury or Mortality* subsection of the *Negligible Impact Analysis and Determination* section in the 2018 HSTT final rule, for a species or stock with incidental M/SI less than 10 percent of residual PBR, we consider M/SI from the specified activities to represent an insignificant incremental increase in ongoing anthropogenic M/SI that alone (*i.e.,* in the absence of any other take and barring any other unusual circumstances) will clearly not adversely affect annual rates of recruitment and survival. In this case, as shown in Tables 16 and 17, the following species or stocks have potential or estimated M/SI from ship strike and explosive takes, respectively, authorized below their insignificance threshold: fin whale (CA/OR/WA stock), gray whale (Eastern North Pacific stock), humpback whale (Central North Pacific stock), sperm whale (Hawaii stock), California sea lion (U.S stock), and short-beaked common dolphin (CA/OR/WA stock). While the authorized M/SI of California sea lions (U.S. stock) and gray whales (Eastern North Pacific stock) are below the insignificance threshold, because of the recent UMEs, we further address how the authorized M/SI and the UME inform the negligible impact determination immediately below. For the other four stocks with authorized M/SI below the insignificance threshold, there are no other known factors, information, or unusual circumstances that indicate anticipated M/SI below the insignificance threshold could have adverse effects on annual rates of recruitment or survival and they are not discussed further. For the remaining two stocks with anticipated potential M/SI above the insignificance threshold, how that M/SI compares to residual PBR, as well as additional factors, as appropriate, are discussed below as well.

California Sea Lion (U.S. Stock)

The estimated (and authorized) lethal take of California sea lions is well below the insignificance threshold (0.71 as compared to a residual PBR of 13,686) and NMFS classifies the stock as ''increasing'' in the 2018 final SAR, the most recent SAR available for this stock. Nonetheless, we consider here how the 2013–2016 (UME closed on May 6, 2020) California Sea Lion UME informs our negligible impact determination. This UME was confined to pup and yearling sea lions and many were emaciated, dehydrated, and underweight. NMFS staff confirmed that the mortality of pups and yearlings returned to normal in 2017 and 2018. The UME Working Group recommended closure of UME in April, 2020 and the UME was closed on May 6, 2020. NMFS' findings indicate that a change in the availability of sea lion prey, especially anchovy and sardines, a high value food source for nursing mothers, was a likely contributor to the large number of strandings. Sardine spawning grounds shifted further offshore in 2012 and 2013, and while other prey were available (market squid and rockfish), these may not have provided adequate nutrition in the milk of sea lion mothers supporting pups, or for newly-weaned pups foraging on their own. Although the pups showed signs of some viruses and infections, findings indicate that this event was not caused by disease, but rather by the lack of high quality, close-by food sources for nursing mothers. Average mortalities from 2013–2017 were 1,000–3,000 more annually than they were in the previous 10 years. However, even if these unusual mortalities were still occurring (with current data suggesting they are not), combined with other annual human-caused mortalities, and viewed through the PBR lens (for human-caused mortalities), total human-caused mortality (inclusive of the potential for additional UME deaths) would still fall well below residual PBR. Further, the loss of pups and yearlings is not expected to have as much of an effect on annual population rates as the death of adult females. In conclusion, because of the abundance, population trend, and residual PBR of this stock, as well as the fact that the increased mortality stopped two years ago, this UME is not expected to have any impacts on individuals during the period of this final rule, nor is it thought to have had impacts on the population rate when it was occurring that would influence our evaluation of the effects of the mortality authorized on the stock.

Gray Whales (Eastern North Pacific Stock)

Since January 2019, gray whale strandings along the west coast of North America have been significantly higher than the previous 18-year averages. Preliminary findings from necropsies have shown evidence of emaciation. The seasonal pattern of elevated strandings in the spring and summer months is similar to that of the previous gray whale UME in 1999–2000. Current total monthly strandings are slightly higher than 1999 and lower than 2000. If strandings continue to follow a similar pattern, we would anticipate a decrease in strandings in late summer and fall. However, combined with other annual human-caused mortalities, and viewed through the PBR lens (for human-caused mortalities), total human-caused mortality (inclusive of the potential for additional UME deaths) would still fall well below residual PBR and the insignificance threshold. Because of the abundance, population trend (increasing, despite the UME in 1999–2000), and residual PBR (662) of this stock, this UME is not expected to have impacts on the population rate that, in combination with the effects of mortality authorized, would affect annual rates of recruitment or survival.

Stocks with M/SI above the Insignificance Threshold

Humpback Whale (CA/OR/WA Stock, Mexico DPS)

For this stock, PBR is currently set at 16.7 for U.S. waters and 33.4 for the stock's entire range. In the 2018 HSTT final rule and 2019 HSTT proposed rule we inadvertently considered only the PBR for U.S. waters (as presented in the SAR summary tables). As the HSTT Study Area extends beyond U.S. waters and activities have the potential to impact the entire stock, we have corrected this here and present the analysis using the PBR for the stock's entire range. The total annual M/SI is estimated at greater than or equal to 42.1, yielding a residual PBR of –8.7. With the corrected PBR, this potential impact on the stock is less than what was presented in both the 2018 HSTT final rule and 2019 HSTT proposed rule. NMFS authorizes one M/SI over the seven-year duration of the rule (which is 0.14 annually for the purposes of comparing to PBR and considering other effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 8.84. In the 2018 HSTT final rule the PBR was correctly reported as 33.4 (PBR for the stock's entire range), however the total annual M/SI was incorrectly reported as greater than or equal to 40.76 (yielding a residual PBR of –7.36). These transcription errors do not affect the fundamental analysis or conclusion reached in the 2018 HSTT final rule, however, and we have corrected these values here using data from the 2019 draft SARs.

In the commercial fisheries setting for ESA-listed marine mammals (which is similar to the non-fisheries incidental take setting, in that a negligible impact determination is required that is based

on the assessment of take caused by the activity being analyzed) NMFS may find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.,* other than the specified activities covered by the incidental take authorization under consideration). When those considerations are applied in the section 101(a)(5)(A) context here, the authorized lethal take (0.14 annually) of humpback whales from the CA/OR/WA stock is significantly less than 10 percent of PBR (in fact less than 1 percent of 33.4) and there are management measures in place to address M/SI from activities other than those the Navy is conducting (as discussed below).

Based on identical simulations as those conducted to identify Recovery Factors for PBR in Wade *et al.* (1998), but where values less than 0.1 were investigated (P. Wade, pers. comm.), we predict that where the mortality from a specified activity does not exceed Nmin * ½ Rmax * 0.013, the contemplated mortality for the specific activity will not delay the time to recovery by more than 1 percent. For this stock of humpback whales, Nmin * ½ Rmax * 0.013 = 1.45 and the annual mortality proposed for authorization is 0.14 (*i.e.,* less than 1.45), which means that the mortality authorized in this rule for HSTT activities would not delay the time to recovery by more than 1 percent.

As described in the 2018 HSTT final rule, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.,* harassment) do not combine with the impacts from M/SI to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which is discussed further below in the species- and stock-specific section.

In November 2019, NMFS published 2019 draft SARs in which PBR is reported as 33.4 with the predicted average annual mortality greater than or equal to 42.1 (including 22 estimated from vessel collisions and greater than 17.3 observed fisheries interactions). While the observed M/SI from vessel strikes remains low at 2.2 per year, the 2018 final and 2019 draft SARs rely on a new method to estimate annual deaths by ship strike utilizing an encounter theory model that combined species distribution models of whale density, vessel traffic characteristics, and whale movement patterns obtained from satellite-tagged animals in the region to estimate encounters that would result in mortality (Rockwood *et al.,* 2017). The model predicts 22 annual mortalities of humpback whales from this stock from vessel strikes. The authors (Rockwood *et al.,* 2017) do not suggest that ship strike suddenly increased to 22. In fact, the model is not specific to a year, but rather offers a generalized prediction of ship strike off the U.S. West Coast. Therefore, if the Rockwood *et al.* (2017) model is an accurate representation of vessel strike, then similar levels of ship strike have been occurring in past years as well. Put another way, if the model is correct, for some number of years total human-caused mortality has been significantly underestimated, and PBR has been similarly exceeded by a notable amount, and yet the CA/OR/WA stock of humpback whales is considered stable nevertheless.

The CA/OR/WA stock of humpback whales experienced a steady increase from the 1990s through approximately 2008, and more recent estimates through 2014 indicate a leveling off of the population size. This stock is comprised of the feeding groups of three DPSs. Two DPSs associated with this stock are listed under the ESA as either endangered (Central America DPS) or threatened (Mexico DPS), while the third is not listed. The mortality authorized by this rule is for an individual from the Mexico DPS only. As described in the Final Rule Identifying 14 DPSs of the Humpback Whale and Revision of Species-Wide Listing (81 FR 62260, September 8, 2016), the Mexico DPS was initially proposed not to be listed as threatened or endangered, but the final decision was changed in consideration of a new abundance estimate using a new methodology that was more accurate (less bias from capture heterogeneity and lower coefficient of variation) and resulted in a lower abundance than was previously estimated. To be clear, the new abundance estimate did not indicate that the numbers had decreased, but rather, the more accurate new abundance estimate (3,264), derived from the same data but based on an integrated spatial multi-strata mark recapture model (Wade *et al.,* 2016) was simply notably lower than earlier estimates, which were 6,000–7,000 from the SPLASH project (Calambokidis *et al.,* 2008) or higher (Barlow *et al.,* 2011). The updated abundance was still higher than 2,000, which is the Biological Review Team's (BRT) threshold between ''not likely to be at risk of extinction due to low abundance alone'' and ''increasing risk from factors associated with low abundance.'' Further, the BRT concluded that the DPS was unlikely to be declining because of the population growth throughout most of its feeding areas, in California/Oregon and the Gulf of Alaska, but they did not have evidence that the Mexico DPS was actually increasing in overall population size.

As discussed earlier, we also take into consideration management measures in place to address M/SI caused by other activities. The California swordfish and thresher shark drift gillnet fishery is one of the primary causes of M/SI take from fisheries interactions for humpback whales on the West Coast. NMFS established the Pacific Offshore Cetacean Take Reduction Team in 1996 and prepared an associated Plan (PCTRP) to reduce the risk of M/SI via fisheries interactions. In 1997, NMFS published final regulations formalizing the requirements of the PCTRP, including the use of pingers following several specific provisions and the employment of Skipper education workshops.

Commercial fisheries such as crab pot, gillnet, and prawn fisheries are also a significant source of mortality and serious injury for humpback whales and other large whales and, unfortunately, have increased mortalities and serious injuries over recent years (Carretta *et al.,* 2019). However, the 2019 draft SAR notes that a recent increase in disentanglement efforts has resulted in an increase in the fraction of cases that are reported as non-serious injuries as a result of successful disentanglement. More importantly, since 2015, NMFS has engaged in a multi-stakeholder process in California (including California State resource managers, fishermen, non-governmental organizations (NGOs), and scientists) to identify and develop solutions and make recommendations to regulators and the fishing industry for reducing whale entanglements (see *http://www.opc.ca.gov/whale-entanglement-working-group/*), referred to as the Whale Entanglement Working Group. The Whale Entanglement Working Group has made significant progress since 2015 and is tackling the problem from multiple angles, including:

- Development of Fact Sheets and Best Practices for specific Fisheries issues (*e.g.,* California Dungeness Crab Fishing BMPs and the 2018–2019 Best Fishing Practices Guide);
- 2018–2019 Risk Assessment and Mitigation Program (RAMP) to support the state of California in working collaboratively with experts (fishermen, researchers, NGOs, *etc.*) to identify and assess elevated levels of entanglement risk and determine the need for

management options to reduce risk of entanglement; and

- Support of pilot studies to test new fisheries technologies to reduce take (*e.g.,* Exploring Ropeless Fishing Technologies for the California Dungeness Crab Fishery).

The Working Group meets regularly, posts reports and annual recommendations, and makes all of their products and guidance documents readily accessible for the public. The March 2019 Working Group Report reported on the status of the fishery closure, progress and continued development of the RAMP (though there is a separate RAMP report), discussed the role of the Working Group (development of a new Charter), and indicated next steps.

Importantly, in early 2019, as a result of a litigation settlement agreement, the California Department of Fish and Wildlife (CDFW) closed the Dungeness crab fishery three months early for the year, which is expected to reduce the number of likely entanglements. The agreement also limits the fishery duration over the next couple of years and has different triggers to reduce or close it further. Further, pursuant to the settlement, CDFW is required to apply for a Section 10 Incidental Take Permit under the ESA to address protected species interactions with fishing gear and crab fishing gear (pots), and they have agreed to prepare a Conservation Plan by May 2020. Any request for such a permit must include a Conservation Plan that specifies, among other things, what steps the applicant will take to minimize and mitigate the impacts, and the funding that will be available to implement such steps.

Regarding measures in place to reduce mortality from other sources, the Channel Islands NMS staff coordinates, collects, and monitors whale sightings in and around a Whale Advisory Zone and the Channel Islands NMS region, which is within the area of highest vessel strike mortality (90th percentile) for humpback whales on the U.S. West Coast (Rockwood *et al.,* 2017). The seasonally established Whale Advisory Zone spans from Point Arguello to Dana Point, including the Traffic Separation Schemes in the Santa Barbara Channel and San Pedro Channel. Vessels transiting the area from June through November are recommended to exercise caution and voluntarily reduce speed to 10 kn or less for blue, humpback, and fin whales. Channel Island NMS observers collect information from aerial surveys conducted by NOAA, the U.S. Coast Guard, California Department of Fish and Game, and Navy chartered aircraft. Information on seasonal presence, movement, and general distribution patterns of large whales is shared with mariners, NMFS' Office of Protected Resources, the U.S. Coast Guard, the California Department of Fish and Game, the Santa Barbara Museum of Natural History, the Marine Exchange of Southern California, and whale scientists. Real time and historical whale observation data collected from multiple sources can be viewed on the Point Blue Whale Database.

More recently, similar efforts to reduce entanglement risk and severity have also been initiated in Oregon and Washington. Both Oregon and Washington are developing applications for ESA Incidental Take Permits for their commercial crab fisheries. They advocate similar best practices for their fishermen as California, and they are taking regulatory steps related to gear marking and pot limits.

In this case, 0.14 M/SI annually means the potential for one mortality in one of the seven years and zero mortalities in six of those seven years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in six of the seven, or 85.7 percent, of the years covered by this rule. That means that even if a humpback whale from the CA/OR/WA stock were to be struck, in six of the seven years there could be no effect on annual rates of recruitment or survival from Navy-caused M/SI. Additionally, as discussed in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule, the loss of a male would have far less, if any, of an effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, we can reasonably assume that there is a 50 percent chance that the single strike authorized by this rule would be a male, thereby further decreasing the likelihood of impacts on the population rate. In situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of M/SI in six of the years and due to the fact that a single strike could be of a male.

Lastly, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the seven-year period covered by this rule, which is the smallest distinction possible when considering mortality. Wade *et al.* (1998), authors of the paper from which the current PBR equation is derived, note that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.''

The information included here illustrates that this humpback whale stock is currently stable, the potential (and authorized) mortality is well below 10 percent (0.4 percent) of PBR, and management actions are in place to minimize both fisheries interactions and ship strike from other vessel activity in one of the highest-risk areas for strikes. More specifically, although the total human-mortality exceeds PBR, the authorized mortality for the Navy's specified activities would incrementally contribute less than 1 percent of that and, further, given the fact that it would occur in only one of seven years and could be comprised of a male (far less impactful to the population), the potential impacts on population rates are even less. Based on all of the considerations described above, including consideration of the fact that the authorized mortality of 0.14 would not delay the time to recovery by more than 1 percent, we do not expect the potential lethal take from Navy activities, alone, to adversely affect the CA/OR/WA stock of humpback whales through effects on annual rates of recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.,* harassment) on the CA/OR/WA stock of humpback whales from the Navy's activities to ensure that the total authorized takes would have a negligible impact on the species and stock. Therefore, this information will be considered in combination with our assessment of the impacts of authorized harassment takes later in the *Group and Species-Specific Analyses* section.

Blue Whale (Eastern North Pacific Stock)

For blue whales (Eastern North Pacific stock), PBR is currently set at 1.23 for U.S. waters and 2.1 for the stock's entire range. In the 2018 HSTT final rule and 2019 HSTT proposed rule we inadvertently presented only the PBR for U.S. waters (as presented in the SAR summary tables). As the HSTT Study Area extends beyond U.S. waters and activities have the potential to impact the entire stock, we have corrected this here and present the analysis using the PBR for the stock's entire range. The

total annual M/SI is estimated at greater than or equal to 19.4, yielding a residual PBR of −17.3. NMFS authorizes one M/SI for the Navy over the seven-year duration of the rule (indicated as 0.14 annually for the purposes of comparing to PBR and evaluating overall effects on annual rates of recruitment and survival), which means that residual PBR is exceeded by 17.44. However, as described previously, in the commercial fisheries setting for ESA-listed marine mammals (which is similar to the incidental take setting, in that the negligible impact determination is based on the assessment of take caused by the activity being analyzed) NMFS may find the impact of the authorized take from a specified activity to be negligible even if total human-caused mortality exceeds PBR, if the authorized mortality is less than 10 percent of PBR and management measures are being taken to address serious injuries and mortalities from the other activities causing mortality (*i.e.,* other than the specified activities covered by the incidental take authorization in consideration). When those considerations are applied in the section 101(a)(5)(A) context, the authorized lethal take (0.14 annually) of blue whales from the Eastern North Pacific stock is less than 10 percent of PBR (which is 2.1) and there are management measures in place to address M/SI from activities other than those the Navy is conducting (as discussed below). Perhaps more importantly, the population is considered ''stable'' and, specifically, the available data suggests that the current number of ship strikes is not likely to have an adverse impact on the population, despite the fact that it exceeds PBR, with the Navy's minimal additional mortality of one whale in the seven years not creating the likelihood of adverse impact. Immediately below, we explain the information that supports our finding that the Navy's authorized M/SI is not expected to result in more than a negligible impact on this stock. As described previously, NMFS must also ensure that impacts by the applicant on the species or stock from other types of take (*i.e.,* harassment) do not combine with the impacts from mortality to adversely affect the species or stock via impacts on annual rates of recruitment or survival, which occurs further below in the stock-specific discussion sections.

As discussed in the 2018 HSTT final rule, the 2018 final SAR and 2019 draft SAR rely on a new method to estimate annual deaths by ship strike utilizing an encounter theory model that combined species distribution models of whale density, vessel traffic characteristics, and whale movement patterns obtained from satellite-tagged animals in the region to estimate encounters that would result in mortality (Rockwood *et al.,* 2017). The model predicts 18 annual mortalities of blue whales from vessel strikes, which, with the additional M/SI of 1.44 from fisheries interactions, results in the current estimate of residual PBR equal to −17.3. Although NMFS' Permits and Conservation Division in the Office of Protected Resources has independently reviewed the new ship strike model and its results and agrees that it is appropriate for estimating blue whale mortality by ship strike on the U.S. West Coast, for analytical purposes we also note that if the historical method were used to predict vessel strike (*i.e.,* using observed mortality by vessel strike, or 0.4, instead of 18), then total human-caused mortality including the Navy's potential take would not exceed PBR. We further note that the authors (Rockwood *et al.,* 2017) do not suggest that ship strike suddenly increased to 18 recently. In fact, the model is not specific to a year, but rather offers a generalized prediction of ship strike off the U.S. West Coast. Therefore, if the Rockwood *et al.* (2017) model is an accurate representation of vessel strike, then similar levels of ship strike have been occurring in past years as well. Put another way, if the model is correct, for some number of years total-human-caused mortality has been significantly underestimated and PBR has been similarly exceeded by a notable amount, and yet the Eastern North Pacific stock of blue whales remains stable nevertheless.

NMFS' 2018 final SAR and 2019 draft SAR state that the stock is ''stable'' and there is no indication of a population size increase in this blue whale population since the early 1990s. The lack of a species' or stock's population increase can have several causes, some of which are positive. The SAR further cites to Monnahan *et al.* (2015), which used a population dynamics model to estimate that the Eastern North Pacific blue whale population was at 97 percent of carrying capacity in 2013, suggesting that the observed lack of a population increase since the early 1990s was explained by density dependence, not impacts from ship strike. This would mean that this stock of blue whales shows signs of stability and is not increasing in population size because the population size is at or nearing carrying capacity for its available habitat. In fact, we note that this population has maintained this status throughout the years that the Navy has consistently tested and trained at similar levels (with similar vessel traffic) in areas that overlap with blue whale occurrence, which would be another indicator of population stability.

Monnahan *et al.* (2015) modeled vessel numbers, ship strikes, and the population of the Eastern North Pacific blue whale population from 1905 out to 2050 using a Bayesian framework to incorporate informative biological information and assign probability distributions to parameters and derived quantities of interest. The authors tested multiple scenarios with differing assumptions, incorporated uncertainty, and further tested the sensitivity of multiple variables. Their results indicated that there is no immediate threat (*i.e.,* through 2050) to the population from any of the scenarios tested, which included models with 10 and 35 strike mortalities per year. Broadly, the authors concluded that, unlike other blue whale stocks, the Eastern North Pacific blue whales have recovered from 70 years of whaling and are in no immediate threat from ship strikes. They further noted that their conclusion conflicts with the depleted and strategic designation under the MMPA, as well as PBR specifically.

As discussed, we also take into consideration management measures in place to address M/SI caused by other activities. The Channel Islands NMS staff coordinates, collects, and monitors whale sightings in and around the Whale Advisory Zone and the Channel Islands NMS region. Redfern *et al.* (2013) note that the areas of highest risk for blue whales is the Santa Barbara Channel, where shipping lanes intersect with common feeding areas. The seasonally established Whale Advisory Zone spans from Point Arguello to Dana Point, including the Traffic Separation Schemes in the Santa Barbara Channel and San Pedro Channel. Vessels transiting the area from June through November are recommended to exercise caution and voluntarily reduce speed to 10 kn or less for blue, humpback, and fin whales. Channel Island NMS observers collect information from aerial surveys conducted by NOAA, the U.S. Coast Guard, California Department of Fish and Game, and U.S. Navy chartered aircraft. Information on seasonal presence, movement, and general distribution patterns of large whales is shared with mariners, NMFS Office of Protected Resources, U.S. Coast Guard, California Department of Fish and Game, the Santa Barbara Museum of Natural History, the Marine Exchange of Southern California, and whale

scientists. Real time and historical whale observation data collected from multiple sources can be viewed on the Point Blue Whale Database.

In this case, 0.14 M/SI annually means one mortality in one of the seven years and zero mortalities in six of those seven years. Therefore, the Navy would not be contributing to the total human-caused mortality at all in six of the seven, or 85.7 percent, of the years covered by this rule. That means that even if a blue whale were to be struck, in six of the seven years there could be no effect on annual rates of recruitment or survival from Navy-caused M/SI. Additionally, as with humpback whales discussed previously, the loss of a male would have far less, if any, effect on population rates and absent any information suggesting that one sex is more likely to be struck than another, we can reasonably assume that there is a 50 percent chance that the single strike authorized by this rule would be a male, thereby further decreasing the likelihood of impacts on the population rate. In situations like this where potential M/SI is fractional, consideration must be given to the lessened impacts anticipated due to the absence of M/SI in six of the seven years and the fact that the single strike could be a male. Lastly, as with the CA/OR/WA stock of humpback whales above, we reiterate that PBR is a conservative metric and also not sufficiently precise to serve as an absolute predictor of population effects upon which mortality caps would appropriately be based. This is especially important given the minor difference between zero and one across the seven-year period covered by this rule, which is the smallest distinction possible when considering mortality. As noted above, Wade *et al.* (1998), authors of the paper from which the current PBR equation is derived, note that ''Estimating incidental mortality in one year to be greater than the PBR calculated from a single abundance survey does not prove the mortality will lead to depletion; it identifies a population worthy of careful future monitoring and possibly indicates that mortality-mitigation efforts should be initiated.'' The information included here indicates that this blue whale stock is stable, approaching carrying capacity, and has leveled off because of density-dependence, not human-caused mortality, in spite of what might be otherwise indicated from the calculated PBR. Further, potential (and authorized) M/SI is below 10 percent of PBR and management actions are in place to minimize ship strike from other vessel activity in one of the highest-risk areas for strikes. Based on all of the considerations described above, we do not expect lethal take from Navy activities, alone, to adversely affect Eastern North Pacific blue whales through effects on annual rates of recruitment or survival. Nonetheless, the fact that total human-caused mortality exceeds PBR necessitates close attention to the remainder of the impacts (*i.e.,* harassment) on the Eastern North Pacific stock of blue whales from the Navy's activities to ensure that the total authorized takes have a negligible impact on the species or stock. Therefore, this information will be considered in combination with our assessment of the impacts of authorized harassment takes in the *Group and Species-Specific Analyses* section that follows.

Group and Species-Specific Analyses

In addition to broader analyses of the impacts of the Navy's activities on mysticetes, odontocetes, and pinnipeds, the 2018 HSTT final rule contained detailed analyses of the effects of the Navy's activities in the HSTT Study Area on each affected species and stock. All of that information and analyses remain applicable and valid for our analyses of the effects of the same Navy activities on the same species and stocks for the seven-year period of this rule. See the *Group and Species-Specific Analyses* subsection in the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule (83 FR 66993–67018; December 27, 2018). In addition, no new information has been received since the publication of the 2018 HSTT final rule that significantly changes the analyses on the effects of the Navy's activities on each species and stock presented in the 2018 HSTT final rule (the potential impact of the new gray whale UME and the corrected numbers from the humpback whale SARs were discussed earlier in the rule).

In the discussions below, the estimated Level B harassment takes represent instances of take, not the number of individuals taken (the much lower and less frequent Level A harassment takes are far more likely to be associated with separate individuals), and in many cases some individuals are expected to be taken more than one time, while in other cases a portion of individuals will not be taken at all. Below, we compare the total take numbers (including PTS, TTS, and behavioral disruption) for species or stocks to their associated abundance estimates to evaluate the magnitude of impacts across the species or stock and to individuals. Specifically, when an abundance percentage comparison is below 100, it means that that percentage or less of the individuals in the stock will be affected (*i.e.,* some individuals will not be taken at all), that the average for those taken is one day per year, and that we would not expect any individuals to be taken more than a few times in a year. When it is more than 100 percent, it means there will definitely be some number of repeated takes of individuals. For example, if the percentage is 300, the average would be each individual is taken on three days in a year if all were taken, but it is more likely that some number of individuals will be taken more than three times and some number of individuals fewer times or not at all. While it is not possible to know the maximum number of days across which individuals of a stock might be taken, in acknowledgement of the fact that it is more than the average, for the purposes of this analysis, we assume a number approaching twice the average. For example, if the percentage of take compared to the abundance is 800, we estimate that some individuals might be taken as many as 16 times. Those comparisons are included in the sections below. For some stocks these numbers have been adjusted slightly (with these adjustments being in the single digits) so as to more consistently apply this approach, but these minor changes did not change the analysis or findings.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. In the annual estimated take tables below, takes within the U.S. EEZ include only those takes within the U.S. EEZ, where most Navy activities occur and where we often have the best information on species and stock presence and abundance. Takes inside and outside the EEZ include all takes in the HSTT Study Area.

An individual that incurs a PTS or TTS take may sometimes also be subject to behavioral disturbance at the same time. As described in the *Harassment* subsection of the *Analysis and Negligible Impact Determination* section of the 2018 HSTT final rule, the degree of PTS, and the degree and duration of TTS, expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues PTS or TTS and is subject to behavioral disturbance would result in impacts to reproduction or survival. Nonetheless, we recognize that if an individual is subjected to behavioral disturbance repeatedly for a longer duration and on consecutive

days, effects could accrue to the point that reproductive success is jeopardized (as discussed below in the stock-specific summaries). Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes (which could result in reproductive impacts), we consider the total takes, not just the Level B harassment takes by behavioral disruption, so that individuals potentially exposed to both threshold shift and behavioral disruption are appropriately considered. We note that the same reasoning applies with the potential addition of behavioral disruption to tissue damage from explosives, the difference being that we do already consider the likelihood of reproductive impacts whenever tissue damage occurs. Further, the number of Level A harassment takes by either PTS or tissue damage are so low compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

As noted previously, we presented a detailed discussion of important marine mammal habitat (*e.g.,* ESA-designated critical habitat, biologically important areas (BIAs), and national marine sanctuaries (NMSs)) for all species and stocks in the HSTT Study Area in the 2018 HSTT proposed final rules. All of that information remains valid and applicable to the species- and stock-specific negligible impact analyses below. Please see the 2018 rules for complete information. In addition, since publication of the 2018 HSTT final rule, NMFS published a proposed rule to designate ESA critical habitat for the Central America and Mexico DPSs of humpback whales on October 9, 2019 (84 FR 54354). In the proposed rule only critical habitat Unit 19 overlapped with the HSTT Study Area, and NMFS proposed to exclude this unit from the critical habitat designation based on consideration of national security. A final rule designating critical habitat for these two DPSs of humpback whales has not been published.

All species in the HSTT Study Area will benefit from the procedural mitigation measures summarized in the *Mitigation Measures* section of this rule, and described in detail in the *Mitigation Measures* section of the 2018 HSTT final rule. Additionally, the Navy will limit activities and employ other measures in mitigation areas that will avoid or reduce impacts to several species and stocks. These mitigation areas and the associated limitations on activities are summarized in Table 15 above and described in detail in the *Mitigation Measures* section of the 2018 HSTT final rule. The manner and extent to which the limitations in these mitigation areas will prevent or minimize potential impacts on specific species and stocks in the HSTT Study Area is discussed in the *Mitigation Measures* section of the 2018 HSTT final rule under *Final Mitigation Areas,* all of which remains valid and applicable for this final rule.

Having considered all of the information and analyses previously presented in the 2018 HSTT final rule, including the *Group and Species-Specific Analyses* discussions organized by the different groups and species, below we present tables showing instances of total take as a percentage of stock abundance for each group, updated with the new explosion and vessel strike calculations. We then summarize the information for each species or stock, considering the analysis from the 2018 HSTT final rule and any new analysis. The analyses below in some cases address species collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds in water), share similar life history strategies, and/or are known to behaviorally respond similarly to acoustic stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species or stock. In addition, animals belonging to each stock within a species typically have the same hearing capabilities and behaviorally respond in the same manner as animals in other stocks within the species.

Mysticetes

In Tables 18 and 19 below for mysticetes, we indicate the total annual mortality, Level A harassment, Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 18 and 19 have been updated from Tables 71 and 72 in the 2018 HSTT final rule as appropriate with the 2018 final SARs and 2019 draft SARs and updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Mysticetes* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 18—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR MYSTICETES IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instance of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Takes (within Navy EEZ)	Total Navy abundance inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy EEZ abundance (HRC)
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Blue whale	Central North Pacific.	15	33	0	0	0	48	40	43	33	112	121
Bryde's whale.	Hawaii	40	106	0	0	0	146	123	108	89	135	138
Fin whale	Hawaii	21	27	0	0	0	48	41	52	40	92	103
Humpback whale.	Central North Pacific.	2,837	6,289	3	0	0.29	9,129	7,389	5,078	4,595	180	161
Minke whale.	Hawaii	1,233	3,697	2	0	0	4,932	4,030	3,652	2,835	135	142
Sei whale	Hawaii	46	121	0	0	0	167	135	138	107	121	126

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), both in and outside of the U.S. EEZ. Because the portion of the Navy's study area inside the U.S. EEZ is generally concomitant with the area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.29 is the result of no more than two mortalities over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section.

TABLE 19—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR MYSTICETES IN THE SOCAL PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE.

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instance of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire Study Area)	Navy abundance in Action Area (SOCAL)	NMFS SARS abundance	Total take as percentage of total Navy abundance in Action Area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
Blue whale	Eastern North Pacific.	792	1,196	1	0	0.14	1,989	785	1,496	253	133
Bryde's whale	Eastern Tropical Pacific.	14	27	0	0	0	41	1	unknown	3,154	unknown
Fin whale	CA/OR/WA	835	1,390	1	0	0.29	2,226	363	9,029	613	25
Humpback whale	CA/OR/WA	480	1,514	1	0	0.14	1,995	247	2,900	808	69
Minke whale	CA/OR/WA	259	666	1	0	0	926	163	636	568	146
Sei whale	Eastern North Pacific.	27	52	0	0	0	79	3	519	2,633	15
Gray whale	Eastern North Pacific.	1,316	3,355	7	0	0.29	4,678	193	26,960	2,424	17
Gray whale	Western North Pacific.	2	4	0	0	0	6	0	290	0	2

Note: For the SOCAL take estimates, because of the manner in which the Navy study area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy study area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the study area, as well as the SARs (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section. The annual mortality of 0.29 is the result of no more than two mortalities over the course of seven years from vessel strikes.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected mysticete stocks.

Blue Whale (Eastern North Pacific Stock)

The SAR identifies this stock as ''stable'' even though the larger species is listed as endangered under the ESA. We further note that this species was originally listed under the ESA as a result of the impacts from commercial whaling, which is no longer affecting the species. No Level A harassment by tissue damage is anticipated or authorized. NMFS will authorize one mortality over the seven years covered by this rule, or 0.14 mortality annually. With the addition of this 0.14 annual mortality, residual PBR is exceeded, resulting in the total human-caused mortality exceeding PBR by 17.44. However, as described in more detail in the *Serious Injury or Mortality* section above, when total human-caused mortality exceeds PBR, we consider whether the incremental addition of a small amount of authorized mortality from the specified activity may still result in a negligible impact, in part by identifying whether it is less than 10 percent of PBR. In this case, the authorized mortality is well below 10 percent of PBR, management measures are in place to reduce mortality from other sources, and the incremental addition of a single mortality over the course of the seven-year Navy rule is not expected to, alone, lead to adverse impacts on the stock through effects on annual rates of recruitment or survival. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.2 to 0.14 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 253 and 133 percent, respectively. Given the range of blue whales, this information suggests that only some smaller portion of individuals in the stock are likely impacted, but that there will likely be some repeat exposure (maybe 5 or 6 days within a year) of some subset of individuals that spend extended time within the SOCAL Range. Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. However, these amounts are still not expected to adversely impact reproduction or survival of any individuals. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, the Navy implements time/area mitigation in SOCAL in the majority of the BIAs, which will reduce the severity of impacts to blue whales by reducing interference in feeding that could result in lost feeding opportunities or necessitate additional energy expenditure to find other good opportunities. Regarding the severity of TTS takes, we have explained in the 2018 HSTT final rule that they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with blue whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effect on the reproduction or survival of that one individual, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, this population is stable, only a smaller portion of the stock is anticipated to be impacted, and any individual blue whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across five or six days, but minimized in biologically important areas. This low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival. One individual is expected to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity

(PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale the estimated one Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of that individual, let alone have effects on annual rates of recruitment or survival. Nor are these harassment takes combined with the one authorized mortality (which our earlier analysis indicated will not have more than a negligible impact on this stock of blue whales), expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of blue whales.

Bryde's Whale (Eastern Tropical Pacific Stock)

Little is known about this stock, or its status, and it is not listed under the ESA. No mortality or Level A harassment is anticipated or authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is 3,154 percent, however, the abundance upon which this percentage is based (1.3 whales from the Navy estimate, which is extrapolated from density estimates based on very few sightings) is clearly erroneous and the SAR does not include an abundance estimate because all of the survey data is outdated (Table 19). However, the abundance in the early 1980s was estimated as 22,000 to 24,000, a portion of the stock was estimated at 13,000 in 1993, and the minimum number in the Gulf of California alone was estimated at 160 in 1990. Given this information and there being no indication of dramatic decline since these population estimates, along with the fact that 41 total takes of Bryde's whales were estimated, this information suggests that only a small portion of the individuals in the stock are likely to be impacted, and few, if any, are likely to be taken over more than one day. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with Bryde's whale communication or other important low-frequency cues. Any associated lost opportunities and capabilities are not at a level that will impact reproduction or survival.

Altogether, in spite of the unknown status and calculated number of instances of take compared to abundance, only a small portion of the stock is anticipated to be impacted based on the more likely minimum population level and any individual Bryde's whale is likely to be disturbed at a low-moderate level, with few, if any, individuals exposed over more than one day in the year. No mortality and no Level A harassment is anticipated or proposed for authorization. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern Tropical Pacific stock of Bryde's whales.

Fin Whale (CA/OR/WA Stock)

The SAR identifies this stock as ''increasing,'' even though the larger species is listed as endangered under the ESA. No Level A harassment by tissue damage is anticipated or authorized. NMFS authorizes two mortalities over the seven years covered by this rule, or 0.29 mortality annually. The addition of this 0.29 annual mortality still leaves the total human-caused mortality well under the insignificance threshold of residual PBR. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.4 to 0.29 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 613 and 25 percent, respectively. This information suggests that only some portion (less than 25 percent) of individuals in the stock are likely impacted, but that there is likely some repeat exposure (perhaps up to 12 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. However, these amounts are still not expected to adversely impact reproduction or survival of any individuals. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, while there are no BIAs for fin whales in the SOCAL range, the Navy implements time/area mitigation in SOCAL in blue whale BIAs, and fin whales are known to sometimes feed in some of the same areas, which means they could potentially accrue some benefits from the mitigation. Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with fin whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of that one individual, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, this population is increasing, only a small portion of the stock is anticipated to be impacted, and any individual fin whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and twelve days, with a few individuals potentially taken on a few sequential days. This low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival for any individuals, let alone have impacts on annual rates of recruitment or survival. One individual is expected to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale

the estimated one Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of that individual, let alone have effects on annual rates of recruitment or survival. Nor are these harassment takes combined with the two authorized mortalities expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of fin whales.

Humpback Whale (CA/OR/WA Stock)

The SAR identifies this stock as stable (having shown a long-term increase from 1990 and then leveling off between 2008 and 2014) and the individuals in this stock are associated with three DPSs, one of which is not listed under the ESA (Hawaii), one of which is listed as threatened (Mexico), and one of which is listed as endangered (Central America). Individuals encountered in the SOCAL portion of the HSTT Study Area are likely to come from the latter two DPSs. No Level A harassment by tissue damage is anticipated or authorized. NMFS authorizes one mortality over the seven years covered by this rule, or 0.14 mortality annually (Mexico DPS only). With the addition of this 0.14 annual mortality, the total human-caused mortality exceeds PBR by 8.84. However, as described in more detail in the *Serious Injury or Mortality* section, when total human-caused mortality exceeds PBR, we consider whether the incremental addition of a small amount of authorized mortality from the specified activity may still result in a negligible impact, in part by identifying whether it is less than 10 percent of PBR, which is 33.4. In this case, the authorized mortality is well below 10 percent of PBR (less than one percent, in fact) and management measures are in place to reduce mortality from other sources. More importantly, as described above in the *Serious Injury or Mortality* section, the authorized mortality of 0.14 will not delay the time to recovery by more than 1 percent. Given these considerations along with those discussed earlier, the incremental addition of a single mortality over the course of the seven-year Navy rule is not expected to, alone, lead to adverse impacts on the stock through effects on annual rates of recruitment or survival. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.2 to 0.14 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 808 and 69 percent, respectively. Given the range of humpback whales, this information suggests that only some portion of individuals in the stock are likely impacted, but that there is likely some repeat exposure (perhaps up to 16 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on several sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. However, these amounts are still not expected to adversely impact reproduction or survival of any individuals.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of that one individual, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, this population is stable, only a small portion of the stock is anticipated to be impacted and any individual humpback whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed up to 16 days, but with no reason to think that more than several of those days would be sequential. This low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, let alone have impacts on annual rates of recruitment or survival. One individual is expected to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale the estimated one Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of that individual, let alone have effects on annual rates of recruitment or survival. Nor are these harassment takes combined with the one authorized mortality (which our earlier analysis indicated will not have more than a negligible impact on this stock of humpback whales) expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of humpback whales.

Minke Whale (CA/OR/WA Stock)

The status of this stock is unknown and it is not listed under the ESA. No mortality from vessel strike or Level A harassment by tissue damage from explosive exposure is anticipated or authorized for this species. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 568 and 146 percent, respectively. Based on the behaviors of minke whales, which often occur along continental shelves and sometimes establish home ranges along the West Coast, this information suggests that only a portion of individuals in the stock are likely impacted, but that there is likely some repeat exposure (perhaps up to 11 days within a year) of some subset of individuals that spend extended time within the SOCAL complex. Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding. However, these amounts are still not expected to adversely impact reproduction or survival of any individuals. Regarding the severity of

those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with minke whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the single estimated Level A harassment take by PTS for this stock is unlikely to have any effects on the reproduction or survival of that individual, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, while the status of this population is unknown, only a portion of the stock is anticipated to be impacted and any individual minke whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and eleven days, with a few individuals potentially taken on a few sequential days. No mortality is anticipated or proposed for authorization. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, let alone have impacts on annual rates of recruitment or survival. One individual is expected to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale the estimated one Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of that individual, let alone have effects on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the CA/OR/WA stock of minke whales.

Sei Whale (Eastern North Pacific Stock)

The status of this stock is unknown and it is listed as endangered under the ESA. No mortality or Level A harassment is anticipated or authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2,633 and 15 percent, respectively, however, the abundance upon which the Navy percentage is based (3 from the Navy estimate, which is extrapolated from density estimates based on very few sightings) is likely an underestimate of the number of individuals in the HSTT Study Area, resulting in an overestimated percentage. Given this information and the large range of sei whales, and the fact that only 79 total Level B harassment takes of sei whales were estimated, it is likely that some very small number of sei whales would be taken repeatedly, potentially up to 15 days in a year (typically 2,633 percent would lead to the estimate of 52 days/year, however, given that there are only 79 sei whale total takes, we used the conservative assumption that five individuals might be taken up to 15 times, with the few remaining takes distributed among other individuals). Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on a few sequential days for some small number of individuals, for example, if they resulted from a multi-day exercise on a range while individuals were in the area for multiple days feeding, however, these amounts are still not expected to adversely impact reproduction or survival of any individuals. Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sei whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival.

Altogether, while the status of this population is unknown, only a small portion of the stock is anticipated to be impacted and any individual sei whale is likely to be disturbed at a low-moderate level, with only a few individuals exposed over one to 15 days in a year, with no more than a few sequential days. No mortality or Level A harassment is anticipated or authorized. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival for the stock. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of sei whales.

Gray Whale (Eastern North Pacific Stock)

The SAR identifies this stock as ''increasing'' and the species is not listed under the ESA. No Level A harassment by tissue damage is anticipated or authorized. NMFS is authorizing two mortalities over the seven years covered by this rule, or 0.29 mortality annually. The addition of this 0.29 annual mortality still leaves the total human-caused mortality well under the insignificance threshold of residual PBR (663). On May 31, 2019, NMFS declared the unusual spike in strandings of gray whales along the west coast of North America since January 1, 2019 an UME. As of March 13, 2020, 264 gray whales have stranded along the west coast of North America (in the U.S., Canada, and Mexico). Including these mortalities in the calculated residual PBR still leaves the addition of 0.29 annual mortality well under the insignificance threshold of residual PBR (399 including known deaths due to the UME). In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.4 to 0.29 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2,424 and 17 percent, respectively. This information suggests that only some small portion of individuals in the stock are likely impacted (less than 17 percent), but that there is likely some level of repeat exposure of some subset of individuals that spend extended time within the SOCAL complex. Typically, 2,424 percent would lead to the estimate of 48 days/year, however, given that a large number of gray whales are known to migrate through the SOCAL complex and the fact that there are 4,678 total takes, we believe that it is more likely that a larger number of individuals would be taken one to a few times,

while a small number staying in an area to feed for several days may be taken on 5–10 days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Some of these takes could occur on a few sequential days for some small number of individuals, however, these amounts are still not expected to adversely impact reproduction or survival of any individuals.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with gray whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the 7 estimated Level A harassment takes by PTS for gray whales will be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, while we have considered the impacts of the gray whale UME, gray whales are not endangered or threatened under the ESA and the Eastern North Pacific stock is increasing. Only a small portion of the stock is anticipated to be impacted and any individual gray whale is likely to be disturbed at a low-moderate level, with likely many animals exposed only once or twice and a subset potentially disturbed across five to ten days. This low magnitude and severity of harassment effects is not expected to result in impacts to reproduction or survival for any individuals, let alone have impacts on annual rates of recruitment or survival. Seven individuals are expected to be taken by PTS annually of likely low severity, with this unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. Nor are these harassment takes combined with the two authorized mortalities expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Eastern North Pacific stock of gray whales.

Gray Whale (Western North Pacific Stock)

The Western North Pacific stock of gray whales is reported as increasing in the 2018 final SAR, but is listed as endangered under the ESA. No mortality or Level A harassment is anticipated or authorization. This stock is expected to incur the very small number of 6 Level B harassment takes (2 behavioral disruption and 4 TTS) to a stock with a SAR-estimated abundance of 290. These takes will likely accrue to different individuals, the behavioral disturbances will be of a low-moderate level, and the TTS instances will be at a low level and of short duration (with the same expected effects as described for the Eastern North Pacific stock of gray whales described above). This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Western North Pacific stock of gray whales.

Humpback Whale (Central North Pacific Stock)

The 2018 final SAR identifies this stock as ''increasing'' and the DPS is not listed under the ESA. No Level A harassment by tissue damage is anticipated or authorized. NMFS authorizes two mortalities over the seven years covered by this rule, or 0.29 mortalities annually. The addition of this 0.29 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.4 to 0.29 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 180 and 161 percent. This information and the complicated far-ranging nature of the stock structure suggests that some portion of the stock (but not all) are likely impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Additionally, as noted above, there are two mitigation areas implemented by the Navy that span a large area of the important humpback reproductive area (BIA) and minimize impacts by limiting the use of MF1 active sonar and explosives, thereby reducing both the number and severity of takes of humpback whales. Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the three estimated Level A harassment takes by PTS for humpback whales will be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, this stock is increasing and the DPS is not listed as endangered or threatened under the ESA. Only a small portion of the stock is anticipated to be impacted and any individual humpback whale is likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one to several days per year, with little likelihood of take across sequential days. This low magnitude and severity of harassment effects is not

expected to result in impacts on individual reproduction or survival, let alone have impacts on annual rates of recruitment or survival. Three individuals are estimated to be taken by PTS annually of likely low severity, with this unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. Nor are these harassment takes combined with the two authorized mortalities expected to adversely affect this stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Central North Pacific stock of humpback whales.

Blue Whale (Central North Pacific Stock) and the Hawaii Stocks of Bryde's Whale, Fin Whale, Minke Whale, and Sei Whale

The status of these stocks is not identified in the SARs. Blue whales, fin whales, and sei whales are listed as endangered under the ESA; minke whales and Bryde's whales (other than the Gulf of Mexico DPS) are not listed under the ESA. No mortality or Level A harassment by tissue damage is anticipated or authorized for any of these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 92–135 and 103–142 percent. This information suggests that some portion of the stocks (but not all) are likely impacted, over one to several days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with mysticete communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the two estimated Level A harassment takes by PTS for the Hawaii stock of minke whales are unlikely to have any effects on the reproduction or survival of those two individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, while the status of these populations is unknown, only a portion of these stocks are anticipated to be impacted and any individuals of these stocks are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and several days, with little chance that any are taken across sequential days. No mortality is anticipated or authorized for any of these stocks. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, let alone have impacts on annual rates of recruitment or survival. Two individual minke whales from the Hawaii stock are estimated to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale the estimated Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on these stocks.

Odontocetes

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales

In Tables 20 and 21 below for sperm whales, dwarf sperm whales, and pygmy sperm whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 20 and 21 are unchanged from Tables 73 and 74 in the 2018 HSTT final rule, except for updated information on mortality for the Hawaii stock of sperm whales, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 20—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR SPERM WHALES, DWARF SPERM WHALES, AND PYGMY SPERM WHALES IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Takes (within NAVY EEZ)	Total Navy abundance inside and outside EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Dwarf sperm whale.	Hawaii	5,870	14,550	64	0	0	20,484	15,310	8,218	6,379	249	240
Pygmy sperm whale.	Hawaii	2,329	5,822	29	0	0	8,180	6,098	3,349	2,600	244	235
Sperm whale.	Hawaii	2,466	30	0	0	0.14	2,496	1,317	1,656	1,317	151	147

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), both in and outside of the U.S. EEZ. Because the portion of the Navy's study area inside the U.S. EEZ is generally concomitant with the area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

The annual mortality of 0.14 is the result of no more than one mortality over the course of seven years from vessel strikes as described above in the *Estimated Take of Marine Mammals* section.

TABLE 21—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR SPERM WHALES, DWARF SPERM WHALES, AND PYGMY SPERM WHALES IN THE SOCAL PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Navy abundance in action area	NMFS SARS abundance	Total take as percentage of total Navy abundance in action area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
Kogia whales	CA/OR/WA	2,779	6,353	38	0	0	9,170	757	4,111	1,211	223
Sperm whale	CA/OR/WA	2,437	56	0	0	0	2,493	273	1,997	913	125

Note: For the SOCAL take estimates, because of the manner in which the Navy study area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy study area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the study area, as well as the SARs (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule). Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected stocks addressed in this section.

Sperm Whale, Dwarf Sperm Whale, and Pygmy Sperm Whale (CA/OR/WA Stocks)

The SAR identifies the CA/OR/WA stock of sperm whales as ''stable'' and the species is listed as endangered under the ESA. The status of the CA/OR/WA stocks of pygmy and dwarf sperm whales is unknown and neither are listed under the ESA. Neither mortality nor Level A harassment by tissue damage from exposure to explosives is expected or authorized for any of these three stocks.

Due to their pelagic distribution, small size, and cryptic behavior, pygmy sperm whales and dwarf sperm whales (*Kogia* species) are rarely sighted during at-sea surveys and are difficult to distinguish between when visually observed in the field. Many of the relatively few observations of *Kogia* species off the U.S. West Coast were not identified to species. All at-sea sightings of *Kogia* species have been identified as pygmy sperm whales or *Kogia* species generally. Stranded dwarf sperm and pygmy sperm whales have been found on the U.S. West Coast, however dwarf sperm whale strandings are rare. NMFS SARs suggest that the majority of *Kogia* sighted off the U.S. West Coast were likely pygmy sperm whales. As such, the stock estimate in the NMFS SAR for pygmy sperm whales is the estimate derived for all *Kogia* species in the region (Barlow, 2016), and no separate abundance estimate can be determined for dwarf sperm whales, though some low number likely reside in the U.S. EEZ. Due to the lack of an abundance estimate it is not possible to predict the amount of Level A harassment and Level B harassment take of dwarf sperm whales and therefore take estimates are identified as *Kogia* whales (including both pygmy and dwarf sperm whales). We assume only a small portion of those takes are likely to be dwarf sperm whales as the available information indicates that the density and abundance in the U.S. EEZ is low.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is, respectively, 913 and 125 percent for sperm whales and 1,211 and 223 percent for *Kogia* whales, with a large proportion of the *Kogia* whales anticipated to be pygmy sperm whales due to the low abundance and density of dwarf sperm whales in the HSTT Study Area. Given the range of these stocks (which extends the entire length of the West Coast, as well as beyond the U.S. EEZ boundary), this information suggests that some portion of the individuals in these stocks will not be impacted, but that there is likely some repeat exposure (perhaps up to 24 days within a year for *Kogia* species and 18 days a year for sperm whales) of some small subset of individuals that spend extended time within the SOCAL Range. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, to occasionally moderate, level and less likely to evoke a severe response). Additionally, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, some of these takes could occur on a fair number of sequential days for some number of individuals.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with any of these three species' communication or other important low-frequency cues, and that the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale the estimated Level A harassment takes by PTS for the dwarf and pygmy sperm whale stocks will be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals (and no Level A harassment takes are anticipated or authorized for sperm whales), even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption. Thus the 38 Level A harassment takes by PTS for the two *Kogia* stocks are unlikely to affect rates of recruitment and survival for the stocks.

Altogether, while this population of sperm whales is stable and the status of the *Kogia* species stocks are unknown, most members of the stocks will likely be taken by Level B harassment at a low to occasionally moderate level over several days a year, and some smaller portion of the stocks are expected to be taken on a relatively moderate to high number of days (up to 18 or 24) across the year, some of which could be sequential days. No mortality is anticipated or authorized for any of

these stocks. Thirty-eight individuals from the two *Kogia* stocks are expected to be taken by PTS annually of likely low severity, with this unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes for a subset of individuals makes it more likely that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As discussed in the 2018 HSTT final rule, however, foregone reproduction (especially for one year, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction is not expected to adversely affect these stocks through effects on annual rates of recruitment or survival. We also note that residual PBR is 19.2 for pygmy sperm whales and 1.6 for sperm whales. Both the abundance and PBR are unknown for dwarf sperm whales, however, we know that take of this stock is likely significantly lower in magnitude and severity (*i.e.,* lower number of total takes and repeated takes of any individual) than pygmy sperm whales. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on the CA/OR/WA stocks of sperm whales and pygmy and dwarf sperm whales.

Sperm Whale (Hawaii Stock)

The SAR does not identify a trend for this stock and the species is listed as endangered under the ESA. No Level A harassment by PTS or tissue damage is expected or authorized. NMFS authorizes one mortality over the seven years covered by this rule, which is 0.14 mortalities annually. The addition of this 0.14 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR. In addition, even with the additional two years of activities under this rule, no additional M/SI is estimated for this stock, leading to a slight decrease (from 0.2 to 0.14 annually) in annual mortality from the 2018 HSTT final rule.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 151 and 147 percent. This information and the sperm whale stock range suggest that likely only a smaller portion of the stock will be impacted, over one to a few days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, to occasionally moderate, level and less likely to evoke a severe response). Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival.

Altogether, while the status of this population is unknown, a relatively small portion of this stock is anticipated to be impacted and any individuals are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and a few days, with little chance that any are taken across sequential days. No Level A harassment by PTS or tissue damage is expected or authorized. This low magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, nor are these harassment takes combined with the one authorized mortality expected to adversely affect the stock through impacts on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Hawaii stock of sperm whales.

Pygmy and Dwarf Sperm Whales (Hawaii Stocks)

The SAR does not identify a trend for these stocks and the species are not listed under the ESA. No mortality or Level A harassment by tissue damage is anticipated or authorized. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 244–249 and 235–240 percent. This information and the pygmy and dwarf sperm whale stock ranges (at least throughout the U.S. EEZ around the entire Hawaiian Islands) suggest that likely a fair portion of each stock is not impacted, but that a subset of individuals may be taken over one to perhaps five days per year, with little likelihood of take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, to occasionally moderate, level and less likely to evoke a severe response). Additionally, as discussed earlier, within the Hawaii Island Mitigation Area, explosives are not used and the use of MF1 and MF4 active sonar is limited, greatly reducing the severity of impacts within the small resident population BIA for dwarf sperm whales, which is entirely contained within this mitigation area.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with pygmy or dwarf sperm whale communication or other important low-frequency cues—and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale, estimated Level A harassment takes by PTS for these stocks of dwarf and pygmy sperm whales will be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that will interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more instances of Level B harassment by behavioral disruption. Thus the 64 and 29 total Level A harassment takes by PTS for dwarf and pygmy sperm whales,

respectively, will be unlikely to affect rates of recruitment and survival for these stocks.

Altogether, while the status of these populations is unknown, only a portion of these stocks are likely to be impacted and any individuals are likely to be disturbed at a low-moderate level, with the taken individuals likely exposed between one and five days, with little chance that any are taken across sequential days. No mortality is anticipated or authorized. This low magnitude and severity of Level B harassment effects is not expected to result in impacts on individual reproduction or survival, let alone have impacts on annual rates of recruitment or survival for these stocks. Sixty-four dwarf sperm whales and 29 pygmy sperm whales are estimated to be taken by PTS annually of likely low severity, with this unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the expected and authorized take will have a negligible impact on the Hawaii stocks of pygmy and dwarf sperm whales.

Beaked Whales

In Tables 22 and 23 below for beaked whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 22 and 23 are unchanged from Tables 75 and 76 in the 2018 HSTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Beaked Whales* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 22—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR BEAKED WHALES IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Takes (within NAVY EEZ)	Total Navy abundance inside and outside EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of EEZ abundance (HRC)
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Blainville's beaked whale.	Hawaii	5,369	16	0	0	0	5,385	4,140	989	768	545	539
Cuvier's beaked whale.	Hawaii	1,792	4	0	0	0	1,796	1,377	345	268	521	514
Longman's beaked whale.	Hawaii	19,152	81	0	0	0	19,233	14,585	3,568	2,770	539	527

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), both in and outside of the U.S. EEZ. Because the portion of the Navy's study area inside the U.S. EEZ is generally concomitant with the area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

TABLE 23—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR BEAKED WHALES IN THE SOCAL PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Navy abundance in action area	NMFS SARS abundance	Total take as percentage of total Navy abundance in action area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
Baird's beaked whale.	CA/OR/WA	2,030	14	0	0	0	2,044	74	2,697	2,762	76
Cuvier's beaked whale.	CA/OR/WA	11,373	127	1	0	0	11,501	520	3,274	2,212	351
Mesoplodon species.	CA/OR/WA	6,125	68	1	0	0	6,194	89	3,044	6,960	203

Note: For the SOCAL take estimates, because of the manner in which the Navy study area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy study area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the study area, as well as the SARs (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected stocks addressed in this section.

Blainville's, Cuvier's, and Longman's Beaked Whales (Hawaii Stocks)

The SAR does not identify a trend for these stocks and the species are not listed under the ESA. No mortality or Level A harassment are expected or authorized for any of these three stocks. Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated instances of take compared to the abundance, both throughout the HSTT Study Area and within the U.S. EEZ, respectively, is 521–545 and 514–539 percent. This information and the stock ranges (at least of the small, resident Island associated stocks around Hawaii) suggest that likely a fair portion of the stocks (but not all) will be impacted,

over one to perhaps eleven days per year, with little likelihood of much take across sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two (*i.e.,* moderate level takes). However, while interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options nearby. Additionally, as noted earlier, within the Hawaii Island mitigation area (which entirely contains the BIAs for Cuvier's and Blainville's beaked whales), explosives are not used and the use of MF1 and MF4 active sonar is limited, greatly reducing the severity of impacts to these two small resident populations.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere with beaked whale communication or other important low-frequency cues, and the associated lost opportunities and capabilities are not at a level that will impact reproduction or survival.

Altogether, the population trend for the three stocks is unknown, a fair portion of these stocks are anticipated to be impacted, and any individuals are likely to be disturbed at a moderate level, with the taken individuals likely exposed between one and eleven days, with little chance that individuals are taken across sequential days. No mortality or Level A harassment are expected or authorized for any of these three stocks. This low, to occasionally moderate, magnitude and severity of harassment effects is not expected to result in impacts on individual reproduction or survival, much less have impacts on annual rates of recruitment or survival for these stocks. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on the Hawaii stocks of beaked whales.

Baird's and Cuvier's Beaked Whales and *Mesoplodon* Species (all CA/OR/WA Stocks)

These species are not listed under the ESA and their populations have been identified as ''stable,'' ''decreasing,'' and ''increasing,'' respectively. No mortality is expected or authorized for any of these stocks and only two takes by Level A harassment (PTS) are expected and authorized (one each for Cuvier's beaked whale and the *Mesoplodon* species). No Level A harassment by tissue damage is anticipated or authorized.

No methods are available to distinguish between the six *Mesoplodon* beaked whale CA/OR/WA stocks (Blainville's beaked whale (*M. densirostris*), Perrin's beaked whale (*M. perrini*), Lesser beaked whale (*M. peruvianus*), Stejneger's beaked whale (*M. stejnegeri*), Gingko-toothed beaked whale (*M. gingkodens*), and Hubbs' beaked whale (*M. carlhubbsi*)) when observed during at-sea surveys (Carretta *et al.,* 2018). Bycatch and stranding records from the region indicate that the Hubbs' beaked whale is most commonly encountered (Carretta *et al.,* 2008, Moore and Barlow, 2013). As indicated in the SAR, no species-specific abundance estimates are available, the abundance estimate includes all CA/OR/WA *Mesoplodon* species, and the six species are managed as one unit. Due to the lack of species-specific abundance estimates it is not possible to predict the take of individual species and take estimates are also identified as *Mesoplodon* species.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance for these stocks is 2,762, 2,212, and 6,960 percent (measured against Navy-estimated abundance) and 76, 351, and 203 percent (measured against the SAR) for Baird's beaked whales, Cuvier's beaked whales, and *Mesoplodon* species, respectively. Given the ranges of these stocks, this information suggests that some smaller portion of the individuals of these stocks will be taken, and that some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 20–25 days, and potentially more for Cuvier's)—potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL Range. Note that we predict fewer days of repeated exposure for these stocks than their percentages might have suggested because of the number of overall takes—*i.e.,* using the higher percentage would suggest that an unlikely portion of the takes are taken up by a small portion of the stock incurring a very large number of repeat takes, with little room for take resulting from few or moderate numbers of repeats, which is unlikely.

Regarding the severity of those individual Level B harassment takes by behavioral disruption, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 160 dB, though with beaked whales, which are considered somewhat more sensitive, this could mean that some individuals will leave preferred habitat for a day or two (*i.e.,* of a moderate level). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, as noted, some of these takes could occur on a fair number of sequential days for these stocks.

The severity of TTS takes are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities are not expected to impact reproduction or survival. For similar reasons (as described in the 2018 HSTT final rule) the single Level A harassment take each by PTS for the Cuvier's beaked whale stock and the *Mesoplodon* species is unlikely to have any effects on the reproduction or survival of those individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, a portion of these stocks will likely be taken (at a moderate or sometimes low level) over several days a year, and some smaller portion of the stock is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. No mortality is expected or authorized for any of these stocks. Two individuals (one each for Cuvier's beaked whale and the *Mesoplodon* species) are expected to be taken by PTS annually of likely low severity. A small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, but at the expected scale the estimated one Level A harassment take by PTS would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of that individual. Though the majority of impacts are expected to be of a moderate severity,

the repeated takes over a potentially fair number of sequential days for some individuals makes it more likely that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for one year, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction is not expected to adversely affect these stocks through effects on annual rates of recruitment or survival, especially given the residual PBR of these three beaked whale stocks (16, 21, and 20, respectively).

Further, Navy activities have been conducted in SOCAL for many years at similar levels and the SAR considers *Mesoplodon* species as increasing and Baird's beaked whales as stable. While NMFS' SAR indicates that Cuvier's beaked whales on the U.S. West Coast are declining based on a Bayesian trend analysis of NMFS' survey data collected from 1991 through 2014, results from passive acoustic monitoring and other research have estimated regional Cuvier's beaked whale densities that were higher than indicated by NMFS' broad-scale visual surveys for the U.S. West Coast (Debich *et al.,* 2015a; Debich *et al.,* 2015b; Falcone and Schorr, 2012, 2014; Hildebrand *et al.,* 2009; Moretti, 2016; Širović *et al.,* 2016; Smultea and Jefferson, 2014). Research also indicates higher than expected residency in the Navy's instrumented Southern California Anti-Submarine Warfare Range in particular (Falcone and Schorr, 2012) and photo identification studies in the SOCAL have identified approximately 100 individual Cuvier's beaked whale individuals with 40 percent having been seen in one or more prior years, with re-sightings up to seven years apart (Falcone and Schorr, 2014). The documented residency by many Cuvier's beaked whales over multiple years suggests that a stable population may exist in that small portion of the stock's overall range (*e.g.,* Falcone *et al.,* 2009; Falcone and Schorr, 2014; Schorr *et al.,* 2017).

For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on the CA/OR/WA stocks of Baird's and Cuvier's beaked whales, as well as all six species included within the *Mesoplodon* CA/OR/WA stocks.

Small Whales and Dolphins

In Tables 24 and 25 below for dolphins and small whales, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 24 and 25 are updated from Tables 77 and 78 in the 2018 HSTT final rule as appropriate with the 2018 final SARs and with updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Small Whales and Dolphins* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 24—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR DOLPHINS AND SMALL WHALES IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Takes (within Navy EEZ)	Abundance		Instance of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)		Total Navy abundance inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy EEZ abundance (HRC)
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Bottlenose dolphin.	Hawaii Pelagic.	3,196	132	0	0	0	3,328	2,481	1,528	1,442	218	172
Bottlenose dolphin.	Kauai & Niihau.	534	31	0	0	0	565	264	184	184	307	143
Bottlenose dolphin.	Oahu	8,600	61	1	0	0	8,662	8,376	743	743	1,169	1,130
Bottlenose dolphin.	4-Island ...	349	10	0	0	0	359	316	189	189	190	167
Bottlenose dolphin.	Hawaii	74	6	0	0	0	80	42	131	131	61	32
False killer whale.	Hawaii Pelagic.	999	42	0	0	0	1,041	766	645	507	161	151
False killer whale.	Main Hawaiian Islands Insular.	572	17	0	0	0	589	476	147	147	400	324
False killer whale.	Northwestern Hawaiian Islands.	365	16	0	0	0	381	280	215	169	177	166
Fraser's dolphin.	Hawaii	39,784	1,289	2	0	0	41,075	31,120	5,408	18,763	760	166
Killer whale.	Hawaii	118	6	0	0	0	124	93	69	54	180	172
Melon-headed whale.	Hawaii Islands.	3,261	231	0	0	0	3,492	2,557	1,782	1,782	196	143
Melon-headed whale.	Kohala Resident.	341	9	0	0	0	350	182	447	447	78	41
Pantropical spotted dolphin.	Hawaii Island.	3,767	227	0	0	0	3,994	2,576	2,405	2,405	166	107

TABLE 24—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR DOLPHINS AND SMALL WHALES IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE—Continued

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Takes (within Navy EEZ)	Abundance		Instance of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)		Total Navy abundance inside and outside of EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy EEZ abundance (HRC)
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Pantropical spotted dolphin.	Hawaii Pelagic.	9,973	476	0	0	0	10,449	7,600	5,462	4,637	191	164
Pantropical spotted dolphin.	Oahu	4,284	45	0	0	0	4,329	4,194	372	372	1,164	1,127
Pantropical spotted dolphin.	4-Island ...	701	17	0	0	0	718	634	657	657	109	96
Pygmy killer whale.	Hawaii	8,122	402	0	0	0	8,524	6,538	4,928	3,931	173	166
Pygmy killer whale.	Tropical ...	710	50	0	0	0	760	490	159	23	478	2,130
Risso's dolphin.	Hawaii	8,950	448	0	0	0	9,398	7,318	1,210	4,199	777	174
Rough-toothed dolphin.	Hawaii	6,112	373	0	0	0	6,485	4,859	3,054	2,808	212	173
Short-finned pilot whale.	Hawaii	12,499	433	0	0	0	12,932	9,946	6,433	5,784	201	172
Spinner dolphin.	Hawaii Island.	279	12	0	0	0	291	89	629	629	46	14
Spinner dolphin.	Hawaii Pelagic.	4,332	202	0	0	0	4,534	3,491	2,885	2,229	157	157
Spinner dolphin.	Kauai & Niihau.	1,683	63	0	0	0	1,746	812	604	604	289	134
Spinner dolphin.	Oahu & 4-Island.	1,790	34	1	0	0	1,825	1,708	354	354	516	482
Striped dolphin.	Hawaii	7,379	405	0	0	0	7,784	6,034	4,779	3,646	163	165

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), both in and outside of the U.S. EEZ. Because the portion of the Navy's study area inside the U.S. EEZ is generally concomitant with the area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

TABLE 25—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR DOLPHINS AND SMALL WHALES IN THE SOCAL PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE.

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instance of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Navy abundance in action area (SOCAL)	NMFS SARS abundance	Total take as percentage of total Navy abundance in action area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
Bottlenose dolphin	California Coastal	1,771	38	0	0	0	1,809	238	453	760	399
Bottlenose dolphin	CA/OR/WA Offshore.	51,727	3,695	3	0	0	55,425	5,946	1,924	932	2,881
Killer whale	Eastern North Pacific (ENP) Offshore.	96	11	0	0	0	107	4	300	2,675	36
Killer whale	ENP Transient/West Coast Transient.	179	20	0	0	0	199	30	243	663	82
Long-beaked common dolphin.	California	233,485	13,787	18	2	0	247,292	10,258	101,305	2,411	244
Northern right whale dolphin.	CA/OR/WA	90,052	8,047	10	1	0	98,110	7,705	26,556	1,273	369
Pacific white-sided dolphin.	CA/OR/WA	69,245	6,093	5	0	0	75,343	6,626	26,814	1,137	281
Risso's dolphin	CA/OR/WA	116,143	10,118	9	0	0	126,270	7,784	6,336	1,622	1,993
Short-beaked common dolphin.	CA/OR/WA	1,374,048	118,525	79	10	1.14	1,492,664	261,438	969,861	571	154
Short-finned pilot whale.	CA/OR/WA	1,789	124	1	0	0	1,914	208	836	920	229
Striped dolphin	CA/OR/WA	163,640	11,614	3	0	0	175,257	39,862	29,211	440	600

Note: For the SOCAL take estimates, because of the manner in which the Navy study area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy study area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the study area, as well as the SARs (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

For mortality takes there is an annual average of 1.14 short-beaked common dolphins (*i.e.,* where eight takes could potentially occur divided by seven years to get the annual number of mortalities/serious injuries).

Mortality for the CA/OR/WA stock of short-beaked common dolphins was unintentionally presented incorrectly as 2 in Table 78 of the 2018 HSTT final rule. The correct value (updated for seven years of activity) is provided here. This transcription error does not affect the analysis or conclusions in the 2018 HSTT final rule, as the correct value was used in the analysis presented in the *Analysis and Negligible Impact Determination* section.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any species or stocks through effects on annual rates of recruitment or survival for any of the affected stocks addressed in this section.

Long-Beaked Common Dolphin (California Stock), Northern Right Whale Dolphin (CA/OR/WA Stock), and Short-Beaked Common Dolphin (CA/OR/WA Stock)

None of these species is listed under the ESA and their stock statuses are considered ''increasing,'' ''unknown,'' and ''stable,'' respectively. Eight mortalities or serious injuries of short-beaked common dolphins are estimated and authorized over the seven-year rule, or 1.14 M/SI annually. The addition of this 1.14 annual mortality still leaves the total human-caused mortality well under the insignificance threshold for residual PBR. The three stocks are expected to accrue 2, 1, and 10 Level A harassment takes from tissue damage resulting from exposure to explosives, respectively. As described in detail in the 2018 HSTT final rule, the impacts of a Level A harassment take by tissue damage could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's procedural mitigation, exposure at the closer to the source and more severe end of the spectrum is less likely and we cautiously assume some moderate impact for these takes that could lower the affected individual's fitness within the year such that a female (assuming a 50 percent chance of it being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for only one year in seven, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low), and 1 to 10 instances is not expected to impact annual rates of recruitment or survival for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is 2,411, 1,273, and 571 percent (measured against the Navy-estimated abundance) and 244, 369, and 154 percent (measured against the SAR abundance) for long-beaked common dolphins, northern right whale dolphins, and short-beaked common dolphins, respectively. Given the range of these stocks, this information suggests that likely some portion (but not all or even the majority) of the individuals in the northern right whale dolphin and short-beaked common dolphin stocks are likely impacted, while it is entirely possible that most or all of the range-limited long-beaked common dolphin is taken. All three stocks likely will experience some repeat Level B harassment exposure (perhaps up to 48, 25, and 11 days within a year for long-beaked common dolphins, northern right whale dolphins, and short-beaked common dolphins, respectively) of some subset of individuals that spend extended time within the SOCAL range complex. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB with a portion up to 178 dB (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, some of these takes could occur on a fair number of sequential days for long-beaked common dolphins or northern right whale dolphins, or even some number of short-beaked common dolphins, given the higher number of total takes (*i.e.,* the probability that some number of individuals get taken on a higher number of sequential days is higher, because the total take number is relatively high, even though the percentage is not that high).

The severity of TTS takes is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues, and the associated lost opportunities and capabilities is not expected to impact reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, as discussed in the 2018 HSTT final rule, the 18, 10, and 79 Level A harassment takes by PTS for long-beaked common dolphins, northern right whale dolphins, and short-beaked common dolphins, respectively are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether these stock statuses are considered ''increasing,'' ''unknown,'' and ''stable,'' respectively. Eight mortalities of short-beaked common dolphins are authorized (1.14 takes annually), and all three stocks may experience a very small number of Level A harassment takes (relative to the stock abundance and PBR) by tissue damage or PTS. The 18, 10, and 79 takes by PTS annually of likely low severity are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. Nonetheless, a moderate to large portion of all three stocks will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of these stocks is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for only one year out of seven, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction (including in combination with that which might result from the small number of Level A harassment takes from tissue damage) along with the estimated eight mortalities or serious injuries for short-beaked common dolphins is not expected to adversely

affect any of the stocks through effects on annual rates of recruitment or survival, especially given the very high residual PBRs of these stocks (621, 175, and 8,353, respectively). For these reasons, in consideration of all of the effects of the Navy's activities combined (mortality, Level A harassment, and Level B harassment), we have determined that the authorized take will have a negligible impact on these three stocks of dolphins.

All Other SOCAL Dolphin Stocks (Except Long-Beaked Common Dolphin, Northern Right Whale Dolphin, and Short-Beaked Common Dolphin)

None of these species is listed under the ESA and their stock statuses are considered ''unknown,'' except for the bottlenose dolphin (California coastal stock) and killer whale (Eastern North Pacific stock), which are considered ''stable.'' No mortality or Level A harassment via tissue damage from exposure to explosives is expected or authorized for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is from 440 to 2,675 percent and 36 to 2,881 percent, respectively. Given the range of these stocks (along the entire U.S. West Coast, or even beyond, with some also extending seaward of the HSTT Study Area boundaries), this information suggests that some portion (but not all or even the majority) of the individuals of any of these stocks will be taken, with the exception that most or all of the individuals of the more range-limited California coastal stock of bottlenose dolphin may be taken. It is also likely that some subset of individuals within most of these stocks will be taken repeatedly within the year (perhaps up to 10–15 days within a year), but for no more than several potentially sequential days, although the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins may include individuals that are taken repeatedly within the year over a higher number of days (up to 57, 22, and 40 days, respectively) and potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL range complex. Note that though percentages are high for the Eastern North Pacific stock of killer whales and short-finned pilot whales, given the low overall number of takes, it is highly unlikely that any individuals would be taken across the number of days their percentages suggest.

Regarding the severity of those individual Level B harassment takes by behavioral disruption, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, as noted, some of these takes could occur on a fair number of sequential days for the three stocks listed earlier.

The severity of TTS takes is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, it is unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption.

Altogether, the status of these stocks is either unknown or stable. The small number of annual estimated takes by PTS of likely low severity for several stocks are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. A portion of all of these stocks will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins, specifically, are expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) for the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for only one year in seven, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction is not expected to adversely affect the stocks through effects on annual rates of recruitment or survival, especially given the residual PBRs of the CA/OR/WA stocks of bottlenose dolphins, Pacific white-sided dolphins, and Risso's dolphins (9.4, 183, and 84, respectively). For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on these stocks of dolphins.

All HRC Dolphin Stocks

With the exception of the Main Hawaiian Island DPS of false killer whales (listed as endangered under the ESA, with the MMPA stock identified as ''decreasing''), none of these species are listed under the ESA and their stock statuses are considered ''unknown.'' No mortality or Level A harassment via tissue damage from exposure to explosives is expected or authorized for these stocks.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is from 46 to 1,169 percent and 41 to 2,130 percent, respectively. Given the ranges of these stocks (many of them are small, resident, island-associated stocks), this information suggests that a fairly large portion of the individuals of many of these stocks will be taken, but that most individuals will only be impacted across a smaller to moderate number of days within the year (1–15), and with no more than several potentially sequential days, although

two stocks (the Oahu stocks of bottlenose dolphin and pantropical spotted dolphin) have a slightly higher percentage, suggesting they could be taken up to 23 days within a year, with perhaps a few more of those days being sequential. We note that although the percentage is higher for the tropical stock of pygmy killer whale within the U.S. EEZ (2,130), given (1) the low overall number of takes (760) and (2) the fact that the small within-U.S. EEZ abundance is not a static set of individuals, but rather individuals moving in and out of the U.S. EEZ making it more appropriate to use the percentage comparison for the total takes versus total abundance—it is highly unlikely that any individuals would be taken across the number of days that the within-U.S. EEZ percentage suggests which is 42.

Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, as noted, some of these takes could occur on a fair number of sequential days for the Oahu stocks of bottlenose dolphin and pantropical spotted dolphins.

Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity (PTS) may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, they will be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of the one or two individuals from the three affected stocks, even if accrued to individuals that are also taken by behavioral harassment at the same time.

Altogether, the status these stocks is unknown (with the exception of the Main Hawaiian Islands Insular stock identified as ''decreasing'') and most of these stocks (all but the Oahu stocks of bottlenose dolphin and pantropical spotted dolphins) will likely be taken at a low to occasionally moderate level over several days a year, with some smaller portion of the stock potentially taken on a more moderate number of days across the year (perhaps up to 15 days for Fraser's dolphin, though others notably less), some of which could be across a few sequential days, which is not expected to affect the reproductive success or survival of individuals. For the Oahu stocks of bottlenose dolphin and pantropical spotted dolphins, some subset of individuals could be taken up to 23 days in a year, with some small number being taken across several sequential days, such that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. As noted previously, however, foregone reproduction (especially for one year, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a small number of instances of foregone reproduction is not expected to adversely affect these two stocks through effects on annual rates of recruitment or survival. No mortality is anticipated or authorized for any of these stocks. One or two individuals from three stocks (see Table 24) are expected to be taken by PTS annually of likely low severity, with this unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of those individuals, let alone have effects on annual rates of recruitment or survival. For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on all of the stocks of dolphins found in the vicinity of the HRC.

Dall's Porpoise

In Table 26 below for porpoises, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Table 26 is unchanged from Table 79 in the 2018 HSTT final rule. For additional information and analysis supporting the negligible-impact analysis, see the *Odontocetes* discussion as well as the *Dall's Porpoise* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 26—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR PORPOISES IN THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Navy abundance in action area	NMFS SARS abundance	Total take as percentage of total Navy abundance in action area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
Dall's porpoise	CA/OR/WA	14,482	29,891	209	0	0	44,582	2,054	25,750	2,170	173

Note: For the SOCAL take estimates, because of the manner in which the Navy study area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy study area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the study area, as well as the SARs (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule).
Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect the CA/OR/WA stock of Dall's porpoises through effects

on annual rates of recruitment or survival.

Dall's porpoise is not listed under the ESA and the stock status is considered ''unknown.'' No mortality or Level A harassment via tissue damage from exposure to explosives is expected or authorized for this stock.

Most Level B harassments to Dall's porpoise from hull-mounted sonar (MF1) in the HSTT Study Area would result from received levels between 154 and 166 dB SPL (85 percent). While harbor porpoises have been observed to be especially sensitive to human activity, the same types of responses have not been observed in Dall's porpoises. Dall's porpoises are typically notably longer than, and weigh more than twice as much as, harbor porpoises, making them generally less likely to be preyed upon and likely differentiating their behavioral repertoire somewhat from harbor porpoises. Further, they are typically seen in large groups and feeding aggregations, or exhibiting bow-riding behaviors, which is very different from the group dynamics observed in the more typically solitary, cryptic harbor porpoises, which are not often seen bow-riding. For these reasons, Dall's porpoises are not treated as an especially sensitive species (as compared to harbor porpoises which have a lower threshold for Level B harassment by behavioral disruption and more distant cutoff) but, rather, are analyzed similarly to other odontocetes. Therefore, the majority of Level B harassment takes are expected to be in the form of milder responses compared to higher level exposures. As discussed more fully in the 2018 HSTT final rule, we anticipate more severe effects from takes when animals are exposed to higher received levels.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) is 2,170 and 173 percent, respectively. Given the range of this stock (up the U.S. West Coast through Washington and sometimes beyond the U.S. EEZ), this information suggests that some smaller portion of the individuals of this stock will be taken, and that some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 42 days)—potentially over a fair number of sequential days, especially where individuals spend extensive time in the SOCAL range complex. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB (*i.e.,* of a lower, or sometimes moderate level, less likely to evoke a severe response). While interrupted feeding bouts are a known response and concern for odontocetes, we also know that there are often viable alternative habitat options in the relative vicinity. However, as noted, some of these takes could occur on a fair number of sequential days for this stock.

The severity of TTS takes is expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues. Therefore, the associated lost opportunities and capabilities are not expected to impact reproduction or survival. For these same reasons (low level and the likely frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the estimated 209 Level A harassment takes by PTS for Dall's porpoise is unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival for most individuals. Because of the more substantial number of PTS takes, however, we acknowledge that a few animals could potentially incur permanent hearing loss of a higher degree that could potentially interfere with their successful reproduction and growth. Given the status of the stock, even if this occurred, it will not adversely impact annual rates of recruitment or survival.

Altogether, the status of this stock is unknown, a portion of this stock will likely be taken (at a low to occasionally moderate level) over several days a year, and some smaller portion of the stock is expected to be taken on a relatively moderate to high number of days across the year, some of which could be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the larger number of takes (in total and for certain individuals) for the Dall's porpoise makes it more likely (probabilistically) that a small number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year. Energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal. Similarly, we acknowledge the potential for this to occur to a few individuals out of the 209 total that might incur a higher degree of PTS. As noted previously, however, foregone reproduction (especially for only one year in seven, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual will be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality. Further, the small number of instances of foregone reproduction that could potentially result from PTS and/or the few repeated, more severe Level B harassment takes by behavioral disruption is not expected to adversely affect the stock through effects on annual rates of recruitment or survival, especially given the status of the species (not endangered or threatened; minimum population of 25,170 just within the U.S. EEZ) and residual PBR of Dall's porpoise (171.4). For these reasons, in consideration of all of the effects of the Navy's activities combined, we have determined that the authorized take will have a negligible impact on the CA/OR/WA stock of Dall's porpoises.

Pinnipeds

In Tables 27 and 28 below for pinnipeds, we indicate the total annual mortality, Level A and Level B harassment, and a number indicating the instances of total take as a percentage of abundance. Tables 27 and 28 have been updated from Tables 80 and 81 in the 2018 HSTT final rule, as appropriate, with the 2018 final SARs and updated information on mortality, as discussed above. For additional information and analysis supporting the negligible-impact analysis, see the *Pinnipeds* discussion in the *Group and Species-Specific Analyses* section of the 2018 HSTT final rule, all of which remains applicable to this final rule unless specifically noted.

TABLE 27—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR PINNIPEDS IN THE HRC PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes		Abundance		Instances of total take as percent of abundance	
	Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Takes (within NAVY EEZ)	Total Navy abundance inside and outside EEZ (HRC)	Within EEZ Navy abundance (HRC)	Total take as percentage of total Navy abundance (HRC)	EEZ take as percentage of Navy EEZ abundance (HRC)
	Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage							
Hawaiian monk seal.	143	62	1	0	0	206	195	169	169	122	115

Note: For the HI take estimates, we compare predicted takes to abundance estimates generated from the same underlying density estimates (as described in the *Estimated Take of Marine Mammals* section of the 2018 HSTT final rule), both in and outside of the U.S. EEZ. Because the portion of the Navy's study area inside the U.S. EEZ is generally concomitant with the area used to generate the abundance estimates in the SARs, and the abundance predicted by the same underlying density estimates is the preferred abundance to use, there is no need to separately compare the take to the SARs abundance estimate.

Total takes inside and outside U.S. EEZ represent the sum of annual Level A and Level B harassment from training and testing activities.

TABLE 28—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT, LEVEL A HARASSMENT, AND MORTALITY FOR PINNIPEDS IN THE SOCAL PORTION OF THE HSTT STUDY AREA AND NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Instances of indicated types of incidental take (not all takes represent separate individuals, especially for disturbance)					Total takes	Abundance		Instances of total take as percent of abundance	
		Level B harassment		Level A harassment		Mortality	Total takes (entire study area)	Navy abundance in action area (SOCAL)	NMFS SARS abundance	Total take as percentage of total Navy abundance in action area	Total take as percentage of total SAR abundance
		Behavioral disturbance	TTS (may also include disturbance)	PTS	Tissue damage						
California sea lion	U.S.	113,419	4,789	87	9	0.71	118,305	4,085	257,606	2,896	46
Guadalupe fur seal.	Mexico	1,442	15	0	0	0	1,457	1,171	20,000	124	7
Northern fur seal	California	15,167	124	1	0	0	15,292	886	14,050	1,726	109
Harbor seal	California	2,450	2,994	8	0	0	5,452	321	30,968	1,698	18
Northern elephant seal.	California	42,916	17,955	97	2	0	60,970	4,108	179,000	1,484	34

Note: For the SOCAL take estimates, because of the manner in which the Navy action area overlaps the ranges of many MMPA stocks (*i.e.,* a stock may range far north to Washington state and beyond and abundance may only be predicted within the U.S. EEZ, while the Navy action area is limited to Southern California and northern Mexico, but extends beyond the U.S. EEZ), we compare predicted takes to both the abundance estimates for the action area, as well as the SARs.

For mortality takes there is an annual average of 0.71 California sea lions (*i.e.,* where five takes could potentially occur divided by seven years to get the annual number of mortalities/serious injuries).

Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any pinnipeds through effects on annual rates of recruitment or survival for any of the affected stocks addressed in this section.

Five M/SI takes of California sea lions over the seven years of the rule, or 0.71 mortality annually, are authorized, which falls well below the insignificance threshold for residual PBR (13,685). No mortality is anticipated or authorized for any other pinniped stocks. A small number of Level A harassment takes by tissue damage are also authorized for two stocks (9 and 2 for California sea lions and northern elephant seals, respectively), which, as discussed in the 2018 HSTT final rule, could range in impact from minor to something just less than M/SI that could seriously impact fitness. However, given the Navy's mitigation, exposure at the closer to the source and more severe end of the spectrum is less likely. Nevertheless, we cautiously assume some moderate impact on the individuals that experience these small numbers of take that could lower the individual's fitness within the year such that a female (assuming a 50 percent chance of it being a female) might forego reproduction for one year. As noted previously, foregone reproduction has less of an impact on population rates than death (especially for only one within seven years, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual would be impacted in this way twice in seven years very low) and these low numbers of instances (especially assuming the likelihood that only 50 percent of the takes would affect females) are not expected to impact annual rates of recruitment or survival, especially given the population sizes of these species.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), for Hawaiian monk seals and Guadalupe fur seals, the two species listed under the ESA, the estimated instances of takes as compared to the stock abundance does not exceed 124 percent, which suggests that some portion of these two stocks would be taken on one to a few days per year. For the remaining stocks, the number of estimated total instances of take compared to the abundance (measured against both the Navy-estimated abundance and the SAR) for these stocks is 1,484 to 2,896 percent and 18 to 40 percent, respectively. Given the ranges of these stocks (*i.e.,* very large ranges, but with individuals often staying in the vicinity of haul outs), this information suggests that some very small portion of the individuals of these stocks will be taken, but that some subset of individuals within the stock will be taken repeatedly within the year (perhaps up to 58 days)—potentially over a fair number of sequential days. Regarding the severity of those individual Level B harassment takes by behavioral disruption, the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) and the received sound levels largely below 172 dB, which is considered a relatively low to occasionally moderate level for pinnipeds. However, as noted, some of these takes could occur on a fair number of sequential days for these stocks.

As described in the 2018 HSTT final rule, the Hawaii and 4-Islands mitigation areas protect (by not using explosives and limiting MFAS within them) a significant portion of the

designated critical habitat for Hawaiian monk seals in the Main Hawaiian Islands, including all of it around the islands of Hawaii and Lanai, most around Maui, and good portions around Molokai and Kaho'olawe. As discussed, this protection reduces the overall number of takes, and further reduces the severity of effects by minimizing impacts near pupping beaches and in important foraging habitat.

The severity of TTS takes are expected to be low-level, of short duration, and mostly not in a frequency band that would be expected to interfere significantly with conspecific communication, echolocation, or other important low-frequency cues that would affect the individual's reproduction or survival. For these same reasons (low level and frequency band), while a small permanent loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, the one to eight estimated Level A harassment takes by PTS for monk seals, northern fur seals, and harbor seals are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, even if it were to be experienced by an animal that also experiences one or more Level B harassment takes by behavioral disruption. Because of the high number of PTS takes for California sea lions and northern elephant seals (87 and 97, respectively); however, we acknowledge that a few animals could potentially incur permanent hearing loss of a higher degree that could potentially interfere with their successful reproduction and growth. Given the status of the stocks (along with residual PBRs of 13,686 and 4,873, respectively), even if this occurred, it will not adversely impact annual rates of recruitment or survival.

Altogether, any individual Hawaiian monk seal and Guadalupe fur seal would be taken no more than a few days in any year, with none of the expected take anticipated to affect individual reproduction or survival, let alone annual rates of recruitment and survival. With all other stocks, only a very small portion of the stock will be taken in any manner. Of those taken, some individuals will be taken by Level B harassment (at a moderate or sometimes low level) over several days a year, and some smaller portion of those taken will be on a relatively moderate to high number of days across the year (up to 58), a fair number of which will likely be sequential days. Though the majority of impacts are expected to be of a lower to sometimes moderate severity, the repeated takes over a potentially fair number of sequential days for some individuals makes it more likely that some number of individuals could be interrupted during foraging in a manner and amount such that impacts to the energy budgets of females (from either losing feeding opportunities or expending considerable energy to find alternative feeding options) could cause them to forego reproduction for a year (energetic impacts to males are generally meaningless to population rates unless they cause death, and it takes extreme energy deficits beyond what would ever be likely to result from these activities to cause the death of an adult marine mammal). As noted previously, however, foregone reproduction (especially for only one year within seven, which is the maximum predicted because the small number anticipated in any one year makes the probability that any individual will be impacted in this way twice in seven years very low) has far less of an impact on population rates than mortality and a relatively small number of instances of foregone reproduction (as compared to the stock abundance and residual PBR) is not expected to adversely affect the stock through effects on annual rates of recruitment or survival, especially given the status of these stocks. Accordingly, we do not anticipate the relatively small number of individual Northern fur seals or harbor seals that might be taken over repeated days within the year in a manner that results in one year of foregone reproduction to adversely affect the stocks through effects on rates of recruitment or survival, given the status of the stocks, which are respectively increasing and stable with abundances of 14,050 and 30,968 and residual PBRs of 449 and 1,598.

For California sea lions, given the very high abundance and residual PBR (257,606 and 13,685, respectively), as well as the increasing status of the stock in the presence of similar levels of Navy activities over past years—the impacts of 0.71 annual mortalities, potential foregone reproduction for up to nine individuals in a year taken by tissue damage, the effects of Level A harassment by PTS, and some relatively small number of individuals taken as a result of repeated behavioral harassment over a fair number of sequential days are not expected to adversely affect the stock through effects on annual rates of recruitment or survival. Similarly, for Northern elephant seals, given the very high abundance and residual PBR (179,000 and 4,873, respectively), as well as the increasing status of the stock in the presence of similar levels of Navy activities over past years, the impacts of potential foregone reproduction for up to two individuals in a year taken by tissue damage, the effects of Level A harassment by PTS, and some relatively small number of individuals taken as a result of repeated behavioral harassment over a fair number of sequential days are not expected to adversely affect the stock through effects on annual rates of recruitment or survival. For these reasons, in consideration of all of the effects of the Navy's activities combined (M/SI, Level A harassment, and Level B harassment), we have determined that the authorized take will have a negligible impact on all pinniped stocks.

Determination

The 2018 HSTT final rule included a detailed discussion of all of the anticipated impacts on the affected species and stocks from serious injury or mortality, Level A harassment, and Level B harassment; impacts on habitat; and how the Navy's mitigation and monitoring measures reduce the number and/or severity of adverse effects. We evaluated how these impacts and mitigation measures are expected to combine, annually, to affect individuals of each species and stock. Those effects were then evaluated in the context of whether they are reasonably likely to impact reproductive success or survivorship of individuals and then, if so, further analyzed to determine whether there would be effects on annual rates of recruitment or survival that would adversely affect the species or stock.

As described above, the basis for the negligible impact determination is the assessment of effects on annual rates of recruitment and survival. Accordingly, the analysis included in the 2018 HSTT final rule used annual activity levels, the best available science, and approved methods to predict the annual impacts to marine mammals, which were then analyzed in the context of whether each species or stock would incur more than a negligible impact based on anticipated adverse impacts to annual rates of recruitment or survival. As we have described above, none of the factors upon which the conclusions in the 2018 HSTT final rule were based have changed. Therefore, even though this final rule includes two additional years, because our findings are based on annual rates of recruitment and survival, and little has changed that would change our 2018 HSTT final rule annual analyses, it is appropriate to rely on those analyses, as well as the new

information and analysis discussed above, for this final rule.

Based on the applicable information and analysis from the 2018 HSTT final rule as updated with the information and analysis contained herein on the potential and likely effects of the specified activities on the affected marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the incidental take from the specified activities will have a negligible impact on all affected marine mammal species and stocks.

Subsistence Harvest of Marine Mammals

There are no subsistence uses or harvest of marine mammals in the geographic area affected by the specified activities. Therefore, NMFS has determined that the total taking affecting species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act

There are nine marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the HSTT Study Area: Blue whale, fin whale, gray whale, humpback whale (Mexico and Central America DPSs), sei whale, sperm whale, false killer whale (Main Hawaiian Islands Insular DPS), Hawaiian monk seal, and Guadalupe fur seal. There is also ESA-designated critical habitat for Hawaiian monk seals and Main Hawaiian Islands Insular false killer whales. The Navy consulted with NMFS pursuant to section 7 of the ESA for HSTT activities. NMFS also consulted internally on the issuance of the 2018 HSTT regulations and LOAs under section 101(a)(5)(A) of the MMPA. NMFS issued a Biological Opinion on December 10, 2018 concluding that the issuance of the 2018 HSTT final rule and subsequent LOAs are not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat in the HSTT Study Area.

The 2018 Biological Opinion included specified conditions under which NMFS would be required to reinitiate section 7 consultation. The agency reviewed these specified conditions for this rulemaking and determined that reinitiation of consultation was not warranted. The incidental take statement that accompanied the 2018 Biological Opinion has been amended to cover the seven-year period of the rule. The 2018 Biological Opinion for this action is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

National Marine Sanctuaries Act

Federal agency actions that are likely to injure national marine sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA). There are two national marine sanctuaries in the HSTT Study Area, the Hawaiian Islands Humpback Whale National Marine Sanctuary and the Channel Islands National Marine Sanctuary. NMFS has fulfilled its responsibilities and completed all requirements under the NMSA.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed actions and alternatives with respect to potential impacts on the human environment. NMFS participated as a cooperating agency on the 2018 HSTT FEIS/OEIS (published on October 26, 2018, *http://www.hstteis.com*) which evaluated impacts from Navy training and testing activities in the HSTT Study Area for the reasonably foreseeable future (including through 2025). In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2018 HSTT FEIS/OEIS and determined that it was adequate and sufficient to meet our responsibilities under NEPA for the issuance of the 2018 HSTT final rule and associated LOAs. NOAA therefore adopted the 2018 HSTT FEIS/OEIS.

In accordance with 40 CFR 1502.9 and the information and analysis contained in this final rule, NMFS has determined that this final rule and the subsequent LOAs will not result in impacts that were not fully considered in the 2018 HSTT FEIS/OEIS. In addition, as indicated in this final rule, the addition of two years of authorized incidental take associated with the same activities conducted in the same geographic area and having the same potential effects on the same species and stocks is not a substantial change to the action, nor are there significant new circumstances or information relevant to environmental concerns or its impacts. Therefore, NMFS has determined that the 2018 HSTT FEIS/OEIS and 2018 NMFS ROD remain valid, and there is no need to supplement either document for this rulemaking.

Regulatory Flexibility Act

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Waiver of Delay in Effective Date Under the Administrative Procedure Act

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)) to waive the 30-day delay in the effective date for this rule. This rule relieves the Navy from the restrictions of the take prohibitions under the MMPA by granting the Navy's request for incidental take authorization under MMPA section 101(a)(5)(A). In addition, there is good cause to waive the 30-day effective date period because the regulations are identical to those that the Navy has been implementing since November 2018 (except for a small number of minor, technical clarifications that do not affect implementation). The only substantive change in the regulations is to extend the mitigation measures and the monitoring and reporting requirements for an additional two years, until December 20, 2025. The Navy is the only entity affected by the regulations, the Navy specifically requested extension of the regulatory requirements for the two years, and the Navy has fully agreed to these requirements for the additional two years through its application for incidental take authorization. The Navy is anticipating finalization of the rule. For all these reasons, there is no need for a period of time following publication of the rule for the Navy to bring its training and testing operations into compliance with the requirements of the rule.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: June 26, 2020

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart H to read as follows:

Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

Sec.

Subpart H—Taking and Importing Marine Mammals; U.S. Navy's Hawaii-Southern California Training and Testing (HSTT)

§ 218.70 Specified activity and geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Hawaii-Southern California Training and Testing (HSTT) Study Area, which includes established operating and warning areas across the north-central Pacific Ocean, from the mean high tide line in Southern California west to Hawaii and the International Date Line. The Study Area includes the at-sea areas of three existing range complexes, the Hawaii Range Complex (HRC), the Southern California Range Complex (SOCAL), and the Silver Strand Training Complex, and overlaps a portion of the Point Mugu Sea Range (PMSR). Also included in the Study Area are Navy pierside locations in Hawaii and Southern California, Pearl Harbor, San Diego Bay, and the transit corridor on the high seas where sonar training and testing may occur.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the Navy conducting training and testing activities, including:

(1) *Training.* (i) Amphibious warfare;
(ii) Anti-submarine warfare;
(iii) Electronic warfare;
(iv) Expeditionary warfare;
(v) Mine warfare;
(vi) Surface warfare; and
(vii) Pile driving.

(2) *Testing.* (i) Naval Air Systems Command Testing Activities;
(ii) Naval Sea Systems Command Testing Activities;
(iii) Office of Naval Research Testing Activities; and
(iv) Naval Information Warfare Systems Command.

§ 218.71 Effective dates.

Regulations in this subpart are effective from July 10, 2020, through December 20, 2025.

§ 218.72 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.76, the Holder of the LOAs (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.70(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives as well as serious injury or mortality associated with vessel strikes and explosives, provided the activity is in compliance with all terms, conditions, and requirements of these regulations in this subpart and the applicable LOAs.

(b) The incidental take of marine mammals by the activities listed in § 218.70(c) is limited to the following species:

TABLE 1 TO § 218.72

Species	Stock
Blue whale	Central North Pacific.
Blue whale	Eastern North Pacific.
Bryde's whale	Eastern Tropical Pacific.
Bryde's whale	Hawaii.
Fin whale	CA/OR/WA.
Fin whale	Hawaiian.
Humpback whale	CA/OR/WA.
Humpback whale	Central North Pacific.
Minke whale	CA/OR/WA.
Minke whale	Hawaii.
Sei whale	Eastern North Pacific.
Sei whale	Hawaii.
Gray whale	Eastern North Pacific.
Gray whale	Western North Pacific.
Sperm whale	CA/OR/WA.
Sperm whale	Hawaii.
Dwarf sperm whale	Hawaii.
Pygmy sperm whale	Hawaii.
Kogia whales	CA/OR/WA.
Baird's beaked whale	CA/OR/WA.
Blainville's beaked whale	Hawaii.
Cuvier's beaked whale	CA/OR/WA.
Cuvier's beaked whale	Hawaii.
Longman's beaked whale	Hawaii.
Mesoplodon spp.	CA/OR/WA.

TABLE 1 TO § 218.72—Continued

Species	Stock
Bottlenose dolphin	California Coastal.
Bottlenose dolphin	CA/OR/WA Offshore.
Bottlenose dolphin	Hawaii Pelagic.
Bottlenose dolphin	Kauai & Niihau.
Bottlenose dolphin	Oahu.
Bottlenose dolphin	4-Island.
Bottlenose dolphin	Hawaii.
False killer whale	Hawaii Pelagic.
False killer whale	Main Hawaiian Islands Insular.
False killer whale	Northwestern Hawaiian Islands.
Fraser's dolphin	Hawaii.
Killer whale	Eastern North Pacific (ENP) Offshore.
Killer whale	ENP Transient/West Coast Transient.
Killer whale	Hawaii.
Long-beaked common dolphin	California.
Melon-headed whale	Hawaiian Islands.
Melon-headed whale	Kohala Resident.
Northern right whale dolphin	CA/OR/WA.
Pacific white-sided dolphin	CA/OR/WA.
Pantropical spotted dolphin	Hawaii Island.
Pantropical spotted dolphin	Hawaii Pelagic.
Pantropical spotted dolphin	Oahu.
Pantropical spotted dolphin	4-Island.
Pygmy killer whale	Hawaii.
Pygmy killer whale	Tropical.
Risso's dolphin	CA/OR/WA.
Risso's dolphin	Hawaii.
Rough-toothed dolphin	Hawaii.
Short-beaked common dolphin	CA/OR/WA.
Short-finned pilot whale	CA/OR/WA.
Short-finned pilot whale	Hawaii.
Spinner dolphin	Hawaii Island.
Spinner dolphin	Hawaii Pelagic.
Spinner dolphin	Kauai & Niihau.
Spinner dolphin	Oahu & 4-Island.
Striped dolphin	CA/OR/WA.
Striped dolphin	Hawaii.
Dall's porpoise	CA/OR/WA.
California sea lion	U.S.
Guadalupe fur seal	Mexico.
Northern fur seal	California.
Harbor seal	California.
Hawaiian monk seal	Hawaii.
Northern elephant seal	California.

Note to Table 1: CA/OR/WA = California/Oregon/Washington.

§ 218.73 Prohibitions.

Notwithstanding incidental takings contemplated in § 218.72(a) and authorized by LOAs issued under §§ 216.106 of this chapter and 218.76, no person in connection with the activities listed in § 218.70(c) may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 218.76;

(b) Take any marine mammal not specified in § 218.72(b);

(c) Take any marine mammal specified in § 218.72(b) in any manner other than as specified in the LOAs; or

(d) Take a marine mammal specified in § 218.72(b) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal.

§ 218.74 Mitigation requirements.

When conducting the activities identified in § 218.70(c), the mitigation measures contained in any LOAs issued under §§ 216.106 of this chapter and 218.76 must be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy must implement whenever and wherever an applicable training or testing activity takes place within the HSTT Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.,* active sonar, air guns, pile driving, weapons firing noise), explosive stressors (*i.e.,* sonobuoys, torpedoes, medium-caliber and large-caliber projectiles, missiles and rockets, bombs, sinking exercises, mines, anti-swimmer grenades, and mat weave and obstacle loading), and physical disturbance and strike stressors *(i.e.,* vessel movement; towed in-water devices; small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; and non-explosive bombs and mine shapes).

(1) *Environmental awareness and education.* Appropriate Navy personnel (including civilian personnel) involved in mitigation, monitoring, and training or testing activity reporting under the specified activities will complete one or more modules of the U.S. Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: Introduction to the U.S. Navy Afloat Environmental Compliance Training

Series, Marine Species Awareness Training; U.S. Navy Protective Measures Assessment Protocol; and U.S. Navy Sonar Positional Reporting System and Marine Mammal Incident Reporting.

(2) *Active sonar.* Active sonar includes low-frequency active sonar, mid-frequency active sonar, and high-frequency active sonar. For vessel-based activities, mitigation applies only to sources that are positively controlled and deployed from manned surface vessels (*e.g.,* sonar sources towed from manned surface platforms). For aircraft-based activities, mitigation applies only to sources that are positively controlled and deployed from manned aircraft that do not operate at high altitudes (*e.g.,* rotary-wing aircraft). Mitigation does not apply to active sonar sources deployed from unmanned aircraft or aircraft operating at high altitudes (*e.g.,* maritime patrol aircraft).

(i) *Number of Lookouts and observation platform*—(A) *Hull-mounted sources.* One Lookout for platforms with space or manning restrictions while underway (at the forward part of a small boat or ship) and platforms using active sonar while moored or at anchor (including pierside); and two Lookouts for platforms without space or manning restrictions while underway (at the forward part of the ship).

(B) *Sources that are not hull-mounted sources.* One Lookout on the ship or aircraft conducting the activity.

(ii) *Mitigation zone and requirements.* (A) During the activity, at 1,000 yards (yd) Navy personnel must power down 6 decibels (dB), at 500 yd Navy personnel must power down an additional 4 dB (for a total of 10 dB), and at 200 yd Navy personnel must shut down for low-frequency active sonar ≥200 dB and hull-mounted mid-frequency active sonar; or at 200 yd Navy personnel must shut down for low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull-mounted, and high-frequency active sonar.

(B) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of active sonar transmission until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of active sonar transmission.

(C) During the activity for low-frequency active sonar at or above 200 dB and hull-mounted mid-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and power down active sonar transmission by 6 dB if marine mammals are observed within 1,000 yd of the sonar source; power down by an additional 4 dB (for a total of 10 dB total) if marine mammals are observed within 500 yd of the sonar source; and cease transmission if marine mammals are observed within 200 yd of the sonar source.

(D) During the activity for low-frequency active sonar below 200 dB, mid-frequency active sonar sources that are not hull mounted, and high-frequency active sonar, Navy personnel must observe the mitigation zone for marine mammals and cease active sonar transmission if marine mammals are observed within 200 yd of the sonar source.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonar source; the mitigation zone has been clear from any additional sightings for 10 minutes (min) for aircraft-deployed sonar sources or 30 min for vessel-deployed sonar sources; for mobile activities, the active sonar source has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting; or for activities using hull-mounted sonar where a dolphin(s) is observed in the mitigation zone, the Lookout concludes that the dolphin(s) is deliberately closing in on the ship to ride the ship's bow wave, and is therefore out of the main transmission axis of the sonar (and there are no other marine mammal sightings within the mitigation zone).

(3) *Air guns*—(i) *Number of Lookouts and observation platform.* One Lookout positioned on a ship or pierside.

(ii) *Mitigation zone and requirements.* 150 yd around the air gun.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of air gun use.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease air gun use.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air gun use) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the air gun; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the air gun has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(4) *Pile driving.* Pile driving and pile extraction sound during Elevated Causeway System training.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the shore, the elevated causeway, or a small boat.

(ii) *Mitigation zone and requirements.* 100 yd around the pile driver.

(A) Prior to the initial start of the activity (for 30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must delay the start until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of pile driving or vibratory pile extraction.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease impact pile driving or vibratory pile extraction.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. The Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing pile driving or pile extraction) until one of the following conditions has been met: The animal is observed exiting the mitigation zone;

the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the pile driving location; or the mitigation zone has been clear from any additional sightings for 30 min.

(5) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the ship conducting the firing. Depending on the activity, the Lookout could be the same as the one provided for under ''Explosive medium-caliber and large-caliber projectiles'' or under ''Small-, medium-, and large-caliber non-explosive practice munitions'' in paragraphs (a)(8)(i) and (a)(18)(i) of this section.

(ii) *Mitigation zone and requirements.* Thirty degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) Prior to the start of the activity, Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of weapons firing until the mitigation zone is clear. Navy personnel must also observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of weapons firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease weapons firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; the mitigation zone has been clear from any additional sightings for 30 min; or for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(6) *Explosive sonobuoys*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft or on a small boat. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 600 yd around an explosive sonobuoy.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of a sonobuoy field, which typically lasts 20–30 min), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of sonobuoy or source/receiver pair detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease sonobuoy or source/receiver pair detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the sonobuoy; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints (*e.g.,* helicopter), or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(7) *Explosive torpedoes*—(i) *Number of Lookouts and observation platform.* One Lookout positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,100 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during deployment of the target), Navy personnel must observe the mitigation zone for floating vegetation and jellyfish aggregations; if floating vegetation or jellyfish aggregations are observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel also must visually observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe for marine mammals and jellyfish aggregations; if marine mammals or jellyfish aggregations are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where

detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(8) *Explosive medium-caliber and large-caliber projectiles.* Gunnery activities using explosive medium-caliber and large-caliber projectiles. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel or aircraft conducting the activity. For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in ''Weapons firing noise'' in paragraph (a)(5)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 200 yd around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles.

(B) 600 yd around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles.

(C) 1,000 yd around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(D) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(E) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(F) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(G) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(9) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 900 yd around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight.

(B) 2,000 yd around the intended impact location for missiles with 21–500 lb net explosive weight.

(C) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(D) During the activity, Navy personnel must observe for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(10) *Explosive bombs*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2,500 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment.

(B) During the activity (*e.g.,* during target approach), Navy personnel must

observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease bomb deployment.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(11) *Sinking exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned in an aircraft and one must be positioned on a vessel). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 2.5 nautical miles (nmi) around the target ship hulk.

(A) Prior to the initial start of the activity (90 min prior to the first firing), Navy personnel must conduct aerial observations of the mitigation zone for floating vegetation and jellyfish aggregations; if floating vegetation or jellyfish aggregations are observed, Navy personnel must delay the start of firing until the mitigation zone is clear. Navy personnel also must conduct aerial observations of the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of firing.

(B) During the activity, Navy personnel must conduct passive acoustic monitoring for marine mammals and use the information from detections to assist visual observations. Navy personnel must visually observe the mitigation zone for marine mammals from the vessel; if marine mammals are observed, Navy personnel must cease firing. Immediately after any planned or unplanned breaks in weapons firing of longer than two hours, Navy personnel must observe the mitigation zone for marine mammals from the aircraft and vessel; if marine mammals are observed, Navy personnel must delay recommencement of firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the target ship hulk; or the mitigation zone has been clear from any additional sightings for 30 min.

(D) After completion of the activity (for two hours after sinking the vessel or until sunset, whichever comes first), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(12) *Explosive mine countermeasure and neutralization activities*—(i) *Number of Lookouts and observation platform.* (A) One Lookout must be positioned on a vessel or in an aircraft when implementing the smaller mitigation zone.

(B) Two Lookouts (one must be positioned in an aircraft and one must be on a small boat) when implementing the larger mitigation zone.

(C) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 600 yd around the detonation site for activities using 0.1–5 lb net explosive weight.

(B) 2,100 yd around the detonation site for activities using 6–650 lb net explosive weight (including high explosive target mines).

(C) Prior to the initial start of the activity (*e.g.,* when maneuvering on station; typically, 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds; if marine mammals, concentrations of seabirds, or individual foraging seabirds are observed, Navy personnel must cease detonations.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to detonation site; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(F) After completion of the activity (typically 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained), Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must

follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(13) *Explosive mine neutralization activities involving Navy divers*—(i) *Number of Lookouts and observation platform.* (A) Two Lookouts (two small boats with one Lookout each, or one Lookout must be on a small boat and one must be in a rotary-wing aircraft) when implementing the smaller mitigation zone.

(B) Four Lookouts (two small boats with two Lookouts each), and a pilot or member of an aircrew must serve as an additional Lookout if aircraft are used during the activity, when implementing the larger mitigation zone.

(C) All divers placing the charges on mines will support the Lookouts while performing their regular duties and will report applicable sightings to their supporting small boat or Range Safety Officer.

(D) If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* (A) 500 yd around the detonation site during activities under positive control using 0.1–20 lb net explosive weight.

(B) 1,000 yd around the detonation site during all activities using time-delay fuses (0.1–29 lb net explosive weight) and during activities under positive control using 21–60 lb net explosive weight charges.

(C) Prior to the initial start of the activity (*e.g.,* when maneuvering on station for activities under positive control; 30 min for activities using time-delay firing devices), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations or fuse initiation until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations or fuse initiation.

(D) During the activity, Navy personnel must observe the mitigation zone for marine mammals, concentrations of seabirds, and individual foraging seabirds (in the water and not on shore); if marine mammals, concentrations of seabirds, or individual foraging seabirds are observed, Navy personnel must cease detonations or fuse initiation. To the maximum extent practicable depending on mission requirements, safety, and environmental conditions, Navy personnel must position boats near the mid-point of the mitigation zone radius (but outside of the detonation plume and human safety zone), must position themselves on opposite sides of the detonation location (when two boats are used), and must travel in a circular pattern around the detonation location with one Lookout observing inward toward the detonation site and the other observing outward toward the perimeter of the mitigation zone. If used, Navy aircraft must travel in a circular pattern around the detonation location to the maximum extent practicable. Navy personnel must not set time-delay firing devices (0.1–29 lb. net explosive weight) to exceed 10 min.

(E) Commencement/recommencement conditions after a marine mammal sighting before or during the activity or a sighting of seabird concentrations or individual foraging seabirds during the activity. Navy personnel must allow a sighted animal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation site; or the mitigation zone has been clear from any additional sightings for 10 min during activities under positive control with aircraft that have fuel constraints, or 30 min during activities under positive control with aircraft that are not typically fuel constrained and during activities using time-delay firing devices.

(F) After completion of an activity, the Navy must observe for marine mammals for 30 min. Navy personnel must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(14) *Maritime security operations—anti-swimmer grenades*—(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the small boat conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 200 yd around the intended detonation location.

(A) Prior to the initial start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of detonations until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended detonation location; the mitigation zone has been clear from any additional sightings for 30 min; or the intended detonation location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(D) After completion of the activity (*e.g.,* prior to maneuvering off station), Navy personnel must, when practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets will assist in the visual observation of the area where detonations occurred.

(15) *Underwater demolition multiple charge—mat weave and obstacle loading exercises*—(i) *Number of Lookouts and observation platform.* Two Lookouts (one must be positioned

on a small boat and one must be positioned on shore from an elevated platform). If additional platforms are participating in the activity, Navy personnel positioned in those assets (*e.g.,* safety observers, evaluators) must support observing the mitigation zone for applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* 700 yd around the intended detonation location.

(A) Prior to the initial start of the activity, or 30 min prior to the first detonation, the Lookout positioned on a small boat must observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel must delay the start of detonations until the mitigation zone is clear. For 10 min prior to the first detonation, the Lookout positioned on shore must use binoculars to observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must delay the start of detonations.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease detonations.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing detonations) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the detonation location; or the mitigation zone has been clear from any additional sightings for 10 min (as determined by the Navy shore observer).

(D) After completion of the activity (for 30 min), the Lookout positioned on a small boat must observe for marine mammals in the vicinity of where detonations occurred; if any injured or dead marine mammals are observed, Navy personnel must follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these Navy assets must assist in the visual observation of the area where detonations occurred.

(16) *Vessel movement.* The mitigation will not be applied if: The vessel's safety is threatened; the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring); the vessel is operated autonomously; or when impracticable based on mission requirements (*e.g.,* during Amphibious Assault—Battalion Landing exercise).

(i) *Number of Lookouts and observation platform.* One Lookout must be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* (A) 500 yd around whales.

(B) 200 yd around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

(iii) *During the activity.* When underway Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(iv) *Incident reporting procedures.* If a marine mammal vessel strike occurs, Navy personnel must follow the established incident reporting procedures.

(17) *Towed in-water devices.* Mitigation applies to devices that are towed from a manned surface platform or manned aircraft. The mitigation will not be applied if the safety of the towing platform or in-water device is threatened.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on a manned towing platform.

(ii) *Mitigation zone and requirements.* 250 yd around marine mammals.

(iii) *During the activity.* During the activity (*i.e.,* when towing an in-water device), Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must maneuver to maintain distance.

(18) *Small-, medium-, and large-caliber non-explosive practice munitions.* Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described for ''Weapons firing noise'' in paragraph (a)(5)(i) of this section.

(ii) *Mitigation zone and requirements.* 200 yd around the intended impact location.

(A) Prior to the start of the activity (*e.g.,* when maneuvering on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting before or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; the mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(19) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a surface target.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 900 yd around the intended impact location.

(A) Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of firing until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of firing.

(B) During the activity, Navy personnel must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must cease firing.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the

activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or the mitigation zone has been clear from any additional sightings for 10 min when the activity involves aircraft that have fuel constraints, or 30 min when the activity involves aircraft that are not typically fuel constrained.

(20) *Non-explosive bombs and mine shapes.* Non-explosive bombs and non-explosive mine shapes during mine laying activities.

(i) *Number of Lookouts and observation platform.* One Lookout must be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* 1,000 yd around the intended target.

(A) Prior to the initial start of the activity (*e.g.,* when arriving on station), Navy personnel must observe the mitigation zone for floating vegetation; if floating vegetation is observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying until the mitigation zone is clear. Navy personnel also must observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel must relocate or delay the start of bomb deployment or mine laying.

(B) During the activity (*e.g.,* during approach of the target or intended minefield location), Navy personnel must observe the mitigation zone for marine mammals and, if marine mammals are observed, Navy personnel must cease bomb deployment or mine laying.

(C) Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity. Navy personnel must allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: The animal is observed exiting the mitigation zone; the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; the mitigation zone has been clear from any additional sightings for 10 min; or for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting.

(b) *Mitigation areas.* In addition to procedural mitigation, Navy personnel must implement mitigation measures within mitigation areas to avoid or reduce potential impacts on marine mammals.

(1) *Mitigation areas for marine mammals in the Hawaii Range Complex for sonar, explosives, and vessel strikes*—(i) *Mitigation area requirements*—(A) *Hawaii Island Mitigation Area (year-round)*—(*1*) Except as provided in paragraph (b)(1)(i)(A)(*2*) of this section, Navy personnel must not conduct more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar annually, or use explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) Should national security require conduct of more than 300 hours of MF1 surface ship hull-mounted mid-frequency active sonar or 20 hours of MF4 dipping sonar, or use of explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(B) *4-Islands Region Mitigation Area (November 15–April 15 for active sonar; year-round for explosives)*—(*1*) Except as provided in paragraph (b)(1)(i)(B)(*2*) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in takes of marine mammals during training and testing.

(*2*) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar or explosives that could potentially result in the take of marine mammals during training or testing, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Humpback Whale Special Reporting Areas (December 15–April 15).* Navy personnel must report the total hours of surface ship hull-mounted mid-frequency active sonar used in the special reporting areas in its annual training and testing activity reports submitted to NMFS.

(D) *Humpback Whale Awareness Notification Message Area (November–April).* (*1*) Navy personnel must issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including humpback whales.

(*2*) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species (including humpback whales).

(*3*) Platforms must use the information from the awareness notification message to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

(2) *Mitigation areas for marine mammals in the Southern California portion of the study area for sonar, explosives, and vessel strikes*—(i) *Mitigation area requirements*—(A) *San Diego Arc, San Nicolas Island, and Santa Monica/Long Beach Mitigation Areas (June 1–October 31).* (*1*) Except as provided in paragraph (b)(2)(i)(A)(*2*) of this section, Navy personnel must not conduct more than a total of 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas, excluding normal maintenance and systems checks, during training and testing.

(*2*) Should national security require conduct of more than 200 hours of MF1 surface ship hull-mounted mid-frequency active sonar in the combined areas during training and testing (excluding normal maintenance and systems checks), Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours) in its annual activity reports submitted to NMFS.

(*3*) Except as provided in paragraph (b)(2)(i)(A)(*4*) of this section, within the San Diego Arc Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(*4*) Should national security require use of explosives that could potentially result in the take of marine mammals during large-caliber gunnery, torpedo,

bombing, and missile (including 2.75-inch rockets) activities during training or testing within the San Diego Arc Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(*5*) Except as provided in paragraph (b)(2)(i)(A)(*6*) of this section, within the San Nicolas Island Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(*6*) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training in the San Nicolas Island Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(*7*) Except as provided in paragraph (b)(2)(i)(A)(*8*) of this section, within the Santa Monica/Long Beach Mitigation Area, Navy personnel must not use explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training and testing.

(*8*) Should national security require use of explosives that could potentially result in the take of marine mammals during mine warfare, large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training or testing in the Santa Monica/Long Beach Mitigation Area, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* explosives usage) in its annual activity reports submitted to NMFS.

(B) *Santa Barbara Island Mitigation Area (year-round).* (*1*) Except as provided in paragraph (b)(2)(i)(B)(*2*) of this section, Navy personnel must not use MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training.

(*2*) Should national security require use of MF1 surface ship hull-mounted mid-frequency active sonar during training or testing, or explosives that could potentially result in the take of marine mammals during medium-caliber or large-caliber gunnery, torpedo, bombing, and missile (including 2.75-inch rockets) activities during training, Naval units must obtain permission from the appropriate designated Command authority prior to commencement of the activity. Navy personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours or explosives usage) in its annual activity reports submitted to NMFS.

(C) *Blue Whale (June–October), Gray Whale (November–March), and Fin Whale (November–May) Awareness Notification Message Areas.* (*1*) Navy personnel must issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales, gray whales, and fin whales.

(*2*) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel must instruct vessels to remain vigilant to the presence of large whale species.

(*3*) Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of procedural mitigation.

(ii) [Reserved]

§ 218.75 Requirements for monitoring and reporting.

(a) *Unauthorized take.* Navy personnel must notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.70 is thought to have resulted in the mortality or serious injury of any marine mammals, or in any Level A harassment or Level B harassment take of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOAs.* The Navy must conduct all monitoring and reporting required under the LOAs, including abiding by the HSTT Study Area monitoring program. Details on program goals, objectives, project selection process, and current projects are available at *www.navymarinespeciesmonitoring.us.*

(c) *Notification of injured, live stranded, or dead marine mammals.* The Navy must consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidentaltake-authorizations-military-readinessactivities.*

(d) *Annual HSTT Study Area marine species monitoring report.* The Navy must submit an annual report of the HSTT Study Area monitoring describing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and study areas to allow for comparison in different geographic locations. The report must be submitted to the Director, Office of Protected Resources, NMFS, either within three months after the end of the calendar year, or within three months after the conclusion of the monitoring year, to be determined by the Adaptive Management process. This report will describe progress of knowledge made with respect to intermediate scientific objectives within the HSTT Study Area associated with the Integrated Comprehensive Monitoring Program (ICMP). Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring plan study questions. As an alternative, the Navy may submit a multi-Range Complex annual Monitoring Plan report to fulfill this requirement. Such a report will describe progress of knowledge made with respect to monitoring study questions across multiple Navy ranges associated with the ICMP. Similar study questions must be treated together so that progress on each topic can be summarized across multiple Navy ranges. The report need not include analyses and content that does not provide direct assessment of cumulative progress on the monitoring study question. This will continue to allow the Navy to provide a cohesive monitoring report covering multiple ranges (as per ICMP goals), rather than entirely separate reports for the HSTT, Gulf of Alaska, Mariana Islands, and Northwest Study Areas.

(e) *Annual HSTT Study Area training exercise report and testing activity report.* Each year, the Navy must submit two preliminary reports (Quick Look Report) detailing the status of authorized sound sources within 21 days after the anniversary of the date of issuance of each LOA to the Director, Office of Protected Resources, NMFS. Each year, the Navy must submit detailed reports to the Director, Office of Protected Resources, NMFS, within 3 months after the one-year anniversary of the date of issuance of the LOA. The HSTT annual Training Exercise Report and Testing Activity Report can be consolidated with other exercise reports from other range complexes in the Pacific Ocean for a single Pacific Exercise Report, if desired. The annual reports must contain information on major training exercises (MTEs), Sinking Exercise (SINKEX) events, and a summary of all sound sources used, including within specific mitigation reporting areas as described in paragraph (e)(3) of this section. The analysis in the detailed reports must be based on the accumulation of data from the current year's report and data collected from previous reports. The detailed reports must contain information identified in paragraphs (e)(1) through (7) of this section.

(1) *MTEs.* This section of the report must contain the following information for MTEs conducted in the HSTT Study Area.

(i) Exercise Information for each MTE.

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, and other platforms participating in exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) Wave height (high, low, and average) during exercise.

(ii) Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor (*e.g.,* sonar, Lookout).

(E) Indication of specific type of platform observation was made from (including, for example, what type of surface vessel or testing platform).

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal was less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd from sonar source.

(K) Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (opening, closing, parallel).

(M) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*) and if any calves were present.

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed. This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) *SINKEXs.* This section of the report must include the following information for each SINKEX completed that year.

(i) Exercise information gathered for each SINKEX.

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, and other platforms, participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy Lookouts) information for each sighting where mitigation was implemented.

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale, dolphin, or pinniped).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.,* sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd, 200 to 500 yd, 500 to 1,000 yd, 1,000 to 2,000 yd, or greater than 2,000 yd.

(J) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming *etc.*), including speed and direction and if any calves were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual hours or quantity (per the LOA) of each bin of sonar or other acoustic sources *(e.g.,* pile driving and air gun activities); and

(ii) Total annual expended/detonated ordinance (missiles, bombs, sonobuoys, *etc.*) for each explosive bin.

(4) *Humpback Whale Special Reporting Area (December 15–April 15).* The Navy must report the total hours of operation of surface ship hull-mounted mid-frequency active sonar used in the special reporting area.

(5) *HSTT Study Area Mitigation Areas.* The Navy must report any use that occurred as specifically described in these areas. Information included in the classified annual reports may be used to inform future adaptive management of activities within the HSTT Study Area.

(6) *Geographic information presentation.* The reports must present an annual (and seasonal, where practical) depiction of training and testing bin usage (as well as pile driving activities) geographically across the HSTT Study Area.

(7) *Sonar exercise notification.* The Navy must submit to NMFS (contact as specified in the LOA) an electronic report within fifteen calendar days after the completion of any MTE indicating:

(i) Location of the exercise;

(ii) Beginning and end dates of the exercise; and

(iii) Type of exercise.

(f) *Seven-year close-out comprehensive training and testing activity report.* This report must be included as part of the 2025 annual training and testing report. This report must provide the annual totals for each sound source bin with a comparison to the annual allowance and the seven-year total for each sound source bin with a comparison to the seven-year allowance. Additionally, if there were any changes to the sound source allowance, this report must include a discussion of why the change was made and include the analysis to support how the change did or did not affect the analysis in the 2018 HSTT FEIS/OEIS and MMPA final rule. The draft report must be submitted within three months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS must submit comments on the draft close-out report, if any, within three months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submittal of the draft if NMFS does not provide comments.

§ 218.76 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy must apply for and obtain LOAs in accordance with § 216.106 of this chapter.

(b) LOAs, unless suspended or revoked, may be effective for a period of time not to exceed December 20, 2025.

(c) If an LOA expires prior to December 20, 2025, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of § 218.77(c)(1)) required by an LOA issued under this subpart, the Navy must apply for and obtain a modification of the LOA as described in § 218.77.

(e) Each LOA must set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) must be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) must be published in the **Federal Register** within 30 days of a determination.

§ 218.77 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.76 for the activity identified in § 218.70(c) may be renewed or modified upon request by the applicant, provided that:

(1) The planned specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for the regulations in this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA(s) were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or to the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of planned LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.76 may be modified by NMFS under the following circumstances:

(1) *Adaptive management.* After consulting with the Navy regarding the practicability of the modifications, NMFS may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the Navy's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by the regulations in this subpart or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of planned LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.76, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 218.78–218.79 [Reserved]

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