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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 10421 of July 5, 2022

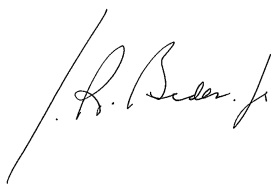
Honoring the Victims of the Tragedy in Highland Park, Illinois

By the President of the United States of America

A Proclamation

As a mark of respect for the victims of the senseless acts of gun violence perpetrated on our Independence Day, July 4, 2022, in Highland Park, Illinois, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, July 9, 2022. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of July, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-seventh.



[FR Doc. 2022–14709
Filed 7–7–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

[Docket No. RHS–22–SFH–0016]

Single Family Housing Section 504 Repair Pilot

AGENCY: Rural Housing Service, USDA.

ACTION: Notification of waivers.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing this document to waive two regulatory requirements for the Section 504 Direct Single Family Housing Loans and Grants (DSFHLG) pilot program. The Agency's intention is to evaluate the existing regulations and remove regulatory barriers to assist eligible applicants with improved ease of use for very low-income homeowners seeking to repair or rehabilitate their homes. This document briefly discusses the new waivers and provides contact information for additional details about the pilot program.

DATES: The effective date of the two regulatory waivers is July 8, 2022. The duration of the pilot program is anticipated to continue until July 8, 2024, at which time the RHS may extend the pilot program (with or without modifications) or terminate it depending on the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program. If the pilot program is extended or terminated, the RHS will notify the public.

FOR FURTHER INFORMATION CONTACT: Anthony Williams, Management and Program Analyst, Special Programs, Single Family Housing Direct Loan Division, Rural Development, U.S. Department of Agriculture, Email: *anthonyl.williams@usda.gov;* Phone: (202) 720–9649.

SUPPLEMENTARY INFORMATION:

Authority

Title V, Section 504 of the Housing Act of 1949, as amended; 42 U.S.C. 1474.

Background

The RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Agency offer loans, grants, and loan guarantees for single- and multifamily housing, child-care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers, and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

The RHS Single Family Housing Direct Loans and Grants Program (SFHDLGP) Division implements the Section 504 loan/grant program under 7 CFR part 3550 with the objective to assist very low-income owner occupants of modest single-family homes in rural areas repair or rehabilitate their homes. Loan funds are available for repairs to improve or modernize a home, make it safer or more sanitary, or remove health and safety hazards. The eligibility requirements, as described in 7 CFR 3550.103, states that homeowner must be unable to obtain affordable credit elsewhere at reasonable terms and conditions, but must demonstrate a reasonable ability to repay the Section 504 loan. For homeowners 62 years old and over who cannot obtain a loan, grant funds are available to correct health or safety hazards, or remodel dwellings to make them accessible to a household member with a disability.

RHS may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 7 CFR 3550.7. Such demonstration programs may not be consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect.

In 2019, the Agency initiated the Section 504 pilot program to evaluate existing regulations and remove regulatory barriers to assist very low-income homeowners seeking to repair or rehabilitate their homes. The pilot program has been successful in creating additional opportunities and greater accessibility for eligible applicants. All but two of the waived regulatory requirements were included in the Direct Singe Family Loans and Grants Programs final rule (87 FR 6761), which became effective on March 9, 2022.

Continuation of Section 504 Pilot Regulatory Waivers

The Agency is continuing the Section 504 Pilot Program with the two waivers that were not included in the final rule (87 FR 6761) published on February 7, 2021. The Agency plans to further evaluate and test these waivers with the intention that, if successful, it will codify them into 7 CFR part 3550 to be applied program wide.

The first waiver is that pilot applicants are not subject to the site requirement outlined in 7 CFR 3550.105(b) which states that the site must not be large enough to be subdivided into more than one site under existing local zoning ordinances. While pilot applicants can have subdividable sites, their homes must meet the other property standards found in 7 CFR 3550.106(a).

The second waiver is that pilot applicants are not subject to the same threshold outlined in 7 CFR 3550.111 which requires an appraisal when the Section 504 debt to be secured exceeds $15,000 or whenever the Agency determines that an appraisal is necessary to establish the adequacy of the security. A ''subject to repairs'' appraisal and appraisal fee will be required when the assessed valuation by local authorities does not support a fully secured interest by the Agency, or when the sum of all secured (RD or non-RD) indebtedness including the proposed repair loan, exceeds $25,000.

Eligibility Requirements

Eligible participants in the Section 504 program must abide by the statutory requriements set forth in 7 CFR part 3550. The following twenty-three (23) States and U.S. Territories are selected to provide wide geographic and historic production variation for the pilot: California, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Texas, Tennessee,

Virginia, Washington, and West Virginia. If an existing borrower in a pilot state qualifies for a subsequent loan or grant, the pilot conditions can apply to the subsequent request as appropriate. Non-pilot states may request case-by-case administrative waivers (if justified) that mirror the allowances in the pilot.

Paperwork Reduction Act

The regulatory waivers for this pilot contains no new reporting or recordkeeping burdens under Office of Management and Budget (OMB) control number 0575–0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ascr.usda.gov/complaint_filing_cust.html,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted 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; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: Program.Intake@usda.gov.*

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–14523 Filed 7–7–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1073; Project Identifier AD–2021–01252–T; Amendment 39–22090; AD 2022–13–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–24–10, which applied to certain The Boeing Company Model 757–200, –200PF, and –300 series airplanes. AD 2017–24–10 required repetitive inspections for any cracking of a certain fuselage frame inner chord; identification of the material of a certain fuselage frame inner chord for certain airplanes; and applicable corrective actions. This AD was prompted by reports of cracking found at a certain fuselage frame inner chord. This AD retains the requirements of AD 2017–24–10, adds airplanes, and requires new inspection types in certain areas, an expanded inspection area, additional inspections, and applicable corrective actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 9, 2018 (82 FR 57343, December 5, 2017).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1073.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1073; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–24–10, Amendment 39–19114 (82 FR 57343, December 5, 2017) (AD 2017–24–10). AD 2017–24–10 applied to certain The Boeing Company Model 757–200, –200PF, and –300 series airplanes. The NPRM published in the **Federal Register** on January 21, 2022 (87 FR 3246). The NPRM was prompted by reports of cracking found at the fuselage station (STA) 1380 frame inner chord and by reports of new crack findings outside of the AD 2017–24–10 inspection area, which the existing inspections will not detect. In the NPRM, the FAA proposed to continue to require repetitive inspections for any cracking of a certain fuselage frame inner chord; identification of the material of a certain fuselage frame inner chord for certain airplanes; and applicable corrective actions. The NPRM also proposed to add airplanes and require new inspection types in

certain areas, an expanded inspection area, additional inspections, and applicable corrective actions. The FAA is issuing this AD to detect and correct such cracks, which could result in rapid decompression of the airplane and the inability to sustain loads required for continued safe flight and landing.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from seven commenters. The Airline Pilots Association, International (ALPA), United Airlines, and two additional commenters supported the NPRM without change.

The FAA received additional comments from Aviation Partners Boeing (APB), Delta Airlines (DAL), and FedEx Express (FedEx). The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

APB stated that the installation of winglets per Supplemental Type Certificate (STC) ST01518SE does not affect compliance with the mandated actions in the proposed rule.

The FAA agrees with the commenter. A review of the STC holders determined that airplanes with their winglets installed do not affect compliance with the proposed actions. Paragraph (c) of the proposed AD has been redesignated as paragraph (c)(1) of this AD, and paragraph (c)(2) has been added to this AD to state that installation of STC ST01518SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request for an Exception for a Certain STC

FedEx noted that its fleet of Boeing Model 757–200 series airplanes was converted to a configuration similar to the Boeing Model 757–200SF per VT Mobile Aerospace Engineering (VT MAE) STC ST03562AT, and those airplanes are no longer configured as passenger airplanes. Per the VT MAE STC ST03562AT, certain areas of the airplane are not altered, but are subject to Boeing Model 757–200SF loads. The FAA infers that the certain areas the commenter referred to is the fuselage STA 1380 frame inner chord. As a result, FedEx requested the VT MAE STC ST03562AT be included as a new exception in paragraph (k) of this AD to the requirements of paragraph (j) of this AD, similar to Model 757–200 Special Freighter STC ST00916WI–D, as specified in Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021.

The FAA agrees with the commenter for the reasons provided. Paragraph (k)(3) has been added to this AD to state that where Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, allows an approved web repair accomplished in accordance with 757–200 SRM 53–00–07 Repair 4 for ''757–200 Special Freighter STC ST00916WI–D only,'' this AD also approves those repairs for VT MAE STC ST03562AT.

Request To Change Compliance Time

FedEx requested that paragraphs (g), (h), and (i) of the proposed AD (retained from AD 2017–24–10) be retained only until the effective date of this final rule, at which point the new requirements of this AD, as specified in paragraphs (j), (k), and (l) of this AD would be the only requirements of this AD. FedEx pointed to the unsafe condition statement in paragraph (e) of the proposed AD as justification, emphasizing the phrase ''. . . new crack findings outside of the AD 2017–24–10 inspection area, which the existing inspections will not detect.'' FedEx noted that the exception specified in paragraph (k)(1) of this AD would remain unchanged.

The FAA does not agree with the commenter. This AD is issued to address new cracking that has been found outside of the inspection area of AD 2017–24–10, and that AD's inspections will not detect the new cracking. Operators that have performed the initial eddy current inspections required by AD 2017–24–10 need to continue to inspect affected airplanes at the applicable repetitive interval in order to maintain the damage tolerance capability of the affected structure. If the FAA were to not retain the requirements of AD 2017–24–10 until the terminating action required by paragraph (l) of this AD is performed, that would allow the affected airplanes to continue flying beyond the repetitive inspection interval. If those repetitive eddy current inspections are not performed, an undetected crack could result in the inability of a principal structural element to sustain limit loads, which could adversely affect the structural integrity of the airplane. No change has been made to this final rule.

Request for an Additional AMOC

FedEx requested that paragraph (m)(4) of the proposed AD be updated to reflect the language in Notes (a) and (b) of Tables 1 and 2 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, which FedEx believes should allow additional AMOCs. FedEx observed that paragraph (m)(4) of the proposed AD states that AMOCs approved previously for AD 2017–24–10 are not approved as AMOCs for this AD. In expressing its disagreement with that statement, FedEx observed that those Notes state that if any existing repair is found and meets either one of the conditions stated in the Notes, the repair is still approved and meets the requirements for accomplishing the action specified in Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021. FedEx asserts that the referenced notes are governed by paragraph (j) of the proposed AD, and paragraph (k) of the proposed AD does not provide any exceptions for the referenced notes. In conclusion, FedEx asserted that paragraph (m)(4) of the proposed AD is in conflict with Notes (a) and (b) of Tables 1 and 2 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021. As a result, FedEx requests that paragraph (m)(4) of the final rule be updated to reflect the language in the referenced notes.

The FAA does not agree with the commenter. FedEx asserted that a repair that meets either one of the conditions stated in Notes (a) and (b) of Tables 1 and 2 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, is approved and meets the requirements for accomplishing the actions specified in that service information. FedEx further asserts that such a repair is therefore in conflict with paragraph (m)(4) of the proposed AD. These assertions are incorrect. For airplanes with repairs that meet either one of the conditions stated in Notes (a) and (b) of Tables 1 and 2 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, the inspections specified in that service information are still required, but at a different inspection threshold than the threshold for airplanes that do not have an approved repair installed in the inspection area. Therefore, Notes (a) and (b) of Tables 1 and 2 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, are not in conflict with paragraph (m)(4) of this AD. AMOCs previously approved for AD 2017–24–10 do not address the unsafe condition identified in this final rule (cracks initiating in the STA 1380 frame web), and therefore cannot be approved as AMOCs for this final rule. If the existing AMOCs were to be

approved as AMOCs for this final rule, then the inspections specified in Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, would not be required on airplanes with a previously approved AMOC. If these inspections are not accomplished, cracks initiating in the frame web could grow undetected, which could result in the inability of a principal structural element to sustain limit loads, which could adversely affect the structural integrity of the airplane. No change has been made to this final rule.

Request for a New Exception To Omit Reinstallation of the Guide Track Fitting as a Required for Compliance Action

Delta requested that the FAA modify paragraph (k) of the proposed AD to include a new exception that omits Figure 6 from Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021. Delta recognized that the proposed AD seeks to mitigate cracking at the fuselage STA 1380 frame inner chord by detecting and repairing such cracks as described in paragraph (e) of the proposed AD. However, Delta contends that reinstallation of the guide track fitting in accordance with Figure 6 of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, does nothing to mitigate the unsafe condition and is a close access step. Open access steps in accordance with Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, including removal of the guide track fitting in Figure 2, and other close access steps in accordance with Part 2, are not contained in Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021.

The FAA does not agree with the commenter. The root cause for the cracking in the STA 1380 frame inner chord and web under the roller guide track fitting is attributed to the out-of-plane bending stress induced from a mis-rigging condition of the No. 2 cargo door, which allows the roller pin on the lower cargo door to contact the roller guide track fitting. Figure 6 provides instructions on how to properly re-rig the roller guide track fitting and the No. 2 cargo door to prevent the contact between the roller pin and the roller guide track fitting, eliminating the out-of-plane bending loads on the STA 1380 frame. No change has been made to this final rule.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021. This service information specifies procedures for a general visual inspection or a maintenance records check of the STA 1380 frame for any repair, and repetitive surface high frequency eddy current (HFEC) inspections of the STA 1380 frame inner chord and frame web for any cracking, repetitive sub-surface low frequency eddy current (LFEC) inspections of the STA 1380 frame inner chord for any cracking, and applicable corrective actions. Corrective actions include repair.

This AD also requires Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016, which the Director of the Federal Register approved for incorporation by reference as of January 9, 2018 (82 FR 57343, December 5, 2017).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affect 477 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Surface HFEC inspection (retained actions from AD 2017–24–10).	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle	$202,725 per inspection cycle.
Identify the material (retained actions from AD 2017–24–10).	Up to 2 work-hours × $85 per hour = $170.	0	Up to $170	Up to $81,090.
General visual inspection (new proposed action).	6 work-hours × $85 per hour = $510.	0	$510	$243,270.
Surface frame inner chord HFEC inspection (new proposed action).	Up to 10 work-hours × $85 per hour = $850 per inspection cycle.	0	Up to $850 per inspection cycle.	Up to $405,450 per inspection cycle.
Sub-surface frame inner chord LFEC inspection (new proposed action).	Up to 6 work-hours × $85 per hour = $510 per inspection cycle.	0	Up to $510 per inspection cycle.	Up to $243,270 per inspection cycle.
Surface HFEC frame web inspection (new proposed action).	Up to 6 work-hours × $85 per hour = $510 per inspection cycle.	0	Up to $510 per inspection cycle.	Up to $243,270 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–24–10, Amendment 39–19114 (82 FR 57343, December 5, 2017); and

■ b. Adding the following new AD:

2022–13–04 The Boeing Company: Amendment 39–22090; Docket No. FAA–2021–1073; Project Identifier AD–2021–01252–T.

(a) Effective Date

This airworthiness directive (AD) is effective August 12, 2022.

(b) Affected ADs

This AD replaces AD 2017–24–10, Amendment 39–19114 (82 FR 57343, December 5, 2017) (AD 2017–24–10).

(c) Applicability

(1) This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01518SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking found at the fuselage station (STA) 1380 frame inner chord and by reports of new crack findings outside of the AD 2017–24–10 inspection area, which the existing inspections will not detect. The FAA is issuing this AD to detect and correct such cracks, which could result in rapid decompression of the airplane and the inability to sustain loads required for continued safe flight and landing.

(f) Compliance

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

(g) Retained Inspection for Group 1 Airplanes, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2017–24–10, with no changes. For Group 1 airplanes as identified in Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016; except as specified in paragraph (i)(1) of this AD, do a surface high frequency eddy current (HFEC) inspection for any cracking of the fuselage STA 1380 frame inner chord, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016; except as specified in paragraph (i)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the surface HFEC inspection, thereafter, at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016.

(h) Retained Inspection for Group 2 Airplanes, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2017–24–10, with no changes. For Group 2 airplanes as identified in Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016, except as specified in paragraph (i)(1) of this AD, identify the material of the fuselage STA 1380 frame inner chord, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016.

(1) If the fuselage STA 1380 frame inner chord material 2024–T42 aluminum alloy is found during any identification required by paragraph (h) of this AD: No further action is required by this paragraph for that airplane.

(2) If the fuselage STA 1380 frame inner chord material 7075–T73 aluminum alloy is found during any identification required by the introductory text of paragraph (h) of this AD: Before further flight, do a surface HFEC inspection for any cracking of the fuselage STA 1380 frame inner chord, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016; except as specified in paragraph (i)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the surface HFEC inspection thereafter at the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016.

(i) Retained Exceptions to the Service Information, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2017–24–10, with no changes.

(1) Where Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after January 9, 2018 (the effective date of AD 2017–24–10).

(2) Where Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016, specifies to contact Boeing for appropriate action and identifies that action as ''RC'' (Required for Compliance): Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(j) New Required Actions

Except as specified by paragraph (k) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021.

Note 1 to paragraph (j): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–53A0118, dated October 22, 2021, which is referred to in Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021.

(k) New Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, uses the phrase ''the original issue date of the Requirements Bulletin 757–53A0118 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, specifies contacting Boeing for repair instructions or for alternative inspections: This AD requires doing the repair, or doing the alternative inspections and applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(3) Where Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, states that 757–200 SRM 53–00–07 Repair 4 is for ''757–200 Special Freighter STC ST00916WI–D only,'' for this AD, 757–200 SRM 53–00–07 Repair 4 is for ''757–200 Special Freighter STC ST00916WI–D and VT Mobile Aerospace Engineering (VT MAE) Supplemental Type Certificate (STC) ST03562AT only.''

(l) Terminating Action for Certain Inspections

Accomplishment of the applicable initial inspections and corrective actions specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021, terminates the inspections required by paragraphs (g) and (h) of this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2017–24–10 are not approved as AMOCs with this AD.

(5) Except as specified by paragraph (i) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(5)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(n) Related Information

For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5234; email: *peter.jarzomb@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 12, 2022.

(i) Boeing Alert Requirements Bulletin 757–53A0118 RB, dated October 22, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 9, 2018 (82 FR 57343, December 5, 2017).

(i) Boeing Alert Service Bulletin 757–53A0101, dated November 8, 2016.

(ii) [Reserved]

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

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

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

Issued on June 13, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14490 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0296; Project Identifier MCAI–2021–01064–E; Amendment 39–22103; AD 2022–13–17]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–15–01 for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines. AD 2021–15–01 required revisions to the airworthiness limitations section (ALS) of the Rolls-Royce (RR) Trent XWB time limits manual (TLM) and the operator's existing approved aircraft maintenance program (AMP). Since the FAA issued AD 2021–15–01, the manufacturer has revised the TLM life limits and updated mandatory inspection intervals of certain critical rotating parts. This AD requires revisions to the ALS of the RR Trent XWB TLM and the operator's existing approved AMP, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 12, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2022.

ADDRESSES: For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0296. For the material identified in this AD that is not incorporated by reference, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.*

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0296; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District

Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0217, dated September 23, 2021 (EASA AD 2021–0217), to address an unsafe condition for all RRD Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–15–01, Amendment 39–21648 (86 FR 36487, July 12, 2021), (''AD 2021–15–01''). AD 2021–15–01 applied to all RRD Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines. The NPRM published in the **Federal Register** on March 28, 2022 (87 FR 17209). The NPRM was prompted by the manufacturer revising the TLM to introduce new instructions for repairs to the low-pressure compressor blades and fan blade inspections. In the NPRM, the FAA proposed to require accomplishing the actions specified in EASA AD 2021–0217, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this Proposed AD and the EASA AD.'' The FAA is issuing this AD to address the unsafe condition on these products. See EASA AD 2021–0217 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters. The commenters were Air Line Pilots Association, International (ALPA) and Delta Air Lines, Inc (DAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Clarify Recording Requirement

DAL requested that the FAA revise paragraph (h)(6), Exceptions to EASA AD 2021–0217, of this AD to read as follows: ''This AD does not require compliance with paragraph (5), Recording AD Compliance, of EASA AD 2021–0217. This AD also does not require that after revising the AMP, as required by paragraph (3) of EASA AD 2021–0217, that accomplishment of individual actions is recorded for demonstration of AD compliance.'' DAL noted that paragraph (5) of EASA AD 2021–0217 states that it is not necessary to record the accomplishment of individual actions in order to demonstrate AD compliance. DAL indicated that the proposed language in paragraph (h)(6) of the NPRM would negate that action, and make the recording of individual actions a requirement for AD compliance.

The FAA disagrees with revising paragraph (h)(6) of this final rule. As stated in this AD, this AD does not require compliance with paragraph (5), Recording AD Compliance, of EASA AD 2021–0217. Additionally, this AD does not mandate that operators not comply with paragraph (5), Recording AD Compliance, of EASA AD 2021–0217. The FAA notes, for purposes of clarification, that this AD only requires compliance with paragraph (3) of EASA AD 2021–0217, and that paragraph (3) of EASA AD 2021–0217 does not specify recording of individual actions in order to demonstrate AD compliance. The FAA did not change this AD as a result of this comment.

Request To Incorporate by Reference EASA AD 2021–0217

DAL requested that the FAA add paragraph (k), Material Incorporated by Reference, to this final rule and include EASA AD 2021–0217 in that paragraph. DAL noted that using EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs has improved the efficiency of the FAA's AD process and operator's AD process. DAL also noted that one of the efficiencies of incorporating EASA AD 2021–0217 by reference is that the Ref. Publications section would allow for the use of later approved revisions of the TLM.

The FAA notes that EASA AD 2021–0217 was proposed for incorporation by reference under 1 CFR part 51 in the NPRM, which lists the material to be incorporated by reference in this final rule. Additionally, while not typically included in an NPRM, the ''Material Incorporated by Reference'' paragraph exists in the final rule published for FAA ADs. The FAA did not change this AD as a result of the comments.

Support for the AD

ALPA expressed support for the AD as written.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed European Union Aviation Safety Agency (EASA) AD 2021–0217, dated September 23, 2021. EASA AD 2021–0217 describes actions for the incorporation of revised life limits and updated mandatory inspection intervals of certain critical rotating parts into the ALS of the RR Trent XWB TLM, as applicable to each engine model, and the operator's existing approved AMP. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Rolls-Royce Airworthiness Limitations (Mandatory parts lives), TRENTXWB–A–05–10–01–00A01–030A–D, Revision 016, dated May 1, 2021, of the Rolls-Royce Trent XWB TLM TRENTXWB–K0680–TIME0–01; Rolls-Royce Airworthiness Limitations (Mandatory Parts Lives), TRENTXWB–B–05–10–01–00A01–030A–D, Revision 003, dated April 19, 2021, of the Rolls-Royce Trent XWB TLM TRENTXWB–K0680–TIME0–01; Rolls-Royce Airworthiness Limitations (Mandatory inspections), TRENTXWB–A–05–20–01–00A01–030A–D, Revision 015, dated May 1, 2021, of the Rolls-Royce Trent XWB TLM TRENTXWB–K0680–TIME0–01; and Rolls-Royce Airworthiness Limitations (Mandatory inspections), TRENTXWB–B–05–20–01–00A01–030A–D, Revision 008, dated April 19, 2021, of the Rolls-Royce Trent XWB TLM TRENTXWB–K0680–TIME0–01. These sections of the TLM specify inspection intervals and life limits, differentiated by engine model, for critical rotating parts.

Costs of Compliance

The FAA estimates that this AD affects 30 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS of the RR Trent XWB TLM and the operator's existing approved AMP.	1 work-hour × $85 per hour = $85.	$0	$85	$2,550

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–15–01, Amendment 39–21648 (86 FR 36487, July 12, 2021); and

■ b. Adding the following new airworthiness directive:

2022–13–17 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–22103; Docket No. FAA–2022–0296; Project Identifier MCAI–2021–01064–E.

(a) Effective Date

This airworthiness directive (AD) is effective August 12, 2022.

(b) Affected ADs

This AD replaces AD 2021–15–01, Amendment 39–21648 (86 FR 36487, July 12, 2021).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Trent XWB–75, Trent XWB–79, Trent XWB–79B, Trent XWB–84, and Trent XWB–97 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine Turbine/Turboprop.

(e) Unsafe Condition

This AD was prompted by the manufacturer revising the time limits manual (TLM) to incorporate revised life limits and updated mandatory inspection intervals of certain critical rotating parts. The FAA is issuing this AD to prevent the failure of critical rotating parts. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0217, dated September 23, 2021 (EASA AD 2021–0217).

(h) Exceptions to EASA AD 2021–0217

(1) Where EASA AD 2021–0217 defines the AMP as the approved Aircraft Maintenance Programme on the basis of which the operator or the owner ensures the continuing airworthiness of each operated engine, this AD defines the AMP as the existing Aircraft Maintenance Program on the basis of which the operator or the owner ensures the continuing airworthiness of each operated airplane.

(2) Where EASA AD 2021–0217 requires revising the approved aircraft maintenance program (AMP) within 12 months after the effective date of EASA AD 2021–0217, this AD requires revising the existing approved AMP and airworthiness limitations section (ALS) within 120 days after the effective date of this AD.

(3) This AD does not require compliance with paragraph (1), Mandatory Inspections and Replacement of Life Limited Parts, of EASA AD 2021–0217.

(4) This AD does not require compliance with paragraph (2), Corrective Action(s), of EASA AD 2021–0217.

(5) This AD does not require compliance with paragraph (4), Credit, of EASA AD 2021–0217.

(6) This AD does not require compliance with paragraph (5), Recording AD Compliance, of EASA AD 2021–0217.

(7) This AD does not require compliance with the ''Remarks'' section of EASA AD 2021–0217.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(2) For service information identified in this AD that is not incorporated by reference, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332

242424; fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0217, dated September 23, 2021.

(ii) [Reserved]

(3) For more information about EASA AD 2021–0217, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0296.

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

Issued on June 17, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14391 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0161]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD during a high-speed power boat event on July 16, 2022 (alternate date on July 17, 2022). This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 9 a.m. on July 16, 2022 through 6 p.m. on July 17, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0161 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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 *D05-DG-SectorMD-NCR-MarineEvents@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 Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Tiki Lee's Dock Bar of Sparrows Point, MD notified the Coast Guard that they will be conducting the 2nd Annual Tiki Lee's Shootout on the River, on Back River between Porter Point and Stansbury Point, in Baltimore County, MD on July 16, 2022. In the event of inclement weather on July 16, 2022, the event will be conducted from 10 a.m. to 5 p.m. on July 17, 2022. In response, on April 29, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Back River, Baltimore County, MD'' (87 FR 25434). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power boat event. During the comment period that ended May 31, 2022, we received no comments.

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**. Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event. Hazards from the high-speed power boat event include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as operating within approaches to local marinas and boat facilities and waterfront residential communities. Immediate action is needed to protect participants, spectators, and other persons and vessels during the high-speed power boat event on these navigable waters.

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 the high-speed power boat event held on July 16, 2022 will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD in or near the event area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 29, 2022. There are no substantive changes in the regulatory text of this rule from the proposed rule in the NPRM. However, three administrative errors have been found in the regulatory text of the proposed rule. The first change is in the last sentence of subparagraph (a)(1), changing the words ''aerobatics box'' to ''course area, buffer area.'' The second change is in paragraph (b), removing the term ''Aerobatics Box'' and its definition, and adding the terms and definitions for ''Course Area'' and ''Buffer Area.'' The third change is in subparagraph (c)(4), changing the words ''aerobatics box'' to ''course area.'' Therefore, the regulatory text of this rule has been changed to make those corrections.

This rule establishes special local regulations from 9 a.m. on July 16, 2022 through 6 p.m. on July 17, 2022. The regulations will be enforced from 9 a.m. to 6 p.m. on July 16, 2022, and if necessary due to inclement weather on July 16, 2022, from 9 a.m. to 6 p.m. on July 17, 2022. The regulated area will cover all navigable waters of Back River, within an area bounded by a line

connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. This rule provides additional information about areas within the regulated area and their definitions. These areas include ''Course Area,'' ''Buffer Area,'' and ''Spectator Areas.'' The size of the regulated area and duration of the special local regulations are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat event, scheduled from 10 a.m. to 5 p.m. on July 16, 2022, (alternate date on July 17, 2022). The COTP and the Coast Guard Event Patrol Commander (PATCOM) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2nd Annual Tiki Lee's Shootout on the River participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. 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. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event 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. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels and official patrol vessels will be allowed to enter and remain within the course area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

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. 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).

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small designated area of Back River for 18 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. 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 Event 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 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 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 18 total enforcement 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 the Record 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 § 100.501T05–0161 to read as follows:

§ 100.501T05–0161 2nd Annual Tiki Lee's Shootout on the River, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The course area, buffer area and spectator areas are within the regulated area.

(2) *Course Area.* The course area is a polygon in shape measuring approximately 1,400 yards in length by 50 yards in width. The area is bounded by a line commencing at position latitude 39°16′14.98″ N, longitude 076°26′57.38″ W, thence east to latitude 39°16′15.36″ N, longitude 076°26′55.56″ W, thence south to latitude 39°15′33.40″ N, longitude 076°26′49.70″ W, thence west to latitude 39°15′33.17″ N, longitude 076°26′51.60″ W, thence north to and terminating at the point of origin.

(3) *Buffer Area.* The buffer area is a polygon in shape measuring approximately 100 yards in east and west directions and approximately 150 yards in north and south directions surrounding the entire course area described in the preceding paragraph of this section. The area is bounded by a line commencing at position latitude 39°16′18.72″ N, longitude 076°27′01.74″ W, thence east to latitude 39°16′20.36″ N, longitude 076°26′52.39″ W, thence south to latitude 39°15′29.27″ N, longitude 076°26′45.36″ W, thence west to latitude 39°15′28.43″ N, longitude 076°26′54.94″ W, thence north to and terminating at the point of origin.

(4) *Spectator Areas.* (i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

Buffer area is a neutral area that surrounds the perimeter of the Course Area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a Course Area and a specified Spectator Areas or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

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.

Course area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an course area reserved for participant vessels competing in the event.

Event Patrol Commander or Event 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 ''2nd Annual Tiki Lee's Shootout on the River'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the course area.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can 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 Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(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 periods.* This section will be enforced from 9 a.m. to 6 p.m. on July 16, 2022, and, if necessary due to inclement weather on July 16, 2022, from 9 a.m. to 6 p.m. on July 17, 2022.

Dated: June 30, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–14377 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0141]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD during activities associated with an air show event from July 15, 2022 through July 17, 2022. This regulation prohibits persons and vessels from entering the regulated area unless authorized by the Captain of the Port, Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

DATES: This rule is effective from 4 p.m. on July 15, 2022 through 4 p.m. on July 17, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0141 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

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 *D05-DG-SectorMD-NCR-MarineEvents@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 Patrol Commander
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows, LLC of Clearfield, PA, notified the Coast Guard that it will be conducting the 2022 Tiki Lee's Shootout on the River Airshow in Back River between Lynch Point and Walnut Point in Baltimore County, MD on July 15, 2022, July 16, 2022, and July 17, 2022. In response, on April 22, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Special Local Regulation; Back River, Baltimore County, MD'' (87 FR 24084). There, we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this airshow. During the comment period that ended May 23, 2022, we received no comments.

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**. Due to the date of the event, it would be impracticable to make the regulation effective 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would delay the safety measures necessary to respond to potential safety hazards associated with this marine event. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to waterside residential communities. Immediate action is needed to protect participants, spectators, and other persons and vessels during the air show event on these navigable waters.

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 the air show being held from July 15, 2022 through July 17, 2022 will be a safety concern for anyone intending to operate within certain waters of Back River in Baltimore County, MD near the event area.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 22, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 4 p.m. on July 15, 2022 through 4 p.m. on July 17, 2022. The regulated area will cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. This rule provides additional information about areas within the regulated area and their definitions. These areas include ''Aerobatics Box'' and ''Spectator Areas.'' The size of the regulated area and duration of the special local regulations are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, scheduled from 5 p.m. to 6 p.m. on July 15, 2022, and from 2 p.m. to 3 p.m. both days on July 16, 2022, and July 17, 2022. The COTP and the Coast Guard Event Patrol Commander (PATCOM) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2022 Tiki Lee's Shootout on the River Airshow participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. 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. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event 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. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels will be allowed to enter the aerobatics box. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

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. 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).

This regulatory action determination is based on the location, size and duration of the regulated area, which will impact a small designated area of Back River for 9 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. 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 Event 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 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 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 9 total enforcement 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 the Record 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 § 100.501T05–0141 to read as follows:

§ 100.501T05–0141 2022 Tiki Lee's Shootout on the River Airshow, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Aerobatics Box.* The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16′01.2″ N, longitude 076°27′05.7″ W, thence east to latitude 39°16′04.7″ N, longitude 076°26′53.7″ W, thence south to latitude 39°15′16.9″ N, longitude 076°26′35.2″ W, thence west to latitude 39°15′13.7″ N, longitude 076°26′47.2″ W, thence north to and terminating at the point of origin.

(3) *Spectator Areas.* (i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence

northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

Aerobatics Box is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by 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.

Event Patrol Commander or Event 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 ''2022 Tiki Lee's Shootout on the River Airshow'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator Area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can 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 Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(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 4 p.m. to 7 p.m. on July 15, 2022, from 1 p.m. to 4 p.m. on July 16, 2022, and from 1 p.m. to 4 p.m. on July 17, 2022.

Dated: June 30, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–14378 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0553]

RIN 1625–AA00

Safety Zone; Pacific Gas and Electric Radiological Barrier Maintenance, Eureka, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of Humboldt Bay in Eureka, CA, in support of the Pacific Gas and Electric Radiological Barrier Maintenance on July 13, 2022. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the dangers associated with the maintenance, such as radiation exposure. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 7 a.m. until 5 p.m. on July 13, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0553 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Anthony Solares, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415–399–3585, email *SFWaterways@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 the Coast Guard did not receive final details for this project until June 24, 2022. It is impracticable to go through the full notice and comment rule making process because the Coast Guard must establish this safety zone by July 13, 2022, and lacks sufficient time to provide a reasonable comment period and to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is necessary to protect personnel, vessels, and the marine environment from the potential safety hazards created by the radiological barrier maintenance beginning on July 13, 2022.

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 San Francisco (COTP) has determined that potential hazards associated with the movement of radiological shielding barriers starting July 13, 2022, will be a safety concern for anyone within 200-meters of position: 40°44′31″ N, 124°12′39″ W (NAD83). For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone for the duration of the barrier maintenance.

IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. until 5 p.m. on July 13, 2022. The safety zone will cover all navigable waters within 200-meters of position: 40°44′31″ N, 124°12′39″ W (North American Datum 83 (NAD83)). The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while radiological material is exposed. A 22,700 pound lid to one of six fortified storage casks, containing spent nuclear fuel rods, be lifted for inspection. No vessel or person will be permitted to enter into, transit through, or remain in the safety zone without obtaining permission from the COTP or a designated representative. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

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. 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).

This regulatory action determination is based on the limited size, location, duration, and time-of-day of the safety zone. This safety zone will impact a small designated area of Humboldt Bay in Eureka, CA. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone. Any vessels or persons desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

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 temporary safety zone lasting ten hours over a single day operation period that will prohibit entry within 200-meters of position: 40°44′31″ N, 124°12′39″ W (NAD83). 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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–105 to read as follows:

§ 165.T11–105 Safety Zone; Pacific Gas and Electric Radiological Barrier Maintenance, Eureka, CA.

(a) *Location.* The following area is a safety zone: all navigable waters of Humboldt Bay in Eureka, CA, from surface to bottom, within a circle formed by connection of all points 200-meters from position: 40°44′31″ N, 124°12′39″ W (NAD83) or as announced via Broadcast Notice to Mariners. These coordinates are based on North American Datum 83 (NAD 83).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or a Federal, State, and Local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *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) During the enforcement periods, the safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement periods.* This section will be enforced from 7 a.m. until 5 p.m. on July, 13, 2022.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with § 165.7.

Dated: July 1, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2022–14573 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0466]

RIN 1625–AA11

Regulated Navigation Area; Oregon Inlet Channel, Marc Basnight Bridge, Dare County, NC

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigational area (RNA) for navigable waters of Oregon Inlet Channel. Due to severe shoaling in the Oregon Inlet Channel, the navigational channel will be moved until shoaling can be mitigated by dredging crews. The new, temporary, channel through the Marc Basnight Bridge may not be suitable for vessels of 100 gross tons (GT) or greater. This temporary RNA is needed to protect personnel, vessels, bridge infrastructure, and the marine environment from potential hazards associated with the transit of vessels 100 GT or greater until the original channel can be restored. Transit of vessels 100 GT or greater through this area is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or designated representative.

DATES: This rule is effective without actual notice from July 8, 2022, through June 30, 2023. For purposes of enforcement, actual notice will be used from July 5, 2022, until July 8, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0466 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Ken Farah, Waterways Management Division, U.S. Coast Guard; telephone 910–772–2221, email *ncmarineevents@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 it is impracticable due to the safety hazard associated with the extreme shoaling in this area and shifiting of the main navigational channel. The potential safety hazards associated with vessels 100 GT or greater transiting this span of the Marc Basnight Bridge must be mitigated until the original channel can be restored. It is impracticable to publish an NPRM and consider the public comments because we must establish this temporary RNA immediately in order to address significant shoaling, and protect vessels, infrastructure, and the marine environment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to restrict the transit of vessels of 100 GT or greater through this dangerous span of the Marc Basnight Bridge.

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 District 5 Commader has determined that potential hazards associated with vessels 100 GT or greater transiting the Marc Basnight Bridge in the new, temporary, Oregon Inlet Channel will be a safety concern to the public. This rule is needed to protect personnel, vessels, bridge infrastructure, and the marine environment until the original channel is restored.

IV. Discussion of the Rule

This rule establishes a temporary regulated navigational area for navigable waters of Oregon Inlet Channel until the original Oregon Inlet Channel is restored. Due to severe shoaling at Oregon Inlet Channel, Aids to Navigation Team (ANT) Wanchese established a new channel which passes from the Oregon Inlet Entrance Channel through Marc Basnight Bridge temporary navigable span 34 to the west side of the bridge. The original Oregon Inlet Channel crossing under the Marc Basnight Bridge (NC–12) at spans 23–31 has been relocated north-west to span 34, between bents 33 and 34. This temporary span provides vertical clearance of approximately 37 feet above mean high water and a horizontal clearance of approximately 146 feet. However, this section of the bridge is not equipped with fenders to protect the spans from potential vessel allisisions. This necessicates the restriction of vessels transiting under this portion of the Marc Basnight Bridge. Vessels of 100 GT or greater may present a significant hazard to this section of the bridge. This temporary RNA will be in place until U.S. Army Corps of Engineers (USACE) crews completes the dredging of the original Oregon Inlet Channel.

This temporary navigational restriction is needed to protect personnel, vessels, bridge infrastructure, and the marine environment from potential hazards associated with the transit of vessels 100 GT or greater until the original Oregon Inlet Channel can be restored. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the original channel is being restored. No vessels 100 GT or greater will be permitted to enter this RNA without first obtaining permission from the Captain of the Port North Carolina 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. 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).

This regulatory action determination is based on the size, duration, and location of the RNA. Most vessel traffic will be able to safely transit this regulated area. There are only a few vessels of 100 GT or more that transit this area. Vessel traffic is mostly comprised of vessels smaller than 100 GT. Vessels of 100 GT or more can contact the Coast Guard for permission to enter the RNA or for alternative instructions on how to transit the area. The Coast Guard will publish a notice in the Local Notice to Mariners.

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 RNA that will prohibit entry of vessels of 100 GT or greater from entering. 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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T05–0466 to read as follows:

§ 165.T05–0466 Regulated navigation area; Oregon Inlet Channel, Marc Basnight Bridge, Dare County, NC.

(a) *Location.* The following area is a regulated navigation area (RNA): Span 34, between bents 33 and 34, of the Marc Basnight Bridge of the temporary Oregon Inlet Channel between Rodanthe and Nags Head, NC, in Dare County, NC.

(b) *Regulations.* In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) No vessel 100 GT or greater may enter, stop, moor, transit, or loiter in the RNA without explicit permission from the Captain of the Port North Carolina (COTP).

(2) A vessel transiting through the RNA must make a direct passage. No vessel may stop, moor, anchor, or loiter within the RNA at any time unless it is engaged or intending to engage in bridge construction work in the RNA or dredging operations. All movement within the RNA is subject to a ''Slow-No Wake'' speed limit. No vessel may produce a wake or attain speeds greater than 5 knots unless a higher minimum speed is necessary to maintain bare steerageway.

(3) The operator of any vessel transiting in the RNA must comply with all lawful directions given to them by the COTP or the COTP's on-scene representative.

(c) *Enforcement period.* This section will be enforced from July 5, 2022, until June 30, 2023, or until the original Oregon Inlet Channel is restored. If the COTP determines this section need not be enforced during these times on a given day, he or she will use marine broadcast notices to mariners to announce the specific periods when this section will not be subject to enforcement.

Dated: July 5, 2022.

Shannon Gilreath,

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

[FR Doc. 2022–14558 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0560]

RIN 1625–AA00

Safety Zone; Lake Erie; Sandusky, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters near Sandusky Bay in Sandusky, OH. This temporary safety zone is necessary to protect race participants, spectators and support vessels from marine traffic in the vicinity swim portion of the Ironman 70.3 Ohio Triathlon. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port Detroit or his designated representative.

DATES: This rule is effective from 4:30 a.m. through 10 a.m. on July 24, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0560 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 the Tracy Girard, Sector Detroit, Coast Guard; telephone (313) 475–7475, email *Tracy.m.Girard@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 doing so would be impracticable. The event sponsor notified the Coast Guard with insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would prevent the Captain of the Port (COTP) Detroit from keeping race participants, spectators, and support vessels safe from marine traffic in the vicinity swim portion of the Ironman 70.3 Ohio Triathlon. The safety zone must be established by July 24, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to ensure the safety of the participants and vessels during the Ironman 70.3 Ohio Triathlon on July 24, 2022.

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 COTP Detroit has determined that potential hazards associated with the Ironman 70.3 Ohio Triathlon on July 24, 2022, will be a safety concern within 400 yards of the Dock Channel from the Jackson Street Pier to the Shelby Street Boat Launch for 5.5 hours. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the event is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 4:30 a.m. through 10 a.m. on July 24, 2022. The safety zone will encompass all U.S. navigable waters of Lake Erie within a 400-yard radius of the dock channel in Sandusky Bay in Sandusky, OH, between the Jackson Street Pier and the Shelby Street Boat Launch. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Ironman 70.3 Ohio Triathlon is taking place. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

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. 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).

This regulatory action determination is based on the size, location, duration and time-of-day of the safety zone. This safety zone would impact a small designated area of Sandusky Bay for approximately 5.5 hours, during the morning when vessel traffic is normally low. Vessel traffic will be able to transit after the time of the event. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the safety zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the 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 5.5 hours that will prohibit entry within a 400-yard radius of the Dock Channel in Sandusky Bay, between the Jackson Street Pier and the Shelby Street Boat Launch. It is categorically excluded from further review under paragraph L[60](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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0560 to read as follows:

§ 165.T09–0560 Safety Zone; Lake Erie; Sandusky Bay, OH.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the Sandusky Bay within a within a 400-yard radius of the Dock Channel between 41°27′36.48″ N, 082°42′54.84″ W and 41°27′25.05″ N, 082°43′26.64″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) Detroit or his designated representative.

(2) The safety zone described in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the COTP Detroit or his designated representative.

(3) The ''designated representative'' of the COTP Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The designated representative of the COTP Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or his designated representative.

(c) *Enforcement period.* This section will be enforced from 4:30 a.m. through 10 a.m. on July 24, 2022. The Captain of the Port Detroit or a designated representative may suspend enforcement of the safety zone at any time.

Dated: June 30, 2022.

Brad W. Kelly,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2022–14434 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0564]

RIN 1625–AA00

Safety Zone; Thunder on the Niagara Fireworks; Niagara River; North Tonawanda, NY

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 400-foot radius of land launched fireworks over the Niagara River in North Tonawanda, NY. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this safety zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or his designated representative.

DATES: This rule is effective August 6, 2022, from 8:45 p.m. through 10:45 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0564 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Anthony Urbana, U.S. Coast Guard Sector Buffalo; telephone 716–843–9342, email *D09-SMB-SECBuffalo-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 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 with respect to this rule because doing so would be impracticable. The event sponsor did not submit notice of the fireworks display to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels from the hazards associated with this fireworks display. The safety zone must be established by August 6, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Buffalo has determined that fireworks over the water presents significant risks to public safety and property. This rule is necessary to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display is taking place.

IV. Discussion of the Rule

This rule establishes a safety zone from 8:45 p.m. through 10:45 p.m. on August 6, 2022. The safety zone will cover all navigable waters within a 400-foot radius of land launched fireworks over The Niagara River in North Tonawanda, NY. The duration of the safety zone is intended to protect spectators, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Buffalo or his 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. 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).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The safety zone will encompass a 400-foot radius of land launched fireworks in the The Niagara River in North Tonawanda, NY lasting approximately 2 hours during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule would allow vessels to seek permission to enter the safety zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, 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 approximately 2 hours that will prohibit entry within a 400-foot radius in the Niagara River in North Tonawanda, NY, for a fireworks display. 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. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0564 to read as follows:

§ 165.T09–0564 Safety Zone; Safety Zone; Thunder on the Niagara Fireworks; Niagara River; North Tonawanda, NY.

(a) *Location.* The following area is a safety zone: All waters of the Lake Ontario, from surface to bottom, encompassed by a 400-foot radius around 43°03′22.39″ N, 078°54′15.59″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Buffalo in the enforcement of the safety zone.

(c) *Regulations.* (1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP Buffalo or his designated representative.

(2) Vessel operators desiring to enter or operate within the safety zone must contact the COTP Buffalo or his designated representative to obtain permission to do so. The COTP Buffalo or his designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Buffalo or his designated representative.

(d) *Enforcement period.* The regulated area described in paragraph (a) of this section is effective from 8:45 p.m. through 10:45 p.m. on August 6, 2022.

Dated: July 1, 2022.

M.I. Kuperman,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2022–14542 Filed 7–7–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220627–0140]

RIN 0648–BK84

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna and Silky Shark in the Eastern Pacific Ocean for 2022 and Beyond

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act (TCA) of 1950, as amended, to implement Resolution C–21–04 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2022–2024*) and Resolution C–21–06 (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis), for the Years 2022 and 2023*), which were adopted at the Resumed 98th Meeting of the Inter-American Tropical Tuna Commission (IATTC) in October 2021. This final rule implements the C–21–04 fishing management measures for tropical tuna (*i.e.,* bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). The fishing restrictions apply to purse seine vessels of class sizes 4–6 (carrying capacity of 182 metric tons (mt) or greater) and longline vessels greater than 24 meters (m) in overall length that fish for tropical tuna in the EPO. To implement Resolution C–21–06, which extended the previous IATTC resolution on silky shark for 2 years, the existing regulations on silky shark will continue in effect with no proposed amendments. This final rule is necessary for the conservation of tropical tuna stocks and silky shark in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

DATES: *Effective date:* This rule is effective July 25, 2022.

Compliance date: Compliance with 50 CFR 300.22(c)(2) through (4) and (d) is required as of August 8, 2022.

ADDRESSES: Copies of supporting documents that were prepared for this rule, including the Regulatory Impact Review, are available via the Federal e-Rulemaking Portal: *https://*

www.regulations.gov, docket NOAA–NMFS–2021–0136, or contact Rachael Wadsworth, NMFS WCR SFD, NMFS West Coast Region Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or *WCR.HMS@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS WCR, at (206) 561–3457.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

On March 28, 2022, NMFS published a proposed rule in the **Federal Register** (87 FR 17248) to implement Resolutions C–21–04 (*Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean During 2022–2024*) and C–21–06 (*Conservation Measures for Shark Species, with Special Emphasis on the Silky Shark (Carcharhinus Falciformis), for the Years 2022 and 2023*). These Resolutions were adopted at the Resumed 98th Meeting of the Inter-American Tropical Tuna Commission in October 2021. The proposed rule contains additional background information, including information on the IATTC and its Convention Area, the international obligations of the United States as an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on April 27, 2022.

The final rule is implemented under the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). This final rule applies to U.S. purse seine vessels of class sizes 4–6 and longline vessels greater than 24 m in overall length fishing for tropical tunas in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

IATTC Resolutions on Tropical Tuna Conservation and Silky Shark

Many of the provisions of the newly adopted Resolution C–21–04 are identical in content to those contained in the previous IATTC resolutions on tropical tuna management that were in place from 2018–2021 (C–20–06; *Tropical Tunas Conservation in the EPO during 2021, pursuant to RES C–20–05;* and C–17–02; *Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean During 2018–2020*). Resolution C–21–04 continues to include provisions for a 72-day EPO fishing closure period for purse seine vessels, exemptions from that closure period due to *force majeure,* a 31-day time/area EPO fishing closure period for purse seine vessels, catch limits of bigeye tuna caught in the EPO for longline vessels greater than 24 m in overall length, catch limit transfer requirements for bigeye tuna, a requirement that all tropical tuna be retained and landed (with some exceptions), and restrictions on the use and design of fish aggregating devices (FADs).

In addition to the existing measures, Resolution C–21–04 contains new measures not included in previous tropical tuna resolutions. These include a system of additional closure days for purse seine vessels that exceed an annual catch level of 1,200 mt for bigeye tuna and amendments to provisions related to *force majeure* exemptions from the 72-day closure period requirement. The Resolution also includes several new restrictions on FADs that include a gradual reduction in the number of active FADs allowed, additional reporting requirements for satellite buoys including activations and deactivations, and specification of circumstances where activations and deactivations are allowed. The Resolution also includes requirements for reporting cannery data and Vessel Monitoring Systems (VMS) data to the IATTC.

Final Regulations

This final rule revises part 300, subpart C of title 50 of the Code of Federal Regulations (CFR). Although Resolutions C–21–04 and C–21–06 are in effect through 2024 and 2023 respectively, these regulations will not expire concurrently with the Resolutions. Instead, because the IATTC will likely continue to adopt similar conservation and management measures upon expiration of those resolutions, and to avoid a lapse in the management of the fishery that may occur between expiration of the proposed regulations and implementation of new measures adopted by the IATTC, the regulations will remain in effect until they are amended or replaced.

The TCA gives NMFS the authority under paragraph 16 U.S.C. 955(a) to promulgate such regulations as may be necessary to carry out the United States international obligations under the Antigua Convention and the TCA, including recommendations and decisions adopted by the IATTC. In past years, NMFS has implemented IATTC resolutions for specific calendar years, and this approach has led to lapses in management in the affected fisheries in subsequent years. Given the time-consuming nature of the U.S. domestic rulemaking process, combined with the increasingly frequent delayed adoption of IATTC resolutions, implementing domestic measures that do not expire until new measures are in place is necessary to carry out the United States' international obligations under the Antigua Convention and the TCA because it will ensure there is no lapse in management of the tropical tuna fishery or silky shark measures in the EPO.

Thus, unless a date is specified in the text of the regulation, the regulations will remain in effect until they are amended or replaced. NMFS does intend to publish proposed and final rules to implement new resolutions adopted by the IATTC as expeditiously as possible; however, this approach allows existing regulations to remain in in effect and prevent any lapse in regulatory coverage caused by expirations. Because the IATTC adopted Resolution C–21–04 as a three-year conservation and management measure (2022–2024), the supporting analyses for this rule (discussed later in the Classification section) cover a three-year time period, with the understanding that these analyses would need to be supplemented should the measures remain in effect for more than three years. Likewise, the supporting analyses for Resolution C–21–06, which was adopted as a two-year conservation measure (2022–2023), cover a two-year period with the understanding that these analyses would also need to be supplemented should the measures remain in effect for more than two years.

Tuna Conservation Measures for 2022 and Beyond

The final rule implements the provisions of Resolution C–21–04 and applies to U.S. commercial fishing vessels using purse seine and longline gear to catch tropical tuna in the IATTC Convention Area. Several provisions included in Resolution C–21–04 do not need to be implemented through this rule because they were already codified in regulations and are not set to expire. The continuing and new tropical tuna provisions are described below.

First, this rule maintains a 750 mt catch limit on bigeye tuna caught by longline vessels greater than 24 m in overall length in the IATTC Convention Area (50 CFR 300.25(a)(2)). Second, the rule maintains the prohibition on purse seine vessels of class size 4 to 6 (*i.e.,* vessels with a carrying capacity greater than 182 mt) from fishing for tropical tuna in the IATTC Convention Area for a period of 72 days (50 CFR 300.25(e)(1)). Specifically, vessels will continue to be prohibited from fishing in the EPO for 72 days during one of the following two periods: (1) from July 29 to October 8; or (2) from November 9 to

January 19 of the following year (50 CFR 300.25(e)(1)(i) and (ii)). Third, the rule maintains a closure period (*i.e.,* Corralito closure) for the purse seine fishery for tropical tuna within the area of 96° and 110° W and between 4° N and 3° S from 0000 hours on October 9 to 2400 hours on November 8 (50 CFR 300.25(e)(5)). The three regulations described in this paragraph are amended by this rule solely to specify that they apply beyond the 2021 calendar year and are no longer linked to specific years in the regulations. Due to the addition of new requirements in § 300.25(e) (discussed later in this section), the closure requirement described in § 300.25(e)(5) will also be moved to § 300.25(e)(6).

This rule also continues, for 2022 and beyond, several other regulations that were in effect in 2021 but that did not specify in the regulatory text the calendar years to which they apply. Therefore, under this rule, those regulations continue to be in effect with no changes or with minor clarifying revisions, as indicated below:

- Provisions related to transferring longline catch limits for bigeye tuna between IATTC members (50 CFR 300.25(a)(5)).
- Provisions related to selection of a 72-day closure period (50 CFR 300.25(e)(2) and (3)). Due to the addition of new regulations in § 300.25(e), these provisions have been moved from § 300.25(e)(2) and (3) to § 300.25(e)(3) and (4), and they also include minor non-substantive clarifying revisions.
- Provisions related to exemptions from the 72-day closure period requirement due to *force majeure* (50 CFR 300.25(e)(4)). Due to the addition of new requirements in § 300.25(e), these provisions have been moved from § 300.25(e)(4) to § 300.25(e)(5). The regulation also includes non-substantive revisions intended to clarify eligibility for a *force majeure* exemption.
- Requirements related to stowing gear during time/area closure periods (50 CFR 300.25(e)(6)). Due to the addition of new requirements in § 300.25(e), this requirement has been moved from § 300.25(e)(6) to § 300.25(e)(7).
- A requirement for all tropical tuna to be retained on board and landed (with certain exceptions) (50 CFR 300.27(a)).
- A number of restrictions related to FADs for purse seine vessels in the IATTC Convention Area (50 CFR 300.22(a)(3); 50 CFR 300.28). Due to changes to § 300.22, the FAD restrictions in § 300.22(a)(3) have been moved to § 300.22(c). The regulation also includes some non-substantive revisions intended to clarify the existing reporting requirements for Active FADs.
- The prohibitions against failing to comply with gear-stowing restrictions, retention requirements, and FAD-related restrictions (50 CFR 300.24(e), (f), (m), (nn), (oo), and (pp)).

This rule implements several new fishing restrictions on purse seine vessels, in accordance with Resolution C–21–04. The new restrictions include a system of additional closure days for class size 4–6 purse seine vessels that exceed specified annual catch levels for bigeye tuna (*see* 50 CFR 300.25(e)(2)). These catch levels begin at 1,200 mt of bigeye tuna with 10 additional closure days and increase in increments of 300 mt and 3 additional closure days beyond that level. In 2023 and 2024, U.S. purse seine vessels that exceed a certain annual catch level of bigeye tuna will be required to increase the number of closure days they observe in the following year, as specified in Table 1.

TABLE 1—BIGEYE TUNA CATCH LEVELS AND CORRESPONDING ADDITIONAL CLOSURE DAYS

Catch level (mt) exceeded	Additional closure days observed
1,200	10
1,500	13
1,800	16
2,100	19
2,400	22

In addition, the rule implements minor revisions to *force majeure* exemptions from the 72-day closure period requirement to clarify when to submit information to NMFS and that the exemption does not apply to the additional closure days specified in table 1 (*see* 50 CFR 300.25(e)(5)(i) through (vi)).

The rule also implements several new restrictions on FADs. These include changes to 50 CFR 300.28(c) to provide for a gradual reduction in the number of active FADs allowed from 2022 to 2024 and beyond, additional reporting requirements for satellite buoys, including specific information about activations and deactivations, in 50 CFR 300.22(c)(3) and (4), and specification of circumstances where activations and deactivations are allowed in the changes to 50 CFR 300.28(d) and (e). The rule also implements new requirements for vessel owners or operators to report cannery data directly to the IATTC and to also make the data available to NMFS upon request, no later than 10 days after completion of unloading and the last day of grading by size (*see* 50 CFR 300.22(d)). Cannery data reported to NMFS will be treated as confidential in accordance with NOAA Administrative Order 216–100 for confidential fisheries data, and data provided from NMFS to IATTC or directly to IATTC from vessel owners or operators will be kept confidential according to IATTC confidentiality standards such as those in C–15–07. Further instructions about reporting will be included in a compliance guide available after publication of the final rule. The changes to 50 CFR 300.21 include the addition of definitions for ''activation of a satellite buoy,'' ''deactivation of a satellite buoy,'' ''reactivation of a satellite buoy,'' ''signal loss,'' and revise the ''Active FAD'' definition. The corresponding prohibitions listed in 50 CFR 300.24 are also updated accordingly. Finally, this action also notifies the public that, consistent with the VMS reporting requirements specified in paragraph 25 of Resolution C–21–04, and beginning on January 1, 2023, NMFS will report VMS data, which vessels are currently required to submit under 50 CFR 300.26, to the IATTC. VMS data reported from NMFS to the IATTC will be kept confidential according to IATTC confidentiality standards.

Regional Vessel Register Regulations

In addition to implementing the measures in the tropical tuna resolution, the rule also slightly reorganizes 50 CFR part 300, subpart C, and clarifies existing regulations pertaining to the IATTC Regional Vessel Register (RVR). Specifically, the regulations in 50 CFR 300.23, ''Persons and vessels exempted,'' are now found in 50 CFR 300.20, ''Purpose and scope,'' and the regulations pertaining to the RVR, previously found in 50 CFR 300.22(b), are now found in 50 CFR 300.23, which has been renamed ''IATTC Regional Vessel Register.'' This change is intended to improve readability and provide easier access to the RVR regulations. The RVR regulations in 50 CFR 300.23 also include some minor housekeeping edits for clarifying purposes.

Silky Shark Regulations

The IATTC also extended existing conservation measures for silky shark without change (*see* Resolution C–21–06). Therefore, under this rule the silky shark regulations in 50 CFR 300.27(e) and (f) will continue to be in effect without change. Those regulations prohibit U.S. purse seine and longline vessels from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark,

with the exception of silky shark caught by purse seine that is not seen during fishing operations and is delivered into the vessel hold. Even though the text of those regulations remains unchanged, the heading for § 300.27(e) has been changed to make clear that paragraph applies to both purse seine and longline vessels.

Public Comments and Responses

NMFS received three comments during the 30-day comment period on the proposed rule, which closed on April 27, 2022. One comment was anonymous and two were from individual members of the public.

Comment 1: One individual commenter expressed concern for the impacts of silky shark bycatch in fisheries due to the life history and vulnerability of silky sharks to overfishing. The commenter supported the extension of silky shark measures to help prevent further declines.

Response: NMFS thanks the commenter for the support for extending silky shark measures. NMFS agrees that due to the incidental catch rate of silky shark in tuna purse seine fisheries and longline fisheries in the EPO, mitigation measures may be needed.

Comment 2: The anonymous commenter supported both tuna and silky shark measures in the proposed rule and recommended that more communication between NMFS and U.S. fishing communities take place so that increased transparency and a shift towards a more co-managed governance system can be observed.

Response: NMFS thanks the commenter for the support for extending tropical tuna and silky shark measures in the EPO. NMFS agrees that communication with stakeholders, such as those in fishing communities, are essential for management. NMFS West Coast Region (WCR) hosts public meetings at least once a year prior to annual meetings of the IATTC where stakeholders can provide input and help to inform U.S. positions going into IATTC meetings. These meetings are announced in the **Federal Register** and NMFS encourages those with expertise and input to participate in these meetings.

Comment 3: Another individual commenter recommended additional protections for silky shark to reduce bycatch in fisheries, such as additional FAD regulations to reduce entanglements.

Response: NMFS thanks the commenter for the support for extending silky shark measures. NMFS agrees that due to the incidental catch rate of silky shark in tuna purse seine fisheries using FADs in the EPO, mitigation measures may be needed. NMFS will continue working through the IATTC Working Group on FADs to consider additional measures to reduce entanglements and improve FAD fishing practices to reduce bycatch.

Changes From the Proposed Rule

No changes were made between the proposed and final rule.

Classification

The NMFS Assistant Administrator has determined that this rule is consistent with the TCA and other applicable laws.

This rule has been determined to be not significant for purposes of Executive Order 12866.

This rule includes changes to collection of information requirements for purposes of the Paperwork Reduction Act of 1995 and amendments to Office of Management and Business (OMB) Control Number 0648–0148 have been submitted to OMB for review and approval with regard to the changes identified in this final rule. There are no changes to information collection for OMB Control Number 0648–0214 (*Pacific Islands Region Logbook Family of Forms*) as a result of this final rule. NMFS is amending the supporting statement for the *West Coast Region Pacific Tuna Fisheries Logbook, Fish Aggregating Device Form, and Observer Safety Reporting,* OMB Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648–0148) to include the new data collection requirements for deactivations and reactivations of satellite buoys associated with FADs and for cannery data as described in the preamble. NMFS estimates that the public reporting burden for the collection of information for satellite buoys associated with FADs will average 3 minutes per form and average 5 minutes for cannery data, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806. Notwithstanding any other provision of the 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: *https://www.reginfo.gov/public/do/PRAMain.*

Under section 553(d) of the Administrative Procedure Act, an agency must delay the effective date of regulations for 30 days after publication in the **Federal Register**, unless the agency finds good cause to make the regulations effective sooner. The Assistant Administrator for Fisheries has determined that good cause exists to issue this final rule without providing a 30-day delay after publication and providing a 15-day delay instead, with the exception of new or revised recordkeeping requirements at 50 CFR 300.22(c)(2) through (4) and (d), for which compliance will be deferred until 30 days after publication to comply with PRA requirements.

NMFS is obligated to implement these measures as soon as possible to conserve silky shark and tropical tuna stocks in the EPO and to comply with the international obligations of the United States under a binding resolution adopted by the IATTC under the Antigua Convention, which constitutes good cause. After two failed attempts to adopt the resolutions implemented through this rulemaking, the IATTC finally adopted those resolutions in late-October 2021, a little more than two months before existing resolutions were set to expire and the new resolutions would become effective. NMFS therefore did not have sufficient time to promulgate regulations implementing those measures before January 1, 2022. Commercial purse seine and longline vessels began fishing for tropical tuna in the EPO on January 1, 2022. The first purse seine closure period, which is a key part of the tropical tuna management measures, begins on July 29, 2022. If the rule is further delayed with a 30-day delay in the effective date, it will not be effective in time for the purse seine closure. NMFS will therefore be unable to enforce the closure period and U.S. fishing vessels risk being out of compliance with international agreements that are intended to prevent overfishing of tropical tuna by the purse seine fleet. Given this timing, delaying the effective date for a full 30 days would be contrary to the public interest in conserving tropical tuna stocks in the EPO. Such a delay would also be contrary to the public's interest in ensuring the U.S. is in compliance with its international obligations to implement the tropical tuna resolution.

The owners and operators of U.S. purse seine and longline vessels operating in the EPO are already

familiar with how to comply with the measures being implemented through this rulemaking. Many of the measures are identical to the measures that have been in place for the past 4 years and therefore no additional steps are necessary to come into compliance with them. As described in the earlier in this rule under ''Final Regulations.'' the new measures being implemented by this rulemaking include: a system of additional closure days for purse seine vessels that exceed an annual catch level of 1,200 mt for bigeye tuna, amendments to provisions related to *force majeure* exemptions from the 72-day closure period requirement, restrictions on FADs that include a gradual reduction in the number of active FADs allowed, additional reporting requirements for satellite buoys including activations and deactivations, and specification of circumstances where activations and deactivations are allowed. In addition, the rule also includes requirements for reporting cannery data and VMS data to the IATTC.

As noted earlier in this section, NMFS is maintaining the 30-day delay in compliance date for the new or revised recordkeeping requirements at 50 CFR 300.22(c) through (4) and (d). The steps required to come into compliance with the remaining new regulations implemented by this rulemaking involve reading and becoming familiar with the following regulations amended by this rule to specify that they apply beyond the 2021. This includes regulations for the 750 mt catch limit on bigeye tuna caught by longline vessels greater than 24 m in overall length in the IATTC Convention Area (50 CFR 300.25(a)(2)), closure for fishing for tropical tuna in the IATTC Convention Area for a period of 72 days (50 CFR 300.25(e)(1)), and maintaining a closure period for the purse seine fishery for tropical tuna within the area of 96°and 110°W and between 4° N and 3° S from 0000 hours on October 9 to 2400 hours on November 8 (50 CFR 300.25(e)(5)).

NMFS is confident this can be accomplished within a week of publication of this rule. Many of the affected individuals attended the IATTC meetings in 2021 and were therefore apprised of these new measures when they were adopted. Industry representatives were also consulted in advance of the meetings through a U.S. Delegation call and were involved in briefings and discussions with the U.S. Department of State and NOAA officials on the periphery of the October 2021 IATTC meeting. Providing 15 days for entities to meet the requirements of this rule balances their need for time to comply with the need to effectively manage the tropical tuna stock and meet the United States' obligation to enact the first purse seine closure on July 29. As soon as the rule is published, NMFS will send a notice of this rule to owners of vessels that are affected by this rule.

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 (March 28, 2022, 87 FR 17248) 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.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 27, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 300, subpart C, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

Authority: 16 U.S.C. 951 *et seq.*

■ 2. Revise § 300.20 to read as follows:

§ 300.20 Purpose and scope.

(a) The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950, as amended (Act), and apply to persons and vessels subject to the jurisdiction of the United States. The regulations implement recommendations and other decisions of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of stocks of tunas and tuna-like species and other species of fish taken by vessels fishing for tunas and tuna-like species in the IATTC Convention Area. The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, may promulgate such regulations as may be necessary to carry out the U.S. international obligations under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), and the Act, including recommendations and other decisions adopted by the IATTC.

(b) This subpart does not apply to:

(1) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes; or

(2) Any person or vessel engaged in sport fishing for personal use.

■ 3. Amend § 300.21 by:

■ a. Adding in alphabetical order a definition for ''Activation of a satellite buoy'';

■ b. Revising the definition of ''Active FAD'';

■ c. Adding in alphabetical order a definition for ''Deactivation of a satellite buoy'';

■ d. Revising the definition of ''Fish aggregating device (FAD)''; and

■ e. Adding definitions in alphabetical order for ''Reactivation of a satellite buoy'', ''Satellite buoy'', and ''Signal loss''.

The revisions and additions read as follows:

§ 300.21 Definitions.

* * * * *

Activation of a satellite buoy means the act of initializing network service for receiving the satellite buoy's position. Activation is done by the buoy supplier company at the request of the vessel owner or manager. Following activation, the vessel owner pays for the communication service. The buoy can be transmitting or not, depending if it has been switched on.

Active FAD means a FAD deployed at sea where activation of the satellite buoy has occurred and the satellite buoy is transmitting its location and is being tracked by the vessel owner or operator. A FAD shall be considered an Active FAD unless/until the vessel owner or operator is no longer tracking its location and the vessel owner or operator notifies the IATTC that the FAD is deactivated.

* * * * *

Deactivation of a satellite buoy means the act of canceling network service for receiving the satellite buoy's position. Deactivation is done by the buoy supplier company at the request of the vessel owner or manager. Following

deactivation, the communication service is no longer paid for and the buoy stops transmitting.

* * * * *

Fish aggregating device (FAD) means anchored, drifting, floating or submerged objects deployed and/or tracked by vessels, including through the use of radio and/or satellite buoys, for the purpose of aggregating target tuna species for purse-seine fishing operations.

* * * * *

Reactivation of a satellite buoy means the act of re-initializing network service for transmission of a satellite buoy's position after deactivation. The procedure is the same as the one to be followed for activation of a satellite buoy.

* * * * *

Satellite buoy means a buoy that uses a satellite network service to indicate its geographical position and is compliant with requirements in § 300.28(a) to be clearly marked with a unique identification code.

* * * * *

Signal loss means the situation in which, without any intervention of the owner, operator, or manager, a satellite buoy cannot be located by the owner on a monitoring device. The main causes of signal loss are buoy retrieved by another vessel or person (at-sea or on-shore), FAD sinking, and buoy failure.

* * * * *

■ 4. Revise § 300.22 to read as follows:

§ 300.22 Recordkeeping and reporting requirements.

(a) *Logbooks*—(1) *General logbook reporting.* The master or other person in charge of a commercial fishing vessel or commercial passenger fishing vessel (CPFV) authorized to fish for tuna and tuna-like species in the Convention Area, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of operations conducted from the fishing vessel.

(2) *Longline and other non-purse seine logbooks.* Maintaining and submitting any logbook required by existing state or Federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(3) *Purse seine logbooks.* For purse seine vessels greater than 400 st (362.8 mt) carrying capacity that are authorized to purse seine for tuna in the Convention Area, the log must include for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained and submitted at the request of the IATTC will be sufficient to comply with this paragraph (a)(3) and with paragraph (a)(1) of this section, provided the items of information specified by the IATTC are accurately entered in the log. For purse seine vessels of 400 st (362.8 mt) carrying capacity or less, maintaining and submitting any logbook required by existing state or Federal regulation will be sufficient to comply with paragraph (a)(1) of this section.

(b) *Whale shark encirclement reporting.* The owner and operator of a purse seine fishing vessel of the United States that encircles a whale shark (*Rhincodon typus*) while commercially fishing in the Convention Area must ensure that the incident is recorded on the log that is required by paragraphs (a)(1) and (3) of this section. The log must include the following information: The number of individual whale sharks with which the vessel interacted, details of how and why the encirclement happened, where it occurred, steps taken to ensure safe release, and an assessment of the life status of the whale shark upon release (including whether the animal was released alive, but subsequently died), as may be further specified by NMFS.

(c) *FAD reporting*—(1) *Reporting on FAD interactions.* U.S. purse seine vessel operators must provide the observer with the FAD identification code and, as appropriate, the other information in the FAD interaction standard format provided by the HMS Branch. U.S. vessel owners and operators, without an observer onboard, must ensure that any interaction or activity with a FAD is reported using a FAD interaction standard format provided by the HMS Branch. The owner and operator shall ensure that the form is submitted within 30 days of each landing or transshipment of tuna or tuna-like species to the address specified by the HMS Branch.

(2) *Reporting on Active FADs.* U.S. vessel owners and operators must record or maintain daily information on buoy location and acoustic data for all Active FADs that have been deployed in the water in the IATTC Convention Area and report that information to the IATTC, using a format and address provided by the HMS Branch. Daily information on buoy location must include date, time, buoy identifier, latitude, longitude, IMO number, and speed. Daily acoustic data will vary depending on the buoy company, but must include company, buoy identifier, latitude, longitude, date, time, and available layers of data. Further instructions on reporting data specific for different buoys companies are available in a compliance guide. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(3) *Deactivation of Active FADs.* U.S. vessel owners and operators must report any deactivation of a satellite buoy, including the reason for deactivation, date, latitude, longitude, buoy identifier, and speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(4) *Reactivation of Active FADs.* U.S. vessel owners and operators must report any remote reactivation of a satellite buoy, including the reason for remote reactivation, date, latitude, longitude, buoy identifier, speed. This information must be reported to the IATTC, using a format and address provided by the HMS Branch. This information must be submitted for each calendar month no later than 90 days after the month covered by the report.

(d) *Cannery reporting.* U.S. vessel owners and operators must report processing plant data for fish caught in the IATTC Convention Area to the IATTC, and also make the data available to NMFS upon request, no later than 10 days after completion of unloading and the last day of grading by size. Instructions for reporting are available in a compliance guide.

■ 5. Revise § 300.23 to read as follows:

§ 300.23 IATTC Regional Vessel Register.

(a) *IATTC Regional Vessel Register (Vessel Register).* The Vessel Register shall include, consistent with resolutions of the IATTC, all commercial fishing vessels and CPFVs authorized to fish for tuna and tuna-like species in the Convention Area. Except as provided under paragraph (a)(1) of this section, tuna purse seine vessels must be listed on the Vessel Register and categorized as active under paragraph (c)(2) of this section in order to fish for tuna and tuna-like species in the Convention Area.

(1) *Exception from requirement for inclusion on the Vessel Register.* Once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean may exercise an option to fish with purse seine gear to target tuna in the Convention Area without the vessel's capacity counted towards the cumulative carrying capacity described under paragraph (c)(1)(i) of this section. This exception is for a single fishing trip that does not exceed 90 days in

duration. At any time during the calendar year, a vessel exercising this exception shall follow the procedures, where applicable, described in paragraph (c) of this section. No more than 32 of such trips are allowed each calendar year. After the commencement of the 32nd such trip, the Regional Administrator shall announce, in the **Federal Register** and by other appropriate means, that no more such trips are allowed for the remainder of the calendar year. Under 50 CFR 216.24(b)(6)(iii)(C), vessel assessment fees must be paid for vessels exercising this option.

(2) *Requirements for inclusion of purse seine vessels on the Vessel Register.* Inclusion on the tuna purse seine portion of the Vessel Register is valid through December 31 of each year. New tuna purse seine vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the tuna purse seine vessel or vessels being replaced.

(b) *Vessel information to be collected for the Vessel Register*—(1) *Required information.* Information on each commercial fishing vessel or CPFV authorized to use purse seine, longline, drift gillnet, harpoon, troll, rod and reel, or pole and line fishing gear to fish for tuna and tuna-like species in the Convention Area for sale shall be collected by the Regional Administrator to conform to IATTC resolutions governing the Vessel Register. This information initially includes, but is not limited to, the vessel name and registration number; the name and business address of the owner(s) and managing owner(s); a photograph of the vessel with the registration number legible; previous vessel name(s) and previous flag (if known and if any); port of registry; International Radio Call Sign; IMO number (if applicable); vessel length, beam, and moulded depth; gross tonnage, fish hold capacity in cubic meters, and carrying capacity in metric tons and cubic meters; engine horsepower; date and place where built; and type of fishing method or methods used. The required information shall be collected as part of existing information collections as described in this part and other parts of the CFR.

(2) *IMO numbers.* For the purpose of this section, an ''IMO number'' is the unique six or seven digit number issued for a vessel under the ship identification number scheme adopted by the International Maritime Organization (IMO) and managed by the entity identified by the IMO (currently IHS Maritime) and is also known as a Lloyd's Register number.

(3) *Requirements for IMO numbers.* The owner of a fishing vessel of the United States used for commercial fishing for tuna and tuna-like species in the IATTC Convention Area shall ensure that an IMO number has been issued for the vessel if the vessel's Certificate of Documentation issued under 46 CFR part 67 indicates that the vessel's total internal volume is 100 gross register tons or greater or 100 gross tonnage or greater. In addition, the owner of a fishing vessel of the United States engaging in fishing activities for tuna or tuna-like species in the IATTC Convention Area, and for which a high seas fishing permit under § 300.333 is required, shall ensure that an IMO number has been issued for the vessel if the vessel's total internal volume is less than 100 gross registered tons or less than 100 gross tons, but equal to or greater than 12 meters in overall length, as indicated in the vessel's Certificate of Documentation issued under 46 CFR part 67 or State documentation. A vessel owner may request that an IMO number be issued for a vessel by following the instructions given by the administrator of the IMO ship identification number scheme; those instructions are currently available on the website of IHS Markit, *https://imonumbers.lrfairplay.com/.*

(4) *Request for exemption.* In the event that a fishing vessel owner, after following the instructions given by the designated manager of the IMO ship identification number scheme, is unable to ensure that an IMO number is issued for the fishing vessel, the fishing vessel owner may request an exemption from the requirement from the Regional Administrator. The request must be sent by mail to NMFS HMS Branch, West Coast Region, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802, or by email to *wcr.hms@noaa.gov,* and must include the vessel's name, the vessel's official number, a description of the steps taken to request an IMO number, and a description of any responses from the administrator of the IMO ship identification number scheme.

(5) *Exemption process.* Upon receipt of a request for an exemption under paragraph (b)(4) of this section, the Regional Administrator will, to the extent they determine appropriate, assist the fishing vessel owner in requesting an IMO number. If the Regional Administrator determines that the fishing vessel owner has followed all appropriate procedures and yet is unable to obtain an IMO number for the fishing vessel, they will issue an exemption from the requirements of paragraph (b)(3) of this section for the vessel and its owner and notify the owner of the exemption. The Regional Administrator may limit the duration of the exemption. The Regional Administrator may rescind an exemption at any time. If an exemption is rescinded, the fishing vessel owner must comply with the requirements of paragraph (b)(3) within 30 days of being notified of the rescission. If the ownership of a fishing vessel changes, an exemption issued to the former fishing vessel owner becomes void.

(c) *Purse seine Vessel Register listing.* For a tuna purse seine vessel to be listed on the Vessel Register and to be categorized as either ''active'' or ''inactive'' in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator the required permit applications, written notifications, and fees as described under 50 CFR 216.24(b) and under paragraphs (c)(2) and (3) of this section as well as payment of the vessel assessment fee, where applicable, to the IATTC.

(1) *Restrictions for purse seine vessels.* The following restrictions apply:

(i) The cumulative carrying capacity of all tuna purse seine vessels on the Vessel Register may not exceed 31,866 cubic meters in a given year; and

(ii) A purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under 50 CFR 216.24(b)(2).

(2) *Active status for purse seine vessels.* As early as August 1 of each year, vessel owners or managing owners may request that a purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as active for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the Regional Administrator the vessel permit application and payment of the permit application fee and submit to the IATTC payment of the vessel assessment fee.

(i) To request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and be categorized as active, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, a vessel photograph, the vessel information as described under paragraph (b) of this section, and the owner or managing owner's signature, business email address, and business telephone and fax numbers. If a purse seine vessel of 400

st (362.8 mt) carrying capacity or less is required by the Agreement on the IDCP to carry an observer, the vessel owner or managing owner must also submit payment of the vessel assessment fee to the IATTC.

(ii) The Regional Administrator must receive the vessel permit application or written notification and payment of the permit application fee and payment confirmation of the vessel assessment fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application or written notification and payment of the vessel assessment fee and permit application fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active.

(3) *Inactive status for purse seine vessels.* (i) From August 1 through November 30 of each year, vessel owners or managing owners may request that purse seine vessels qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the following calendar year. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. Payment of the vessel assessment fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(ii) To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the following calendar year, the vessel owner or managing owner must submit to the HMS Branch a written notification including, but not limited to, the vessel name and registration number and the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. Payment of the vessel assessment fee is not required for vessels of 400 st (362.8 mt) carrying capacity or less to be categorized as inactive.

(iii) At any time during the year, a vessel owner or managing owner may request that a tuna purse seine vessel qualified to be listed on the Vessel Register under paragraph (a)(2) of this section be categorized as inactive for the remainder of the calendar year, provided the cumulative carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded. To request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the IATTC payment of the associated vessel assessment fee. To request a tuna purse seine vessel of 400 st (362.8 mt) carrying capacity or less be listed on the Vessel Register and categorized as inactive for the remainder of the calendar year, the vessel owner or managing owner must submit to the HMS Branch written notification as described in paragraph (c)(3)(i) of this section. Payment of the vessel assessment fee is not required for such vessels.

(iv) The vessel owner or managing owner of a purse seine vessel listed as active on the Vessel Register that has sunk may request the vessel be listed as sunk and categorized as inactive on the Vessel Register. To request the vessel be listed as sunk and categorized as inactive on the Vessel Register, the vessel owner or managing owner must submit to the HMS Branch written notification within 30 days of the vessel's sinking. Written notification shall include, but is not limited to, the vessel name, date of sinking, registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers. For subsequent calendar years, vessel assessment fee payment shall be made as described in paragraph (c)(3) of this section.

(v) A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, requesting active status will be prioritized according to the hierarchy under paragraph (e) of this section. A vessel listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020, will be removed from the Vessel Register as described in paragraph (f)(9) of this section.

(d) *Frivolous requests for purse seine vessels on the Vessel Register.* (1) Except as described under paragraph (d)(2) of this section, requests for active status under paragraph (c)(2) of this section will be considered frivolous if, for a vessel categorized as active on the Vessel Register in a given calendar year:

(i) Less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area; or

(ii) The vessel did not fish for tuna at all in the Convention Area in that same year.

(2) Requests described under paragraph (d)(1) of this section will not be considered frivolous requests if:

(i) The vessel's catch pattern fell within the criteria described in paragraph (d)(1) of this section as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator; or

(ii) The vessel's carrying capacity is 400 st (362.8 mt) or less and there was at least one documented landing of tuna caught by the vessel in the Convention Area in the calendar year prior to the year in which the request is made and through November 15 of the year of the request, unless the vessel was not able to make a landing as a result of *force majeure* or other extraordinary circumstances as determined by the Regional Administrator.

(iii) The vessel was listed as inactive before January 21, 2020, and has not been listed as inactive for more than two consecutive calendar years since January 21, 2020.

(e) *Listing hierarchy for purse seine vessels on the Vessel Register.* Requests for active status and inactive status will be prioritized according to the following hierarchy:

(1) Requests received for replacement vessels with a carrying capacity equal to or less than a vessel removed from the Vessel Register under a request described in paragraph (j) of this section;

(2) Requests received for vessels that were categorized as active in the previous year, unless the request was determined to be frivolous by the Regional Administrator under paragraph (c)(2) of this section;

(3) Requests received for vessels that were categorized as inactive under paragraph (c)(3) of this section in the previous year, unless that vessel has been listed as inactive or sunk under paragraph (c)(3) for more than 2 consecutive calendar years after January 21, 2020;

(4) Requests for vessels not described in paragraphs (e)(1) through (3) of this section, and requests, if applicable, by replacement vessels for the portion of the carrying capacity greater than the amount authorized to the vessel that was replaced under paragraph (j) of this section, will be prioritized on a first-come, first-served basis according to the date and time of receipt, provided that the associated vessel assessment fee is paid by the applicable deadline described in 50 CFR 216.24(b)(6)(iii); and

(5) Requests received from owners or managing owners of vessels that were determined by the Regional Administrator to have made a frivolous request for active status under paragraph (d) of this section or that have been listed as inactive or sunk as described in paragraph (c)(3) of this section for more than two consecutive calendar years after January 21, 2020.

(f) *Removal from the Vessel Register.* A vessel may be removed from the Vessel Register by the Regional Administrator under any of the following circumstances:

(1) The vessel has sunk and the vessel owner or managing owner has not submitted written notification as described in paragraph (c)(3)(iv) of this section.

(2) By written request of the vessel's owner or managing owner.

(3) Following a final agency action on a permit sanction for a violation.

(4) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation.

(5) The U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(i) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(ii) The documentation for the vessel has been or will be deleted for any reason.

(6) The vessel does not have a valid state registration or U.S. Coast Guard certificate of documentation.

(7) For tuna purse seine vessels, by written notification from the owner or managing owner of the intent to transfer the vessel to foreign registry and flag, as described in paragraph (i) of this section.

(8) For tuna purse seine vessels, the request for active status on the Vessel Register has been determined to be a frivolous request.

(9) For tuna purse seine vessels, the vessel has been listed as inactive or sunk on the Vessel Register for more than two consecutive calendar years after January 21, 2020.

(g) *Process for removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (f) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefore. For a removal from the Vessel Register under § 300.30(f)(3), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under § 300.30(f)(4), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(h) *Procedures for replacing purse seine vessels removed from the Vessel Register.* (1) A purse seine vessel that was previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the cumulative carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded. The owner or managing owner of a purse seine vessel of more than 400 st (362.8 mt) carrying capacity must pay the vessel assessment fee associated with inactive status. The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less must submit written notification as described in paragraph (c)(3) of this section.

(2) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel or vessels removed from active or inactive status under paragraph (f) of this section, provided the total carrying capacity described in paragraph (c)(1)(i) of this section is not exceeded and the owner submits a complete request under paragraph (h)(4) of this section.

(3) Notification of available capacity after a purse seine vessel has been removed from the Vessel Register will be conducted as follows:

(i) After a purse seine vessel categorized as active or inactive is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active or inactive list of the Vessel Register.

(ii) When a purse seine vessel categorized as active or inactive on the Vessel Register has been removed from the Vessel Register under the procedures described in paragraph (j) of this section, the Regional Administrator will not make available the capacity of the vessel removed from the Vessel Register, and will reserve that capacity for a replacement vessel for a period of 2 years from the date of notification described in paragraph (j)(4) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity amount for the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in paragraph (e)(4).

(4) Vessel owners or managing owners may request a purse seine vessel of 400 st (362.8 mt) carrying capacity or less be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the HMS Branch written notification as described in paragraph (c)(2) of this section and, only if the vessel is required by the Agreement on the IDCP to carry an observer, payment of the vessel assessment fee to the IATTC within 10 business days after submission of the written notification. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity or less as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(5) Vessel owners or managing owners may request a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity be categorized as active to replace a vessel or vessels removed from the Vessel Register by submitting to the Regional Administrator the vessel permit application as described under 50 CFR 216.24(b) and payment of the vessel assessment fee to the IATTC and payment of the permit application fee to

the Regional Administrator within 10 business days after submission of the vessel permit application for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register at the same carrying capacity as that of the vessel or vessels it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity for the vessel or vessels being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available. The replacement vessel will also only be eligible to be categorized as active on the Vessel Register if the captain of the replacement vessel possesses an operator permit under 50 CFR 216.24(b). Payments received will be subject to a 10 percent surcharge for vessels that were listed as active on the Vessel Register in the previous calendar year, but not listed as inactive at the beginning of the calendar year for which active status was requested.

(6) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

(i) *Transfers of purse seine vessels to a foreign registry and flag.* The owner or managing owner of a purse seine vessel listed on the Vessel Register must provide written notification to the Regional Administrator prior to submitting an application for transfer of the vessel to foreign registry and flag. Written notification must be submitted to the Regional Administrator at least 10 business days prior to submission of the application for transfer. The written notification must include the vessel name and registration number; the expected date that the application for transfer will be submitted; and the vessel owner or managing owner's name and signature. Vessels that require approval by the U.S. Maritime Administration prior to transfer of the vessel to foreign registry and flag will not be subject to the notification requirement described in this paragraph (i).

(j) *Aging fleet provision for purse seine vessels.* (1) The vessel owner or managing owner of a purse seine vessel listed as active or inactive on the Vessel Register may request to replace the current vessel with a new or used vessel without losing the vessel's placement in the hierarchy of requests for active status as described in paragraph (e) of this section. The replacement vessel will be eligible to be listed as active on the Vessel Register at the same carrying capacity or less as that of the vessel it is replacing. If the replacement vessel has a carrying capacity greater than the vessel being replaced, the vessel owner or managing owner may request additional carrying capacity be allocated to the vessel in accordance with paragraph (e)(4) of this section. If additional carrying capacity is not available at the time the request to be listed as active on the Vessel Register is received by the Regional Administrator, the replacement vessel must reduce its carrying capacity to no more than the previously authorized carrying capacity of the vessel being replaced by complying with the protocol for sealing wells adopted by the IATTC, prior to it being listed as active on the Vessel Register. Such a vessel may apply for additional carrying capacity as it becomes available under the procedures described in paragraph (e)(4). This aging fleet provision may be used only once per vessel by the vessel owner or managing owner.

(2) A request made under this provision may include a request to remove the vessel from the Vessel Register. The Regional Administrator will ensure the amount of carrying capacity equal to or less of the vessel being replaced will be available for the replacement vessel for up to 2 years from the date of notification described in paragraph (j)(4) of this section.

(3) To request a vessel be replaced under this provision, the vessel owner or managing owner must submit to the HMS Branch written notification including, but not limited to, the vessel name and registration number, the vessel owner or managing owner's name, signature, business address, business email address, and business telephone and fax numbers, and the expected month and year the replacement vessel will be ready to fish in the Convention Area.

(4) Within 30 days of receiving each request described in paragraph (j)(3) of this section, the Regional Administrator shall notify the vessel owner or managing owner in writing whether the request has been accepted or denied, and the reasons therefore.

■ 6. Amend § 300.24 by revising paragraphs (n), (ff), (kk), and (ll) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the IATTC Convention Area in contravention of § 300.25(e).

* * * * *

(ff) Fail to provide information to an observer or record or report data on FADs as required in § 300.22(c).

* * * * *

(kk) When deploying a FAD, activate the satellite buoy attached to a FAD in a location other than on a purse seine vessel at sea as required in § 300.28(b).

(ll) Fail to activate a satellite buoy before deploying a FAD at sea as required in § 300.28(b).

* * * * *

■ 7. Amend § 300.25 by revising paragraphs (a)(2) and (e) to read as follows:

§ 300.25 Fisheries management.

(a) * * *

(2) There is a limit of 750 metric tons of bigeye tuna that may be caught by longline gear in the Convention Area by U.S. commercial fishing vessels that are over 24 meters in overall length. The catch limit within a calendar year is subject to increase if the United States receives a transfer of catch limit from another IATTC member or cooperating non-member, per paragraph (a)(5) of this section.

* * * * *

(e) *Purse seine closures*—(1) *72-day closure.* A U.S. commercial purse seine fishing vessel that is of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 72 days during one of the following two periods:

(i) From 0000 hours Coordinated Universal Time (UTC) July 29 to 2400 hours UTC October 8; or

(ii) From 0000 hours UTC November 9 to 2400 hours UTC January 19 of the following year.

(2) *Additional closure days for vessels that exceed bigeye tuna catch levels.* (i) In 2023 and 2024, U.S. purse seine vessels that exceed a certain annual catch level of bigeye tuna must increase the number of closure days they observe in the following year, as specified in table 1 to this paragraph (e)(2).

(ii) The additional days of closure must be added to one of the two closure periods indicated in paragraph (e)(1) of this section. For vessels observing the first closure period, the additional days must be added at the beginning of the closure period. For vessels observing the second closure period, the additional days must be added to the end of the

closure period. The HMS Branch will confirm the determination of annual catch levels for U.S. purse vessels based on information provided by the IATTC and notify any U.S. vessel that exceeds a given catch level.

TABLE 1 TO PARAGRAPH (e)(2)

Catch level (mt) exceeded	Additional closure days observed
1,200	10
1,500	13
1,800	16
2,100	19
2,400	22

(3) *Choice of closure period.* A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (e)(1) of this section must provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (e)(1) their vessel will observe in that year. This written notification must be submitted by email to *wcr.hms@noaa.gov* and must be received no later than May 15 of the relevant calendar year. The written notification must include the vessel name and registration number, the closure dates that will be observed by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) *Default closure period.* If written notification is not submitted per paragraph (e)(3) of this section for a vessel subject to the requirements under paragraph (e)(1) of this section, that vessel must observe the second closure period under paragraph (e)(1)(ii) of this section.

(5) *Request for exemption due to force majeure.* A vessel may request a reduced closure period if a *force majeure* event renders the vessel unable to proceed to sea outside one of the two closure periods specified in paragraph (e)(1) of this section for at least 75 continuous days. A vessel will only be eligible for an exemption due to *force majeure* if the vessel was disabled in the course of fishing operations by mechanical and/or structural failure, fire, or explosion.

(i) A request for an exemption due to *force majeure* must be made to the Highly Migratory Species Branch no later than 20 calendar days after the end of the period of inactivity due to *force majeure.* The request must be made via email to *wcr.hms@noaa.gov* or by contacting the HMS Branch. The request must include the name and official number of the vessel, vessel owner or manager's name and signature, and evidence to support the request, which may include but is not limited to photographs, repair bills, certificates of departure from port, and in the case of a marine casualty, a completed copy of the U.S. Coast Guard Form CG–2692A (See 46 CFR 4.05–10).

(ii) If accepted by the Sustainable Fisheries Division, the request for exemption due to *force majeure* will be forwarded to the IATTC Director. If declined by the Sustainable Fisheries Division, the applicant may provide additional information or documentation to the Sustainable Fisheries Division with a request that the initial decision be reconsidered by email to *wcr.hms@noaa.gov,* or by contacting the HMS Branch Chief.

(iii) If the request for an exemption due to *force majeure* is accepted by the IATTC, the vessel may observe a reduced closure period of 40 consecutive days in the same year during which the *force majeure* event occurred, in one of the two closure periods described in paragraph (e)(1) of this section. After a request is accepted by the IATTC, the vessel owner or manager must specify to the HMS Branch which 40 consecutive days the vessel will observe for their reduced closure period.

(iv) If the request for an exemption due to *force majeure* is accepted by the IATTC and the vessel has already observed a closure period described in paragraph (e)(1) of this section in the same year during which the *force majeure* event occurred, the vessel may observe a reduced closure period of 40 consecutive days the following year, in one of the two closure periods described in paragraph (e)(1).

(v) An exemption due to *force majeure* will only apply to the 72-day closure period required under paragraph (e)(1) of this section. Vessels that are both granted a reduced 40-day initial closure period due to *force majeure* under this paragraph (e)(5) and required to observe additional closure days for exceeding bigeye tuna catch levels under paragraph (e)(2) of this section must observe the reduced closure period consecutively with the additional closure days by adding the additional closure days to either the beginning of the first reduced closure period or the end of the second reduced closure period.

(vi) Any purse seine vessel for which a *force majeure* request is accepted by the IATTC must carry an observer aboard authorized pursuant to the International Agreement on the International Dolphin Conservation Program, unless that vessel has been granted an exemption from the Regional Administrator.

(6) *31-day area closure.* A U.S. fishing vessel of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on October 9 to 2400 hours on November 8 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W longitude and bounded at the north and south by 4° N and 3° S latitude.

(7) *Requirement to stow gear.* At all times while a vessel is in a time/area closed period established under paragraph (e)(1) or (6) of this section, unless fishing under the exception under paragraph (e)(5) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

* * * * *

■ 8. Amend § 300.27 by revising paragraph (e) to read as follows:

§ 300.27 Incidental catch and tuna retention requirements.

* * * * *

(e) *Silky shark restrictions for purse seine and longline vessels.* The crew, operator, and owner of a commercial purse seine or longline fishing vessel of the United States used to fish for tuna or tuna-like species is prohibited from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark (*Carcharhinus falciformis*) that is caught in the IATTC Convention Area, except as provided in paragraph (f) of this section.

* * * * *

■ 9. Amend § 300.28 by:
■ a. Revising paragraphs (b) and (c);
■ b. Redesignating paragraphs (d) and (e) as paragraphs (f) and (g);
■ c. Adding new paragraphs (d) and (e); and,
■ d. Revising the introductory text to newly redesignated paragraph (g).

The revisions and additions read as follows:

§ 300.28 FAD restrictions.

* * * * *

(b) *Activating FADs for purse seine vessels.* When deploying a FAD in the IATTC Convention Area, a vessel owner, operator, or crew must activate the satellite buoy while the FAD is onboard the purse seine vessel and before it is deployed in the water.

(c) *Restrictions on Active FADs for purse seine vessels.* U.S. vessel owners and operators of purse-seine vessels with the following well volume in cubic meters (m^3) must not have more than the following number of Active FADs per vessel in the IATTC Convention Area at any one time during the following years.

TABLE 1 TO PARAGRAPH (c)

Well volume (m^3)	Active FAD limit
For 2022 calendar year	
1,200 or more	400
426–1,199	270
213–425	110
0–212	66
For 2023 calendar year	
1,200 or more	340
426–1,199	255
213–425	105
0–212	64
For 2024 calendar year and beyond	
1,200 or more	340
426–1,199	210
213–425	85
0–212	50

(d) *Restrictions on satellite buoy deactivations.* A vessel owner or operator that deactivates a satellite buoy attached to a FAD must comply with the reporting requirements for buoy deactivations in § 300.22(c)(3). A U.S. vessel owner or operator shall only deactivate a satellite buoy attached to a FAD that was activated in the IATTC Convention Area in the following circumstances:

(1) Complete loss of signal reception;

(2) Beaching;

(3) Appropriation of a FAD by a third party;

(4) Temporarily during a selected closure period;

(5) For being outside of the area between the meridians 150° W and 100° W, and the parallels 8° N and 10° S; the area between the meridian 100° W and the coast of the American continent and the parallels 5° N and 15° S; or

(6) Transfer of ownership.

(e) *Restrictions on satellite buoy reactivations.* A vessel owner or operator that reactivates a satellite buoy must comply with the reporting requirements for satellite buoy reactivations in § 300.22(c)(4). A U.S. vessel owner or operator shall only remotely reactivate a satellite buoy at sea that was activated in the IATTC Convention Area in the following circumstances:

(1) To assist in the recovery of a beached FAD;

(2) After a temporary deactivation during the closure period; or

(3) Transfer of ownership while the FAD is at sea.

* * * * *

(g) *FAD design requirements to reduce entanglements.* All FADs onboard or deployed in the IATTC Convention Area by U.S. vessel owners, operators, or crew, must comply with the following design requirements:

* * * * *

[FR Doc. 2022–14115 Filed 7–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220630–0148]

RIN 0648–BL22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Catch Limits for Red Grouper

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

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases commercial and recreational catch levels for red grouper in the Gulf of Mexico (Gulf). The purpose of this final rule is to prevent overfishing of red grouper and to achieve optimum yield (OY) from the stock.

DATES: This final rule is effective on August 8, 2022.

ADDRESSES: Electronic copies of the framework action may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/modification-gulf-mexico-red-grouper-catch-limits.* The framework action includes an environmental assessment, a fishery impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, including red grouper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On May 3, 2022, NMFS published a proposed rule in the **Federal Register** to implement the management measures described in the framework action and requested public comment (87 FR 26178). The proposed rule and the framework action provide additional background and rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented through this final rule is described below. All weights described in this final rule are in gutted weight.

Red grouper in the Gulf exclusive economic zone is found primarily in offshore areas of the eastern Gulf with hard bottom, that is, bottom structure with relief that attracts fish. Red grouper is managed as a single stock with commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs). Prior to June 1, 2022, the stock ACL was allocated 76 percent to the commercial sector and 24 percent to the recreational sector. On June 1, 2022, NMFS implemented the final rule for Amendment 53 to the FMP, which modified the allocation of the red grouper stock ACL to 59.3 percent for the commercial sector and 40.7 percent for the recreational sector (87 FR 25573, May 2, 2022). Amendment 53 and its implementing final rule also adjusted the catch levels for red grouper based on the results of a 2019 stock assessment (Southeast Data, Assessment, and Review (SEDAR) 61). As specified in Amendment 53, the current overfishing limit (OFL) and acceptable biological catch (ABC) are 4.66 million lb (2.11 million kg) and 4.26 million lb (1.93 million kg), respectively. The red grouper stock ACL is equal to the ABC.

Subsequent to the management measures the Council recommended in Amendment 53, the Council recommended further revisions to red grouper catch levels based on an interim analysis conducted by the NMFS Southeast Fishery Science Center (SEFSC). This interim analysis indicated that Gulf red grouper harvest levels could be increased. The Council's Scientific and Statistical Committee (SSC) agreed with the results of the interim analysis and recommended increasing the overfishing limit (OFL) to 5.99 million lb (2.72 million kg) and

increasing the acceptable biological catch (ABC) to 4.96 million lb (2.25 million kg). Based on the SSC recommendations, the Council revised the catch limits and approved this framework action at its October 2021 meeting.

Management Measures Contained in This Final Rule

This final rule revises the ACLs and ACTs for Gulf red grouper consistent with the sector allocations established in Amendment 53 and implemented by the associated final rule (87 FR 25573, May 2, 2022). This final rule increases the total ACL for Gulf red grouper from 4.26 million lb (1.93 million kg) to 4.96 million lb (2.25 million kg).

Using the sector allocations approved in Amendment 53 and implemented by NMFS on June 1, 2022, this final rule increases the commercial ACL and ACT from 2.53 million lb (1.15 million kg) and 2.40 million lb (1.09 million kg) to 2.94 million lb (1.33 million kg) and 2.79 million lb (1.27 million kg), respectively.

For the recreational sector, this final rule increases the recreational ACL and ACT from 1.73 million lb (0.78 million kg) and 1.57 million lb (0.71 million kg) to 2.02 million lb (0.92 million kg) and 1.84 million lb (0.83 million kg), respectively.

Comments and Responses

NMFS received 12 public comments on the proposed rule from individuals, commercial and recreational fishing associations, and a sportfishing trade organization. The majority of the public comments supported the proposed action. Some of the comments requested that NMFS revise the allocation of the red grouper stock ACL between the commercial and recreational sectors. These comments are outside the scope of the proposed rule and framework action, and therefore, are not addressed further in this final rule. NMFS acknowledges the comments in favor of all or part of the proposed rule, and agrees with them. Comments that are opposed to the proposed rule expressed concern about the health of the red grouper stock. These comments are grouped and summarized below, and NMFS' response follows.

Comment: NMFS should not increase the red grouper catch limits at this time. Red grouper in the Gulf is struggling. The Council and NMFS should consider waiting at least 1 or 2 years to let the red grouper stock grow to a greater level before increasing the catch limits.

Response: NMFS disagrees. Maintaining the current ACLs and ACTs is not consistent with the best scientific information available, which indicates that the red grouper stock can support higher catch limits. Amendment 53 and its implementing final rule set catch limits based on SEDAR 61, the most recent stock assessment for Gulf red grouper, which was completed in September 2019. However, in 2021, the SEFSC made two adjustments to the SEDAR 61 estimates. First, the SEFSC found that the SEDAR 61 assessment model underestimated the average size of red grouper caught recreationally by about 2.1 lb (0.9 kg) per fish. When the SEFSC ran the SEDAR 61 model using the new recreational weight estimates, the results indicated that an increase in catch limits was appropriate. Second, the SEFSC performed an interim analysis to update SEDAR 61 catch level projections that incorporated the recreational per-fish weight adjustments and used the NMFS Bottom Longline Survey as the index of abundance, which showed an increase in the number of fish and also indicated that catch limit increases were appropriate. In August 2021, the Council's SSC reviewed these two analyses, agreed that the Gulf red grouper stock could support additional harvest, and recommended increases in the OFL and ABC. The Council approved increases to the catch limits implemented through this final rule at its October 2021 meeting. NMFS agrees with the SSC and the Council that the best scientific information available supports increasing the red grouper catch limits, and that these revised catch limits will help achieve OY on a continuing basis while preventing overfishing.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Magnuson-Stevens Act provides the legal basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

A description of this final rule, why it is being considered, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule. The objectives of this final rule are to revise the ACLs and ACTs for Gulf red grouper consistent with the best scientific information available, and to continue to achieve OY consistent with the requirements of the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) 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. NMFS did not receive any comments from SBA's Office of Advocacy or the public regarding the certification in the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Red grouper, Reef fish.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2022.

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 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.39, revise paragraph (a)(1)(iii)(C) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) *Red grouper.* 2.79 million lb (1.27 million kg).

* * * * *

■ 3. In § 622.41, revise the last sentence of paragraph (e)(1) and paragraph (e)(2)(iv) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(e) * * *

(1) * * * The commercial ACL for red grouper in gutted weight is 2.94 million lb (1.33 million kg).

(2) * * *

(iv) The recreational ACL for red grouper in gutted weight is 2.02 million lb (0.92 million kg). The recreational ACT for red grouper in gutted weight is 1.84 million lb (0.83 million kg).

* * * * *

[FR Doc. 2022–14545 Filed 7–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[RTID 0648–XB763]

Fisheries Off West Coast States; Standardized Bycatch Reporting Methodology Amendments to the Fishery Management Plans for Coastal Pelagic Species, West Coast Highly Migratory Species, and Pacific Coast Salmon

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

ACTION: Notice of Agency decision.

SUMMARY: NMFS announces the approval of three fishery management plan (FMP) amendments: Amendment 19 to the FMP for Coastal Pelagic Species (CPS FMP), Amendment 7 to the FMP for the West Coast Highly Migratory Species (HMS FMP), and Amendment 22 to the FMP for Pacific Coast Salmon Fisheries (Salmon FMP) (collectively Amendments). These Amendments modify language in the CPS, HMS, and Salmon FMPs to more clearly describe and align the FMPs with the way bycatch is currently reported in the fisheries managed by the Council. These Amendments ensure conformance with national guidance for compliance with the standardized bycatch reporting methodology (SBRM) requirement in the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

DATES: The Amendments were approved on July 5, 2022.

ADDRESSES: Electronic copies of the Amendments may be obtained from *www.regulations.gov* or the West Coast Region website at *https://www.fisheries.noaa.gov/action/standardized-bycatch-reporting-methodology-amendments-fishery-management-plans-coastal.* Additional documents can be found on the Council's website at *www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: For CPS—Taylor Debevec at (562) 980–4066 or *taylor.debevec@noaa.gov*. For HMS—Celia Barroso at (562) 432–1850 or *celia.barroso@noaa.gov*. For Salmon—Jeromy Jording at (360) 763–2268 or *jeromy.jording@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. 16 U.S.C. 1854(a). NMFS manages the CPS, HMS, and salmon fisheries in the Pacific Coast exclusive economic zone under the CPS, HMS, and Salmon FMPs, respectively. The Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the 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 660.

Section 303(a)(11) of the Magnuson-Stevens Act requires that any FMP establish a SBRM to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch, and (B) minimize the mortality of bycatch that cannot be avoided. (16 U.S.C. 1853(a)(11))

On January 19, 2017, NMFS published a final rule (82 FR 6317) establishing national guidance regulations at 50 CFR 600.1600 through 50 CFR 600.1610 for compliance with the Magnuson-Stevens Act SBRM requirement (SBRM regulations). The SBRM regulations require regional fishery management councils, in coordination with NMFS, to review their FMPs and make any necessary changes so all FMPs are consistent with the guidance.

The SBRM regulations define an SBRM as a consistent procedure or procedures used to collect, record, and report bycatch data in a fishery managed under an FMP. This information, in conjunction with other relevant sources, is used to assess the amount and type of bycatch occurring in the fishery and inform the development of conservation and management measures to minimize bycatch. The SBRM regulations require the Council to explain how each FMP's SBRM meets the purpose described in the national guidelines, based on an analysis of four considerations: (1) Characteristics of bycatch in the fishery, (2) the feasibility of the reporting methodology, (3) the uncertainty of data resulting from the methodology, and (4) how the data will be used to assess the amount and type of bycatch occurring in the fishery (50 CFR 600.1610(a)). The Council undertook a review of its FMPs to ensure they met this requirement. That review resulted in the three Amendments referenced in this notice that make additions and modifications to the CPS, HMS, and Salmon FMPs to clearly and accurately describe the SBRM for those fisheries, consistent with the SBRM regulations.

Further detail describing the Amendments was provided in the Notice of Availability for this action and is not repeated here.

Procedural Aspects of the Amendments

The Council submitted the Amendments to the Secretary for review on April 4, 2022. On April 12, 2022, NMFS published a notice of availability (NOA) for the Amendments, including background on the rationale for how the respective amendments proposed to satisfy the requirements of the SBRM regulations, and requested public review and comment (87 FR 21603). Public comments were received pertaining to the Salmon FMP amendment and are addressed below.

The Amendments do not add any new reporting requirements and do not change any regulatory requirements. Therefore, no proposed or final rule was prepared. This action only modifies language in the CPS, HMS, and Salmon FMPs to more clearly describe and align with how bycatch is currently reported in the fisheries managed by the Council.

Comments and Responses

NMFS received a combined 17,355 comments regarding the Amendment 22 for the Salmon FMP. These comments were directed at actions to protect Southern Resident Killer Whales (SRKW) and are not relevant to the development of SBRM for ocean salmon fisheries. Rather, these comments reiterated comments NMFS previously addressed in the final environmental assessment (EA) for FMP Amendment 21 (*https://www.fisheries.noaa.gov//action/amendment-21-pacific-coast-salmon-fishery-management-plan*), in the notice of agency decision (86 FR 51017, September 14, 2021), and the West Coast Salmon Fisheries 2022

Specifications and Management Measures (*https://www.federalregister.gov/documents/2022/05/16/2022-10430/fisheries-off-west-coast-states-west-coast-salmon-fisheries-2022-specifications-and-management*).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–14597 Filed 7–7–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 130
Friday, July 8, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–22–0039]

Onions Grown in South Texas; Continuance Referendum

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible producers of onions grown in South Texas to determine whether they favor continuance of the marketing order regulating the handling of onions produced in the production area.

DATES: The referendum will be conducted from September 1 through October 3, 2022. Only producers of South Texas onions who produced onions within the production area during the period August 1, 2020, through July 31, 2021, are eligible to vote in this referendum. The U.S. Department of Agriculture (Department) will provide the option for ballots to be returned electronically. Further details will be provided in the ballot instructions. Ballots returned via express mail or electronic mail must show proof of delivery by no later than 11:59 p.m. Eastern Time on October 3, 2022, to be counted.

ADDRESSES: Copies of the marketing order may be obtained from the Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; or from the Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; or on the internet: *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Abigail Maharaj, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1124 First Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 959, as amended (7 CFR part 959), hereinafter referred to as the ''Order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the Order is favored by producers. The referendum shall be conducted by mail and email ballot from September 1 through October 3, 2022, among onion producers in the production area. Only Texas onion producers who were engaged in the production of South Texas onions grown in the production area during the period of August 1, 2020, through July 31, 2021, may participate in the continuance referendum. The Department will provide the option for ballots to be returned electronically. Further details will be provided in the ballot instructions.

The results of a referendum the Department conducted of South Texas onion producers in 2020 (85 FR 55388) failed to reach the level of support for continuing the marketing order. The results had 57 percent of the eligible growers voting, representing 53 percent of production volume voted, favoring continuing the program. Voting results prompted the Secretary, as authorized in 7 CFR 959.84(d), to consider termination of this part due to less than two-third of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum voting in support of continuance. Following the results of the continuance referendum, the Department issued a proposed rule (86 FR 42748) inviting comments on the proposed termination of the Order. Feedback received during the public comment period demonstrated support for keeping the Order. AMS received 90 comments, 85 of which opposed termination. Thirty-three of the comments were from the production area, with 31 opposing termination. After reviewing the results of the continuance referendum, and the comments received in response to the proposed termination, the Secretary of Agriculture has determined a second referendum is appropriate to assess the true level of producer support for the program.

The Department would withdraw the proposed rule to terminate the Order if two-thirds of the producers that cast votes, or producers representing two-thirds of the volume of South Texas onions voted in the referendum, cast ballots in favor of continuance. If the results of the referendum do not favor continuance, the Department will consider the results of the continuance referendum and any other relevant information regarding the operation of the Order and relative benefits and disadvantages to producers, handlers, and consumers in determining whether continued operation of the Order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballots used in the referendum have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178, Vegetable and Specialty Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 100 onion producers to cast a ballot. Participation is voluntary. Ballots postmarked after October 3, 2022, will not be included in the vote tabulation. Ballots delivered to the Department via express mail or electronic mail must show proof of delivery by no later than 11:59 p.m. Eastern Time (ET) on October 3, 2022.

Dolores Lowenstine, Abigail Maharaj, and Christian Nissen of the Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA, are hereby designated as the referendum agents for the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–7 CFR 900.407).

Ballots and voting instructions will be sent by U.S. mail, United Parcel Service, or through electronic mail to all

producers of record and may also be obtained from the referendum agents or their appointees.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–14574 Filed 7–7–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0799; Project Identifier AD–2022–00611–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by a report indicating that foreign object debris (FOD) could have been introduced during rework of certain engine fire shutoff switches (EFSS). This proposed AD would require determining the serial number of the left and right EFSS and replacing affected parts. This proposed AD would also limit the installation of affected parts under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0799.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0799; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email *Takahisa.Kobayashi@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0799; Project Identifier AD–2022–00611–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email *Takahisa.Kobayashi@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that FOD could have been introduced in the left or right EFSS having certain serial numbers during rework at a sub-tier supplier. The affected EFSS are part of the engine fire control panel part number (P/N) 412600–003, with left EFSS P/N 417000–104 and right EFSS P/N 417000–105. FOD in an EFSS, if not addressed, could result in a latent failure and loss of intended functions, including the inability to pull the engine fire handle and uncommanded activation of the engine fuel shutoff function. The inability to pull the engine fire handle when an engine fire is detected could lead to an uncontrolled engine fire and subsequent wing failure, and uncommanded activation of the fuel shutoff function for an engine, which if combined with in-flight shutdown of the remaining engine, could lead to total loss of engine thrust. Boeing and the parts supplier have notified operators who received affected EFSS parts and asked operators to return the parts for inspection and rework to address the unsafe condition. Any affected EFSS that has undergone this inspection and rework has been marked with ''Inspection Record SB

D533–1X–003,'' and is acceptable for installation on an airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022. This service information specifies procedures for determining the serial number of the left EFSS having P/N 417000–104 and the right EFSS having P/N 417000–105, and replacing any EFSS having an affected serial number with an EFSS that does not have an affected serial number, or with an EFSS that has an affected serial number but is marked with ''Inspection Record SB D533–1X–003.''

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this Proposed AD and the Service Information'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also limit the installation of affected parts under certain conditions. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0799.

Other Relevant Rulemaking

The FAA issued AD 2021–02–06, Amendment 39–21389 (86 FR 10790, February 23, 2021) (AD 2021–02–06) to address a latent failure of the engine fire handle. AD 2021–02–06 requires, among other actions, replacing engine fire control panel part number (P/N) 412600–001 with P/N 412600–003, or modifying P/N 412600–001 and re-identifying it as P/N 412600–003. Engine fire control panel part number P/N 412600–003 includes left EFSS P/N 417000–104 and right EFSS P/N 417000–105, which are the EFSS this proposed AD would require inspecting and replacing if necessary. AD 2021–02–06 has a compliance time of within 15 months after March 30, 2021, for operators to install or modify the engine fire control panel, including the right and left EFSS.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022, is limited to Model 787 airplanes having certain line numbers. However, the applicability of this proposed AD includes all Boeing Model 787 airplanes. Because the affected EFSS are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable EFSS, thereby subjecting those airplanes to the unsafe condition. The FAA has confirmed that the Accomplishment Instructions in Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022, are applicable to the expanded group of airplanes.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 132 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Determination of EFSS serial number	1 work-hour × $85 per hour = $85	$0	$85	$11,220

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of EFSS	2 work-hours × $85 per hour = $170	$9,685	$9,855 (for one EFSS).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0799; Project Identifier AD–2022–00611–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 22, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Unsafe Condition

This AD was prompted by a report indicating that foreign object debris (FOD) could have been introduced during rework of certain engine fire shutoff switches (EFSS). The FAA is issuing this AD to address FOD in an EFSS, which if not addressed, could result in a latent failure and loss of intended functions, including the inability to pull the engine fire handle and uncommanded activation of the engine fuel shutoff function. The inability to pull the engine fire handle when an engine fire is detected could lead to an uncontrolled engine fire and subsequent wing failure and uncommanded activation of the fuel shutoff function for an engine, which if combined with in-flight shutdown of the remaining engine, could lead to total loss of engine thrust.

(f) Compliance

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

(g) Required Actions

For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD: Except as specified by paragraph (h) of this AD, at the applicable time specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB260010–00, Issue 001, dated May 2, 2022, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022.

(h) Exceptions to Service Information Specifications

Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB260010–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Parts Installation Limitation

For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD: As of the effective date of this AD, no person may install a left EFSS P/N 417000–104 or a right EFSS P/N 417000–105, having a serial number specified in Boeing Alert Requirements Bulletin B787–81205–SB260010–00 RB, Issue 001, dated May 2, 2022, unless that EFSS is marked with ''Inspection Record SB D533–1X–003.''

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Section, FAA Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3553; email *Takahisa.Kobayashi@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on June 16, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14412 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0814; Project Identifier AD–2022–00205–A]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland Inc.) Model DHC–2 Mk. I airplanes with Supplemental Type Certificate (STC) No. SA01324CH installed. This proposed AD was prompted by a report of damage in the main wing spar. This proposed AD would require inspecting the wing structure for damage (drill starts, corrosion, cracks, and improperly installed fasteners), repairing damage and reporting the inspection results if

necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2022.

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

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

For service information identified in this NPRM, contact Wipaire, Inc., 1700 Henry Avenue, South Saint Paul, MN 55075; phone: (651) 414–4460; email: *bkutz@wipaire.com;* website: *www.wipaire.com.* You may view this service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0814; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dirk Dodge, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E. Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7135; email: *Dirk.Dodge@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0814; Project Identifier AD–2022–00205–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dirk Dodge, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA received a report that during an annual inspection of a Viking Air Limited Model DHC–2 Mk. I airplane, a gap was noted between the doubler and wing near station 42.5, requiring partial removal of the doubler and removal of the sealant between the doubler and the wing skin. Further inspection of the internal wing structure of that area with a borescope found damage in the forward spar caused by a drill during initial installation of the doubler. The doubler was installed as part of Wipaire, Inc., STC No. SA01324CH. Inspection of the rest of the operator's fleet of airplanes with STC No. SA01324CH installed found a total of 6 out of 14 wings with drill start damage in the same area. Later inspections on these same airplanes on the outboard end of the doubler installation revealed improperly installed fasteners. As only a small fraction of the affected fleet has been inspected, the possible extent of damage in the field is unknown. Accordingly, the FAA determined that in addition to inspecting for drill starts and improperly installed fasteners, inspecting for corrosion and cracks is necessary. Damage of the main structural members of the wing could adversely affect the structural integrity of the airplane and could result in loss of control of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed a Wipaire, Inc., letter, dated September 7, 2021. This letter requests that operators inspect the front wing spar (strap) and front (forward) spar aft flange for drill holes due to the installation of the top wing strap installed using Wipaire, Inc., Drawing 5D1–790, which is an attachment to the letter. This letter also requests reporting all findings of damage to Wipaire, Inc.

Proposed AD Requirements in This NPRM

This proposed AD would require inspecting the wing structure (spar cap, spar flange, and stringers) for damage (drill starts, corrosion, cracks, and improperly installed fasteners), repairing damage if necessary, and reporting certain inspection results.

Differences Between This Proposed AD and the Service Information

The Wipaire, Inc., letter, dated September 7, 2021, specifies inspecting the front spar and front spar aft flange between wing stations 42.5 and 56. This proposed AD would require inspecting all airplane structure under the installed doubler between wing stations 30.26 and 126.36.

Impact on Intrastate Aviation in Alaska

Airplanes modified by Wipaire, Inc., STC No. SA01324CH are often used to transport cargo and supplies to remote areas of Alaska. The FAA estimates that roughly half of the U.S.-registered airplanes modified by STC No. SA01324CH are operating in Alaska. Since damage to the main structural members of the wing could result in loss of the airplane wing and therefore, loss of control of the airplane, the FAA has determined that the need to correct the unsafe conditions outweighs any impact on aviation in Alaska.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 96 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Inspection	6 work-hours × $85 per hour = $510.	Not applicable	$510	$48,960

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. The agency has no way of determining the number of airplanes that might need these repairs.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Repair damage	100 work-hours × $85 per hour = $8,500	$35,000	$43,500
Report inspection results	1 work-hour × $85 per hour = $85	Not applicable	$85

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland Inc.): Docket No. FAA–2022–0814; Project Identifier AD–2022–00205–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 22, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland Inc.) Model DHC–2 Mk. I airplanes, all serial numbers, certificated in any category, with Supplemental Type Certificate (STC) No. SA01324CH installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 5711, Wing Spar.

(e) Unsafe Condition

This AD was prompted by a report of damage in the main wing spar. The FAA is issuing this AD to detect and address damage (drill starts, corrosion, cracks, and improperly installed fasteners) to the main structural members of the wing. This condition, if not addressed, could adversely affect the structural integrity of the airplane and result in loss of control of the airplane.

(f) Compliance

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

(g) Actions

Within 12 months after the effective date of this AD, using a borescope, flashlight and mirror or equivalent, visually inspect the aircraft structure under the installed doubler between wing stations 30.26 and 126.36 for drill starts, corrosion, cracks, and improperly installed fasteners. Pay particular attention to the spar cap, spar flange, and stringers, and include all structural items in the wing. If there is a drill start, any corrosion, a crack, or an improperly installed fastener, before further flight, repair using a method approved by the Manager, Chicago ACO Branch, FAA. For a repair method to be approved by the Manager, Chicago ACO Branch, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Note 1 to paragraph (g): Wipaire, Inc., letter, dated September 7, 2021, provides additional information on this subject, including examples of damage.

(h) Reporting Requirement

If, during the inspection required by paragraph (g) of this AD, any damage is found, within 30 days after doing the inspection or within 30 days after the effective date of this AD, whichever occurs later, report the following information to the person identified in paragraph (k)(1) of this AD:

(1) Name and address of owner.

(2) Date of the inspection.

(3) Name, address, telephone number, and email address of person submitting the report.

(4) Airplane serial number, registration number, STC installation date, and total hours time-in-service on the airplane at the time of the inspection.

(5) Description of damage. Include affected structure, location, dimensions, and photos of damage (or sketches, if photos are not possible).

(i) Special Flight Permit

Special flight permits are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Dirk Dodge, Aviation Safety Engineer, Chicago ACO Branch, FAA, 2300 E Devon Avenue, Des Plaines, IL 60018; phone: (847) 294–7135; email: *Dirk.Dodge@faa.gov.*

(2) For service information identified in this AD, contact Wipaire, Inc., 1700 Henry Avenue, South Saint Paul, MN 55075; phone: (651) 414–4460; email: *bkutz@wipaire.com;* website: *www.wipaire.com.* You may view this referenced service information at the Airworthiness Products Section, Operational Safety Branch, FAA, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on July 1, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14429 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0812; Project Identifier MCAI–2022–00445–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), and A310 series airplanes. This proposed AD was prompted by a determination that a new airworthiness limitation is necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2022.

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

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

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this material on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0812.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0812; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0812; Project Identifier

MCAI–2022–00445–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0060, dated April 1, 2022 (EASA AD 2022–0060) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300–600 and A310 series airplanes, and A300–600ST airplanes. Model A300–600ST airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

EASA previously issued AD 2017–0203, dated October 12, 2017 (EASA AD 2017–0203) and AD 2019–0188, dated July 31, 2019 (EASA AD 2019–0188) to require accomplishment of all airworthiness limitations as described in Airbus A300–600 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 01, dated August 28, 2017, and A310 ALS Part 3, CMR, Revision 01, dated August 28, 2017; and A300–600 ALS Part 3, CMR, Variation 1.1, dated February 21, 2019, and A310 ALS Part 3, CMR, Variation 1.1, dated February 21, 2019 (introducing a functional test of the reservoir air pressurization lines for pipe rupture); respectively. EASA AD 2017–0203 corresponds to FAA AD 2018–18–20, Amendment 39–19399 (83 FR 47042, September 18, 2018) (AD 2018–18–20). EASA AD 2019–0188 corresponds to FAA AD 2020–02–22, Amendment 39–19834 (85 FR 8148, February 13, 2020) (AD 2020–02–22).

This proposed AD was prompted by a determination that a new airworthiness limitation is necessary. The FAA is proposing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of hydraulic systems. See the MCAI for additional background information.

Relationship to AD 2018–18–20 and AD 2020–02–22

This NPRM would not supersede AD 2018–18–20 and AD 2020–02–22. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0060 describes a new airworthiness limitation for airplane hydraulic systems: Certification Maintenance Requirement (CMR) task 291000–00004–1–C ''Main and Auxiliary (Hydraulic Power)—Functional Check of the 3 Hydraulic Reservoirs for Air Leakage.''

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, which is specified in EASA AD 2022–0060 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0060 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0060 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0060 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance

Time(s)'' in EASA AD 2022–0060. Service information required by EASA AD 2022–0060 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0812 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections or intervals) may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Additional FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this proposed AD would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2022–0812; Project Identifier MCAI–2022–00445–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 22, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(2) Model A300 B4–605R and B4–622R airplanes.

(3) Model A300 C4–605R Variant F airplanes.

(4) Model A300 F4–605R and F4–622R airplanes.

(5) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that a new airworthiness limitation is necessary. The FAA is issuing this AD to address safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition of hydraulic systems.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0060, dated April 1, 2022 (EASA AD 2022–0060).

(h) Exceptions to EASA AD 2022–0060

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0060 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0060 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0060 is at the applicable ''threshold'' as incorporated by the requirements of paragraph (3) of EASA AD

2022–0060, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraph (4) of EASA AD 2022–0060 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0060 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0060.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) For EASA AD 2022–0060, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0812.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*.

Issued on June 30, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14443 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0813; Project Identifier MCAI–2021–01316–A]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Vulcanair S.p.A. Model P.68, P.68B, P.68C, P.68C–TC, P.68 ''Observer,'' P.68TC ''Observer,'' P.68 ''Observer 2,'' and P.68R airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion causing failure of the upper rudder hinge. This proposed AD would require repetitively inspecting the upper and lower rudder hinges for corrosion, cracking, or damage, and depending on the inspection results, taking corrective action. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 22, 2022.

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

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

For service information identified in this NPRM, contact Vulcanair S.p.A., Fulvio Oloferni, via Giovanni Pascoli, 7, 80026 Naples, Italy; phone: +39 081 5918 135; email: *airworthiness@vulcanair.com;* website: *https://www.vulcanair.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0813; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: John DeLuca, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: *john.p.deluca@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2022–0813; Project Identifier MCAI–2021–01316–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt

from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to John DeLuca, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0267, dated November 24, 2021 (referred to after this as ''the MCAI''), to address an unsafe condition on Vulcanair S.p.A. (Vulcanair) (formerly Partenavia Costruzioni Aeronautiche S.p.A.) Model P.68 ''Victor,'' P.68B ''Victor,'' P.68R ''Victor,'' P.68C, P.68C–TC, P.68 ''Observer,'' P.68 ''Observer 2,'' and P.68TC ''Observer'' airplanes, all serial numbers. The MCAI states:

Occurrences were reported of failures of the upper rudder hinge on P.68 aeroplanes due to corrosion, which can occur if the aeroplane is operated in an environment which may favour the formation of corrosion.

This condition, if not detected and corrected, could interfere with rudder movement and ultimately lead to failure, possibly resulting in loss of control of the aeroplane.

To address this potential unsafe condition, Vulcanair issued the SL [Vulcanair Aircraft Alert Service Letter No. 23, Revision 2, dated September 29, 2021] and updated the applicable AMM [Aircraft Maintenance Manual], as defined in this [EASA] AD, to provide inspection instructions.

For the reason described above, this [EASA] AD requires repetitive inspections of the upper and lower rudder hinges and, depending on findings, accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0813.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Vulcanair Aircraft Alert Service Letter No. 23, Revision 2, dated September 29, 2021, which specifies procedures for inspecting the upper and lower rudder hinges for corrosion, cracking, and damage, and specifies contacting Vulcanair for instructions to repair an affected rudder hinge. This service information also refers to the applicable aircraft maintenance manuals for additional inspection procedures.

The FAA also reviewed the following service information, which specifies procedures for maintaining various structural parts. These documents are distinct since they apply to different airplane models.

- Section 6, Structures, of the Vulcanair Aircraft P.68C & P.68C–TC Maintenance Manual, AMM10.702–1, Revision 7, dated May 11, 2021.
- Section 6, Structures, of the Vulcanair Aircraft P.68 Observer 2 & P.68TC Observer Maintenance Manual, AMM10.702–2, Revision 8, dated November 11, 2021.
- Section 6, Structures, of the Vulcanair Aircraft P.68R Maintenance Manual, AMM10.702–3, Revision 12, dated December 12, 2019.
- Section C, Airframe, of the Vulcanair Aircraft P68C Maintenance Manual, NOR10.709–1B, Revision 9, dated August 30, 2017.
- Section C, Airframe, of the Vulcanair Aircraft P68–TC Observer Maintenance Manual, NOR10.709–4A, Revision 4, dated March 15, 2018.
- Section B, Structure, of the Vulcanair Aircraft A/C P68B Victor Maintenance Manual, NOR.10.709–9, Revision 16, dated September 22, 2017.
- Section C, Airframe, of the Vulcanair Aircraft P68 Observer 2 Maintenance Manual, NOR10.709–10, Revision 5, dated October 23, 2017.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

The MCAI applies to Model P.68 ''Victor,'' P.68B ''Victor,'' and P.68R ''Victor'' airplanes, which are identified on the FAA type certificate as Model P.68, P.68B, and P.68R airplanes, respectively.

The MCAI requires contacting Vulcanair for approved repair instructions, while this proposed AD does not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 14 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Visual inspection of upper and lower rudder hinges	2 work-hours × $85 per hour = $170.	Not applicable ...	$170 per inspection cycle.	$2,380 per inspection cycle.
Disassembly for dye inspection of the top rudder hinge (bracket).	7 work-hours × $85 per hour = $595.	Not applicable ...	$595 per inspection cycle.	$8,330 per inspection cycle.
Disassembly for dye inspection for the lower rudder hinge (control tube).	8 work-hours × $85 per hour = $680.	Not applicable ...	$680 per inspection cycle.	$9,520 per inspection cycle.
Dye inspection of upper and lower rudder hinges (post disassembly).	2 work-hours × $85 per hour = $170.	Not applicable ...	$170 per inspection cycle.	$2,380 per inspection cycle.

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of airplanes that might need these actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replacement of the top rudder hinge (bracket)	7 work-hours × $85 per hour = $595	$320	$915
Replacement of the lower rudder hinge (control tube)	8 work-hours × $85 per hour = $680	1,020	1,700

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Vulcanair S.p.A.: Docket No. FAA–2022–0813; Project Identifier MCAI–2021–01316–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by August 22, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Vulcanair S.p.A. Model P.68, P.68B, P.68C, P.68C–TC, P.68 ''Observer,'' P.68TC ''Observer,'' P.68 ''Observer 2,'' and P.68R airplanes, all serial numbers (S/Ns), certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5540, Rudder Structure.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as corrosion causing failure of the upper rudder hinge. The FAA is issuing this AD to address damage of the upper and lower rudder hinges. This condition, if not addressed, could result in interference with the rudder movement and lead to failure of the rudder, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 200 hours time-in-service (TIS) after the effective date of this AD or within 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 200 hours TIS or 12 months, whichever occurs first, inspect the upper and lower rudder hinges for looseness, corrosion, cracking, and damage in accordance with steps 1 through 4 of Vulcanair Aircraft Alert Service Letter No. 23, Revision 2, dated September 29, 2021 (Vulcanair SL No. 23R2).

(1) If there is no looseness, no corrosion, no cracking, and no damage, do the actions in paragraphs (g)(1)(i) and (ii) of this AD.

(i) Remove the rudder by following the removal procedure for your airplane identified in figure 1 to paragraph (g)(1) of this AD.

(ii) Perform a dye penetrant inspection of the hinges, paying particular attention to the pivot/attachment holes, using a dye penetrant solution for manual non-destructive testing using the following:

(A) Penetrant System: TYPE II (Visible Dye);

(B) METHOD C (Solvent Removable);

(C) Developer: FORM D (Non-aqueous); or

(D) Solvent Remover: CLASS 1 (Halogenated).

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Figure 1 to paragraph (g)(i) – *Applicable Maintenance Manuals (MMs)*

Airplane Model	Vulcanair MM Rudder Removal Procedure	Airplane S/N
P.68 and P.68B	Paragraph 6.2, Removal and Installation of the Rudder, of Chapter 6 – Vertical Empennage, of Section B, Structure, of the Vulcanair Aircraft A/C P68B Victor Maintenance Manual, NOR.10.709-9, Revision 16, dated September 22, 2017	All S/Ns
P.68R	Paragraph 6.2, Removal and Installation of the Rudder, of Chapter 6 – Vertical Empennage, of Section B, Structure, of the Vulcanair Aircraft A/C P68B Victor Maintenance Manual, NOR.10.709-9, Revision 16, dated September 22, 2017	S/N 40 and S/N 430
	Paragraph 3.2.13, Removal of Rudder, of Section 6, Structures, of the Vulcanair Aircraft P.68R Maintenance Manual, AMM10.702-3, Revision 12, dated December 12, 2019	S/N 453 and larger
P.68C	Paragraph 5.10, Removal of the Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68C Maintenance Manual, NOR10.709-1B, Revision 9, dated August 30, 2017	S/N up to and including S/N 460
	Paragraph 3.2.13, Removal of Rudder, of Section 6, Structures, of the Vulcanair Aircraft P.68C & P.68C-TC Maintenance Manual, AMM10.702-1, Revision 7, dated May 11, 2021	S/N 462 and larger
P.68C-TC	Paragraph 5.10, Removal of the Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68C Maintenance Manual, NOR10.709-1B, Revision 9, dated August 30, 2017	S/N up to and including S/N 392
	Paragraph 3.2.13, Removal of Rudder, of Section 6, Structures, of the Vulcanair Aircraft P.68C & P.68C-TC Maintenance Manual AMM10.702-1, Revision 7, dated May 11, 2021	S/N 467 and larger
P.68 Observer	Paragraph 5.10, Removal of the Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68C Maintenance Manual, NOR10.709-1B, Revision 9, dated August 30, 2017	All S/Ns

Airplane Model	Vulcanair MM Rudder Removal Procedure	Airplane S/N
P.68 Observer 2	Paragraph 5.10, Removal of Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68 Observer 2 Maintenance Manual, NOR10.709-10, Revision 5, dated October 23, 2017	S/N up to and including S/N 451
	Paragraph 3.2.13, Removal of Rudder, of Section 6, Structures, of the Vulcanair Aircraft P.68 Observer 2 & P.68TC Observer Maintenance Manual, AMM10.702-2, Revision 8, dated November 11, 2021	S/N 465 and larger
P.68TC Observer	Paragraph 5.10, Removal of the Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68C Maintenance Manual, NOR10.709-1B, Revision 9, dated August 30, 2017	S/N up to and including S/N 394
	Paragraph 5.10, Removal of Rudder, of Section C, Airframe, of the Vulcanair Aircraft P68-TC Observer Maintenance Manual, NOR10.709-4A, Revision 4, dated March 15, 2018	S/N 400 up to and including S/N 461
	Paragraph 3.2.13, Removal of Rudder, of Section 6, Structures, of the Vulcanair Aircraft P.68 Observer 2 & P.68TC Observer Maintenance Manual, AMM10.702-2, Revision 8, dated November 11, 2021	S/N 481 and larger

(2) If there is any looseness, corrosion, cracking, or damage, replace the hinge before further flight.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(j) Related Information

(1) For more information about this AD, contact John DeLuca, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7369; email: *john.p.deluca@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0267, dated November 24, 2021, for more information. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2022–0813.

(3) For service information identified in this AD, contact Vulcanair S.p.A., Fulvio Oloferni, via Giovanni Pascoli, 7, 80026 Naples, Italy; phone: +39 081 5918 135; email: *airworthiness@vulcanair.com*; website: *https://www.vulcanair.com*. You may review this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on June 30, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–14428 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–13–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0531; FRL–9976–01–R7]

Air Plan Disapproval; Missouri; Control of Sulfur Dioxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove revisions to the Missouri

State Implementation Plan (SIP) submitted by Missouri on March 7, 2019. In its submission, Missouri requested rescinding a regulation addressing sulfur compounds from the SIP and replacing it with a new regulation that establishes requirements for units emitting sulfur dioxide (SO_2). The EPA is proposing to disapprove the SIP revision because the state has not demonstrated that the removal of SO_2 emission limits for the Evergy-Hawthorn (Hawthorn, formerly Kansas City Power & Light-Hawthorn) and Ameren Labadie (Labadie) power plants from the SIP would not interfere with National Ambient Air Quality Standard (NAAQS) attainment and reasonable further progress (RFP), or any other applicable requirement of the Clean Air Act (CAA) as required under CAA section 110(l). This disapproval action is being taken under the CAA to maintain the stringency of the SIP and preserve air quality.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2022–0531 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: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7697; email address: *vit.wendy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

Table of Contents

I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2022–0531, 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?

Missouri revised title 10, division 10 of the code of state regulations (CSR) by rescinding 10 CSR 10–6.260 ''Restriction of Emission of Sulfur Compounds'' and replacing it with a new regulation, 10 CSR 10–6.261 ''Control of Sulfur Dioxide Emissions.'' 10 CSR 10–6.260 was originally approved into the SIP at 40 CFR 52.1320(c) in 1998 (63 FR 45727, August 27, 1998) and has been revised several times.[1] 10 CSR 10–6.261 has not been approved into the SIP. On March 7, 2019, the state submitted a request to revise the SIP by removing 10 CSR 10–6.260 and replacing it with 10 CSR 10–6.261 (effective date March 30, 2019). Missouri's analysis of the rescission and replacement can be found in the technical support document (TSD) submitted to the EPA on May 4, 2022 and included in this docket.

In order for the EPA to fully approve a SIP revision, the state must demonstrate that the SIP revision meets the requirements of CAA section 110(l), 42 U.S.C. 7410(l). Under CAA section 110(l), the EPA may not approve a SIP revision that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement of the CAA. The EPA interprets section 110(l) such that states have two main options to make this noninterference demonstration. First, the state could demonstrate that emissions reductions removed from the SIP are replaced with new control measures that achieve equivalent or greater emissions reductions. Thus, the SIP revision will not interfere with the area's ability to continue to attain or maintain the affected NAAQS or other CAA requirements. The EPA further interprets section 110(l) as requiring such substitute measures to be quantifiable, permanent, and enforceable, among other considerations. For section 110(l) purposes, ''permanent'' means the state cannot modify or remove the substitute measure without EPA review and approval. Second, the state could conduct air quality modeling or develop an attainment or maintenance demonstration based on EPA's most recent technical guidance to show that, even without the control measure or with the control measure in its modified form, the area (as well as interstate and intrastate areas downwind) can continue to attain and maintain the affected NAAQS.

As discussed in detail in its TSD, Missouri contends that there are substitute measures of comparable or greater stringency to the Hawthorn and Labadie SO_2 limits, and therefore argues that removal of these emission limits from the SIP would satisfy CAA section 110(l) requirements without the need for an air quality analysis showing that removing the measures will not interfere with NAAQS attainment or other applicable requirements.

We disagree with Missouri's analysis and rationale for removing the Hawthorn and Labadie SO_2 emission limits from the SIP. The substitute SO_2 emission limit for Hawthorn is contained in a Prevention of Significant Deterioration (PSD) permit that is not approved in the SIP and could be later modified without requiring EPA approval, and therefore the substitute measure is not considered permanent. For Labadie, the substitute SO_2 emission limit is not as stringent as the limit currently in the SIP-approved 10 CSR 10–6.260, nor does it result in surplus emission reductions. In addition, Missouri has not provided an air quality analysis demonstrating the revisions related to the Labadie SO_2 emission limits in the SIP will not interfere with NAAQS attainment or other applicable requirements. For these reasons we are proposing to disapprove the rescission of 10 CSR 10–6.260 and replacement with 10 CSR 10–6.261 in the SIP.

This proposed disapproval action, if finalized, would maintain 10 CSR 10–6.260 requirements at 40 CFR 52.1320(c) as federally approved SIP obligations.

[1] See 71 FR 12623 (March 13, 2006), 73 FR 35071 (June 20, 2008), and 78 FR 69995 (November 22, 2013).

The EPA's rationale for disapproving removal of the Hawthorn and Labadie SO_2 emission limits from the SIP is further discussed in the sections below.

A. Hawthorn SO_2 Emission Limit

Table 1 of 10 CSR 10–6.260 in the SIP includes a 30-day rolling average SO_2 emission limit of 0.12 pounds/million British thermal units (lb/MMBtu) for the Hawthorn plant. The footnote to Table 1 in 10 CSR 10–6.260 states: ''The SO_2 emission rate comes from the Prevention of Significant Deterioration permit for Unit 5A and is implemented in accordance with the terms of the permit.'' The referenced permit for Hawthorn is Construction Permit Number 888 issued by the Kansas City Health Department in August of 1999 and amended in 2001 after the reconstruction of the unit 5 boiler (which was renamed unit 5A). The permit contains the 30-day rolling average SO_2 emission limit of 0.12 lb/MMBtu referenced in Table 1 of 10 CSR 10–6.260, and it stipulates that the facility must achieve the limit by utilizing a dry flue gas desulfurization system and low-sulfur coal. This permit has not changed since 2001 when the reconstruction of unit 5 was completed, and the SO_2 limit has also been part of the facility's Title V operating permit since that time.

Missouri's rationale for removing the 0.12 lb/MMBtu SO_2 limit from the SIP is based on using the equivalent SO_2 emission limit in Hawthorn's PSD permit as a substitute measure. Missouri contends that removal of the 0.12 lb/MMBtu SO_2 limit from the SIP satisfies CAA section 110(l) because the same limit remains in place through Hawthorn's PSD permit. Missouri further states that any relaxation of the 30-day rolling average SO_2 emission limit in the PSD permit would subject the facility to PSD permitting requirements.

EPA disagrees with Missouri's assessment because it relies on a substitute measure from Hawthorn's PSD permit that is not SIP-approved. Although the PSD permit is federally enforceable, it is not considered permanent because it is not contained in the Missouri SIP and could be modified without requiring EPA approval. While the EPA can provide comments on PSD permits during the state's public notice period, Missouri can issue or modify PSD permits that are not in the SIP without EPA approval pursuant to the state's federally approved permitting program. Therefore, because substitute measures must be quantifiable, permanent, and enforceable to be used for 110(l) analysis purposes, EPA's approval of the removal of a SIP-approved limit based on permits that are not SIP-approved would not be consistent with CAA section 110(l).

B. Labadie SO_2 Emission Limit

The Labadie SO_2 emission limit found at 10 CSR 10–6.260 (3)(C)3.A.(II) in the SIP is a daily average of 4.8 lb/MMBtu, which applies to each of Labadie's four boilers. In 2015, the state entered into a Consent Agreement with the operating entity to limit SO_2 emissions at Labadie. The Consent Agreement includes a facility-wide SO_2 emission limit of 40,837 pounds per hour (lb/hr) for Labadie. As stated in Missouri's TSD included in this docket, the purpose of the Consent Agreement was to strengthen the SIP related to attainment in the Jefferson County, Missouri nonattainment area for the 2010 1-hour SO_2 NAAQS. In December 2020, the state amended the 2015 Consent Agreement with an addendum to clarify that all four of Labadie's units are covered under the facility-wide SO_2 limit and incorporate the enforceable monitoring, recordkeeping, and reporting requirements associated with the facility-wide limit. The EPA approved the Consent Agreement including the limits for Labadie, as amended, into the SIP at 40 CFR 52.1320(d) on January 28, 2022 (87 FR 4508). 10 CSR 10–6.261 does not include any of the limits contained in the Consent Agreement.

Missouri's rationale for removing the 4.8 lb/MMBtu SO_2 limit from the SIP is based on using the already SIP-approved Consent Agreement SO_2 emission limit as a substitute measure of greater stringency. The state's analysis of the stringency of the Consent Agreement facility-wide SO_2 limit of 40,837 lb/hr compared to the 10 CSR 10–6.260 unit-level SO_2 limit of 4.8 lb/MMBtu assumes all four boilers are operating at their maximum hourly design rate, which is a combined total heat input of 24,580 MMBtu/hr.[2] Labadie's maximum hourly SO_2 emissions allowed under 10 CSR 10–6.260 is calculated by multiplying 4.8 lb/hour by 24,580 MMBtu/hr, which equates to 117,984 lb/hr, nearly three times the maximum hourly emissions of 40,837 lb/hr allowed by the already SIP-approved Consent Agreement. Based on these calculations, Missouri concludes that the limit in the already SIP-approved Consent Agreement is more restrictive than the limit in 10 CSR 10–6.260, and therefore, removal of the 4.8 lb/MMBtu SO_2 emission limit from the SIP will not relax requirements for Labadie, thus satisfying CAA section 110(l).

The EPA agrees that maximum allowable facility-wide hourly SO_2 emissions for Labadie are lower under the already SIP-approved Consent Agreement than were under 10 CSR 10–6.260 alone. However, our calculations show that under a different set of assumptions, there are potential operating scenarios for Labadie in which individual units could operate at a rate greater than the current 4.8 lb/MMBtu SO_2 SIP limit if it were removed from the SIP, while still complying with the already SIP-approved Consent Agreement limit. In our analysis, we converted the Consent Agreement facility-wide lb/hr limit to a unit-level lb/MMBtu rate for multiple scenarios by dividing 40,837 lb/hr by the total heat input for all units assumed to be operating. An example of a scenario in which Labadie could potentially exceed the emission rate allowed under the 4.8 lb/MMBtu SO_2 limit but still comply with the Consent Agreement limit is when a single unit is operating at 100% load. A maximum hourly heat input rate of 6,107 MMBtu/hr (representative of either unit 3 or 4) is used in this example. Dividing 40,837 lb/hr by 6,107 MMBtu/hr equates to an SO_2 rate of 6.69 lb/MMBtu, which is greater than the 4.8 lb/MMBtu SO_2 limit in 10 CSR 10–6.260 in the current SIP. If this limit were removed from the SIP, there would not be a permanent and enforceable limit or condition in place to prevent Labadie from operating a single unit at an SO_2 rate higher than 4.8 lb/MMBtu.

In order for a state to use a previously SIP-approved measure (one that is already obtaining emissions reductions) as a substitute measure to satisfy the requirements of CAA section 110(l), the emissions reductions must be surplus, meaning they cannot otherwise be relied on for attainment/maintenance or Rate of Progress/Reasonable Further Progress requirements. The area should have an approved attainment/maintenance demonstration in order to ascertain that the emissions reductions from the existing SIP-approved measure are indeed surplus. As Missouri states in the TSD included in this docket, the purpose of the Consent Agreement was to strengthen the SIP related to attainment in the Jefferson County, Missouri nonattainment area for the 2010 1-hour SO_2 NAAQS. When the Jefferson County, Missouri area was redesignated to attainment for the 1-hour SO_2 NAAQS, the Consent Agreement was approved into the SIP as

[2] Labadie units 1 and 2 each have a rated maximum heat input capacity of 6,183 MMBtu/hr. Labadie units 3 and 4 each have a rated maximum heat input capacity of 6,107 MMBtu/hr.

part of the maintenance plan for the area (87 FR 4508, January 28, 2022). The Labadie SO_2 emission limit in the Consent Agreement is not surplus and therefore cannot be relied on as a substitute measure to meet the requirements of section 110(l).

The EPA's approval of the removal of the 4.8 lbs/MMBtu SO_2 limit from the SIP would not be consistent with CAA section 110(l) because the substitute SO_2 limit from the already SIP-approved Consent Agreement is not as stringent as the SIP's 4.8 lb/MMBtu limit in all situations, nor is it surplus. Moreover, Missouri has not demonstrated that this change in the SIP would be protective of all NAAQS.

III. Have the requirements for approval of a SIP revision been met?

As explained above, because EPA's approval of the revision would not be consistent with CAA section 110(l), we are proposing to disapprove the submission. However, 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 four comments from three entities, which included the EPA. The state did not make changes to the rule as a result of comments received prior to submitting to the EPA.

IV. What action is the EPA proposing to take?

The EPA is proposing to disapprove a SIP submission from Missouri that would rescind 10 CSR 10–6.260 ''Restriction of Emission of Sulfur Compounds'' and replace it with 10 CSR 10–6.261 ''Control of Sulfur Dioxide Emissions.'' By disapproving these revisions, 10 CSR 10–6.260 will be retained in the SIP, along with the already SIP-approved Consent Agreement. The EPA has determined that Missouri's proposed SIP revisions do not meet the requirements of the Clean Air Act because the revisions would remove permanent and enforceable emission limits, thereby relaxing the stringency of the SIP. Furthermore, Missouri has not shown that the proposed SIP revisions would not have an adverse impact on air quality.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The Missouri SIP submission that we propose to disapprove was not submitted to meet either of these requirements. Therefore, any action we take to finalize this proposed disapproval will not trigger mandatory sanctions under CAA section 179. In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after either finding that a State has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. With respect to our proposed disapproval of Missouri's SIP submission, however, we propose to conclude that any FIP obligation resulting from finalization of the proposed disapproval would be satisfied by our determination that there is no deficiency in the SIP to correct.[3] Specifically, the limits discussed in this proposed rulemaking would remain in the SIP and remain federally enforceable.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. 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. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely proposes to disapprove a SIP submission as not meeting the CAA.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this

[3] The EPA's obligation under CAA section 110(c)(1) to issue a FIP following a SIP disapproval is not limited to ''required'' plan submissions. However, the EPA can avoid promulgating a FIP if the Agency finds that there is no ''deficiency'' in the SIP for a FIP to correct. *Association of Irritated Residents vs. United States Environmental Protection Agency,* 632 F.3d 584 (9th Cir. 2011).

action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 30, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

[FR Doc. 2022–14469 Filed 7–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 300

[Docket No. 220603–0130]

RIN 0648–BG11

Implementation of Provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule to implement certain provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 and the Ensuring Access to Pacific Fisheries Act, and to amend the definition of illegal, unreported, or unregulated (IUU) fishing in the regulations that implement the High Seas Driftnet Fishing Moratorium Protection Act.

DATES: Written comments must be received on or before September 6, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0164, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2016–0164 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), 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).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce and by submission to Information Collection Review (*https://www.reginfo.gov/public/do/PRAMain*).

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301–427–8350; or email: *christopher.rogers@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would implement the Port State Measures Agreement Act of 2015 and certain other provisions of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (IUU Fishing Act), Public Law 114–81 (November 15, 2015), and would implement certain provisions of the Ensuring Access to Pacific Fisheries Act (Pacific Fisheries Act), Public Law 114–327 (December 16, 2016). As explained below, these two Acts amended several existing statutes. Thus, authority for this rulemaking comes from those existing statutes, as amended.

This proposed rule would also amend the definition of IUU fishing in regulations that implement the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) (16 U.S.C. 1826d *et seq.*). Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Pub. L. 109–479) amended the Moratorium Protection Act to direct the Secretary of Commerce to promulgate a regulatory definition of IUU fishing. See 16 U.S.C. 1826j(e).

Statutory Background

On November 15, 2015, President Obama signed into law the IUU Fishing Act, which can be found at: *https://www.congress.gov/114/plaws/publ81/PLAW-114publ81.pdf,* and consists of three Titles. Title I amends several regional fishery management agreements' implementing statutes to harmonize their enforcement provisions with those found in the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* and addresses other administrative matters. Title II provides authority to implement the Antigua Convention, which was negotiated to strengthen and replace the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. Title III provides the authority to implement the provisions of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement or PSMA) of the Food and Agriculture Organization of the United Nations. The Port State Measures Agreement has been signed and ratified by the United States and, as of February 2022, joined by 69 other Parties, including the European Union on behalf of its Member States.

On December 16, 2016, President Obama signed into law the Pacific Fisheries Act. This Act provides authority to implement the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, and the amendments to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. The Pacific Fisheries Act also addresses other matters, including harmonizing amendments to the Moratorium Protection Act (16 U.S.C. 1826d–k), which are detailed below.

This proposed rule would implement only certain provisions of the IUU Fishing Act and the Pacific Fisheries Act, by: revising the regulatory penalty provisions under the Pacific Salmon Treaty Act (1985) (16 U.S.C. 3631) and the Dolphin Protection Consumer Information Act (16 U.S.C. 1385); amending the procedures for identifying and certifying nations under the Moratorium Protection Act; reducing the period of validity for vessel permits issued under the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*); and expanding the set of information

required to be submitted by foreign fishing vessels requesting entry into U.S. ports as required by the Port State Measures Agreement. The proposed rule also updates a reference to subsequent subparts in the general definitions section of 50 CFR part 300, subpart A (50 CFR 300.2).

Title II of the IUU Fishing Act (implementing the Antigua Convention) has already been addressed through a separate final rule published on August 1, 2016 (81 FR 50401). Additionally, Titles I, II, III, V, and VI of the Pacific Fisheries Act will be implemented, as needed, through separate rulemakings.

Strengthening Fisheries Enforcement Mechanisms

This proposed rule would implement several amendments made by the IUU Fishing Act to the fisheries enforcement mechanisms of a number of existing statutes implementing U.S. obligations to regional fisheries management organizations and other international conservation organizations, as described below. Rulemaking is needed to implement these amended enforcement provisions and to ensure their consistent application nationally. Specifically, the penalties section of the regulations implementing the Pacific Salmon Treaty Act (1985) (16 U.S.C. 3631) would be revised to reference the updated enforcement provisions of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g), described above.

In addition, this proposed rule would revise the Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385) regulations to remove the existing paragraph describing penalties. Given that the IUU Fishing Act makes the updated enforcement and penalties provisions of the High Seas Driftnet Fishing Moratorium Protection Act (codified at 16 U.S.C. 1826g) applicable to the DPCIA, a separate penalties section for the DPCIA regulations is no longer needed.

Amendments to Procedures To Identify and Certify Nations

The Moratorium Protection Act requires the Secretary of Commerce to identify and certify nations whose fishing vessels are engaged in illegal, unreported, or unregulated fishing, bycatch of protected living marine resources, or shark catch on the high seas without a regulatory program comparable to that of the U.S. *See* 16 U.S.C. 1826j(a), (d) and 1826k(a), (c) (setting forth identification and certification requirements) and 50 CFR 300.201–300.204 (definitions and identification, notification, and certification procedures). Such identifications and certifications are notified to Congress through a biennial report, available at *https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities#magnuson-stevens-reauthorization-act-biennial-reports-to-congress.* Nations identified in the Biennial Report receive notification as provided in 50 CFR 300.202–300.204. To facilitate analysis and report preparation, the Pacific Fisheries Act changes the due date of the biennial report to June 1 of a reporting year. While adjustment of the reporting date is a statutory provision that does not require a regulatory change, we are providing notice of this change in the preamble to this rule.

Consistent with the Pacific Fisheries Act, this proposed rule would amend the Moratorium Protection Act's implementing regulations for identifying nations (50 CFR part 300, subpart N). Specifically, the proposed regulatory change would expand to three years the time period for which a nation's fishing activities will be considered for identification for IUU fishing (originally 2 years), for bycatch of protected living marine resources (originally 1 year), or for fishing activities that target or incidentally catch sharks in waters beyond any national jurisdiction without having adopted a regulatory program comparable to that of the United States (originally 1 year).

The proposed rule also would amend the existing procedures for certifying nations to clarify the effect of negative certification of a nation, including the duration of a negative certification, denial of port privileges, and import restrictions on fish or fish products from negatively certified nations. In addition, consistent with a statutory amendment, the proposed rule would limit the applicability of provisions for denial of port privileges and prohibition of imports only to identified nations that receive a negative certification under the Moratorium Protection Act. Currently, 50 CFR 300.205 addresses situations where a nation ''does not receive a positive certification,'' because the Act originally provided for the assessment of sanctions on a nation if that nation received a negative certification or if a nation has not been certified either positively or negatively in the subsequent biennial report. The Pacific Fisheries Act eliminated the option of not certifying a nation, thus existing regulations would be revised to reflect this change.

IUU Fishing Definition Amendments

This proposed rule would also amend the definition of ''Illegal, unreported, or unregulated (IUU) fishing'' in the regulations implementing the Moratorium Protection Act (50 CFR 300.201). Congress authorized the Secretary of Commerce to establish a definition of IUU fishing for the purposes of the Act and required the definition to include, among other elements, fishing activities that violate conservation and management measures required under international fishery management agreements to which the United States is a party. 16 U.S.C. 1826j(e).

This proposed rule would add two new elements to the regulatory definition of IUU fishing for identifications and certifications under the Act. The first proposed element would be new paragraph (6) in the definition of IUU fishing in 50 CFR 300.201, which would add fishing in waters under the jurisdiction of a nation, without the permission of that nation, or in contravention of its laws and regulations. The United States is a contracting party to a number of regional fishery management organizations (RFMOs) that have adopted IUU fishing vessel-listing procedures that presume unauthorized fishing within waters under the jurisdiction of another nation to be IUU fishing. For example, see Recommendation 2018–08 of the International Commission for the Conservation of Atlantic Tunas (*https://www.iccat.int*) and Conservation and Management Measure 2019–07 of the Western and Central Pacific Fisheries Commission (*https://www.wcpfc.int*).

In addition, paragraph 3.1.1 of the United Nations Food and Agriculture Organization (FAO) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA IUU) includes fishing in the waters under the jurisdiction of a state without permission or in contravention of the laws of that state in its description of activities constituting IUU fishing (*https://www.fao.org/3/y1224e/Y1224E.pdf*). Consistent with the IPOA IUU, this proposed change to the IUU fishing definition could lead to identification of nations by the United States even when the unauthorized incursion is not a violation of any specific RFMO conservation measure or an RFMO has not posted any involved vessels of the identified flag state to its IUU fishing vessel list.

The proposed change to the definition of IUU fishing would allow

identification of a nation under the Moratorium Protection Act for a failure to exercise effective flag state control, as evidenced by persistent and pervasive fishing activities by the nation's vessels in waters recognized by the United States as being under the jurisdiction of another nation without the authorization of that nation or otherwise in contravention of that nation's laws. The flag nation would be considered for identification unless there has been effective resolution of such illegal fishing by the flag State, on a bilateral basis, or through a relevant international fishery management organization.

As with identifications for other aspects of IUU fishing, the process and procedures of 50 CFR 300.202(a) would be applied to consider the history, nature, circumstances, extent, duration and gravity of any unauthorized fishing in waters under the jurisdiction of a coastal nation. NMFS will also take into account any actions already taken or on-going proceedings by the United States and/or flag State to address the IUU fishing activity of concern as well as the effectiveness of such actions.

NMFS notes that the Joint Explanatory Statement to Division B of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) directs NOAA to revise existing regulations defining IUU fishing in 50 CFR 300.201 (Moratorium Protection Act regulations) to be consistent with the definition codified in section 3532(6) of Public Law 116–92 (Maritime Security and Fisheries Enforcement (SAFE) Act). Under section 3532(6), IUU fishing ''means illegal fishing, unreported fishing, or unregulated fishing (as such terms are defined in paragraph 3 of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA IUU], adopted at the 24th Session of the Committee on Fisheries in Rome on March 2, 2001).''

The Joint Explanatory Statement does not amend the Moratorium Protection Act, which prescribes specific, minimum elements for the regulatory definition of IUU fishing. While the IPOA IUU generally describes activities considered illegal fishing, unreported fishing, or unregulated fishing, an operational definition of IUU fishing is needed in order to implement the identification and certification procedures of the Moratorium Protection Act. NMFS believes that the IUU fishing definition, as amended by proposed paragraph (6) in the definition in § 300.201, is consistent with the IPOA IUU and Moratorium Protection Act, and can be used to implement the Act's procedures.

The second proposed element would add paragraph (7) to the definition of IUU fishing in 50 CFR 300.201, which would amend the definition to include fishing activities in waters beyond any national jurisdiction that involve the use of forced labor. Because the Moratorium Protection Act sets forth ''minimum'' elements for the IUU fishing definition, NMFS has discretion to consider whether other elements should be added. Significant concerns have been raised about the use of forced labor in the course of fishing activity on fishing vessels in international waters. As stated by NMFS on page 77 of its 2019 report to Congress, Improving International Fisheries Management (available at *https://www.fisheries.noaa.gov/foreign/international-affairs/identification-iuu-fishing-activities*), there is a growing body of evidence documenting severe abuses and exploitation on board fishing vessels. Workers on fishing vessels may be particularly vulnerable due to isolated workplaces and length of time at sea, which physically restricts workers' abilities to leave or escape abusive situations. Fisheries also frequently recruit migrant workers, who may not be protected by the flag state's domestic laws, and are therefore more vulnerable to exploitation. Further, such abuses and exploitation are known to occur in conjunction with other IUU fishing activities. These practices may include charging workers recruitment fees, confiscating and withholding workers' passports or identity documents, threats or physical violence, and using fraudulent recruitment tactics such as contract switching.

To facilitate implementation, paragraph (7) in the definition of IUU fishing in § 300.201 is focused on fishing activities ''in waters beyond any national jurisdiction.'' This is consistent with the Moratorium Protection Act's bycatch and shark identification provisions, 16 U.S.C. 1826k(a)(1)(A), (2)(A). The proposed rule uses the definition of ''forced labor'' in Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307) with a few edits: ''all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer [themself] voluntarily. For purposes of this subpart, forced labor includes forced child labor.'' As forced labor can include ''indentured labor'' and the latter term is not separately defined, the proposed rule does not include ''indentured labor.'' In addition, one grammatical edit is noted in brackets.

As previously discussed, the Joint Explanatory Statement directs that the definition of IUU fishing be consistent with the definition codified in section 3532(6) of Public Law 116–92 (Maritime Security and Fisheries Enforcement (SAFE) Act). Under section 3532(6), IUU fishing ''means illegal fishing, unreported fishing, or unregulated fishing (as such terms are defined in paragraph 3 of the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing [IPOA IUU], adopted at the 24th Session of the Committee on Fisheries in Rome on March 2, 2001).'' Under the IPOA IUU paragraph 3,

> Illegal fishing refers to activities: 3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State . . . in contravention of its laws and regulations; . . . 3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

The IPOA IUU does not specifically mention forced labor. However, the Maritime SAFE Act refers to ''IUU fishing, including its links to forced labor and transnational organized illegal activity.'' 16 U.S.C. 8003(1). It also indicates that trafficking and forced labor are ''other'' crimes ''associated'' with IUU fishing. 16 U.S.C. 8013(d)(9). The Maritime SAFE Act also references the ties of IUU fishing to human trafficking, poor working conditions, and labor abuses. See, *e.g.,* 16 U.S.C. 8003 (11), (12).

While the Maritime SAFE Act does not require that forced labor be included as an element of IUU fishing, the addition of paragraph (7) to the definition in § 300.21 is not inconsistent with the Maritime SAFE Act and the IPOA IUU. Specifically, the proposed addition of ''forced labor'' uses the established definition embodied in U.S. law and widely adopted international obligations. The definition, which comes from Section 307 of the Tariff Act of 1930, is consistent with Article 2 of the Forced Labor Convention of 1930. The 1998 ILO Declaration on Fundamental Principles and Rights at Work confirms that all ILO Members have an obligation, arising from the very fact of membership in the organization, to respect, promote and realize, in good faith, the principles concerning fundamental labor rights. One of those principles is the elimination of forced or compulsory labor. In addition, the primary international instrument

concerning human trafficking,[1] which has been widely ratified, provides a framework for countries to criminalize trafficking in persons in all its forms, including for the purpose of forced labor; to prevent the crime; to protect the victims; and to facilitate international cooperation. If finalized, the inclusion of forced labor in the definition of IUU fishing would apply only in the Moratorium Protection Act context and would not modify other legal authorities.

Revisions to the IUU Fishing Identification Procedures

With regard to the triggers for identification, the Moratorium Protection Act provides that, for actions of its fishing vessels, a nation is identified for IUU fishing if it violates measures required under an international fishery management organization and the violations undermine the effectiveness of such measures, or the nation fails to effectively address or regulate IUU fishing in areas where no international fishery management organization exists with a mandate to regulate the fishing activity in question. 16 U.S.C. 1826j(a). NOAA is committed to engaging with such organizations to take any appropriate actions on forced labor issues. But given that no such organization has adopted a binding forced labor measure yet, proposed § 300.202(a)(1)(iii) adds a new basis for identifying a nation for its fishing vessels' IUU fishing actions ''[a]s defined under paragraph (7) of the definition of IUU fishing in § 300.201.''

As with identifications for other aspects of IUU fishing, NMFS would apply the process and considerations under 50 CFR 300.202(a). Given the expertise of other Departments and agencies on labor issues, the proposed rule adds that NMFS may consider relevant documentation, information, and advice from other Departments and agencies during the identification and certification process and may engage with other Departments and agencies during the consultation process with identified nations ((50 CFR 300.202(a)(3), (c), and (d)(2)).

NMFS seeks comment on the proposed addition of paragraph (7) to the definition of IUU fishing in § 300.201, the related, new basis for identification of nations, and other conforming provisions; on whether other alternatives would be more appropriate or preferable; on which factors should be considered when identifying and certifying nations that are engaged in fishing activities that involve the use of forced labor; and on any other considerations concerning the implementation of the proposed measures to address forced labor under the Moratorium Protection Act.

NMFS also proposes a revision to the identification criteria for IUU fishing (50 CFR 300.202) to conform with a statutory amendment to the Moratorium Protection Act. Under the revised identification criteria, NMFS could also identify a nation for actions or inactions that undermine a conservation measure of an RFMO to which the United States is a party even in situations where there is no direct evidence of activities by specific vessels. For example, identification could occur when a nation does not report catch and effort data as required by the RFMO to assess stocks or monitor catch allocations. NMFS could also identify a nation if its vessels are engaged in activities defined as IUU fishing in areas where no RFMO has been established and therefore no specific conservation measures would pertain.

New § 300.202(a)(3) contains existing regulatory text that is proposed to be reordered and, as explained above, adds a reference to possible consultation with other relevant Departments and agencies regarding information on forced labor in specific fisheries including, but not limited to, information provided under section 131 of the Trafficking Victims Protection Reauthorization Act (TVPRA) and Withhold Release Orders and Findings issued pursuant to section 307 of the Tariff Act of 1930. This paragraph (a)(3) provides discretion to examine the full context of the IUU fishing activity and relevant mitigating circumstances when deciding to identify a nation. These discretionary provisions would apply to both paragraph (a)(1) as proposed to be revised and paragraph (a)(2) as proposed to be added. Under new paragraph (a)(2), a nation could be identified on the basis of certain actions/inactions as a flag state. NMFS would not need to have detailed information about the actions of specific vessels when applying the provisions of proposed paragraph (a)(2). For example, failure to implement required monitoring, control and surveillance measures for its fleet or report annual catch data to the relevant RFMO could lead to an identification under paragraph (a)(2).

Definition of ''Nation''

This proposed rule would also add a regulatory definition for ''nation'' to address a corresponding provision of the IUU Fishing Act. Consistent with the amended statutory text, this provision specifies that in addition to nations, an entity having the competency to enter into international fisheries management agreements could be identified as a nation under the Moratorium Protection Act process.

Consolidation of Alternative Procedures Provisions

Proposed revisions to § 300.207 consolidate text in existing §§ 300.207 (IUU fishing), 300.208 (bycatch) and 300.209 (shark catch) on alternative procedures for products not subject to trade restrictions under circumstances of a negative certification of a nation. Under the Moratorium Protection Act and current procedures, the Secretary of Commerce may make a determination that a vessel has not engaged in IUU fishing under an international fishery management agreement to which the United States is a party. The proposed rule would delete the reference to an agreement, given the proposed edits related to forced labor and interest in ensuring that trade restrictions are applied fairly and consistently.

Reformatting Revisions

Finally, this proposed rule would also renumber several provisions of the Moratorium Protection Act's implementing regulations to fix erroneous formatting in the existing regulatory text.

Validity Period for High Seas Fishing Compliance Act Permits

This proposed rule would revise the High Seas Fishing Compliance Act (HSFCA) (16 U.S.C. 5501 *et seq.*) regulations to indicate that a high seas permit becomes void upon the expiration, revocation, or suspension of any other permit or authorization also required for the conduct of the particular high seas fishing activity (*see*

[1] The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Protocol), defines trafficking in persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The Protocol provides that exploitation includes forced labor or services. See also the Trafficking Victims Protection Act of 2000, 22 U.S.C. 7102 (defining ''severe forms of trafficking in persons'' to include ''the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery''); see also 18 U.S.C. 1589 (Forced Labor) (punishing whoever ''knowingly provides or obtains the labor or services of a person'' by means of force, threats of force, threats of serious harm, or other means set forth in section 1589).

e.g., 50 CFR 635.4, requiring permits for Atlantic Highly Migratory Species Fisheries; 50 CFR 660.707 requiring permits for West Coast Fisheries for Highly Migratory Species; 50 CFR 665.13 requiring permits to fish for Western Pacific Pelagic Fisheries).

In addition, this proposed rule would clarify that a high seas permit will no longer be issued for a period of validity of 5 years as the IUU Fishing Act eliminated this requirement in amending the HSFCA. NMFS instead proposes to set the length of validity of these high seas permits to 1 year to ensure that vessels are compliant with monitoring, reporting, and record-keeping requirements through an annual review upon receipt of a renewal application. Additionally, the annual review will ensure that any underlying permits necessary to obtain an HSFCA permit for a specific fishery, many of which require annual renewal, are concurrently valid. NMFS notes that the proposed regulatory text does not specify a 1 year period, but states that HSFCA permits are valid from their dates of issuance to dates of expiration. This approach provides NMFS with flexibility to consider changing a HSFCA permit's validity period, in light of changes to the validity periods of the underlying permits, if any, needed to authorize the high seas fishing activity.

The HSFCA applies, and requires a permit, for a vessel of the United States (or subject to the jurisdiction of the United States) used or intended for use on the high seas; for the purpose of the commercial exploitation of living marine resources; and as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation. 16 U.S.C. 5502(4). Under the US implementing regulations for several RFMO conventions, permits are required throughout the convention area whether fishing in the U.S. Exclusive Economic Zone (EEZ) or beyond. The statutory requirements overlap, thus it is appropriate to coordinate permits for consistent periods of validity. The overlapping fisheries are identified in the regulations at 50 CFR 300.334(a).

Because annual renewal would reduce the period of validity for high seas permits from the existing five years, the proposed rule requires modifications to an existing information collection subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (OMB Control Number 0648–0304). As explained below, NMFS has revised the reporting burden associated with renewal of these permits. In addition, NMFS has implemented an automated permitting system for initial permits and renewal permits, so no additional staff would be needed to accomplish annual renewals.

NMFS requests comment on the proposal to renew HSFCA vessel permits on an annual basis. In addition, should the proposed action be implemented, NMFS requests comment on the appropriate transition to annual permits. Options could include converting HSFCA permits as they expire over the next few years, recalling all current permits and reissuing them for a one-year period of validity, or re-issuing HSFCA vessel permits together with any underlying permits held by the vessel according to the same period of validity for those other permits. NMFS will also consider other transition options submitted during the comment period on this proposed rule.

Transshipment and Catch on the High Seas

Sections 300.339 and 300.341 of 50 CFR part 300, subpart R, concerning transshipment and catch by U.S-flagged vessels on the high seas, are proposed to be revised for formatting purposes only. The procedures for notification and reporting of high seas transshipment, and for reporting catch, that are currently in effect would not be altered by these formatting changes.

Implementation of the Port State Measures Agreement

This proposed rule would implement the Port State Measures Agreement, as authorized by Title III of the IUU Fishing Act. The main purpose of the Port State Measures Agreement, which can be found at *https://www.fao.org/3/a-i5469t.pdf*, is to prevent, deter, and eliminate IUU fishing through the implementation of minimum standards for effective port state measures. The Port State Measures Agreement is intended to enhance regional and international cooperation and the ability of nations to detect and intercept products of IUU fishing before they enter into national and international markets. NOAA proposes to incorporate the PSMA by reference.

The regulations authorizing actions against IUU fishing vessels (50 CFR part 300, subpart P) would be amended to incorporate certain definitions included in the IUU Fishing Act. In particular, a definition of ''IUU fishing'' would be added to reflect the description of IUU fishing included in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing of the FAO, which was incorporated by reference into the Port State Measures Agreement. This definition would establish the criteria for denial of port access or port privileges to a vessel known to be engaged in IUU fishing or for which there are reasonable grounds to believe it to be engaged in IUU fishing. It is not inconsistent with, and is distinct from, the definition of IUU fishing as laid out in 50 CFR part 300, subpart N, which serves as the basis to identify nations for engaging in IUU fishing under the Moratorium Protection Act.

NOAA likewise proposes to incorporate by reference FAO's 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which can found at *https://www.fao.org/3/y1224e/Y1224E.pdf*. That Plan of Action addresses the nature and scope of IUU fishing and adopts objectives and principles to prevent, deter, and eliminate IUU Fishing. In particular, NMFS proposes to incorporate by reference the description of activities deemed to constitute IUU fishing and apply that description for the purposes of screening foreign fishing vessels seeking entry to U.S. ports.

In current subpart P, the regulations address U.S. obligations to RFMOs that have included vessels on IUU fishing vessel lists. This proposed rule would add to subpart P those obligations of the U.S. as a party to PSMA. RFMOs decide how to define IUU fishing for the purposes of listing IUU fishing vessels. The addition of PSMA obligations to these regulations expands U.S. requirements to take action against vessels engaged in IUU fishing, or for which there are reasonable grounds to believe it has been engaged, even if the vessels were not previously posted to RFMO IUU fishing vessel lists. The IPOA IUU description of IUU fishing activities would be used as a basis to take action against vessels not listed by an RFMO.

The respective RFMO definitions of IUU fishing would continue to be used to take obligatory action against RFMO listed vessels. The subpart N definition of IUU fishing would be used as a basis for action to identify and negatively certify a nation under the Moratorium Protection Act, and port access restrictions would pertain. The subpart P definition would be used as a basis for action under PSMA obligations. In some instances, there could be more than one statutory authority that could lead to a denial of port access and/or port privileges. The specific actions of the vessel and the pertinent authority for the situation would determine how port access would be denied or granted.

Ports to which foreign vessels may request entry pursuant to the PSMA,

include those Customs Ports of Entry listed in 19 CFR 101.3 and those specified under any existing international fisheries agreement. NMFS interprets the latter as referring to any such agreements that are in force, not just those existing when the IUU Fishing Act was enacted in 2015. The regulatory provisions for vessel inspection under subpart P would apply to either a situation where an RFMO has placed the vessel on its IUU fishing vessel list (U.S. obligation to the RFMO) or a situation where the vessel is not listed by an RFMO but is suspected of having engaged in IUU fishing as that term is defined in subpart P (U.S. obligation under the PSMA). Vessel inspections will be carried out as necessary to meet all U.S. obligations that pertain to the circumstances applicable to the vessel.

In addition, the proposed action would expand the set of information required to be submitted by foreign vessels when such vessels request entry into U.S. ports. The term ''vessel'' is defined by the Act at 16 U.S.C. 7402(8) as ''any vessel, ship of another type, or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities''. The regulations would also specify the criteria under which port entry and access to port privileges is authorized or denied, and procedures for communicating the decisions regarding port entry and access to port privileges.

U.S. Coast Guard regulations currently require foreign-flagged vessels to give advance notice prior to arrival at a U.S. port or place of destination, as defined in 33 CFR 160.202. In accordance with 33 CFR 160.206, vessels are currently required to report electronically, through the U.S. Coast Guard's electronic Notice of Arrival and Departure (eNOAD) system. Under current U.S. Coast Guard regulations, information to be submitted includes the vessel name, voyage number, cargo on board, crewmembers, and other related information. This information must be reported to the Coast Guard's National Vessel Movement Center (NVMC) at least 96 hours before entering the port or place of destination or, if an exemption applies, in accordance with the timeframe stipulated at 33 CFR 160.212.

Annex A of the Port State Measures Agreement is titled Information to be Provided in Advance by Vessels Requesting Port Entry. The information specified in Annex A must be collected from foreign vessels when they are bound for a U.S. port. Annex A information includes: specific vessel information, including external and RFMO vessel identification numbers, the type of vessel and its dimensions, the type of Vessel Monitoring System aboard the vessel, details about relevant fishing and transshipment authorizations for the vessel, as well as a description of the total catch onboard the vessel and the catch to be offloaded at the requested port of entry.

Therefore, the proposed rule would require vessel operators to submit this additional information through the eNOAD system and outlines expanded requirements with respect to the Notice of Arrival process for vessels bound for U.S. ports listed in 19 CFR 101.3. Supplemental submission may be needed if the PSMA Annex A information is incomplete. Vessel operators submitting a notice of arrival are already familiar with and using the eNOAD system. It is anticipated that only a few hundred foreign fishing vessels will be affected annually by the additional information requirement. No additional operators on board foreign fishing vessels are likely needed to collect and transmit this information.

This would be a new information collection subject to approval by OMB under the Paperwork Reduction Act (OMB Control Number to be assigned). NMFS has coordinated closely with the U.S. Coast Guard to ensure that these proposed regulations would be compatible with existing U.S. Coast Guard regulations and operations.

Once this new information collection is approved, compliance guidance documents outlining the requirements of the information collection, as well as the revised process of requesting port entry, will be made available through the NMFS Office of Law Enforcement and the U.S. Coast Guard (USCG). Should the proposed action be implemented, NMFS will provide for a period of delayed effectiveness that will allow USCG time for software development, testing and deployment, and to allow shippers and vessel operators the time needed to become familiar with the new information requirements and notification procedures. NMFS requests comment on the additional time needed for operators of foreign fishing vessels before the new reporting requirement becomes mandatory for acceptance of a notice of arrival.

Classification

This rulemaking is published under the authority of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, Public Law 114–81 (November 15, 2015); the Ensuring Access to Pacific Fisheries Act, Public Law 114–327 (December 16, 2016); the High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826d–k; 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 5501 *et seq.;* Antarctic Marine Living Resource Conservation Act of 1984, 16 U.S.C. 2431 *et seq.;* 31 U.S.C. 9701 *et seq.;* the High Seas Driftnet Fishing Enforcement Act, 16 U.S.C. 1826a–1826c; the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.;* the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.;* the Northwest Atlantic Fisheries Convention Act, 16 U.S.C. 5601 *et seq.;* and the Pacific Salmon Treaty Act, 16 U.S.C. 3631 *et seq.;* the Tunas Convention Act, 16 U.S.C. 951 *et seq.,* the Magnuson-Stevens Fishery Management and Conservation Act, 16 U.S.C. 1801 *et seq.;* and the High Seas Fishing Compliance Act, 16 U.S.C. 5501 *et seq.* The NMFS Assistant Administrator has determined that this proposed rule is consistent with the above referenced statutes and other applicable law, subject to further consideration after public comment.

This rulemaking has been determined to be significant for the purposes of Executive Order (E.O.) 12866. Details on the estimated costs and potential benefits of this proposed rule can be found in the associated Regulatory Impact Review. NMFS requests comments on the benefit-cost analysis, including whether the most likely net impacts are reasonable, and solicits additional information to better characterize the indirect effects of this rulemaking on curtailing IUU fishing activity.

As described in the Background section above, certain provisions of two different Acts would be implemented through this rulemaking: the IUU Fishing Act (Pub. L. 114–81), implementation of which includes a proposed new information-collection; and the Pacific Fisheries Act (Pub. L. 114–327), implementation of which includes a proposed revision to an existing information-collection.

Regulatory Flexibility Act

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to describe the economic impact that this proposed rule would have on small entities in accordance with section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603. A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for, this proposed rule are contained in the **SUMMARY** section of the preamble. A copy of the full analysis is available on the Federal e-Rulemaking Portal (see **ADDRESSES**). A summary of the IRFA follows.

The proposed action and new information collection under the IUU Fishing Act would directly affect approximately 300 foreign fishing vessels and foreign vessels engaged in fishing-related activities that seek access to U.S. ports. The foreign fishing vessel's notice of arrival, including the PSMA Annex A information, would identify the vessel's flag State and the fishing activities authorized by the flag State. If NMFS has concerns about fraudulent representations, the reported information can be verified by the flag State. If NMFS has concerns about the RFMO compliance status of flag States, a vessel allowed in port could be subject to inspection. The existing notice of arrival process would not provide sufficient information regarding fishing authorizations by the flag State. If the PSMA Annex A information is not collected via eNOAD, NMFS would have to obtain that information via other sources.

The requirement for PSMA Annex A information would indirectly affect some U.S. suppliers of port services should vessels be denied entry. However, these suppliers of port services would not be subject to any of the requirements of this rulemaking and the number of vessels denied entry or denied port services under this proposed rule is estimated to be small. While there may be some minor indirect impacts on suppliers due to port denials, such impacts on small entities to which the rulemaking would not apply are not analyzed under the IRFA.

For the potentially affected foreign vessels, only a small percentage would likely receive a Denial of Entry Notice. Because foreign vessels engaged in fishing-related activities outside of U.S. waters are not regulated by NMFS or any other U.S. Federal or State agency, information is not available to enable an estimate of the number of those vessels that might be expected to receive a Denial of Entry Notice. However, otherwise admissible foreign fishing vessels that are unable to meet the notice of arrival information requirements are unlikely to seek entry into U.S. ports. Those eligible foreign fishing vessels that can meet the notice of arrival requirements, including PSMA Annex A information, are unlikely to be denied port access unless they submit obviously fraudulent or suspicious information.

With respect to the Pacific Fisheries Act, this proposed rule includes regulatory provisions to implement Title IV of the Act, which would make conforming amendments to regulations implementing the statutes amended by the Act, specifically amendments to the High Seas Driftnet Fishing Moratorium Protection Act. Titles I, II, III, V, and VI of the Pacific Fisheries Act have been or will be implemented, as needed, through separate rulemakings.

As discussed above, the Pacific Fisheries Act removed the requirement that a high seas fishing permit be issued for a period of validity of five years. Instead, NMFS proposes that the validity of the high seas permit be limited to one year.

A 1 year period is more appropriate than the current 5 year period in order to ensure that high seas fishing vessels are compliant with all other relevant requirements and that underlying permits necessary to participate in the fisheries authorized by an HSFCA permit are concurrently valid. The objective of the change is to coordinate issuance and renewal of the HSFCA permit with other required permits for the particular fishery. NMFS examined the permit programs for those other fisheries and determined that annual renewal of HSFCA permits would coincide with renewal of other permits required to participate in the fisheries when those vessels operate on the high seas.

The HSFCA permit is required of, and issued to, U.S. flag vessels fishing on the high seas, not to foreign fishing vessels. U.S. vessels are not subject to the PSMA requirements for entry into U.S. ports, only foreign fishing vessels. There would be no supply chain impacts to the proposed annual renewal of HSFCA permits, because the number of permits is either not limited for some fisheries or limited by other pre-existing regulations for those fisheries.

This change to annual permit renewal would have potential impacts to small entities. Therefore, the analysis focuses primarily on the effects of the change of the permit frequency to permit holders.

Small entities include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S. including commercial seafood processors (North American Industry Classification System (NAICS) code 311710). A business 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 not in excess of 750 employees for all its affiliated operations worldwide. A small organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The proposed 1 year permit renewal would apply to owners and operators of U.S. permitted fishing vessels operating on the high seas, including harvesting vessels operating on the high seas, refrigerated cargo vessels, or other vessels used to support fishing. As of March 2022, there are 347 registered U.S. vessels permitted to fish on the high seas. The majority of these permitted vessels are longliners, trollers, purse seiners, and pole and line vessels. There is also a small percentage of gillnetting, squid jigging, line fishing, multipurpose, and trawl vessels. A small number of the affected entities are freezer vessels involved in seafood processing.

In the IRFA, an individual permitted vessel was used as the proxy for each business entity. Although a single business entity may own multiple vessels, NMFS does not have a reliable means at this time to track ownership of multiple vessels to a single business entity. For this reason, an assumption that each vessel is owned by a unique business entity may overestimate the number of small businesses affected by the proposed rule.

The NMFS annual report, Fisheries of the United States, for 2019 provides an aggregate total revenue for the active vessels (permit holders reporting catch) listed as fishing on ''High Seas or off Foreign Shores'' of $394 million in 2018 and and $347 million in 2019. Using these revenue figures and the current number of permitted vessels, average annual revenues for an individual U.S. high seas vessel over the 2 year period is estimated at $1.1 million. Based on the best available financial information about the affected fishing vessels (*i.e.,* permit holders), NMFS believes that all the affected fish harvesting businesses

would be small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $11 million. Also, this sector has an employee-based size standard different from other sectors. A size standard of less than 750 employees would classify these business as small. Based on available information on freezer vessels, NMFS believes the entities would have fewer than 750 employees and therefore, would be considered small entities as well.

If promulgated, the proposed action would require entities to renew the permit annually, increasing the cost over the current requirement of a renewal only every 5 years. NMFS reevaluated the cost of the application process under the annual renewal cycle and due to automated renewal procedures recently implemented for this program. As a result of automation, NMFS lowered the permit fee from $129.00 to $56.00 for each application/renewal. While the automation represents a decrease for each application, the proposed change from 5-year renewal to annual renewals would result in an increase in permitting fees from an average of $11.20 per year to $56.00 per year. The HSFCA authorizes the Secretary of Commerce to retain permit fees for the administration of the program and such funds remain available until expended. Collected fees have been used for development, operations and maintenance of the National Permits System including enhancements to automate issuance of HSFCA vessel permits.

NMFS has estimated the burden and cost associated with the information collection that would be imposed on the entities. NMFS estimates that the total public burden for the proposed information collection and fee will apply to all permitted entities that would have to comply with the changes in permit validity as part of the proposed regulation. These estimates include the time required to review the instructions and update any information from the previous year that may have changed (*e.g.,* upload a new picture of vessel) and pay the associated permit fee via the U.S. Treasury financial management system (*www.pay.gov*). The detailed analysis is provided in the request to OMB for approval of revisions to the information collection under Control Number 0648–0304.

The labor burden estimates of the proposed action were based on a permit holder's hours of activity required to comply with the proposed regulation to require an annual permit renewal application and fee, rather than the current five-year renewal. Over 5 years, this equates to completion of four additional permit applications and payment of the application processing fee each year. NMFS previously estimated one-half hour to complete the paper application form based on the number of required data elements and the need to mail the form. With the ability to apply for new permits and renew permits online, previously recorded data elements are pre-populated in the system, thus reducing data entry time. Because the annual renewal process is automated and available online, NMFS has reduced its estimate of the average time burden by 50 percent from 0.5 hours per application to 0.25 hours. For the purpose of burden analysis, NMFS assumed that an upper bound of 400 vessels would apply for or maintain HSFCA permits. Given the reduced time per application in the automated environment (15 minutes), NMFS estimates that the total burden to all 400 permit holders for the information collection would require an additional 80 labor hours annually to comply with the proposed regulation compared to current regulation (*i.e.,* each vessel owner completing four additional permit applications over a 5 year period).

NMFS assumes the administrative burden to complete the permit is the same for all entities (*i.e.,* permit holders), regardless of whether the entity harvests or processes seafood. NMFS estimated the labor cost of $5.28 per application using the Bureau of Labor and Statistics 2021 mean hourly wage for Bookkeeping, Accounting, and Auditing Clerks of $21.10 and a mean time of 15 minutes per application/renewal. There is no additional recordkeeping or reporting requirements associated with the proposed annual permit renewal. There is no additional capital or operational and maintenance cost associated with the proposed regulation. If promulgated, the total cost (processing fee plus application process labor) per entity is estimated to be $61.28 per year ($24,512 for an estimated 400 permit holders). This represents an insignifcant fraction of the average revenue for the high seas fishing permit holders who actively engaged in fishing in 2018 and 2019.

The proposed action in this rule does not limit an entity's ability to harvest or process fish and, therefore, would not impose a significant adverse impact on an entity's profitability. All entities are expected to be able to absorb the cost associated with the proposed action as part of their normal cost of operations. Therefore, based on the results of the analysis and all available information, if promulgated, NMFS does not anticipate that this proposed action would impose significant adverse or long-term economic impacts on a substantial number of small entities.

Relative to this proposed regulation, no duplicative, overlapping, or conflicting Federal rules have been identified. The annual renewal of HSFCA permits would not require changes to observer deployment under the other applicable authorities for regulating high seas fisheries (*e.g.,* Atlantic Highly Migratory Species, Western Pacific Pelagic Fisheries, and Pacific Highly Migratory Species). Therefore, annual renewal under HSFCA would not affect the schedule for dockside safety exams necessary for observer deployment.

In addition to analyzing the proposed action, NMFS considered and rejected a no-action alternative, whereby NMFS would leave the length of validity of the permit at 5 years. The no-action alternative to the proposed rule would impose the least burden or economic impact on small entities, but it does not allow NMFS the ability to best fulfill its obligations to monitor and control its fishing vessels operating in areas beyond any national jurisdiction.

Although NMFS did consider other lengths of validity for this permit (*i.e.,* 2 or 3 years), the proposed annual permit renewal is the preferred alternative because it will synchronize renewals with the underlying fisheries permits that each high seas permit holder must also carry. These underlying permits are required to operate the vessel on the high seas for the specifically authorized fisheries and these other permits must be renewed annually. Issuing a vessel permit under HSFCA authority for a time period inconsistent with another required permit can lead to confusion about the actual fishing authorization. In addition, as discussed above, it will also provide the United States with a better ability to monitor and control its high seas fishing fleet by ensuring that any delinquent reports are submitted at the time of initial permit application or annual renewal.

Paperwork Reduction Act

There are two collection-of-information requirements in this proposed rule that are subject to OMB review and approval under the Paperwork Reduction Act. The first is a new collection-of-information that would be established to comply with the United States' obligations under the

Port State Measures Agreement. This collection-of-information was submitted to OMB for approval. The proposed collection-of-information would apply to foreign vessels engaged in fishing activities that are also seeking access to U.S. ports. The reporting burden would apply only to the personnel aboard the foreign vessel who file the eNOAD report. USCG will process the information for its purposes (*e.g.,* Ports and Waterways Safety Act) while NMFS will process the Annex A information to determine if the vessel is listed by RFMOs or is otherwise believed to have engaged in IUU fishing.

The new collection-of-information burden, as proposed under this rule, is estimated to be an increase of 0.17 hours per submission over the normal eNOAD filing already required of foreign vessels calling on U.S. ports. In 2017, the U.S. Coast Guard received a total of 183,582 vessel Notice of Arrival submissions, 675 of which were classified as fishing vessels (defined under the Port State Measures Agreement as ''any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities.'') Of these fishing vessel submissions, 217 were from foreign-flagged vessels. For the purpose of estimating reporting burden, NMFS is assuming that each submission is made by an individual vessel, but this would be an overestimate if some submissions were made by the same vessel.

NMFS anticipates that neither U.S. entities nor foreign entities would be significantly affected by this action because it does not pose entirely new burdens with regard to the collection and submission of information necessary to approve port access and/or port services. Further, many of the data elements to be submitted electronically through this collection-of-information to grant port access are, to some extent, either already collected under the existing U.S. Coast Guard Notice of Arrival procedures, collected pursuant to national or international trade tracking or catch documentation requirements, or collected in support of third-party certification schemes voluntarily adopted by the trade.

The second collection-of-information proposed in this rulemaking revises the existing collection-of-information for High Seas Fishing Compliance Act permitting (OMB Control Number 0648–0304).

This information collection is revised to reduce the period of validity for high seas permits from 5 years to 1 year. The collection-of-information burden for the permit requirement proposed by NMFS under the discretionary authority afforded by the Pacific Fisheries Act was estimated with respect to the annual renewal of high seas permits. The revised burden to all permit applicants is estimated to be an increase of 80 hours per year. This estimation is based on 400 permits renewed annually rather than once every 5 years. However, as of March 2022, there are only 347 active HSFCA permits that have been issued. Thus, the use of 400 vessels in estimating the reporting burden represents an upper bound.

The information collection requirement under this proposed rule does not duplicate or conflict with such requirements under any other Federal rules. Potential overlap with other reporting requirements has been taken into account to avoid collecting data more than once.

Send comments on the burden estimates or any other aspects of the new and revised collections of information to the Office of International Affairs, Trade, and Commerce at the **ADDRESSES** above, and by submission to Information Collection Review (*https://www.reginfo.gov/public/do/PRAMain*).

Notwithstanding any other provision of the 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 216

Administrative practice and procedure, Exports, Fish, Imports, Indians, Labeling, Marine mammals.

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Incorporation by reference, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: June 27, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 216 and 300 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

§ 216.24 [Amended]

■ 2. In § 216.24, remove and reserve paragraph (g).

PART 300—INTERNATIONAL FISHERIES REGULATIONS

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

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

Subpart A—General

■ 4. The authority for part 300, subpart A, continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

■ 5. In § 300.2, revise the introductory text to read as follows:

§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through R of this part, the terms used in this part have the following meanings, unless defined otherwise in the respective subpart:

* * * * *

■ 6. Add § 300.9 to read as follows:

§ 300.9 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the National Oceanic and Atmospheric Administration (NOAA) and at the National Archives and Records Administration (NARA). Contact NOAA at: the National Marine Fisheries Service (NMFS), Office of International Affairs, Trade, and Commerce, 1315 East-West Highway, Silver Spring, MD 20910; phone (301) 427 8350; website: *https://www.fisheries.noaa.gov/about/office-international-affairs-trade-and-commerce.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following source:

(a) *Food and Agriculture Organization of the United Nations (FAO).* Viale delle Terme di Caracalla, 00153 Rome, Italy;

phone: (+39) 06 57051; email: *FAO-HQ@fao.org;* website: *www.fao.org/publications/.*

(1) Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), Revised edition, copyright 2016; IBR approved for §§ 300.300(c); 300.304(a) and (b); 300.306(e).

(2) International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (International Plan of Action), published 2001; IBR approved for § 300.301.

(b) [Reserved]

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

■ 7. The authority for part 300, subpart F, continues to read as follows:

Authority: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

■ 8. Revise § 300.96 to read as follows:

§ 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures set forth in section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).

Subpart N—Identification and Certification of Nations

■ 9. The authority for part 300, subpart N, continues to read as follows:

Authority: 16 U.S.C. 1826d *et seq.*

■ 10. In § 300.201, add paragraphs (6) and (7) to the definition of ''Illegal, unreported, or unregulated (IUU) fishing'' and the definition of ''Nation'', in alphabetical order, to read as follows:

§ 300.201 Definitions.

* * * * *

Illegal, unreported, or unregulated (IUU) fishing * * *

(6) Failure to exercise effective flag State control as evidenced by persistent and pervasive fishing activities by the nation's vessels in waters recognized by the United States as being under the jurisdiction of another nation without the authorization of that nation or otherwise in contravention of that nation's laws, unless there has been effective resolution of such illegal fishing by the flag State, on a bilateral basis, or through a relevant international fishery management organization.

(7) Fishing activities in waters beyond any national jurisdiction that involve the use of forced labor, which shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the person does not offer themself voluntarily. For purposes of this subpart, forced labor includes forced child labor.

* * * * *

Nation means a country other than the United States, or other entity that has competency to enter into international fisheries management agreements.

* * * * *

■ 11. In § 300.202, revise paragraphs (a), (c), and (d) to read as follows:

§ 300.202 Identification and certification of nations engaged in illegal, unreported, or unregulated fishing activities.

(a) *Procedures to identify nations for IUU fishing*—(1) *Identification for actions of fishing vessels.* Based on a cumulative compilation and analysis of data collected and provided by international fishery management organizations, other nations, non-governmental and intergovernmental organizations, and Federal, State, and other governmental agencies, NMFS will identify, and list in the biennial report to Congress, a nation if any fishing vessel of that nation is engaged, or has been engaged at any point during the preceding three years, in illegal, unreported, or unregulated fishing—

(i) That undermines the effectiveness of measures required by an international fishery management organization, taking into account whether the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

(ii) Where no international fishery management organization exists with a mandate to regulate the fishing activity in question; or

(iii) As defined under paragraph (7) of the definition of IUU fishing in § 300.201.

(2) *Identification for actions of a nation.* Taking into account the factors described under paragraph (a)(1) of this section when making a report to Congress, NMFS will also identify, and list in such report, a nation—

(i) If it is violating, or has violated at any point during the preceding three years, conservation and management measures required under an international fishery management organization to which the United States is a party and the violations undermine the effectiveness of such measures; or

(ii) If it is failing, or has failed in the preceding three-year period, to effectively address or regulate illegal, unreported, or unregulated fishing in areas where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

(3) *Considerations when making identifications.* When determining whether to identify a nation for IUU fishing, NMFS will take into account all relevant matters, including but not limited to the history, nature, circumstances, extent, duration, and gravity of the IUU fishing in question, and any measures that the nation has implemented to address the IUU fishing. NMFS will also take into account whether an international fishery management organization exists with a mandate to regulate the fishery in which the IUU fishing in question takes place. If such an organization exists, NMFS will consider whether the relevant international fishery management organization has adopted measures that are effective at addressing the IUU fishing in question and, if the nation whose fishing vessel(s) are engaged, or have been engaged, in IUU fishing is a party to, or maintains cooperating status with, the organization. NMFS will also take into account any actions taken or on-going proceedings by the United States and/or flag State to address the IUU fishing of concern as well as the effectiveness of such actions. With regard to making identifications under paragraph (7) of the defintion of IUU fishing in § 300.201, NMFS may additionally consider any pertinent documentation provided by other relevant Departments and agencies, including, but not limited to, information provided under section 131 of the Trafficking Victims Protection Reauthorization Act (TVPRA); Withhold Release Orders and Findings issued pursuant to section 307 of the Tariff Act of 1930; and other information on the history, nature, circumstances, extent, duration, and gravity of the activity in question, and any measures that the nation has implemented to address that activity.

* * * * *

(c) *Consultation with nations identified under paragraph (a) of this section.* Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through

or in cooperation with the Secretary of State, will initiate consultations with nations that have been identified in the biennial report for the purpose of encouraging such nations to take appropriate corrective action with respect to the IUU fishing activities described in the biennial report. The Secretary of Commerce may engage with other Departments and agencies when initiating consultations with nations identified under paragraph (7) of the definition of IUU fishing in § 300.201 and as appropriate throughout the consultation process.

(d) *Procedures to certify nations identified under paragraph (a) of this section.* Each nation that is identified under paragraph (a) of this section shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. A positive certification indicates that a nation has taken appropriate corrective action to address the activity described in the biennial report. A negative certification indicates that a nation has not taken appropriate corrective action.

(1) The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that such nation has taken appropriate corrective action to address the activities for which such nation has been identified in the biennial report to Congress. When making such determination, the Secretary shall take into account the following:

(i) Whether the government of the nation identified pursuant to paragraph (a) of this section has provided evidence documenting that it has taken corrective action to address the IUU fishing activity described in the biennial report;

(ii) Whether the relevant international fishery management organization has adopted and, if applicable, the identified member nation has implemented and is enforcing, measures to effectively address the IUU fishing activity of the identified nation's fishing vessels described in the biennial report;

(iii) Whether the United States has taken enforcement action to effectively address the IUU fishing activity of the identified nation described in the biennial report; and

(iv) Whether the identified nation has cooperated in any action taken by the United States to address the IUU fishing activity described in the biennial report.

(2) Prior to a formal certification determination, nations will be provided with preliminary certification determinations and an opportunity to support and/or refute the preliminary determinations and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations. The Secretary may consider advice or information provided by other relevant Departments and agencies in making its preliminary and formal certification determinations for identifications made under paragraph (7) of the definition of IUU fishing in § 300.201.

■ 12. Revise § 300.203 to read as follows:

§ 300.203 Identification and certification of nations engaged in bycatch of protected living marine resources.

(a) *Criteria for identification.* NMFS will identify and list, in the biennial report to Congress, nations—

(1) Whose fishing vessel(s) are engaged, or have been engaged during the preceding three years prior to publication of the biennial report to Congress, in fishing activities or practices either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or in waters beyond the U.S. EEZ that result in bycatch of a PLMR that is shared by the United States;

(2) If the nation is a party to or maintains cooperating status with the relevant international organization with jurisdiction over the conservation and protection of the relevant PLMRs, or a relevant international or regional fishery organization, and the organization has not adopted measures to effectively end or reduce bycatch of such species; and

(3) The nation has not implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements, taking into account different conditions that could bear on the feasibility and efficacy of comparable measures.

(b) *Considerations when making identifications.* When determining whether to identify a nation as having any fishing vessel(s) engaged in PLMR bycatch, NMFS will take into account all relevant matters, including but not limited to, the history, nature, circumstances, extent, duration, and gravity of the bycatch activity in question.

(c) *Effectiveness of comparable measures.* NMFS will also examine whether the nation has implemented measures designed to end or reduce such bycatch that are comparable in effectiveness to U.S. regulatory requirements. In considering whether a nation has implemented measures that are comparable in effectiveness to those of the United States, NMFS will evaluate if different conditions exist that could bear on the feasibility and efficacy of such measures to end or reduce bycatch of the pertinent PLMRs.

(d) *Notification of nations identified as having fishing vessels engaged in PLMR bycatch.* Upon identifying a nation whose vessels have been engaged in bycatch of PLMRs in the biennial report to Congress, the Secretary of Commerce will notify the President of such identification. Within 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will notify identified nations about the requirements under the High Seas Driftnet Fishing Moratorium Protection Act and this subpart.

(e) *Consultations and negotiations.* Upon submission of the biennial report to Congress, the Secretary of Commerce, acting through or in consultation with the Secretary of State, will:

(1) Initiate consultations within 60 days after submission of the biennial report to Congress with the governments of identified nations for the purposes of encouraging adoption of a regulatory program for protected living marine resources that is comparable in effectiveness to that of the United States, taking into account different conditions, and establishment of a management plan that assists in the collection of species-specific data;

(2) Seek to enter into bilateral and multilateral treaties with such nations to protect the PLMRs from bycatch activities described in the biennial report; and

(3) Seek agreements through the appropriate international organizations calling for international restrictions on the fishing activities or practices described in the biennial report that result in bycatch of PLMRs and, as necessary, request the Secretary of State to initiate the amendment of any existing international treaty to which the United States is a party for the protection and conservation of the PLMRs in question to make such agreements consistent with this subpart.

(f) *International cooperation and assistance.* To the greatest extent possible, consistent with existing authority and the availability of funds, the Secretary shall:

(1) Provide appropriate assistance to nations identified by the Secretary under paragraph (a) of this section and international organizations of which those nations are members to assist those nations in qualifying for a positive

certification under paragraph (e) of this section;

(2) Undertake, where appropriate, cooperative research activities on species assessments and improved bycatch mitigation techniques, with those nations or organizations;

(3) Encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for positive certification under paragraph (e) of this section; and

(4) Provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(g) *Procedures to certify nations identified as having fishing vessels engaged in PLMR bycatch.* (1) Each nation that is identified as having fishing vessels engaged in PLMR bycatch shall receive either a positive or a negative certification from the Secretary of Commerce, and this certification will be published in the biennial report to Congress. The Secretary of Commerce shall issue a positive certification to an identified nation upon making a determination that:

(i) Such nation has provided evidence documenting its adoption of a regulatory program to end or reduce bycatch of such PLMRs that is comparable in effectiveness to regulatory measures required under U.S. law to address bycatch in the relevant fisheries, taking into account different conditions that could bear on the feasibility and efficacy of these measures, and which, in the case of an identified nation with fishing vessels engaged in pelagic longline fishing, includes the mandatory use of circle hooks, careful handling and release equipment, training and observer programs; and

(ii) Such nation has established a management plan that will assist in the collection of species-specific data on PLMR bycatch to support international stock assessments and conservation efforts for PLMRs.

(2) Nations will be notified prior to a formal certification determination and will be provided with an opportunity to support and/or refute preliminary certification determinations, and communicate any corrective actions taken to address the activities for which such nations were identified. The Secretary of Commerce shall consider any information received during the course of these consultations when making the subsequent certification determinations.

■ 13. In § 300.204, revise the heading of paragraph (a) and paragraph (a)(1)(i) to read as follows:

§ 300.204 Identification and certification of nations whose vessels are engaged in shark catch.

(a) *Procedures to identify nations whose fishing vessels target or incidentally catch sharks in waters beyond any national jurisdiction.* (1) * * *

(i) Whose fishing vessels are engaged, or have been engaged during the three years prior to publication of the biennial report to Congress, in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks; and

* * * * *

■ 14. In § 300.205:

■ a. Revise the section heading, introductory text of paragraph (a), and paragraph (b);

■ b. Add a heading for paragraph (c); and

■ c. Revise paragraphs (d) and (e).

The revisions and addition read as follows:

§ 300.205 Effect of negative certification.

(a) *Response to negative certification.* If a nation identified under § 300.202(a), § 300.203(a), or § 300.204(a) receives a negative certification under this subpart, the Secretary of the Treasury shall, in accordance with international law:

* * * * *

(b) *Trade restrictions.* Upon notification and any recommendations by the Secretary of Commerce to the President that an identified nation has received a negative certification, the President is authorized to direct the Secretary of the Treasury to prohibit the importation of certain fish and fish products from such nation (see § 300.206).

(c) *Consistency of actions.* * * *

(d) *Additional sanctions.* If certain fish and fish products are prohibited from entering the United States, the Secretary of Commerce shall, within six months after the imposition of the prohibition, determine whether the prohibition is insufficient to cause that nation to effectively address the IUU fishing activity, bycatch, or shark catch described in the biennial report, or that nation has retaliated against the United States as a result of that prohibition. The Secretary of Commerce shall certify to the President each affirmative determination that an import prohibition is insufficient to cause a nation to effectively address such IUU fishing activity, bycatch, or shark catch or that a nation has taken retaliatory action against the United States. This certification is a certification under 22 U.S.C. 1978(a), which provides that the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of any products from the country so certified for any duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in 19 U.S.C. 3501(8)) or any relevant multilateral trade agreements (as defined in 19 U.S.C. 3501(4)).

(e) *Duration of negative certification.* Any nation identified in the biennial report to Congress for having vessels engaged in IUU fishing, PLMR bycatch, or shark catch that is negatively certified will remain negatively certified until the Secretary has determined that the nation has effectively addressed the fishing or regulatory activities for which the nation received a negative certification and issues a positive certification.

* * * * *

■ 15. In § 300.206, revise the section heading and paragraphs (a)(1) and (2) and (b)(1) and (4) to read as follows:

§ 300.206 Denial of port privileges and import restrictions on fish or fish products from negatively certified nations.

(a) * * *

(1) Vessels from a nation identified in the biennial report under § 300.202(a), § 300.203(a), or § 300.204(a) and subsequently negatively certified by the Secretary that enter any place in the United States or the navigable waters of the United States remain subject to inspection and may be prohibited from landing, processing, or transshipping fish and fish products, under applicable law. Services, including the refueling and re-supplying of such fishing vessels, may be prohibited, with the exception of services essential to the safety, health, and welfare of the crew. Fishing vessels will not be denied port access or services in cases of *force majeure* or distress.

(2) For nations identified in the previous biennial report under § 300.202(a) that are negatively certified in the subsequent biennial report, the Secretary shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations. Such a recommendation would address the relevant fishing activities or practices for which such nations were identified in the biennial report. Such import prohibitions, if implemented, would apply to fish and fish products managed under an applicable international

fishery agreement. If there is no applicable international fishery agreement, such prohibitions, if implemented, would only apply to fish and fish products caught by vessels engaged in illegal, unreported, or unregulated fishing for which a nation was identified and negatively certified. For nations identified under § 300.203(a) or § 300.204(a) that are negatively certified, the Secretary of Commerce shall so notify and make recommendations to the President, who is authorized to direct the Secretary of the Treasury to impose import prohibitions with respect to fish and fish products from those nations; such prohibitions would only apply to fish and fish products caught by the vessels engaged in the relevant activity for which the nation was identified and negatively certified.

* * * * *

(b) * * *

(1) *Notification.* Where the Secretary of Commerce makes negative certifications for identified nations, and the President determines that certain fish and fish products from such nations are ineligible for entry into the United States and U.S. territories, the Secretary of Commerce, in cooperation with the Secretaries of Treasury, Homeland Security, and State, will publish a notice to that effect in the **Federal Register**.

* * * * *

(4) *Removal of negative certifications and import restrictions.* Upon a determination by the Secretary that an identified nation that was negatively certified has satisfactorily met the conditions in this subpart and that nation has been positively certified, the provisions of this section shall no longer apply. The Secretary of Commerce will issue a positive certification and will, in cooperation with the Secretaries of Treasury, Homeland Security, and State, notify such nations and publish in the **Federal Register** notification of the removal of the import restrictions per the regulations in this part effective on the date of publication.

■ 16. In § 300.207, revise the section heading and paragraphs (a) and (b) to read as follows:

§ 300.207 Alternative procedures for products not subject to trade restrictions.

(a) Alternative procedures may be applied to fish or fish products from a harvesting nation that has been negatively certified under § 300.202, § 300.203, or § 300.204 but are not caught by the vessel(s) engaged in the fishing activity for which the nation was negatively certified.

(b) Consistent with paragraph (a) of this section, the Secretary may allow entry of fish or fish products on a shipment-by-shipment, shipper-by-shipper, or other basis if the Secretary determines that:

(1) The vessel concerned has not engaged in IUU fishing;

(2) The vessel concerned is not identified by an international fishery management organization as participating in IUU fishing or fishing-related activities in support of such fishing;

(3) The fish products were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

(i) Are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fisheries, the regulatory program of an identified nation includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(ii) Include the gathering of species-specific data that can be used to support international and regional assessments and conservation efforts for protected living marine resources; and

(4) The fish products were harvested by fishing activities or practices that do not target or incidentally catch sharks, or were harvested by practices that—

(i) Are comparable to those of the United States, taking into account different conditions; and

(ii) Include the gathering of species-specific shark data that can be used to support international and regional assessments and conservation efforts for sharks.

* * * * *

§§ 300.208 and 300.209 [Removed]

■ 17. Remove §§ 300.208 and 300.209.

Subpart P—Vessels Known or Reasonably Believed to Have Engaged in Illegal, Unreported, and Unregulated Fishing

■ 18. The authority for part 300, subpart P, is added to read as follows:

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 971 *et seq.,* 16 U.S.C. 1413 *et seq.,* 16 U.S.C. 1826i, 16 U.S.C. 2341 *et seq.,* 16 U.S.C. 5601 *et seq.,* 16 U.S.C. 6901 *et seq.,* 16 U.S.C. 7401 *et seq.,* 16 U.S.C. 7701 *et seq.,* 16 U.S.C. 7801 *et seq.*

■ 19. Revise subpart P heading to read as set forth above.

■ 20. In § 300.300, revise paragraph (a) and add paragraph (c) to read as follows:

§ 300.300 Purpose and scope.

(a) This subpart implements internationally-adopted measures pertaining to foreign vessels determined to have engaged in illegal, unreported, and unregulated (IUU) fishing and placed on IUU fishing vessel lists of the:

(1) International Commission for the Conservation of Atlantic Tunas (ICCAT);

(2) Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);

(3) Northwest Atlantic Fisheries Organization (NAFO);

(4) Western and Central Pacific Fisheries Commission (WCPFC);

(5) Inter-American Tropical Tuna Commission (IATTC);

(6) Parties to the Agreement on the International Dolphin Conservation Program (AIDCP);

(7) North Pacific Fisheries Commission (NPFC);

(8) South Pacific Regional Fishery Management Organization (SPRFMO); and

(9) Any other regional fisheries management organization or arrangement to which the United States is a contracting party or member.

* * * * *

(c) In addition to the measures specified in paragraph (a) of this section, this subpart implements provisions of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (incorporated by reference, see § 300.9), as it pertains to foreign vessel(s) for which there are reasonable grounds to believe that the vessel(s) has engaged in IUU fishing activities or fishing-related activities in support of such fishing.

■ 21. In § 300.301:

■ a. Revise the introductory text;

■ b. Add, in alphabetical order, definitions for ''Fish'', ''Fishing'', and ''IUU fishing'';

■ c. Remove the definition of ''Listed IUU Vessel'' and add the definition of ''Listed IUU vessel'' in its place; and

■ d. Add, in alphabetical order, the definition of ''Vessel''.

The revision and additions read as follows:

§ 300.301 Definitions.

In addition to the definitions in § 300.2, the terms used in this subpart have the following meaning. If also defined under § 300.2, the terms as defined in this subpart supersede those as defined in § 300.2.

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

(5) Fishing does not mean any scientific research activity that is conducted by a scientific research vessel.

IUU fishing means any activity set out in paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (incorporated by reference, see § 300.9).

* * * * *

Listed IUU vessel means a vessel that is included in a list of vessels having engaged in IUU fishing or fishing-related activities in support of IUU fishing that has been adopted by a regional fisheries management organization (RFMO) of which the United States is a member, or a list adopted by an RFMO of which the United States is not a member if the Secretary determines that the criteria used by that organization to create the IUU fishing vessel list is comparable to criteria for identifying IUU fishing vessels and activities that have been adopted by RFMOs to which the United States is a member.

* * * * *

Vessel means any vessel, ship of another type, or boat used for, equipped to be used for, or intended to be used for, fishing or fishing-related activities, including support vessels and container vessels that are carrying fish that have not been previously landed.

■ 22. Revise § 300.302 to read as follows:

§ 300.302 Port entry by foreign vessels.

(a) The Secretary of Commerce may decide to deny entry to any port or place subject to the jurisdiction of the United States to a foreign vessel listed as an IUU vessel by any regional fishery management organization recognized by the United States.

(b) The Secretary may decide to deny entry to any port or place subject to the jurisdiction of the United States to a foreign vessel that the Secretary has reasonable grounds to believe has:

(1) Engaged in IUU fishing activities or fishing-related activities in support of such fishing; or

(2) Violated any provisions of the Port State Measures Agreement Act of 2015, Public Law 114–81, or amendments thereto.

(c) When determining whether a foreign vessel is or has been previously engaged in IUU fishing or fishing-related activities in support of such fishing, the Secretary will take into account, among other things, the IUU vessel lists and compliance determinations of any regional fishery management organization recognized by the United States.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a foreign vessel may be allowed entry for the purpose of inspection or facilitation of enforcement.

(e) The provisions of paragraphs (a) and (b) of this section to deny entry shall not apply in cases of *force majeure.*

■ 23. Revise § 300.303 to read as follows:

§ 300.303 Port access by foreign vessels.

If a foreign, listed IUU vessel, or a foreign vessel for which there are reasonable grounds to believe that the vessel has engaged in IUU fishing or fishing-related activities in support of such fishing, is allowed to enter a port or place subject to the jurisdiction of the United States, the Secretary may, in accordance with the Port State Measures Agreement Act (Pub. L. 114–81) and applicable provisions of conservation and management measures of a regional fishery management organization recognized by the United States, take one or more of the following actions:

(a) Inspect the vessel;

(b) Request that the Secretaries of the Departments in which the U.S. Coast Guard and U.S. Customs and Border Protection are operating deny the vessel access to port services, including but not limited to refueling, resupplying, or disembarking or embarking of crew; or

(c) Prohibit the vessel from engaging in commercial transactions including, but not limited to, entering, importing, exporting, transshipping, or landing product.

§ 300.304 [Redesignated as § 303.306]

■ 24. Redesignate § 300.304 as § 303.306.

■ 25. Add a new § 300.304 to read as follows:

§ 300.304 Notice of Arrival requirements.

(a) Ports to which foreign vessels may request entry pursuant to the on Port State Measures Agreement (incorporated by reference, see § 300.9), include those Customs Ports of Entry listed in 19 CFR 101.3 as well as those specified under any existing international fisheries agreement.

(b) In addition to complying with the Electronic Notice of Arrival/Departure (eNOAD) provisions under 33 CFR 160.206(a), the vessel owner, agent, master, operator, or person in charge of a vessel requesting access to the ports of entry referenced in paragraph (a) of this section must supply the information items listed in Annex A of the Port State Measures Agreement to the National Vessel Movement Center (NVMC) through the eNOAD system.

(c) Vessel owners and operators should protect any personal or otherwise confidential information they gather in preparing notices for transmittal to the NVMC to prevent unintended disclosure of that information.

■ 26. Add § 300.305 to read as follows:

§ 300.305 Determinations and notifications.

For a foreign vessel that is requesting entry to, or that has already entered, a port authorized under § 300.304(a), the Secretary shall provide the following notifications to the vessel master and/or ship's agent and the flag nation of the vessel, and may also provide such notifications as may be appropriate to the nation of which the vessel's master is a national; relevant coastal nations; RFMOs; the Food and Agriculture Organization of the United Nations; and other relevant international organizations:

(a) Notification of the denial or authorization of port entry or use of port services or of the withdrawal of the denial of port services;

(b) The taking of enforcement action under this title or other applicable law; or

(c) The results of any inspection conducted pursuant to this subpart.

■ 27. In newly redesignated § 300.306, revise paragraph (d) and add paragraph (e) to read as follows:

§ 300.306 Prohibitions.

* * * * *

(d) The prohibitions listed in paragraph (c) of this section shall not apply when the Assistant Administrator has authorized a listed IUU vessel to access such port services or engage in such commercial transactions, in accordance with applicable provisions of RFMO conservation and management measures, including in cases of *force majeure* and where the Assistant Administrator has determined that such services are essential to the safety, health, and welfare of the crew.

(e) It is unlawful for any vessel of the United States, and for the owner or operator of any such vessel, to refuse to cooperate with, or provide requested information to, a port nation in accordance with the Port State Measures Agreement (incorporated by reference, see § 300.9) or with port inspection or

port State measures adopted by an RFMO recognized by the United States. For the purposes of this paragraph (e), ''vessel of the United States'' has the same meaning as in 16 U.S.C. 1802(48).

Subpart R–High Seas Fisheries

■ 28. The authority for part 300, subpart R, continues to read as follows:

Authority: 16 U.S.C. 5501 *et seq.*

■ 29. In § 300.333, revise paragraph (d)(4) to read as follows:

§ 300.333 Vessel permits.

* * * * *

(d) * * *

(4) Except as otherwise provided, permits issued under this subpart are valid from the date of issuance until the date of expiration as indicated on the permit. For a permit to remain valid to its expiration date, the vessel's U.S. Coast Guard documentation or State registration must be kept current. A permit issued under this subpart is void if the vessel owner or the name of the vessel changes; if any other permit or authorization required for the vessel to fish expires, or is revoked or suspended; or, in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

* * * * *

■ 30. In § 300.334, revise paragraphs (c) and (f) to read as follows:

§ 300.334 Fisheries authorized on the high seas.

* * * * *

(c) *Change in authorized fisheries.* If a high seas fishing permit holder elects to change the authorized fisheries specified on the permit, he or she shall notify the Regional Administrator or Office Director who issued the permit of the change(s) and shall obtain the underlying permits for the authorized fisheries prior to engaging in the fishery on the high seas. Per the process under § 300.333(d), the Regional Administrator or Office Director will then issue a revised high seas fishing permit which will expire on the date as indicated on the original permit.

* * * * *

(f) *Deletion of a fishery from the authorized fisheries list.* NMFS will delete (*i.e.,* de-authorize) a fishery under paragraph (d) or (e) of this section through publication of a final rule. NMFS will also provide notice to affected permit holders by email and by Registered Mail at the addresses provided to NMFS in the high seas permit application. When a fishery is deleted from the list, any activities on the high seas related to that fishery are prohibited as of the effective date of the final rule. In addition, the high seas permit will be voided unless the permit holder notifies NMFS that he or she elects to change to another authorized high seas fishery or continue in any other authorized fisheries noted on the permit. Once the applicant so notifies NMFS and, if necessary, secures any underlying permits necessary for participation in another authorized high seas fishery, the Regional Administrator or Office Director will then issue a revised high seas fishing permit per the process under § 300.333(d). The revised permit will expire on the date as indicated on the original permit.

■ 31. Revise § 300.339 to read as follows:

§ 300.339 Transshipment on the high seas.

In addition to any other applicable restrictions on transshipment, including those under this part and part 635 of this title, the following requirements apply to transshipments, when authorized, taking place on the high seas:

(a) The owner or operator of a U.S. vessel receiving or offloading fish on the high seas shall provide a notice by fax or email to the Regional Administrator or the Office Director at least 36 hours prior to any intended transshipment on the high seas with the following information: the vessels offloading and receiving the transshipment (names, official numbers, and vessel types); the location (latitude and longitude to the nearest tenth of a degree) of transshipment; date and time that transshipment is expected to occur; and species, processed state, and quantities (in metric tons) expected to be transshipped. If another requirement for prior notice applies, the more restrictive requirement (*i.e.,* a requirement for greater advance notice and/or more specific information regarding vessels, location, etc.) must be followed.

(b) U.S. high seas fishing vessels shall report transshipments on the high seas to the Regional Administrator or Office Director within 15 calendar days after the vessel first enters into port, using the form obtained from the Regional Administrator or Office Director. If there are applicable transshipment reporting requirements in other parts of this title, the more restrictive requirement (*e.g.,* a reporting requirement due in fewer than 15 calendar days) must be followed.

■ 32. Revise § 300.341 to read as follows:

§ 300.341 Reporting.

(a) The operator of any vessel permitted under this subpart must accurately maintain on board the vessel a complete record of fishing activities, such as catch, effort, and other data and report high seas catch and effort information to NMFS in a manner consistent with the reporting requirements of the authorized fishery(ies) noted on the high seas permit. Reports must include:

(1) Identification information for vessel and operator;

(2) Operator signature;

(3) Crew size;

(4) Whether an observer is aboard;

(5) Target species;

(6) Gear used;

(7) Dates, times, locations, and conditions under which fishing was conducted;

(8) Species and amounts of fish retained and discarded; and

(9) Details of any interactions with sea turtles, marine mammals, or birds.

(b) The vessel owner and operator are responsible for obtaining and completing the reporting forms from the Regional Administrator or Office Director who issued the permit holder's high seas fishing permit. The completed forms must be submitted to the same Regional Administrator or Office Director or, if directed by NMFS, to a Science Center.

(c) Reports must be submitted within the deadline provided for in the regulations governing the authorized fishery, or within 15 days following the end of a fishing trip, whichever is sooner. Contact information for the Regional Administrators and Science Center Directors can be found on the NMFS website.

[FR Doc. 2022–14034 Filed 7–7–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 130
Friday, July 8, 2022

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

Foreign Agricultural Service

Commodity Credit Corporation

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) and Commodity Credit Corporation's (CCC) intention to request an extension from the Office of Management and Budget (OMB) for a currently approved information collection process in support of the Foreign Market Development (FMD) Program and the Market Access Program (MAP).

DATES: Comments on this notice must be received by September 6, 2022 to be assured of consideration.

ADDRESSES: You may send comments, identified by OMB Control Number 0551–0026, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* This portal enables respondents to enter short comments or attach a file containing lengthier comments.
- *Email: PODadmin@usda.gov.* Include OMB Control Number 0551–0026 in the subject line of the message.
- *Mail, Courier, or Hand Delivery*: Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW, Room 6512, Washington, DC 20250.

Instructions: All submissions received must include the agency names and OMB Control Number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Curt Alt, 202 690–4784, *Podadmin@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Market Development Program and Market Access Program.

OMB Number: 0551–0026.

Expiration Date of Approval: September 30, 2022.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the FMD and MAP programs is to encourage and aid in the creation, maintenance, and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. The programs are a cooperative effort between CCC and eligible trade organizations. Currently, there are approximately 67 organizations participating directly in the programs with activities in more than 100 countries.

Prior to initiating program activities, each FMD or MAP participant must submit a detailed application to FAS which includes an assessment of overseas market potential; market or country strategies, constraints, goals, and benchmarks; proposed market development activities; estimated budgets; and performance measurements. Each FMD or MAP participant is also responsible for submitting: (1) reimbursement claims for approved costs incurred in carrying out approved activities, (2) an end-of-year contribution report, (3) travel reports, and (4) progress reports/evaluation studies. FMD or MAP participants must maintain records on all information submitted to FAS. The information collected is used by FAS to manage, plan, evaluate, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is currently estimated to average 21 hours per response.

Type of Respondents: Non-profit agricultural trade organizations, non-profit state regional trade groups, agricultural cooperatives, and state agencies.

Estimated Number of Respondents: 67.

Estimated Number of Responses per Respondent: 64.

Estimated Total Annual Burden on Respondents: 89,324 hours.

Copies of this information collection can be obtained from Dacia Rogers, the Agency Information Collection Coordinator, at *Dacia.Rogers@usda.gov.*

Request for Comments: Send comments regarding (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 collection of information including validity of the methodology and assumption 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 automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be available without change, including any personal information provided, for inspection online at *http://www.regulations.gov* and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Comments will be summarized and included in the submission for Office of Management and Budget approval.

Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact *FAS-ReasonableAccommodation@usda.gov* or Cynthia Stewart (RA Coordinator), *cynthia.stewart@usda.gov.*

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

Daniel Whitley,

Administrator, Foreign Agricultural Service.

[FR Doc. 2022–14575 Filed 7–7–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Information (RFI) Inviting Input About New Online Accounting, Filing, and Reporting Database for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Request for information.

SUMMARY: The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture is building a new online system to manage the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program (hereinafter ''the Sugar Re-Export Programs'') to replace the existing Sugars Users Group Accounting and Report System (SUGARS), launched in 2004. This request for information (RFI) seeks input regarding the new online system from all stakeholders involved directly or indirectly in the Sugar Re-Export Programs. This stakeholder input will inform FAS' efforts in developing a new, more efficient system to provide quality service to program users.

DATES: Comments on this notice must be received by August 8, 2022 to be assured of consideration.

ADDRESSES: USDA invites submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email:* FAS will accept electronic submissions emailed to *FAS.Sugars@usda.gov.* The email should contain the subject line, ''Response to RFI: New Online Accounting, Filing, and Reporting Database for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program.''

Instructions: Response to this RFI is voluntary. All comments submitted in response to this RFI will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Janis, International Economist, U.S. Department of Agriculture, Foreign Agricultural Service, telephone 202–720–2194, email *FAS.Sugars@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FAS administers and manages three inter-related programs in the sugar market: the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program (*see* 7 CFR part 1530). FAS issues licenses to qualified sugar refiners, manufacturers of sugar-containing products (SCP), and producers of polyhydric alcohol not for human consumption which apply for these programs.

The Refined Sugar Re-Export Program provides a raw cane sugar refiner a license that authorizes three types of activities. First, a refiner with a refined sugar re-export license (''licensed refiner'') may import low-duty raw cane sugar, refine it, and re-export it to the world market. Second, the licensed refiner may export refined sugar produced with domestic or imported raw cane or beet sugar and later import low-duty raw cane sugar for any use. Third, the licensed refiner may import low-duty raw cane sugar for refining for any use and transfer refined sugar produced with domestic or imported raw cane or beet sugar to licensed U.S. manufacturers of sugar-containing products and/or licensed producers of polyhydric alcohol for non-food purposes.

U.S. manufacturers in the Sugar-Containing Products Re-Export Program obtain a license allowing them to buy world-priced refined cane or beet sugar from any licensed domestic cane or beet refiner for use in exported products.

U.S. producers of polyhydric alcohols in the Polyhydric Alcohol Program obtain a license allowing them to buy world-priced refined cane or beet sugar from any licensed domestic cane or beet refiner for use in polyhydric alcohols, except polyhydric alcohols incorporated as a substitute for sugar in human food consumption.

An in-house FAS online system called SUGARS currently serves to organize the many program transactions among the three sets of licensees. The interactions of exports, imports, transfers, and use resemble the workings of an online checking account. Documents must substantiate each stage of these program transactions.

Refiners manage their licenses using exports, imports, and transfers. Exports pertain to refined sugar shipped outside the United States. Imports reference raw cane sugar entering the United States. Transfers mean refined sugar sold to licensed SCP manufacturers and producers of polyhydric alcohol not for human consumption. Refiners increase their balances in tonnage by exporting refined sugar and selling refined sugar to licensed makers of SCPs and producers of polyhydric alcohol not for human consumption. Both of these transactions with SCP and polyhydric alcohol manufacturers qualify as transfers for the parties involved.

SCP licensees accumulate quantities in their accounts by claiming exports of their goods. Specifically, these amounts include only the net weight of sugar in the exported products. From their balances, SCP licensees may purchase world-priced refined sugar from licensed refiners. These transfers may not exceed the balances of SCP license holders.

Companies with polyhydric alcohol licenses report their use of refined sugar to produce polyhydric alcohol not for human consumption. They build their balances and may buy world-priced sugar from licensed refiners. These transfers may not exceed the balances of companies with polyhydric alcohol licenses.

A new system is being constructed to replace the existing SUGARS, which dates to 2004. The new system will be highly automated, better protected, and more streamlined. FAS envisions a more thoroughly encrypted seamless approach for transmitting and verifying data that operates like an online checking account.

Request for Information

A new system must accomplish the following objectives:

1. Help to enforce the terms and conditions of issued licenses under 7 CFR part 1530.
2. Be intuitive and user-friendly for licensees.
3. Provide licensees maximum access to their proprietary data.
4. Integrate fully the component parts of a license.
5. Allow for publication of aggregated, non-proprietary data.
6. Permit FAS to access and compile data needed for resolving issues.
7. Serve as a portal for interested parties to apply for licenses.

As the system remains in development, this RFI is a general solicitation for public input from all stakeholders involved directly or indirectly in the Sugar Re-export Programs. This stakeholder input will inform efforts to build a system to operate more efficiently and provide quality service to program users.

Specific questions to which responses are requested are listed below. Respondents may provide non-

confidential input concerning any or all of these questions. In addition, this representative list does not cover all aspects of a new system to replace SUGARS. Therefore, we welcome other input on topics not covered in these questions. In particular, please provide any additional recommendations related to achieving the seven objectives noted above.

1. Should the new system continue the current SUGARS structure resembling an online checking account? For example: Exports for SCP licensees and use for polyhydric alcohol licensees count as deposits. Meanwhile, purchases of program sugar from licensed refiners qualify as withdrawals. In turn, refiners rely on their balances of exports, imports, and transfers to enter low-duty imports of raw cane sugar.

2. SUGARS currently requires licensees to use a spreadsheet tool to upload data to their accounts. After receiving and reviewing the uploaded information, FAS transmits by email to licensees their balance information. FAS envisions a new, more thoroughly encrypted seamless approach for communicating this data, like an online checking account. What features are needed in a new system to allow licensees and FAS to more easily and more securely transmit, verify and access data?

3. The new system could be created to permit each licensee complete access to data and license documents provided by the licensee to FAS without having to obtain permission from FAS, such as the original application package. These documents could be stored for a number of years in the licensee's account in the new system. Please share your perspectives on this matter.

4. In what ways could or should the new system allow or require licensees to upload supporting documents for each program transaction?

5. Should the license application process be incorporated into the new system?

6. What other features, if any, should the new system include to improve program operations?

Any information obtained from this RFI is intended to be used by the Government on a non-attribution basis for planning and developing a successor system to SUGARS. This RFI does not constitute a formal solicitation for proposals or abstracts. Your response to this notice will be treated as information only. FAS will not reimburse any costs incurred in responding to this RFI. Respondents are advised that FAS is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted under this RFI. Responses to this RFI do not bind FAS to any further actions related to this topic. Responses will become government property.

No confidential information, such as confidential business information or proprietary information, should be submitted in comments for this RFI. Comments received in response to this notice will be a matter of public record and will be made available for public inspection and posted without change and as received, including any business information or personal information provided in the comments, such as names and addresses. Please do not include anything in your comment submission that you do not wish to share with the general public.

Aileen Mannix,

Acting Licensing Authority, Foreign Agricultural Service.

[FR Doc. 2022–14556 Filed 7–7–22; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for the Carson National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of approval of the Revised Land Management Plan for the Carson National Forest.

SUMMARY: James Duran, the Forest Supervisor for the Carson National Forest, Southwestern Region, signed the final record of decision (ROD) for the Revised Land Management Plan (LMP) for the Carson National Forest Land. The final ROD documents the rationale for approving the LMP and is consistent with the Reviewing Officer's responses to objections and instructions.

DATES: The revised LMP for the Carson National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register** (36 CFR 219.17(a)(1)).

ADDRESSES: To view the signed final ROD, final environmental impact statement (FEIS), the revised LMP, and other related documents, please visit the Carson National Forest website at: *https://www.fs.usda.gov/detail/carson/landmanagement/planning/?cid=stelprdb5443166.*

A legal notice of approval is also being published in the newspaper of record, *The Taos News.* A copy of this legal notice will be posted on the Carson National Forest's website shown above.

FOR FURTHER INFORMATION CONTACT: Peter Rich, Forest Planner, Carson National Forest, at *peter.rich@usda.gov* or 575–758–6277.

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays. Written requests for information may be sent to Carson National Forest, Attn: Carson National Forest Plan Revision, 208 Cruz Alta Rd., Taos, NM 87571.

SUPPLEMENTARY INFORMATION: The Carson National Forest covers six ranger districts across nearly 1.5 million acres of National Forest System land in the northern New Mexico counties of Taos, Rio Arriba, Colfax, and Mora. The LMP was developed pursuant to the 2012 Forest Service Planning Rule (36 CFR 219) and will replace the 1986 Land Management Plan. The LMP describes desired conditions, objectives, standards, guidelines, and land suitability for project and activity decision-making and will guide all resource management activities on the Forest. The Carson National Forest plays an important role supporting and partnering with communities in northern New Mexico and throughout the southwestern United States by providing economic benefits including fuelwood gathering, livestock grazing, and abundant recreational opportunities. The development of the LMP was shaped by the best available scientific information, current laws, and public input.

The Carson National Forest initiated plan revision in 2014 and engaged the public frequently throughout the process. This engagement effort has included conventional public meetings, information sharing via social media, and collaborative work sessions with cooperating agencies. The Forest invited State, local and Tribal governments, and other federal agencies from around the region to participate in the process to revise the LMP. The Carson National Forest engaged in government-to-government consultation with 16 tribes during LMP revision, ensuring tribal-related plan direction accurately reflects the Carson National Forest's trust responsibilities and government-to-government relationship with tribes. A cooperating agency working group met regularly throughout the plan revision effort. During the 90-day comment period in 2019 for the draft LMP and draft EIS, the Carson National Forest received 5,740 letters, which helped refine the preferred alternative and

augment plan content based on response to comments.

A draft ROD, LMP, and FEIS were released in September 2021, initiating a 60-day objection filing period that closed November 2, 2021. The Carson National Forest received 16 eligible objections. Through a comprehensive review of each objection, a variety of issues were identified. Following the objection review, the Reviewing Officer held objection resolution meetings with objectors and interested persons. Based on these meetings, the Reviewing Officer issued a written response on May 24, 2022. The instructions from the Reviewing Officer were addressed in the final ROD, LMP, and FEIS.

Responsible Official

The Responsible Official for approving the LMP is James Duran, Forest Supervisor, Carson National Forest. The Responsible Official approving the list of species of conservation concern is Michiko Martin, Regional Forester, Southwestern Region.

Dated: June 30, 2022.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–14535 Filed 7–7–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tonto National Forest; Arizona; Revision of the Land Management Plan for the Tonto National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice to reinitiate opportunity to object to the revised land management plan and the Regional Forester's list of species of conservation concern for the Tonto National Forest.

SUMMARY: The Forest Service is revising the Tonto National Forest's Land Management Plan and has prepared a final environmental impact statement (FEIS) for its revised Land Management Plan (LMP) and a draft record of decision (ROD). This notice is to inform the public that the **Federal Register** notice and legal notice posted on March 25, 2022, had an incorrect website to submit objections electronically through the comment analysis and response application (CARA). The correct website to submit an objection is listed below. This notice reinitiates the 60-day period where individuals or entities with specific concerns about the Tonto National Forest's revised LMP, draft ROD, and the associated FEIS may file objections for Forest Service review prior to plan approval. This is also an opportunity to object to the Regional Forester's list of species of conservation concern (SCC) for the Tonto National Forest. Those that submitted objections during the original objection period must resubmit their objections to be considered.

DATES: The publication date of the legal notice in the Tonto National Forest's newspaper of record, *Arizona Capitol Times,* 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 *https://www.fs.usda.gov/project/?project=51592.*

ADDRESSES: The Tonto National Forest's revised LMP, FEIS, draft ROD, SCC list, and other supporting information is available for review at *https://www.fs.usda.gov/project/?project=51592.* Hard copies of the Tonto National Forest's revised LMP, FEIS, draft ROD, and Regional Forester's list of SCC can be obtained at the Tonto National Forest Supervisor's Office, 2324 E McDowell Rd., Phoenix, AZ 85006, Phone: (602) 225–5200.

Objections must be submitted to the Objection Reviewing Officer by one of the following methods:

- *Electronically to the Objection Reviewing Officer via the CARA objection web form: https://cara.fs2c.usda.gov/Public//CommentInput?Project=51592.* Electronic submissions must be submitted in a format (Word, PDF, or Rich Text) that is readable and searchable with optical character recognition software.
- *Via regular mail to the following address:* USDA-Forest Service Southwest Region, ATTN: Objection Reviewing Officer, 333 Broadway Blvd. SE, Albuquerque, NM 87102.
- *By Fax:* 505–842–3173. Faxes must be addressed to ''Objection Reviewing Officer.'' The fax coversheet should include a subject line with ''Tonto National Forest Plan Revision Objection'' or ''Tonto Species of Conservation Concern'' and specify the number of pages being submitted.
- To submit an objection via hand delivery, please contact your local district office.

FOR FURTHER INFORMATION CONTACT: Forest Planner, Kenna Belsky, at *kenna.belsky@usda.gov* or (602) 225–5200.

Individuals who use telecommunication devices for the deaf or hard of hearing (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The decision to approve the revised Land Management Plan and the Regional Forester's list of species of conservation concern for the Tonto National Forest will be subject to the objection process identified in 36 CFR part 219 Subpart B (219.50 to 219.62). Per 36 CFR 219.53, only individuals and entities who have submitted substantive formal comments related to a plan revision during the opportunities for public comment attributed to the objector may file an objection unless the objection concerns an issue that arose after the opportunities for formal comment.

How To File an Objection

Objections must be submitted to the Objection 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, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the draft plan decision may be improved. If the objector believes that the plan, plan amendment, or 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 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 proposed plan, plan amendment, or plan revision comment period. It is the responsibility of the objector to ensure that the Objection Reviewing Officer receives the objection in a timely manner. The regulations generally prohibit extending the length of the objection filing period (36 CFR 219.56(d)). However, when the time period expires on a Saturday, Sunday, or a Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as email or facsimile machine) (36 CFR 219.56).

Responsible Official

The responsible official who will sign the draft ROD for the revised LMP and associated FEIS for the Tonto National Forest is Neil Bosworth, Forest Supervisor, Tonto National Forest, Tonto National Forest Supervisor's Office, phone: (602) 225–5201. The responsible official for the list of SCC is Michiko Martin, Regional Forester, USDA Forest Service Southwestern Region, 333 Broadway Blvd. SE, Albuquerque, NM 87102.

The Regional Forester is the reviewing officer for the revised LMP, draft ROD, and FEIS since the Forest Supervisor is the responsible official (36 CFR 219.56(e)). The decision to approve the SCC list will be subject to a separate objection process. The Chief of the Forest Service is the reviewing officer for SCC identification since the Regional Forester is the responsible official (36 CFR 219.56(e)(2)).

This authority may be delegated to an individual Deputy Chief or Associate Deputy Chief for the National Forest System, consistent with delegations of authority provided in the Forest Service Manual at sections 1235.4 and 1235.5.

Dated: July 4, 2022.

Deborah Hollen,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2022–14534 Filed 7–7–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket Number: RBS–22–BUSINESS–0013]

Notice of Request for Revision of a Currently Approved Information Collection; Comments Requested

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service, an agency of the United States Department of Agriculture's (USDA), invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by September 6, 2022.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 690–2682. Email *lynn.gilbert@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 the Agency is submitting to OMB for revision.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms and information technology. Comments may be sent as follows:

Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No.RBS–22–BUSINESS–0013. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. 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 ''FAQ'' link at the bottom. Comments on this information collection must be received by September 6, 2022.

Title: 7 CFR PART 4280–E, Rural Business Development Grants.

OMB Control Number: 0570–0070.

Type of Request: Revision of currently approved package.

Abstract: The Agricultural Act of 2014, Public Law 113–79 (2014 Farm Bill) (7 U.S.C. 1932(c)), authorizes the Rural Business Development Grant (RBDG) program to facilitate the development of small and emerging private businesses, industries, and related employment as well as identifying and analyzing business opportunities, establishing business support centers, and providing training, technical assistance, and planning for improving the economy in rural communities. The regulations contain requirements that involve information collection activities, including organizational documents, recordkeeping, scope of work, budgets, project plan, appraisal reports, audit reports, selection priorities narrative, appealing denial of grant application, consultations, small business plan evidence, experience documentation, financial information, funding source documentation, performance reports and financial assistance plans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.65 hours per responses.

Estimated Number of Respondents: 920.

Estimated Number of Total Annual Responses: 12,847.

Estimated Number of Total Annual Responses per Respondents: 13.96.

Estimated Total Annual Burden on Respondents: 59,823.

Copies of this information collection can be obtained from Lynn Gilbert, Rural Development Innovation Center-Regulatory Team, at (202) 690–2682. Email: *lynn.gilbert@usda.gov.*

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Karama Neal,

Administrator, Rural Business Cooperative Service.

[FR Doc. 2022–14519 Filed 7–7–22; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the American Samoa Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the American Samoa Advisory Committee (Committee) will hold a series of meetings via Webex platform on the following dates and times listed below. These meetings are for the purpose of discussing the Committee's current project topic.

DATES: These meetings will be held on:

- Thursday, September 15, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)
- Thursday, October 20, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)
- Thursday, November 17, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)
- Thursday, December 15, 2022, from 12:00 p.m.–1:00 p.m. Samoa Standard Time (SST)

ADDRESSES:

Public Webex Registration Link:

- Thursday, September 15th: *https://tinyurl.com/4256r3u3*
- Thursday, October 20th: *https://tinyurl.com/awnfch9w*
- Thursday, November 17th: *https://tinyurl.com/2nza6f43*
- Thursday, December 15th: *https://tinyurl.com/2u4mv67p*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov* or by phone at (202) 701–1376. 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.

SUPPLEMENTARY INFORMATION: 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 emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

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/apex/FACAPublicCommittee?id=a10t000000BD8SMAA1.*

Please click on the ''Meeting Details'' and ''Documents'' links. 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 & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14527 Filed 7–7–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Kansas 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 Kansas Advisory Committee (Committee) will hold a meeting via web conference on, August 11, 2022 at 11:00 a.m.–1:00 p.m. Central Time. The purpose of the meetings is for the committee to discuss potential topics and panelists for the upcoming briefing(s).

DATES: The meeting will be held on Thursday, August 11, 2022.

ADDRESSES:

Join from the meeting link: https://civilrights.webex.com/civilrights/j.php?MTID=m37bb9e8a0a385d7d9d97ae15f0aefe43 or

Join by phone: 800–360–9505 USA Toll Free, Access code: 2760 059 3655.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

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. 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. Individuals who are deaf, deafblind and hard of hearing 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 submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@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 via *www.facadatabase.gov* under the Commission on Civil Rights, Kansas 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 & Roll Call
II. Chair's Comments
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: July 3, 2022.

David Mussatt,

Supervisory Chief, Regional Program Unit.

[FR Doc. 2022–14528 Filed 7–7–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, July 20, 2022, at 1:00 p.m. (AT). The purpose is for project planning.

DATES: July 20, 2022, Wednesday, at 1:00 p.m. (AT):

- To join by web conference, use Webex link: *https://tinyurl.com/ytdrwpbx;* password, if needed: USCCR–PR
- To join by phone only, dial: 1–551–285–1373; Meeting ID: 161 008 3385#

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

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 respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, July 20, 2022; 1:00 p.m. (AT)

1. Welcome & Roll Call
2. Committee Discussion and Project Planning
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: July 3, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–14526 Filed 7–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–093]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and/or exporters did not sell subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) December 13, 2019, through November 30, 2020.

DATES: Applicable July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Konrad Ptaszynski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6187.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2022, Commerce published the *Preliminary Results* of this administrative review of the antidumping duty order on kegs from the People's Republic of China (China) [1] in the **Federal Register**.[2] On April 18, 2022, we received case briefs from Guangzhou Jingye Machinery Co., Ltd. (Jingye),[3] and the American Keg Company (the Petitioner).[4] On April 28, 2022, we received a rebuttal briefs from the Petitioner, Jingye and Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix).[5] Commerce addressed comments from the parties in the Issues and Decision Memorandum accompanying this notice.[6] 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 this *Order* are refillable stainless steel kegs. A full description of the scope of the *Order* is provided in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in the administrative review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is included as Appendix I 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 is available to parties at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary*

[1] *See Refillable Stainless Steel Kegs from the Federal Republic of Germany and the People's Republic of China: Antidumping Duty Orders,* 84 FR 68405 (December 16, 2019) (*Order*).

[2] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 87 FR 425 (January 5, 2022) (*Preliminary Results*).

[3] *See* Jingye's Letter, ''Jingye Letter in Lieu of Case Brief,'' dated April 18, 2022.

[4] *See* Petitioner's Letter, ''Case Brief,'' dated April 18, 2022.

[5] *See* Petitioner's Letter, ''Case Brief,'' dated April 28, 2022; *see also* Jingye's Letter, ''Jingye Rebuttal Brief,'' dated April 28, 2022.; and Ulix's Letter, ''Ulix Rebuttal Brief,'' dated April 28, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of Refillable Stainless Steel Kegs from the People's Republic of China,'' dated concurrently with, and hereby adapted by, this notice (Issues and Decision Memorandum).

Results, we made one change to the *Preliminary Results* of this administrative review regarding Jingye. For the final results of review, we find that Jingye had a sale during the POR and is entitled to a separate rate. We made no changes to the margin calculation for Ulix.

Rate for Non-Examined Separate Rate Respondent

The statute and Commerce's regulations do not address what rate to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding rates that are zero, de minimis, or based entirely on facts available. When the rates for individually examined companies are all zero, de minimis, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

We have calculated a 0.00 percent dumping margin for the mandatory respondent, Ulix. We assigned the non-individually examined separate rate respondent a dumping margin equal to the dumping margin of Ulix, consistent with the guidance in section 735(c)(5)(B) of the Act.

Final Results of Review

Commerce determines that the following weighted-average dumping margin exists for the administrative review covering the period December 13, 2019, through November 30, 2020:

Exporters	Weighted-average dumping margin (percent)
Guangzhou Ulix Industrial & Trading Co., Ltd	0.00
Guangzhou Jingye Machinery Co., Ltd	0.00

Disclosure

Normally, Commerce discloses the calculations used in its analysis to parties in a review within five days of the date of publication of the notice of final results of the review, in accordance with 19 CFR 351.224(b). However, in this case, given we made no changes to the calculations addressed in the *Preliminary Results,* there are no additional calculations on the record to disclose to the interested parties.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Because the weighted-average dumping margin for Ulix and the respondent that was not selected for individual examination in this administrative review but qualified for a separate rate is zero, Jingye, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[7] For the companies listed in Appendix II, identified as part of the China-wide entity, we will instruct CBP to apply an antidumping duty assessment rate of 77.13 percent (the rate applicable to the China-wide entity) to all entries of subject merchandise during the POR exported by those companies.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese or non-Chinese 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 existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 77.13 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These 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) 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 also serves as a final 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). 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 these final results of review in accordance with sections 751(a)(l), 751(a)(2)(B), and 777(i) of the Act.

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

Appendix II

Companies that are subject to this administrative review that are considered to be part of the China-wide entity are:

1. Equipmentimes (Dalian) E-Commerce Co., Ltd.
2. Jinan HaoLu Machinery Equipment Co., Ltd.
3. NDL Keg Qingdao Inc.
4. Ningbo BestFriends Beverage Containers Industry Co., Ltd.
5. Ningbo Chance International Trade Co., Ltd.
6. Ningbo Direct Import & Export Co., Ltd.
7. Ningbo Haishu Direct Import and Export Trade Co., Ltd.
8. Ningbo Haishu Xiangsheng Metal Factory
9. Ningbo Hefeng Container Manufacturer Co., Ltd.
10. Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.
11. Ningbo HGM Food Machinery Co., Ltd.
12. Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.
13. Ningbo Kegco International Trade Co., Ltd.
14. Ningbo Minke Import & Export Co., Ltd.
15. Ningbo Sanfino Import & Export Co., Ltd.
16. Ningbo Shimaotong International Co., Ltd.
17. Ningbo Sunburst International Trading Co., Ltd.
18. Orient Equipment (Taizhou) Co., Ltd.
19. Penglai Jinfu Stainless Steel Products
20. Qingdao Henka Precision Technology Co., Ltd
21. Rain Star International Trading Dalian Co., Ltd.
22. Shandong Tiantai Beer Equipment Co., Ltd.
23. Shandong Tonsen Equipment Co., Ltd.
24. Sino Dragon Group, Ltd.
25. Wenzhou Deli Machinery Equipment Co.
26. Wuxi Taihu Lamps and Lanterns Co., Ltd.
27. Yantai Toptech Ltd.
28. Yantai Trano New Material Co., Ltd.

[FR Doc. 2022–14566 Filed 7–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–889]

Certain Quartz Surface Products From India: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2019–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Pokarna Engineered Stone Limited (PESL) did not make sales of subject merchandise at less than normal value during the period of review (POR) December 13, 2019, through May 31, 2021. Additionally, Commerce has preliminarily assigned Antique Group an antidumping duty margin based on the application of adverse facts available. Finally, we are also rescinding this review with respect to two companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane or Charles Doss, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5449 or (202) 482–4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2020, Commerce published the antidumping duty order on certain quartz surface products (QSP) from India in the **Federal Register**.[1] On August 3, 2021, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order*.[2] On February 4, 2022, we extended the deadline for the preliminary results to June 30, 2022.[3]

Commerce initiated this administrative review covering 57 individually named companies.[4] On September 28, 2021, we limited the number of respondents selected for individual examination in this administrative review to PESL and Antique Group.[5] We did not select the remaining companies for individual examination, and these companies remain subject to this administrative review.

For a complete description of the events that followed the initiation of this administrative review, see the Preliminary Decision Memorandum.[6] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are QSP from India. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. On October 29, 2021, and November 1, 2021, M S International, Inc. (MSI) and certain exporters and/or producers of QSP from India (Indian Applicants) timely withdrew their respective requests for an administrative review of Argil Ceramics. On October 29, 2021, MSI, Arizona Tile, LLC, and Indian Applicants timely withdrew their respective requests for an administrative review of Global Stones Private Limited. No other party requested a review of these companies. Accordingly, we are rescinding this review, in part, with respect to Argil Ceramics and Global Stones Private Limited, pursuant to 19 CFR 351.213(d)(1) and (4).

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price was calculated in

[1] *See Certain Quartz Surface Products from India and Turkey: Antidumping Duty Orders,* 85 FR 37422 (June 22, 2020) (*Order*).

[2] *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 86 FR 41821 (August 3, 2021) (*Initiation Notice*).

[3] *See* Memorandum, ''Extension of Time Limit for the Preliminary Results of the 2019–2021 Antidumping Duty Administrative Review,'' dated February 4, 2022.

[4] *See Initiation Notice.*

[5] *See* Memorandum, ''Respondent Selection,'' dated September 28, 2021. In the underlying antidumping investigation, Commerce found Antique Marbonite Private Limited, India (Antique Marbonite) and its affiliates Shivam Enterprises (Shivam) and Prism Johnson Limited (Prism Johnson) to be a single entity (collectively, Antique Group). *See also Certain Quartz Surface Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 85 FR 25391 (May 1, 2020). Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity for the purposes of this administrative review, in accordance with section 771(33)(E) and (F) of the Act, and 19 CFR 351.401(f).

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of the Administrative Review of the Antidumping Duty Order on Certain Quartz Surface Products from India; 2019–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Application of Facts Available with Adverse Inferences

Pursuant to section 776(a) of the Act, Commerce is preliminarily relying upon facts otherwise available to determine a weighted-average dumping margin for Antique Group in this review. Commerce preliminarily finds that Antique Group withheld information requested by Commerce, warranting a determination on the basis of the facts available under section 776(a) of the Act. Further, Commerce preliminarily determines that Antique Group failed to cooperate to the best of its ability, and thus, Commerce is applying facts available with adverse inferences (AFA) to Antique Group, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our conclusions regarding the application of AFA, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies

The statute and Commerce's regulations do not identify the dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.'' We have preliminarily calculated a zero percent dumping margin for PESL, and we have preliminarily assigned Antique Group a dumping margin of 323.12 percent based entirely on facts available with an adverse inference. Therefore, in accordance with section 735(c)(5)(B) of the Act, we are preliminarily applying to the 51 companies not selected for individual examination a rate of 161.56, which is an average of the zero percent rate calculated for PESL and the 323.12 percent AFA rate assigned to Antique Group. These 51 exporters are listed in Appendix II. For additional discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

Commerce preliminarily determines the following weighted-average dumping margins exist for the POR:

Producer/exporter	Weighted-average dumping margin (percent)
Pokarna Engineered Stone Limited	0.00
Antique Marbonite Private Limited, India/Shivam Enterprises (Shivam)/Prism Johnson Limited (Prism Johnson)	323.12
Non-Selected Companies	161.56

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[7] Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[9] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS [11] and must be served on interested parties.[12] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[14] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, no later than 120 days after the date of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

If the weighted-average dumping margin for PESL is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.303.

[12] *See* 19 CFR 351.303(f).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* 19 CFR 351.310(c).

importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [15] For entries of subject merchandise during the POR produced by PESL for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company (or companies) involved in the transaction.[16]

Should we continue to apply facts available with an adverse inference to Antique Group in the final results, we will instruct CBP to apply an assessment rate equal to the dumping margin of 323.12 percent, as indicated above, to all entries produced and/or exported by Antique Group. The assessment rate for antidumping duties for each of the companies not selected for individual examination will be equal to the weighted-average dumping margin identified in the final results of review.

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 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 company listed above will be that established in the final results of this administrative 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 reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 1.02 percent, the rate established in the investigation of this proceeding, as adjusted for subsidy offsets.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Review
V. Application of Facts Available and Use of Adverse Inferences
VI. Margin for Companies Not Selected for Individual Examination
VII. Discussion of the Methodology
VIII. Currency Conversion
IX. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

Alicante Surfaces Pvt., Ltd.
Antique Granito Shareholders Trust
Argil Ceramic Private Limited
ARO Granite Industries Limited
Asian Granito India Ltd
Baba Super Minerals Pvt. Ltd.
Camrola Quartz Limited
Chaitanya International Minerals LLP
Chariot International Pvt. Ltd.
Colors Of Rainbow
Creative Quartz LLP
Cuarzo
Divyashakti Granites Limited
Esprit Stones Pvt., Ltd.
Globalfair Technologies Pvt.
Glowstone Industries Private Limited
Gupta Marbles
Gyan Chand Lodha
Hi Elite Quartz LLP
Hilltop Stones Pvt., Ltd.
Inani Marbles and Industries Ltd.
International Stones India Private Limited
Jennex Granite Industries
Jessie Kan Granite Inc.
Keros Stone LLP
M.B. Granites Private Ltd.
Mahi Granites Private Limited.
Malbros Marbles & Granites Industries
Marudhar Rocks International Pvt. Ltd.
Mountmine Imp. & Exp. Pvt., Ltd.
P.M. Quartz Surfaces Pvt., Ltd.
Pacific Industries Limited
Pacific Quartz Surfaces LLP
Pangaea Stone International Private Ltd.
Paradigm Granite Pvt., Ltd.
Paradigm Stone India Private Limited
Pelican Quartz Stone
Quartzkraft LLP
Rocks Forever
Rose Marbles Ltd.
Safayar Ceramics Private Ltd.
Satya Exports
Southern Rocks and Minerals Private Limited
Stone Imp. & Exp. (India) Pvt., Ltd.
Stoneby India LLP
Sunex Stones Private Ltd.
Tab India Granites Pvt., Ltd.
Ultima International
Vishwas Ceramic
Vishwas Exp.
Yash Gems

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[15] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Order,* 85 FR at 37423.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–878]

Glycine From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers or exporters subject

to this administrative review made sales of subject merchandise at less than normal value during the period of review June 1, 2020, through May 31, 2021. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 8, 2022.

FOR FURTHER INFORMATION CONTACT: John K. Drury, 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) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2021, Commerce published the notice of initiation of the administrative review of the antidumping duty order on glycine from Japan.[1] On February 22, 2022, Commerce extended the time limit for these preliminary results to June 30, 2022, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).[2]

Scope of the Order

The merchandise subject to the order is glycine. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[3]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. GEO Specialty Chemicals, Inc. withdrew its requests for review of Showa Denko K.K[4] and Yasunaga Trading Co., Ltd.[5] Because the requests for review were timely withdrawn filed and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is partially rescinding this review of the order for these two companies.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021.

Producer/exporter	Estimated weighted-average dumping margin (percent)
Yuki Gosei Kogyo Co., Ltd./ Nagase & Co., Ltd[6]	24.48

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this administrative review within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[7] Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[10]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[11] If the weighted-average dumping margin for Yuki Gosei Kogyo Co., Ltd./Nagase & Co., Ltd. is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific assessment rate. Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem*

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 41821, 41823 (August 3, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Glycine from Japan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated February 22, 2022.

[3] *See* Memorandum, ''Glycine from Japan: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See* GEO Specialty Chemicals, Inc.'s Letter, ''Glycine from Japan (A–588–878): Partial Withdrawal of Request for Administrative Review,'' dated September 14, 2021.

[5] *See* GEO Specialty Chemicals, Inc.'s Letter, ''Glycine from Japan (A–588–878): Partial Withdrawal of Request for Administrative Review,'' dated November 1, 2021.

[6] As explained in the Preliminary Decision Memorandum, based on the record information, Commerce preliminarily determines that Nagase & Co., Ltd. and a non-selected respondent, Yuki Gosei Kogyo Co., Ltd., are affiliated within the meaning of section 771(33)(E) of the Act and should be treated as a single entity pursuant to 19 CFR 351.401(f) for these preliminary results of review.

[7] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'')

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[9] *See* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.310(c).

[11] *See* 19 CFR 351.212(b)(1).

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 such sales in accordance with 19 CFR 351.212(b)(1).[12] Where the respondent did not report entered values, in accordance with 19 CFR 351.212(b)(1), Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported. Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. If YGK/Nagase's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate for one of these companies is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[13] For entries of subject merchandise during the period of review produced by any of these companies for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries.[14]

Consistent with its recent notice,[15] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of glycine from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will be 53.66 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[16] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary 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 to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–838]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Italy: Preliminary Results of the Administrative Review of the Antidumping Duty Order and Preliminary Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Italy have not been made at less than normal value (NV) during the period of review (POR) June 1, 2020, through May 31, 2021. We also determine that one exporter had no shipments of cold-drawn mechanical tubing to the United States during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, 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) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2018, Commerce published the antidumping duty order on cold-drawn mechanical tubing from Italy.[1] On August 3, 2021, Commerce

[12] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[13] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings,* 86 FR 3995 (January 15, 2021).

[16] *See Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 84 FR 29170, 29171 (June 21, 2019).

[1] *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland:*

initiated an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Italy, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] This administrative review covers two producers/exporters of the subject merchandise.[3] However, as discussed below, we preliminary find that one of these producers/exporters, Metalfer SpA (Metalfer), had no entries of subject merchandise into the United States during the POR. Pursuant to section 751(a)(3)(A) of the Act, Commerce extended the preliminary results by 120 days, until June 30, 2022.[4]

For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by this order are certain cold-drawn mechanical tubing of carbon and alloy steel from Italy. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On August 4, 2021, Commerce released U.S. Customs and Border Protection (CBP) data and allowed parties to comment.[6] The CBP data indicated that Dalmine S.p.A. (Dalmine) was the only respondent under review that had entries during the POR. Although Metalfer timely provided comments stating that it made a sale of subject merchandise during the POR,[7] it was unable to demonstrate, at Commerce's request, that it had an associated POR entry.[8] Based on the foregoing, Commerce preliminarily determines that Metalfer did not have any reviewable entries during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with Commerce's practice, we are not preliminarily rescinding the review with respect to Metalfer but, rather, we will complete the review with respect to Metalfer and issue appropriate instructions to CBP based on the final results of this review.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 2020, through May 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Dalmine S.p.A	0.00

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If Dalmine's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same 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 assessment rate calculated in the final results of this review is not zero or *de minimis.* If Dalmine's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. 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.[9]

For entries of subject merchandise during the POR produced by Dalmine or Metalfer for which that company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at 47.87 percent, the all-others rate established in the less-than-fair-value (LTFV) investigation,[10] if there is no rate for the intermediate company(ies) involved in the transaction.[11]

We intend to issue liquidation instructions to CBP 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

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 Dalmine in the final results of review will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate

Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland, 83 FR 26962 (June 11, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 41821 (August 3, 2021).

[3] *Id.*

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2020–2021,'' dated February 1, 2022.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Memorandum, ''Release of U.S. Customs and Border Protection Data Query,'' dated August 4, 2021.

[7] *See* Metalfer's Letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Comments on CBP Data,'' dated August 10, 2021.

[8] *See* Metalfer's Letter, ''Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Italy: Response to Request for Documentation,'' dated September 1, 2021.

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Order.*

[11] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 47.87 percent,[12] the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[13] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[15] Executive summaries should be limited to five pages total, including footnotes. Case and rebuttal briefs should be filed using ACCESS[16] and must be served on interested parties.[17] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary 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 to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–14568 Filed 7–7–22; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See Order.*

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[15] *See* 19 CFR 351.309(c)(2) and (d)(2).

[16] *See generally* 19 CFR 351.303.

[17] *See* 19 CFR 351.303(f).

[18] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Shanghai Tainai Bearing Co., Ltd. (Tainai) has made sales of tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from the People's Republic of China (China) at less than normal value (NV) during the period of review (POR), June 1, 2020, through May 31, 2021. The administrative review covers 11 companies; however, based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to two of these companies. Additionally, we find that Tainai and Zhejiang Jingli Bearing Technology Co., Ltd. (Jingli) have each demonstrated that they are eligible for a separate rate. Interested parties are invited to comment on these preliminary results.

DATES: Applicable July 8, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Wood, 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) 482–1959.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2021, Commerce published a notice of initiation of an administrative review of the antidumping duty (AD) order on TRBs from China covering the period June 1, 2020, through May 31, 2021, with respect to 11 companies.[1]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[2] A

[1] *See Initiation of Antidumping and Countervailing Duty Reviews,* 86 FR 41821 (August 3, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–2021 Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties who requested the review withdraw their requests within 90 days of the date of publication of notice of initiation of the requested review. Changshan Peer Bearing Co., Ltd. (CPZ) and GGB Bearing Technology (Suzhou) Co., Ltd. (GGB) timely withdrew their requests for an administrative review. No other party requested a review of these companies. Accordingly, we are rescinding this review, in part, with respect to CPZ and GGB, pursuant to 19 CFR 351.213(d)(1).

Scope of the Order

Imports covered by the *Order* are shipments of tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum.[3]

China-Wide Entity

C&U Group Shanghai Bearing Co., Ltd. (C&U Group); Hangzhou C&U Automotive Bearing Co., Ltd. (C&U Automotive); Hangzhou C&U Metallurgy Bearing Co., Ltd. (C&U Metallurgy); Hebei Xintai Bearing Forging Co., Ltd. (Hebei Xintai); Huangshi C&U Bearing Co., Ltd. (Huangshi C&U); Sichuan C&U Bearing Co., Ltd. (Sichuan C&U); and Xinchang Newsun Xintianlong Precision Bearing Manufacturing Co., Ltd. (XTL) did not submit separate rate applications or recertify their eligibility for a separate rate; therefore, each company has failed to establish their eligibility for a separate rate as a result of this administrative review. Commerce preliminarily determines that these companies are not eligible for a separate rate and are a part of the China-wide entity.

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity. Because no party requested a review of the China-wide entity in this review, the China-wide entity is not under review, and the weighted-average dumping margin determined for the China-wide entity rate is therefore not subject to change and continues to be 92.84 percent.[4]

Rate for Non-Examined Companies That Are Eligible for a Separate Rate

Commerce calculated an individual weighted-average dumping margin for Tainai, the only company individually examined in this administrative review. Because the only individually calculated weighted-average dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the weighted-average dumping margin calculated for Tainai is the basis to determine the weighted-average dumping margin for the separate rate, non-examined companies, consistent with section 735(c)(5)(A) of the Act, which provides for the determination of the estimated weighted-average dumping margin for all other producers and exporters in an investigation.

As indicated in the ''Preliminary Results of Review'' section below, we preliminarily determine that a weighted-average dumping margin of 36.03 percent applies to Jingli, the only company not selected for individual examination that is eligible for a separate rate. For further information, *see* the Preliminary Decision Memorandum at ''Weighted-Average Dumping Margin for the Separate Rate Companies.''

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period June 1, 2020, through May 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Shanghai Tainai Bearing Co., Ltd	36.03
Zhejiang Jingli Bearing Technology Co., Ltd	36.03

Disclosure

Commerce will disclose calculations performed for these preliminary results to the representatives of interested parties that have access to business proprietary information under the Administrative Protective Order within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results.[5] Rebuttals to case briefs may be filed no later than seven days after case briefs are filed, and all rebuttal briefs must be limited to comments raised in the case briefs.[6] Parties who submit comments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant

[3] *See* Preliminary Decision Memorandum at ''Discussion of the Methodology.''

[4] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987, 3988–89 (January 22, 2009) (*TRBs from China 2009*).

[5] *See* 19 CFR 351.309(c)(1)(ii).

[6] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (collectively, *Temporary Modifications*).

[7] *See* 19 CFR 351.309(c)(2).

Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and 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.[8]

All submissions must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the established due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of all issues raised in the case briefs, within 120 days after the date of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.[10]

Verification

As provided in section 782(i)(3) of the Act, Commerce verified the information relied upon in making its preliminary results with respect to Tainai.[11] Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to travel restrictions in response to the global COVID–19 pandemic, Commerce was unable to conduct on-site verification in this review. Accordingly, we issued a questionnaire in lieu of on-site verification. We intend to rely on Tainai's response to our verification questionnaire for the final results.

Assessment Rates

Upon issuance of the final results of the administrative review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[12] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1).[13] Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer.[14] Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[15] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16] Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Tainai for which it did not know that the merchandise it 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 China-wide rate[17] if there is no rate for the intermediate company(ies) involved in the transaction.[18]

For the final results, if we continue to treat the C&U Group; C&U Automotive; C&U Metallurgy; Hebei Xintai; Huangshi C&U; Sichuan C&U; and XTL as part of China-wide entity, we will instruct CBP to apply an *ad valorem* assessment rate of 92.84 percent, the weighted-average dumping margin previously established for the China-wide entity,[19] to all entries of subject merchandise during the POR that were exported by these companies.

For Jingli, the company that is receiving a separate rate and was not individually examined, its assessment rate will be equal to the weighted-average dumping margin determined in the final results of this review.

For CPZ and GGB, the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

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 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 the exporters listed above that have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that are currently eligible for a separate rate, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published for the most recently

[8] *See* 19 CFR 351.310(d).

[9] *See Temporary Modifications.*

[10] *See* section 751(a)(3)(A) of the Act; *see also* 19 CFR 351.213(h).

[11] *See* Tainai's Letter, ''Response to Questionnaire issued in Lieu of Verification; Part 1,'' dated June 13, 2022; and Tainai's Letter, ''Response to Questionnaire issued in Lieu of Verification; Part 2,'' dated June 15, 2022.

[12] *See* 19 CFR 351.212(b)(1).

[13] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[14] *See* 19 CFR 351.212(b)(1).

[15] *Id.*

[16] *See Final Modification,* 77 FR at 8103.

[17] *See TRBs from China 2009.*

[18] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[19] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987 (January 22, 2009).

completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the cash deposit rate established for the China-wide entity, 92.84 percent; and (4) for all exporters of subject merchandise that are not located in China and that are not eligible for a separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l), 751(a)(2)(B), and 777(i)(l) of the Act, and 19 CFR 351.221(b)(4).

Dated: June 30, 2022.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–14563 Filed 7–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC143]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of modification to expiration date of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been re-issued to W&T Offshore Inc. (W&T) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The Letter of Authorization is effective through August 1, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and 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 (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

NMFS issued an LOA to W&T and its designee, Echo Offshore, LLC (Echo), on November 19, 2021, for the take of marine mammals incidental to an archaeological and geohazards survey in the Eugene Island Area, Block EI389 and portions of Blocks EI385 and EI386, and in the Ewing Bank Area, in the E/2 portion of Block EW979. Please see the **Federal Register** notice of issuance (86 FR 67449; November 26, 2021) for

additional detail regarding the LOA and the survey activity.

W&T initially anticipated that the activity would occur at some point between December 1, 2022, and July 1, 2022. W&T subsequently conveyed to NMFS that as of June 24, 2022, the survey had not commenced but would be starting very soon. W&T has requested modification to the effectiveness end date of the LOA (from July 1 to August 1, 2022) to allow for additional time for complete their survey. There are no other changes to W&T's planned activity. Since issuance of the LOA, no survey work has occurred.

Authorization

NMFS has changed the effectiveness end date of the LOA from July 1 to August 1, 2022. There are no other changes to the LOA as described in the November 11, 2021, **Federal Register** notice of issuance (86 FR 67449): the specified activity; estimated take by incidental harassment; and small numbers analysis and determination remain unchanged and are herein incorporated by reference.

Dated: July 1, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–14508 Filed 7–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC057]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off New Jersey by NextEra Energy Transmission MidAtlantic Holdings, LLC

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization to NextEra Energy Transmission MidAtlantic Holdings, LLC (NEETMA) to incidentally harass marine mammals during site characterization surveys off New Jersey.

DATES: This Authorization is effective from July 1, 2022 through June 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental harassment authorization (IHA) 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 the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 4, 2022, NMFS received a request from NEETMA for an IHA to take marine mammals incidental to marine site characterization surveys occurring in two locations (Northern and Southern survey areas) off the coast of New Jersey in the New Jersey Offshore Transmission Facilities Project (NJOTF or Project). The application was deemed adequate and complete on April 1, 2022. NEETMA's request was for take of a small number of 15 marine mammal species (consisting of 16 stocks) by Level B harassment only. Neither NEETMA nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS considered all public comments received and determined that no changes to the final IHA were necessary.

Description of Survey Activities

Overview

NEETMA proposes to conduct HRG and geotechnical surveys as part of the NJOTF off the coast of New Jersey. The surveys will take place along proposed submarine export cable routes and at locations for potential offshore platforms. Geotechnical survey activities will include the use of vibracores and/or cone penetration tests (CPTs), to identify and characterize the seabed conditions vertically for project planning and design, and to collect data to identify paleolandscapes.

The purpose of these surveys are to support the siting and design of offshore facilities, including offshore platforms for converter stations and offshore submarine transmission cables. Up to 320 days are planned for survey activities (Table 1). As many as three survey vessels may operate concurrently as part of the site characterization surveys. Underwater sound resulting from NEETMA's survey activities, specifically HRG surveys, has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

TABLE 1—NUMBER OF SURVEY DAYS THAT NEETMA PLANS TO PERFORM THE DESCRIBED HRG SURVEY ACTIVITIES

Survey area	Number of active survey days expected [1]
Northern	248
Southern	72
Total:	320

[1] Up to three total survey vessels may be operating within the survey areas concurrently.

Table 2 identifies the representative survey equipment with the expected potential to cause the take of marine mammals that may be used in support

of planned geophysical survey activities. The make and model of the listed equipment may vary depending on availability and the final equipment choices will vary depending upon the final survey design, vessel availability, and survey contractor selection. Geophysical surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 2—SUMMARY OF REPRESENTATIVE EQUIPMENT SPECIFICATIONS

Equipment category	HRG survey equipment type	Operating frequency ranges (kHz)	Operational source level ranges (dB re 1 µPa m)	Source $level_{0\text{-}peak}$ (dB re 1 µPa m)	Beamwidth ranges (degrees)	Typical pulse durations (millisecond)	Pulse repetition rate (Hz)
Non-parametric shallow penetration SBPs (non-impulsive)							
CHIRPs	ET 216 (2000DS or 3200 top unit).	2–16 2–8	195		24	20	6
	ET 424	4–24	176		71	3.4	2
	ET 512	0.7–12	179		80	9	8
	GeoPulse 5430A.	2–17	196		55	50	10
	Teledyne Benthose Chirp III—TTV 170.	2–7	197		100	60	15
Medium penetration SBPs (impulsive)							
Sparker	AA, Dura-spark UHD (400 tips, 500 J) [1].	0.3–1.2	203	211	Omnidirectional.	1.1	4
	GeoMarine Geo Spark 2000 (400 tip) [1].	0.05–3	203	213	Omnidirectional.	3.4	1
Boomer	AA, triple plate S-Boom (700–1,000 J) [2].	0.1–5	205	211	80	0.6	4

Note: = not applicable; µPa = microPascal; AA = Applied Acoustics; dB = decibel; ET = EdgeTech; J = joule; Omni = omnidirectional source; re = referenced to; SL = source level; 0–PK = zero-to-peak; RMS = root mean squared; UHD = ultra-high definition.

[1] The Dura-spark measurements and specifications provided in Crocker and Fratantonio (2016) were used for all sparker systems planned for NEETMA's survey. These include variants of the Dura-spark sparker system and various configurations of the GeoMarine Geo-Source sparker system. The data provided in Crocker and Fratantonio (2016) represent the most applicable data for similar sparker systems with comparable operating methods and settings when manufacturer or other reliable measurements are not available.

[2] Crocker and Fratantonio (2016) provide S-Boom measurements using two different power sources (CSP–D700 and CSP–N). The CSP–D700 power source was used in the 700 J measurements but not in the 1,000 J measurements. The CSP–N source was measured for both 700 J and 1,000 J operations but resulted in a lower SL; therefore, the single maximum SL value was used for both operational levels of the S-Boom.

A detailed description of the surveys planned by NEETMA was provided in the **Federal Register** notice of the proposed IHA (87 FR 27575; May 9, 2022). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for additional description of the specified activities.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see the Mitigation and Monitoring and Reporting sections).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to NEETMA was published in the **Federal Register** on May 9, 2022 (87 FR 27575), initiating a 30-day public comment period. That notice described, in detail, NEETMA's activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments.

NMFS received letters from two environmental non-governmental organizations (eNGOs) (Oceana, Inc. and Clean Ocean Action (COA)) and from a local citizen group (Save Long Beach Island (LBI)). All substantive comments, and NMFS' responses, are provided below, and the letters are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-nextera-energy-transmission-midatlantic-holdings-llc-marine*). Please review the letters for full details regarding the comments and underlying justification.

Comment 1: Oceana, COA, and LBI asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and North Atlantic right whales in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA. The commenters additionally state that NMFS should

include nearby survey activities in the analysis performed in support of this IHA, specifically related to surveys and activities occurring in the Ocean Wind 1 (OCS–A–0498) and Atlantic Shores (OCS–A–0499) leases, as the activities are occurring during similar timeframes and in similar spatial locations.

NMFS response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the species' density/distribution and status, population size and growth rate, and other relevant factors (see Negligible Impact Analysis and Determination section). The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, NEETMA was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island; the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; and the 2019 Orsted EA for survey activities offshore southern New England. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by NEETMA have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion for issuance of NEETMA's IHA, which included consideration of extraordinary circumstances.

For ESA-listed species, the cumulative effects of substantially similar activities in the same geographic region have been analyzed in the past under Section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities included those for which NMFS issued Atlantic Shores' 2020 IHA and subsequent 2021 renewal IHA (85 FR 21198; April 16, 2020 and 86 FR 21289; April 22, 2021), which are substantially similar to those planned by NEETMA under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes, that while issuance of this IHA is covered under a different consultation, this Biological Opinion (BiOp) remains valid.

In addition, NMFS disagrees with LBI's assertion that separate specified activities should be considered together in each MMPA analysis on the basis that they share a similar regional location. Under the MMPA, NMFS is required to consider applications upon request. To date, NMFS has not received any joint application from Orsted, Atlantic Shores, and NEETMA regarding their site characterization surveys off of New Jersey. While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas, such as what was done by Orsted in their recent surveys from New York to Massachusetts (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case to the surveys being performed by Atlantic Shores, Orsted, and NEETMA off New Jersey. In the future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

NMFS notes that these actions (Atlantic Shores', Orsted's, and NEETMA's site characterization surveys) are occurring in spatially distinct areas and not within overlapping areas. The entities' survey activities will not occur in the same location at any one time. Any other authorization issued to Orsted or Atlantic Shores, relating to activities in or around OCS–A–0498 or OCS–A–0499, respectively, would be considered a discrete activity with its own separate and independent action.

Comment 2: LBI asserts that it is not clear where the source level information for the GeoMarine Geo Spark 2000 acoustic unit came from.

NMFS response: NEETMA states in their IHA application (*https://media.fisheries.noaa.gov/2022-05/NEETMA_2022IHA_App_OPR1.pdf*) that the information and source level for the GeoMarine Geo Spark 2000 unit, with the same tips (400) and source level (203 dB re 1 µPa m), was previously used in the analysis supporting issuance of the Vineyard Wind 1 Marine Site Characterization Survey (86 FR 40469; June 7, 2021), which can be found on NMFS' website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-1-marine-site-characterization-surveys.* Within the Vineyard Wind 1 IHA application, the same approach as recently used in the Atlantic Shores HRG survey (87 FR 24103; April 22, 2022) is described where the SIG ELC 820 sparker was used as a proxy for the GeoMarine Geo Spark 2000 unit

(Atlantic Shores used the SIG ELC 820 as a proxy for the Applied Acoustics Dura-Spark 240), given the same source level, peak source level, energy source level, and pulse duration were present for all three acoustic sources.

Please refer to Table 5 of the proposed **Federal Register** notice for NEETMA (87 FR 27575; May 9, 2022) where all the distances to the Level B harassment threshold are 141 m for the Applied Acoustics Dura-Spark UHG (500 J/400 tip), the Applied Acoustics Dura-Spark UHD (440 + 400), and the GeoMarine Geo Spark 2000 (400 tips).

Comment 3: LBI states that NMFS' assumption that use of a 20logR transmission loss factor (*i.e.,* spherical spreading) is inappropriate, and suggests that NMFS must use a 15 dB propagation loss factor. LBI goes on to comment that the use of the higher propagation loss coefficient is not consistent with what NMFS' analyses for previous actions and underestimates the distance to the Level B harassment threshold, which would cause an underestimation of marine mammal takes.

NMFS response: A major component of transmission loss is spreading loss and, from a point source in a uniform medium, sound spreads outward as spherical waves (''spherical spreading'') (Richardson *et al.,* 1995). In water, these conditions are often thought of as being related to deep water, where more homogenous conditions may be likely. However, the theoretical distinction between deep and shallow water is related more to the wavelength of the sound relative to the water depth, versus the water depth itself. Therefore, when the sound produced is in the kilohertz range, where wavelength is relatively short, much of the continental shelf may be considered ''deep'' for purposes of evaluating likely propagation conditions.

As described in the notice of proposed IHA, the area of water ensonified at or above the root mean square (RMS) 160 dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model (where transmission loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source) is a reasonable approximation over the relatively short distances involved. Even in conditions where cylindrical spreading (where transmission loss = 10 * log [range]; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.,* non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. In any case, spreading is usually more or less spherical from the source out to some distance, and then may transition to cylindrical (Richardson *et al.,* 1995). For these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters (in an absolute sense) as the reflected energy from the seafloor will be much weaker than the direct source and the volume of water influenced by the reflected acoustic energy would be much smaller over the relatively short distances involved.

The assumption of a 20-dB transmission loss coefficient is also supported by more recent data on sound transmission by sparker sources collected by the U.S. Geological Survey (USGS) in waters offshore California in spring 2021 (Pers. Comm., C. Ruppel, 2022). Unpublished data from these recent sound source verification experiments indicate that, at the frequencies of many HRG instruments, spherical, not cylindrical, spreading applies even in waters only tens of meters deep. For a sparker source, even at 25-m water depth, the signal spreading was almost completely spherical. As noted previously, at the higher frequency of most HRG sources, the spreading is expected to be spherical because the wavelength of the signal is very small compared to the water depth. That is the criterion for spherical spreading, which is why spherical spreading applies to most HRG sources, regardless of water depth. This would not be the case for lower frequency (*i.e.,* larger wavelength) sources, such as airguns.

In support of its position, LBI cites several examples of use of practical spreading (a useful real-world approximation of conditions that may exist between the theoretical spreading modes of spherical and cylindrical; 15logR) in asserting that this approach is also appropriate here. However, these examples (U.S. Navy construction at Newport, RI, and NOAA construction in Ketchikan, AK) are not relevant to the activity at hand. First, these actions occur in even shallower water (*e.g.,* less than 10 m for Navy construction). Of greater relevance to the action here, pile driving activity produces sound with longer wavelengths than the sound produced by the acoustic sources planned for use here. As noted previously, a determination of appropriate spreading loss is related to the ratio of wavelength to water depth more than to a strict reading of water depth. NMFS indeed uses practical spreading in typical coastal construction applications, but for reasons described here, uses spherical spreading when evaluating the effects of HRG surveys on the continental shelf.

In addition, this analysis is likely conservative for other reasons, *e.g.,* the lowest frequency was used for systems that are operated over a range of frequencies and other sources of propagation loss (*e.g.,* interference effects) are neglected.

NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and has relied on this approach for past IHAs with similar equipment, locations, and depths. Please refer back to the Garden State HRG IHA (83 FR 14417; April 4, 2018) and the 2019 Skipjack HRG IHA (84 FR 51118; September 27, 2019) for examples. Prior to the issuance of these IHAs (approximately 2018 and older), NMFS typically relied upon practical spreading for these types of survey activities. However, as additional scientific evidence became available, including numerous sound source verification reports, NMFS determined that this approach was inappropriately conservative and, since that time, as consistently used spherical spreading. Furthermore, NMFS' User Spreadsheet tool assumes a ''safe distance'' methodology for mobile sources where propagation loss is spherical spreading (20LogR) (*https://media.fisheries.noaa.gov/2020-12/User_Manual%20_DEC_2020_508.pdf?null*), and NMFS calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading.

Comment 4: LBI asserts that NMFS has not appropriately considered the location of North Atlantic Right Whales (NARW) migratory habitat in relation to the survey and, in so doing, has not correctly evaluated the potential for impacts to NARW migratory habitat.

NMFS response: NMFS disagrees with LBI's assertion that the close proximity of the NARW migratory corridor is not discussed or accounted for in the proposed **Federal Register** notice. Page 27581 (*https://www.federalregister.gov/d/2022-09917/p-42*) includes an overview of the NARW and its habitat, including text noting that any NARWs in the ''survey areas are expected to be transient, most likely migrating through the area'' due to the overlap of the Project area with the migratory corridor. More information is presented on Page 27582 (*https://www.federalregister.gov/d/2022-09917/p-44*) and NMFS reiterates it here: ''The proposed survey

area is part of a migratory corridor Biologically Important Area (BIA) for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break. This important migratory area is approximately 269,488 square kilometers (km^2) in size (compared with the approximately 5,183.97 km^2 of total estimated Level B harassment ensonified area associated with the 320 planned survey days) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. A portion of one SMA, which occurs off the mouth of Delaware Bay, overlaps spatially with a section of the proposed survey area. The SMA, which occurs off the mouth of Delaware Bay, is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 kn) for all vessels greater than 65 ft. A portion of one SMA overlaps spatially with the northern section of the proposed survey area.''

NMFS also reiterates the language found on Page 27596 within the Negligible Impact Analysis and Determination section, which has not changed since the initial publication of the proposed **Federal Register** notice and is carried forward into this final notice: ''The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the proposed survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the proposed survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the proposed survey.''

Comment 5: LBI and COA assert that Level A harassment may occur during site characterization surveys and that it was not accounted for in the proposed **Federal Register** notice. LBI asserts specifically that Level A harassment will result from cumulative noise exposure, contradicting NMFS' analysis.

NMFS response: NMFS acknowledges the concerns brought up by LBI regarding the potential for Level A harassment of marine mammals. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones described in NEETMA's IHA application in Table 1–4 (*https://media.fisheries.noaa.gov/2022-05/NEETMA_2022IHA_App_OPR1.pdf*). Furthermore, the commenters do not provide any support for the apparent contention that Level A harassment is a potential outcome of these activities. As discussed in the notice of proposed IHA, NMFS considers this category of survey operations to be near de minimis, with the potential for Level A harassment for any species to be discountable.

As described in the Estimated Take section of the proposed **Federal Register** notice (87 FR 27575; May 9, 2022), NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative SEL for low frequency cetaceans (which include North Atlantic right whales). Estimated Level A harassment zones for similar equipment (*i.e.,* the Applied Acoustics Dura-Spark 240 sparker, GeoMarine Geo Spark 2000 (400 tip)) were provided in Table 1–4 in NEETMA's IHA application (*https://media.fisheries.noaa.gov/2022-05/NEETMA_2022IHA_App_OPR1.pdf*), showing that a NARW would have to come within 1 m of the sparker source to potentially incur PTS. Due to the mitigation measures being implemented, including the required vessel strike reduction measures, NMFS considers it impossible that a NARW will reasonably be in sufficiently close proximity to the active acoustic source (*i.e.,* the sparker) to incur PTS. NMFS has reviewed the analysis and confirmed that it is accurate and relevant to this action.

Not only are any NARWs in the area migrating, meaning that their occurrence in the area is expected to be of relatively brief duration and the likelihood of exposures of longer duration or at closer range minimized, NEETMA is also required to not approach any NARW within 500 m or operate the sparker within 500 m of a NARW. As such, there is essentially no potential for a NARW to experience PTS (*i.e.,* Level A harassment) from the described surveys.

Comment 6: LBI discusses their belief that all pathways to the Level B harassment threshold and/or masking of cetacean communication that could lead to the serious injury and/or mortality of the animal have not been fully analyzed by NMFS.

NMFS response: NMFS disagrees that the potential impacts of masking were not properly considered and expects that the masking effects to any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and, as our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of mysticetes, and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted previously, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel, combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects, likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

NMFS recognizes that acute stress from acoustic exposure is one potential

impact of these surveys, and that chronic stress can have fitness, reproductive, etc. impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by NEETMA will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARWs, which are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS's negligible impact analyses. Because NARWs generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor (BIA of 269,448 km^2) compared with the survey area (5,184 km^2). Thus, the transitory nature of NARWs at this location means it is unlikely for any exposure to cause chronic effects as NEETMA's planned survey area and ensonified zones are much smaller than the overall migratory corridor. Because of this, NMFS does not expect any acute or cumulative stress, including any masking, to be a detrimental factor to the health, fitness, or survival of NARWs from NEETMA's described survey activities.

NMFS continues to maintain that the best available science indicates that only Level B harassment, or minor disruptions of behavioral patterns, may occur from the planned site characterization surveys. No mortality or serious injury is expected to occur as a result of the planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity. Authorization of mortality and serious injury may not occur via IHAs, only within Incidental Take Regulations (ITRs), and such authorization was neither requested nor proposed. NMFS notes that in its history of authorizing take of marine mammals, there has never been a report of any serious injuries or fatalities of a marine mammal related to the site characterization surveys, including for NARW. We emphasize that an estimate of take numbers alone is not sufficient to assess impacts to a marine mammal population. Take numbers must be viewed contextually with other factors, as explained in the Negligible Impact Analysis and Determination section of this notice.

Comment 7: LBI asserts that the criteria for determining ''negligible impact'' to the NARW have not been clearly or well defined.

NMFS response: NMFS disagrees with LBI's position regarding the negligible impact analysis, and the commenters do not provide a reasoned basis for finding that the effects of the specified activity will be greater than negligible on any species or stock. The Negligible Impact Analysis and Determination section of the proposed IHA (87 FR 27575; May 9, 2022) provides a detailed qualitative discussion supporting NMFS' determination that any anticipated impacts from this action will be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With specific regard to NARW, we note that take is authorized for only a very small percentage of the right whale population (see Table 11). Furthermore, NMFS notes that while a species *may* be taken during activities, this is not always the case. For example, we note that Ocean Wind's (Orsted) previous monitoring report (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-ocean-wind-llc-marine-site-characterization-surveys-new-jersey*) indicates that no right whales experienced harassment during the previous activity, although take of the species (Level B harassment only) was authorized. However, the numbers of potential incidents of take or animals taken are only part of an assessment and are not, alone, decisively indicative of the degree of impact. In order to adequately evaluate the effects of noise exposure at the population level, the total number of take incidents must be further interpreted in context of relevant biological and population parameters and other biological, environmental, and anthropogenic factors and in a spatially and temporally explicit manner. The effects to individuals of a ''take'' are not necessarily equal. Some take events represent exposures that only just exceed a Level B harassment threshold, which would be expected to result in lower-level impacts, while other exposures occur at higher received levels and would typically be expected to have comparatively greater potential impacts on an individual. Further, responses to similar received levels may result in significantly different impacts on an individual dependent upon the context of the exposure or the status of the individuals (*e.g.,* if it occurred in an area and time where concentrated feeding was occurring, or to individuals weakened by other effects). In this case, NMFS reiterates that no such higher level takes are expected to occur. The maximum anticipated Level B harassment zone is 141 m, a distance smaller than the precautionary shutdown zone of 500 m. To the extent that any exposure of NARW does occur, it would be expected to result in lower-level impacts that are unlikely to result in significant or long-lasting impacts to the exposed individual and, given the relatively small amount of exposures expected to occur, it is unlikely that these exposures would result in population-level impacts. NMFS acknowledges that impacts of a similar degree on a proportion of the individuals in a stock may have differing impacts to the stock based on its status, *i.e.,* smaller stocks may be less able to absorb deaths or reproductive suppression and maintain similar growth rates as larger stocks. However, even given the precarious status of the NARW, the low-level nature of the impacts expected to occur for only a few individuals means that the population status does not weigh meaningfully in NMFS' consideration of population-level impacts. The commenters provide no substantive reasoning to contradict this finding, and do not support their assertions of effects greater than NMFS has assumed may occur.

Additionally, NMFS evaluated the impacts of HRG surveys on ESA-listed species under ESA section 7, with NMFS Greater Atlantic Regional Fisheries Office (GARFO) as the consulting agency. NMFS GARFO determined that issuance of the IHA to NEETMA was not likely to adversely affect listed species or the critical habitat of any ESA-listed species or result in the take of any marine mammals in violation of the ESA.

Comment 8: LBI asserts that the criteria for ''small numbers'' is not scientifically supported, nor consistent with a prior judicial decision.

NMFS response: NMFS disagrees with LBI's arguments on the topic of small numbers. Although there is limited legislative history available to guide NMFS and an apparent lack of biological underpinning to the concept, we have worked to develop a reasoned approach to small numbers. NMFS explains the concept of ''small numbers'' in recognition that there could also be quantities of individuals taken that would correspond with ''medium'' and ''large'' numbers. As such, NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to ''small numbers.'' This relative approach is consistent with the statement from the legislative history that ''[small numbers] is not capable of being expressed in absolute numerical limits'' (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity* v. *Salazar,* 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted ''small numbers'' by analyzing take in relative or proportional terms)). In regards to LBI's suggestion that the one-third number is inconsistent with prior case law, we note that LBI cited the *NRDC* v. *Evans* decision of October 31, 2002 (232 F. Supp. 2d 1003, N.D. Cal. 2002), which was related to the plaintiffs' motion for a preliminary injunction. Ultimately, after parties' cross-motions for summary judgment, the Evans court held that NMFS' regulatory definition of small numbers (which NMFS did not apply here) improperly conflated the small numbers and negligible impact issues. *NRDC* v. *Evans,* 279 F. Supp. 2d at 1129. Contrary to LBI's suggestion, the Evans court expressly stated that it was not setting any numerical limit for small numbers. *NRDC* v. *Evans,* 279 F. Supp. 2d at 1153. As for LBI's suggestion to reconsider small numbers specifically for NARW, the argument to establish a small numbers threshold on the basis of stock-specific context is unnecessarily duplicative of the required negligible impact finding, in which relevant biological and contextual factors are considered in conjunction with the amount of take.

Comment 9: LBI asserts that NMFS' 160 dB harassment criterion for intermittent sound sources is too high, and that the 120 dB criterion for continuous noise sources should be used instead.

NMFS response: NMFS disagrees with LBI's comment, which references a Marine Mammal Commission recommendation made in reference to the proposed authorization of take incidental to use of scientific sonars (such as echosounders). We refer the reader to the original response (84 FR 46788; October 7, 2019) for full detail and provide a summary here.

First, we provide some necessary background on implementation of acoustic thresholds. NMFS has historically used generalized acoustic thresholds based on received levels to predict the occurrence of behavioral harassment, given the practical need to use a relatively simple threshold based on information that is available for most activities. Thresholds were selected in consideration largely of measured avoidance responses of mysticete whales to airgun signals and to industrial noise sources, such as drilling. The selected thresholds of 160 dB rms SPL and 120 dB rms SPL, respectively, have been extended for use since then for estimation of behavioral harassment associated with noise exposure from sources associated with other common activities as well.

Sound sources can be divided into broad categories based on various criteria or for various purposes. As discussed by Richardson *et al.* (1995), source characteristics include strength of signal amplitude, distribution of sound frequency and, importantly in context of these thresholds, variability over time. With regard to temporal properties, sounds are generally considered to be either continuous or transient (*i.e.,* intermittent). Continuous sounds, which are produced by the industrial noise sources for which the 120-dB behavioral harassment threshold was selected, are simply those whose sound pressure level remains above ambient sound during the observation period (ANSI, 2005). Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Simply put, a continuous noise source produces a signal that continues over time, while an intermittent source produces signals of relatively short duration having an obvious start and end with predictable patterns of bursts of sound and silent periods (*i.e.,* duty cycle) (Richardson and Malme, 1993). It is this fundamental temporal distinction that is most important for categorizing sound types in terms of their potential to cause a behavioral response. For example, Gomez *et al.* (2016) found a significant relationship between source type and marine mammal behavioral response when sources were split into continuous (*e.g.,* shipping, icebreaking, drilling) versus intermittent (*e.g.,* sonar, seismic, explosives) types. In addition, there have been various studies noting differences in responses to intermittent and continuous sound sources for other species (*e.g.,* Neo *et al.,* 2014; Radford *et al.,* 2016; Nichols *et al.,* 2015).

Sound sources may also be categorized based on their potential to cause physical damage to auditory structures and/or result in threshold shifts. In contrast to the temporal distinction discussed previously, the most important factor for understanding the differing potential for these outcomes across source types is simply whether the sound is impulsive or not. Impulsive sounds, such as those produced by airguns, are defined as sounds which are typically transient, brief (< 1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). These sounds are generally considered to have greater potential to cause auditory injury and/or result in threshold shifts. Non-impulsive sounds can be broadband, narrowband or tonal, brief or prolonged, continuous or intermittent, and typically do not have the high peak pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998). Because the selection of the 160-dB behavioral threshold was focused largely on airgun signals, it has historically been commonly referred to as the ''impulse noise'' threshold (including by NMFS). However, this longstanding confusion in terminology—*i.e.,* the erroneous impulsive/continuous dichotomy—presents a narrow view of the sound sources to which the thresholds apply, and inappropriately implies a limitation in scope of applicability for the 160-dB behavioral threshold in particular.

Following the background discussion provided previously, we note that LBI apparently misunderstands the crux of the Marine Mammal Commission argument that it references, *i.e.,* that because scientific sonars are not impulsive sound sources, they must be assessed using the 120-dB behavioral threshold appropriate for continuous noise sources. The sparker source at issue here is in fact an impulsive source. Therefore, the historical confusion regarding terminology associated with the 160 dB threshold (*i.e.,* impulsive versus intermittent) is not relevant, and there is no reasonable argument to be made in support of using the 120 dB threshold versus the 160 dB threshold.

Comment 10: LBI states that, based on their contention that serious injury and/or mortality is a potential outcome of the specified activity for NARWs, authorization under section 101(a)(5)(A) of the MMPA (Incidental Take Regulation (ITR) with subsequent Letters of Authorization (LOA)) is required.

NMFS response: NMFS acknowledges that authorization under section 101(a)(5)(A) of the MMPA would be required were mortality or serious injury an expected outcome of the action. However, as noted previously, there is no scientific evidence suggesting that such outcomes are possible and, therefore, an IHA issued under section 101(a)(5)(D) is appropriate. Similarly, if the analysis presented by LBI were considered credible, the results would necessitate a revision to NMFS' negligible impact determination. However, as detailed in previous comment responses and **Federal Register** notices, the LBI analysis is not based on the best scientific evidence available, and NMFS does not consider it to be a credible analysis. Separately, it appears that LBI equates Level A harassment with serious injury and mortality in suggesting that Incidental Take Regulations are required. As discussed herein, Level A harassment is not an expected outcome of the specified activity. However, we clarify that section 101(a)(5)(D) of the MMPA, which governs the issuance of IHAs, indicates that the ''the Secretary shall authorize . . . . taking by harassment [. . . .]'' The definition of ''harassment'' in the MMPA clearly includes both Level A and Level B harassment.

To reiterate, NMFS does not expect any serious injury or mortality, even absent mitigation efforts, because of the nature of the activities described in the proposed **Federal Register** notice. Furthermore, NMFS included a vessel strike analysis in the proposed notice under the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section. We identified that at average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is low enough to be discountable. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds during transit. Further, NEETMA is required to implement monitoring and mitigation measures during transit, including observing for marine mammals and maintaining defined separation distances between the vessel and any marine mammal (see the Mitigation and Monitoring and Reporting sections). Finally, despite several years of marine site characterization surveys occurring off the U.S. east coast, no vessels supporting offshore wind development have struck a marine mammal either in transit or during surveying. Because vessel strikes are not reasonably expected to occur, no such take is authorized. The mitigation measures in the IHA related to vessel strike avoidance are not limited to vessels operating within the survey area or cable corridors and therefore apply to transiting vessels. Because of these reasons and the addition of mitigation efforts, including required vessel separation distances to further reduce any risk, we do not find that a Rulemaking is necessary for NEETMA's HRG surveys.

Comment 11: LBI recommends that NMFS should require Passive Acoustic Monitoring (PAM) at all times to maximize the probability of detection for NARW. LBI provided recommendations that NMFS should require PAM at all times, both day and night, to maximize the probability of detection for NARW, as well as other species and stocks.

NMFS response: LBI does not explain why it expects that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARW and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their

habitat. NMFS has previously provided discussions on why PAM isn't a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021; 87 FR 13975, March 11, 2022; 87 FR 24103; April 22, 2022 for examples).

Comment 12: LBI, Oceana, and COA all express concern regarding the potential for vessel strike and recommendations to reduce the potential for vessel strike. Oceana and COA recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn)(5.14 meters per second) at all times due to the risk of vessel strikes to NARWs and other large whales. Oceana and LBI both provide recommendations for additional mitigation measures, including a larger exclusion zone (from 500 m for NARWs and 100 m for all other species to 736 m from LBI and a suggestion of a 1,000 m Exclusion Zone for NARWs from Oceana); a prohibition of site characterization surveys at night unless a PAM system is employed; a 736 m buffer on the NARW's migratory corridor during primary migration months (January, February, March, April, and November), and the development of additional Seasonal Management Areas (SMAs) adjacent to the survey area to reduce against ship strike.

NMFS response: NMFS notes that the 500 m Exclusion Zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth distance (141 m during sparker use) by a substantial margin. LBI does not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a NARW Exclusion Zone that is significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate. Further, Level A harassment is not expected to result even in the absence of mitigation, given the characteristics of the sources planned for use. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Regarding the recommendation for PAM usage, NMFS refers to the response provided for Comment #11.

LBI's recommendation to implement a 736 m buffer zone on the NARW migratory corridor is based on its own analysis using the a 15LogR transmission loss coefficient. Regarding assumptions related to transmission loss, we refer the reader to the response to Comment #3, which invalidates the premise that a larger zone is appropriate (as discussed previously). In addition, as previously stated, given the large size of the migratory corridor (BIA of 269,448 km^2) compared with the survey area (5,184 km^2), an additional buffer is unnecessary. This would unnecessarily slow down NEETMA's site characterization surveys, prolonging the duration of the survey effort to make up for the lost survey days.

While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for ship strike resulting from NEETMA's activities and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. These mitigation measures, most of which were included in the proposed IHA and all of which are required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA, DMA or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn(5.14 m/s) or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel). We have determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites. Existing and permanent SMAs have been previously established under a different rulemaking (73 FR 60173; October 10, 2008) and can also be found on NMFS' website at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales#speedlimit*).

Comment 13: LBI asserts that NMFS has not complied with the Endangered Species Act (ESA) through the use of the NMFS Greater Atlantic Regional Office (GARFO) Programmatic Consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

NMFS response: NMFS disagrees with LBI's assertion that NMFS has not complied with ESA section 7. LBI suggests that a BiOp is required, and that because GARFO's programmatic consultation is not a BiOp, NMFS is not compliant with the requirements of Section 7. LBI misunderstands the relevant legal requirements, as an informal consultation concluding that the effects of an action are not likely to adversely affect ESA-listed species (as GARFO's consultation document does) is a sufficient endpoint of consultation under section 7. LBI's additional complaints regarding GARFO's analysis are misdirected.

Comment 14: LBI has stated its opposition to the use of a categorical exclusion under NEPA, asserting that, at minimum, an EA is the appropriate level of review.

NMFS response: NMFS does not agree with LBI's comment. A categorical exclusion (CE) is a category of actions that an agency has determined does not

individually or cumulatively have a significant effect on the quality of the human environment, and is appropriately applied for such categories of actions so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis is required because they are circumstances in which a normally excluded action may have significant effects. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Potential extraordinary circumstances relevant to this action include (1) adverse effects on species or habitats protected by the MMPA that are not negligible; (2) highly controversial environmental effects; (3) environmental effects that are uncertain, unique, or unknown; and (4) the potential for significant cumulative impacts when the proposed action is combined with other past, present, and reasonably foreseeable future actions.

The relevant NOAA CE associated with issuance of incidental take authorizations is CE B4, ''Issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.'' This action falls within CE B4. In determining whether a CE is appropriate for a given incidental take authorization, NMFS considers the applicant's specified activity and the potential extent and magnitude of takes of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NAO 216–6A and summarized previously. The evaluation of whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of the incidental take authorization. While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous EA) analyzing the environmental impacts of the categories of activities encompassed by CE B4 which resulted in Findings of No Significant Impacts (FONSIs) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of incidental harassment authorization for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of NEETMA's IHA, which included consideration of extraordinary circumstances. As part of that analysis, NMFS considered including whether this IHA issuance would result in cumulative impacts that could be significant. In particular, the issuance of an IHA to NEETMA is expected to result in minor, short-term behavioral effects on marine mammal species due to exposure to underwater sound from site characterization survey activities. Behavioral disturbance is expected to occur intermittently in the vicinity of NEETMA's survey area during the one-year timeframe. Level B harassment will be reduced through use of mitigation measures described herein. Additionally, as discussed elsewhere, NMFS has determined that NEETMA's activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021), which concluded surveys such as those planned by NEETMA are not likely to adversely affect endangered listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216–6A) adverse effects on species protected by the ESA and the MMPA.

Further, the issuance of this IHA will not result in highly controversial environmental effects or result in environmental effects that are uncertain, unique, or unknown because numerous entities have been engaged in site characterization surveys that result in Level B harassment of marine mammals in the United States. This type of activity is well documented; prior authorizations and analysis demonstrates issuance of an IHA for this type of action only affects the marine mammals that are the subject of the specific authorization and, thus, no potential for significant cumulative impacts are expected, regardless of past, present, or reasonably foreseeable actions, even though the impacts of the action may not be significant by itself. Based on this evaluation, we concluded that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Comment 15: LBI requests that NMFS conduct an analysis and submit a Federal consistency determination to the State of New Jersey pursuant to the Coastal Zone Management Act (CZMA), if NMFS had not done so already. Referencing a March 2015 consistency determination issued by the New Jersey Department of Environmental Protection (NJDEP) involving a separate and unrelated proposed marine geophysical survey in the Atlantic Ocean off the Coast of New Jersey, LBI expressed concern that the survey proposed by NEETMA may not be consistent with New Jersey Coastal Zone Management rules.

NMFS response: NMFS cannot submit a Federal consistency determination to the State of New Jersey, because this activity is not a Federal agency activity proposed by NMFS under NOAA's CZMA regulations at 15 CFR part 930, subpart C. Rather, NMFS is reviewing an application for a Federal authorization for NEETMA's proposed survey. As such, whether a CZMA review is required is determined by the regulations governing CZMA Federal consistency review of Federal license or permit activities found at 15 CFR part 930, subpart D. If an applicant for a Federal license or permit activity is not required by 15 CFR part 930, subpart D to submit a CZMA consistency certification to a state, then the authorizing Federal agency, in this case, NMFS cannot compel or require the applicant to submit a consistency certification.

In this case, NEETMA was not, and is not, required to submit a CZMA consistency certification to the State of New Jersey under 15 CFR part 930, subpart D, because NMFS MMPA IHAs are not, pursuant to 15 CFR 930.53, listed in New Jersey's federally-approved coastal management program and New Jersey has not described a

geographic location in Federal waters for the NMFS authorization. In addition, the State of New Jersey did not request approval from the Director of NOAA's Office for Coastal Management (formerly known as the Office of Ocean and Coastal Resource Management) to review NEETMA's application to NMFS as an unlisted activity pursuant to 15 CFR 930.54, and the time period to make such a request has passed. Regarding the CZMA Federal consistency unlisted activity review request process under 15 CFR 930.54, NMFS published its **Federal Register** notice for NEETMA's MMPA IHA application on May 9, 2022. The State of New Jersey then had 30 days to notify NEETMA, NMFS and the Director of NOAA's Office for Coastal Management that it was seeking approval to review the activity as an unlisted activity. The State of New Jersey did not make such a request and the 30-day period ended on June 8, 2022. Accordingly, NEETMA's IHA application is not subject to Federal consistency review under the CZMA and NMFS denies LBI's request.

Comment 16: Oceana made comments objecting to NMFS' renewal process regarding the extension of any one-year IHA with a 15-day public comment period, and suggested a 30-day public comment period is necessary for any renewal request.

NMFS response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342; August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

In particular, we emphasize that any renewal IHA does have a 30-day public comment period associated with initial issuance of the IHA, and accordingly each renewal IHA is made available for a total 45-day public comment period. The notice of the proposed IHA published in the **Federal Register** on May 9, 2022 (87 FR 27575) made clear that NMFS was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. As detailed in the **Federal Register** notice for the proposed IHA and on the agency's website, any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA. NMFS' analysis of the anticipated impacts on marine mammals caused by the applicant's activities covers both the Initial IHA period and the possibility of a 1-year renewal. Therefore a member of the public considering commenting on a proposed initial IHA also knows the scope of activities (or subset of activities) that would be included in a proposed renewal IHA, the potential impacts of those activities, the maximum amount and type of take that could be caused by those activities, the mitigation and monitoring measures that would be required, and the basis for the agency's negligible impact determinations, least practicable adverse impact findings, small numbers findings, and (if applicable) the no unmitigable adverse impact on subsistence use finding—all the information needed to provide complete and meaningful comments on a possible renewal at the time of considering the proposed initial IHA. Reviewers have the information needed to meaningfully comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are the same as those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or would decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period, which includes NMFS' direct notice to anyone who commented on the proposed initial IHA, provides the public an opportunity to review these few documents, provide any additional pertinent information, and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Comment 17: Oceana and COA remarked that NMFS must utilize the best available science. The commenters further suggest that NMFS has not done so, specifically, referencing information regarding the NARW such as updated population estimates and recent habitat usage patterns in NEETMA's survey area. The commenters specifically asserted that NMFS is not using the best available science with regards to the NARW population estimate and state that NMFS should be using the 336 estimate presented in the recent North Atlantic Right Whale Report Card (*https://www.narwc.org/report-cards.html*).

NMFS response: While NMFS agrees that the best available science should be used for assessing NARW abundance estimates, we disagree that the North Atlantic Right Whale Report Card (*i.e.,* Pettis *et al.* (2022)) study represents the most recent and best available estimate for NARW abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a

different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently (after publication of the notice of proposed IHA), NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). (See the footnote under Table 3 in the proposed **Federal Register** notice (87 FR 27575; May 9, 2022)). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change our analysis regarding the estimated take of NARWs, nor affect our ability to make the required findings under the MMPA for NEETMA's survey activities.

NMFS further notes that Oceana seems to be conflating the phrase ''best available data'' with ''the most recent data.'' The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS's determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the draft SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

The commenters also noted their concern regarding NARW habitat usage, stating that NMFS was not appropriately considering relevant information on this topic. While this survey specifically intersects a portion of migratory habitat for NARWs, year-round ''core'' NARW foraging habitat (Oleson *et al.,* 2020) is located much further north in the southern area of Martha's Vineyard and Nantucket Islands, where both visual and acoustic detections of NARWs indicate a nearly year-round presence (Oleson *et al.,* 2020). NMFS notes that prey for NARWs are mobile and broadly distributed throughout the survey area; therefore, NARW foraging efforts are not likely to be disturbed given the location of these planned activities in relation to the broader area that NARWs migrate through and the northern areas where NARWs primarily forage. There is ample foraging habitat further north of this survey area that will not be ensonified by the acoustic sources used by NEETMA, such as in the Great South Channel and Georges Bank Shelf Break feeding BIA. Furthermore, and as discussed in the proposed Notice (87 FR 27575; May 9, 2022), the spatial acoustic footprint of the survey is very small relative to the spatial extent of the available foraging habitat.

Lastly, as we stated in the Notice announcing the proposed IHA, any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the survey area is approximately 5,184 km^2 and the NARW migratory BIA is 269,448 km^2. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 18: Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for NARWs. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARWs, as disturbance responses in NARWs could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

NMFS response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, etc. impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by NEETMA would create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS's negligible impact analyses. Because NARWs generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor (BIA of 269,448 km^2) compared with the survey area (5,184 km^2). Thus, the transitory nature of NARWs at this location means it is unlikely for any exposure to cause chronic effects as NEETMA's planned survey area and ensonified zones are much smaller than the overall migratory corridor. Because of this, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from NEETMA's described survey activities.

Comment 19: Oceana states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to provide information to inform site characterization surveys and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. In general, Oceana stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys.

NMFS response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. Oceana does not make any specific recommendations of measures to add to the IHA. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluates the effects expected as a result of the specified activity, makes the necessary findings, and prescribes

mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 20: Oceana has requested NMFS prepare a vessel traffic plan on the basis that the site characterization surveys will increase the vessel traffic in and around the project area.

NMFS response: NMFS disagrees that vessel traffic would increase significantly to a level where adverse impacts would occur to marine mammals in and around NEETMA's survey site. NEETMA anticipates the use of up to three concurrently operating survey vessels during the entire effective period of the IHA, over the approximate survey area of 5,183.97 km^2. Due to the size of the planned survey area and the small number of vessels expected to be operating specifically relating to NEETMA's project, NMFS considers it highly unlikely that this level of additional vessels would increase the risk to the species in and around the area.

Furthermore, NEETMA did not request authorization for take incidental to vessel traffic during their site characterization surveys. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If NEETMA were to strike a marine mammal with a vessel, this would be an unauthorized take and be in violation of the MMPA. This gives NEETMA a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures called for in the IHA. NEETMA proposed a very conservative suite of mitigation measures related to vessel strike avoidance, including measures specifically designed to avoid impacts to NARWs. Section 4(f) in the IHA contains a suite of non-discretionary requirements pertaining to ship strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of site characterization vessel from surveys reporting a ship strike within the United States. When considered in the context of low overall probability of any vessel strike by NEETMA vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid ship strike. These measures are described fully in the Mitigation section below, and include, but are not limited to: Training for all vessel observers and captains, daily monitoring of NARW Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for situational awareness regarding NARW presence in the survey area, communication protocols if whales are observed by any NEETMA personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

Comment 21: Oceana suggests that protected species observers (PSOs) complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

NMFS response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** notice. That requirement is included as a requirement of the issued IHA.

Comment 22: Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m from NARWs at all times.

NMFS response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** notice and was included as a requirement in the issued IHA.

Comment 23: Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

NMFS response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, those activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by NEETMA, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 24: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

NMFS response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of NEETMA, the vessel operators, the lead PSO, and any other relevant designees of NEETMA carrying out activities subject to this IHA. The IHA also states that NEETMA must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 25: Oceana stated that the IHA must include a requirement for all phases of the NEETMA's site characterization to subscribe to the highest level of transparency, including frequent reporting to Federal agencies, requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website

NMFS response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations.

NEETMA is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, and describes, assesses and compares the effectiveness of monitoring and mitigation measures. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. Further the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, NEETMA must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System and to the U.S. Coast Guard, and that any discoveries of injured or dead marine mammals be reported by Atlantic Shores to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. All reports and associated data submitted to NMFS are included on the website for public inspection.

Comment 26: Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publically available explanation of any exemptions as to why the applicant would not be able to shutdown in these situations.

NMFS response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 27575; May 9, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone while geophysical survey equipment is operational. There is no exemption for the shutdown requirement. In regards to reporting, NEETMA must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, NEETMA is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. We note that if a right whale is detected within the Exclusion Zone before a shutdown is implemented, the right whale and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in NEETMA's final monitoring report and made publicly available on NMFS' website. NEETMA is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

Comment 27: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

NMFS response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 27575; May 9, 2022) and in this final IHA, which includes a stipulation that, when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Operators must ramp up sources to half power for 5 minutes and then proceed to full power. NMFS notes that ramp-up would not be required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable exclusion zone (EZ).

Comment 28: COA is concerned regarding the number of species that could be impacted by the activities, as well as a lack of baseline data being available for species in the area. In addition, COA has stated that NMFS did not adequately address the potential for cumulative impacts to bottlenose dolphins from Level B harassment over several years of project activities.

NMFS response: We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** notice have some likelihood of occurring in NEETMA's survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. Furthermore, NMFS notes that it has previously addressed discussions on cumulative impact analyses in previous comments and references COA back to these specific responses in this notice.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points towards two sources of information for marine mammal baseline information: the Ocean/Wind Power Ecological Baseline Studies, January 2008-December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (*https://dspace.njstatelib.org/xmlui/handle/10929/68435*) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected*) with annual reports available from 2010 to 2020 (*https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species*) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information.

Based on the information presented, NMFS has determined that no new information has become available, nor do the commenters present additional information, that would change our determinations since the publication of the proposed notice.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of NEETMA's application summarize the available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all species or stocks for which take is authorized for this action, and summarizes information related to the species or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its

optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (SAR). NMFS has utilized the more recent SAR information (in this case, the draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal SARs). All values presented in Table 3 are the most recent available at the time of publication (including from the draft 2021 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 3—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA THAT MAY BE AFFECTED BY NEETMA'S ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic	E/D, Y	368 (0; 356; 2020) [5]	0.8	18.6
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E/D, Y	6,802 (0.24; 5,573; 2016)	11	2.35
Humpback whale	*Megaptera novaengliae*	Gulf of Maine	-/-, Y	1,396 (0; 1,380; 2016)	22	12.15
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal	-/-, N	21,968 (0.31; 17,002; 2016)	170	10.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic	-/-, N	35,493 (0.19; 30,289; 2016)	303	54.3
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	-/-, N	39,215 (0.3; 30,627; 2016)	306	21
Short-finned pilot whale	*Globicephala macrorhynchus.*	Western North Atlantic	-/-, Y	28,924 (0.24; 23,637, 2016)	236	136
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	-/-, N	93,233 (0.71; 54,443; 2016)	544	26
Common dolphin	*Delphinus delphis*	Western North Atlantic	-/-, Y	172,897 (0.21, 145,216, 2016)	526	399
Common bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic—Offshore.	-/-, N	62,851 (0.23; 51,914; 2016)	519	28
		Western North Atlantic—Coastal Migratory.	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic	-/-, N	39,921 (0.27; 32,032; 2016)	320	0
Harbor porpoise	*Phocoena*	Gulf of Maine/Bay of Fundy	-/-, N	95,543 (0.31; 74,034; 2016)	851	217
Order Carnivora—Superfamily Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-/-, N	75,834 (0.15; 66,884; 2012)	2006	350
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic	-/-, N	27,131 (0.19; 23,158; 2016)	1389	4,729

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR 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: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual M/SI value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for North Atlantic right whales is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

A detailed description of the species likely to be affected by NEETMA's activities, including information regarding population trends and threats, and local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 27575; May 9, 2022). Since that time, we are not aware of any changes in the status of these species and stocks or other relevant new information; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel

(dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range [1]
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

[1] Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA (87 FR 27575; May 9, 2022) included a discussion of the potential effects of the specified activity on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (87 FR 27575; May 9, 2022) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

For this IHA, authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor authorized. Consideration of the anticipated effectiveness of the measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in the Mitigation section, further strengthens the conclusion that Level A harassment is not a reasonably anticipated outcome of the survey activity. Furthermore and as previously described, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take numbers.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for the impulsive sources (*i.e.,* boomers, sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRP SBPs) evaluated here for NEETMA's survey activities.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). For more information, see

NMFS' 2018 Technical Guidance, which may be accessed at *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

NEETMA's survey activities include the use of impulsive (*i.e.,* sparkers and boomers) and non-impulsive, intermittent (*e.g.,* CHIRP SBP) sources. These can be found in Table 2.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described previously to estimate isopleth distances to harassment thresholds. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Refer back to Table 2 to see the HRG equipment types that may be used during the planned surveys and the source levels associated with those HRG equipment types. Table 5 depicts the estimated Level B harassment isopleths for each acoustic source.

TABLE 5—DISTANCES TO LEVEL B HARASSMENT THRESHOLD (160 dB rms)

Equipment category	HRG equipment	Distance to Level B harassment threshold in meters (m)
Shallow SBPs	ET 216 CHIRP	9
	ET 424 CHIRP	4
	GeoPulse 5430	21
	TB CHIRP III	48
Medium SBPs	AA, triple plate S-Boom (700–1,000 J)	34
	AA, Dura-spark UHD (500 J/400 tip	141
	AA, Dura-spark UHD 400+400	141
	GeoMarine Geo Spark 2000 (400 tip)	141

Results of modeling using the methodology described previously indicated that, of the HRG survey equipment planned for use by NEETMA that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark UHDs and GeoMarine Geo-Source sparkers will produce the largest Level B harassment isopleth (141 m). Estimated Level B harassment isopleths for all sources evaluated here, including the sparkers, are provided in Table 5. Although NEETMA does not expect to use sparker sources on all planned survey days, it assumed, for purposes of analysis, that the sparker will be used on all survey days. This is a conservative approach, as the actual sources used on individual survey days may produce smaller harassment distances.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–201 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016a; Curtice *et al.,* 2018), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018).

The density data presented by Roberts *et al.* (2016b, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa (Roberts *et al.,* 2016b, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, marine mammal density data from Roberts *et al.* (2016a, 2016b, 2017, 2018, 2020, 2021a, 2021b) were mapped for the survey area using a geographic information system (GIS). NEETMA used all 10 × 10 km (6.2 × 6.2 mile) grid cells (5 × 5 km (3.1 × 3.1 mile) for the North Atlantic right whale) where the centroid was within each survey area in developing estimated density values for each species. For data in which the Roberts *et al.* data does not provide outputs at the species level (*i.e.,* pilot whale *spp.* and pinnipeds) the single annual density was used. For all other species, the monthly densities were used to

yield the average annual density. Bottlenose dolphin density estimates were also divided based on the specified stock.

In the Roberts *et al.* (2016b, 2017, 2018) models, species-specific delineations were not made for some marine mammals, including some pinniped species' (harbor seal and gray seal) and for pilot whale *spp.* (long-finned and short-finned). For pilot whales, both species are known to share similar habitat in the Project area, feed on similar prey, and have overlapping distributions (Mintzer *et al.,* 2008; Rone and Pace, 2012). Hayes *et al.* (2017) noted a particular overlap between the two species between New Jersey and George's Bank. Furthermore, due to their similar appearances at sea and difficulty in distinguishing species-specific characteristics, observers are likely to combine sightings of pilot whales (Waring, 1993; Rone and Pace, 2012; Stepanuk *et al.,* 2018).

Regarding the pinniped species, because the seasonality, feeding preferences, and habitat use by gray seals often overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species.

As discussed in the application, the single annual density for each marine mammal group (pilot whale *spp.* and pinnipeds) was applied and the results were divided between each species, resulting in an equal split based on the lack of evidence to support a different allocation.

For the bottlenose dolphin densities, Roberts *et al.* (2016b, 2017, 2018) does not differentiate by stock. The Western North Atlantic northern migratory coastal stock is generally expected to occur only in coastal waters from the shoreline to approximately the 20-m (65-ft) isobath (Hayes *et al.,* 2018). Both of these stocks have the potential to occur in the Northern and Southern survey areas. To account for the potential for mixed stocks within the survey areas, the densities of the two stocks were apportioned based on the 20-m isobaths contour. Any grid cells in the Roberts *et al.* data that feel entirely inshore of the 20-m isobaths were assigned to the coastal migratory stock. Any grid cells that fell outside this 20-m isobaths were apportioned to the offshore stock.

Densities from both of the survey sites were averaged annually to provide a density estimate for each species; please see Table 6 for density values used in the exposure estimation process. Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated.

TABLE 6—MAXIMUM SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 km^2) IN THE NORTHERN AND SOUTHERN SURVEY AREAS

Species groups	Marine mammal species	Stock	Mean annual density (number of animals/100km^2) [a]	
			Northern survey area	Southern survey area
Cetaceans	North Atlantic right whale	Western North Atlantic	0.169	0.102
	Fin whale	Western North Atlantic	0.154	0.058
	Sperm whale	North Atlantic	0.017	0.002
	Humpback whale	Gulf of Maine	0.042	0.040
	Common minke whale	Canadian East Coast	0.044	0.010
	Risso's dolphin	Western North Atlantic	0.014	0.001
	Long-finned pilot whale	Western North Atlantic	0.108	0.005
	Short-finned pilot whale	Western North Atlantic	0.108	0.005
	Atlantic white-sided dolphin	Western North Atlantic	0.836	0.092
	Common dolphin (short-beaked)	Western North Atlantic	5.692	0.739
	Common bottlenose dolphin	Western North Atlantic—Offshore	2.616	8.158
		Western North Atlantic—Coastal Migratory.	14.203	33.409
	Atlantic spotted dolphin	Western North Atlantic	0.129	0.004
	Harbor porpoise	Gulf of Maine/Bay of Fundy	3.012	0.874
Pinnipeds	Harbor seal	Western North Atlantic	1.690	1.226
	Gray seal	Western North Atlantic	1.690	1.226

[a] All density data was derived from Roberts *et al.* (2016a, 2016b, 2017, 2018, 2020, 2021a, 2021b).

Take Calculation and Estimation

Here we describe how the information provided previously is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that will result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described previously. The maximum distance (*i.e.,* 141 m distance associated with the Medium SBPs) to the Level B harassment criterion and the estimated distance traveled per day by a given survey vessel (*i.e.,* 62 km (38.5 mi)) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

NEETMA estimates that the surveys will achieve a maximum daily track line distance of 62 km per day (24-hour period). This distance accounts for the vessel traveling at approximately 4-knots and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 141 m (refer back to Table 5) and the maximum estimated daily track line distance of 62 km across both survey sites, an area of 5,183.97 km^2 will be ensonified to the Level B harassment threshold during NEETMA's surveys (Table 7) based on the following formula:

$$Mobile\ Source\ ZOI = (Distance/day \times 2r) + \pi r^2$$

Where: *Distance/day* = the maximum distance a survey vessel could travel in a 24-hour period; and *r* = the maximum radial distance from a given sound source to the NOAA Level B harassment thresholds.

TABLE 7—ZOI FOR EACH TYPE OF REPRESENTATIVE HRG SURVEY EQUIPMENT

Equipment type	Largest harassment isopleth in km (m); r	Distance/day in km	ZOI (km²)
Shallow SBP	0.048 (48)	62	5.98
Medium SBP (sparker)	0.141 (141)	.....	17.61

These calculated ZOIs were than input to yield the total ensonified area per day (in km²), as shown in Table 8 below.

TABLE 8—HRG SURVEY AREA DISTANCES FOR NEETMA'S PROJECT

HRG survey equipment type	Specific equipment used			Largest harassment isopleth; r (km)	Survey distances per day (km)[1]	Calculated ZOI per day (km²)
Shallow SBP	TB CHIRP III			0.048	62	5.98
Medium (SBP)	AA, Dura-spark UHD (500 J/400 tip).	AA, Dura-spark UHD 400+400.	GeoMarine Geo Spark 2000 (400 tip)	.....	0.141	17.61

[1] Assumes 24-hours of survey activity during the Project.

As described previously, this is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold will be operated at all times during the entire survey, which may not ultimately occur.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km²), incorporating the maximum seasonal estimated marine mammal densities as described previously. Estimated numbers of each species taken per day across both survey sites are then multiplied by the total number of survey days (*i.e.,* 320). The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting authorized take of marine mammals shown in Table 9:

$$Estimated\ Take = D \times ZOI \times \#\ of\ days$$

Where: D = average species density (per km²); and ZOI = maximum daily ensonified area to relevant thresholds.

TABLE 9—TOTAL AUTHORIZED TAKES BY LEVEL B HARASSMENT AND PERCENT OF POPULATION/STOCK FOR NEETMA'S PROJECT

Marine mammal species	Stock	Calculated level B take		Authorized level B take	
		Northern survey area	Southern survey area	Total authorized[a]	% stock[c]
North Atlantic right whale	Western North Atlantic	7.40	0.83	8	2.17
Fin whale	Western North Atlantic	6.73	0.47	7	0.10
Sperm whale	North Atlantic	0.73	0.02	3	0.07
Humpback whale	Gulf of Maine	1.83	0.33	3 (6)[b]	0.21 (0.43)[b]
Common minke whale	Canadian East Coast	1.92	0.08	2	0.01
Risso's dolphin	Western North Atlantic	0.62	0.01	30	0.09
Long-finned pilot whale	Western North Atlantic	4.72	0.04	20	0.05
Short-finned pilot whale	Western North Atlantic	4.72	0.04	20	0.07
Atlantic white-sided dolphin	Western North Atlantic	36.52	0.76	37	0.04
Common dolphin (short-beaked)	Western North Atlantic	248.52	6.04	255	0.15
Common bottlenose dolphin	Western North Atlantic—Offshore.	53.88	9.27	63	0.10
	Western North Atlantic—Coastal Migratory.	325.25	235.27	561	8.45
Atlantic spotted dolphin	Western North Atlantic	5.61	0.03	100	0.25
Harbor porpoise	Gulf of Maine/Bay of Fundy	131.51	7.15	139	0.15
Harbor seal	Western North Atlantic	73.77	10.02	84	0.14
Gray seal	Western North Atlantic	73.77	10.02	84	0.31

[a] All of these values were requested by NEETMA, with exception for the value in parenthesis found for humpback whales.

[b] The values in parenthesis were a proposed adjustment by NMFS based on a proposed adjustment to account for higher recorded occurrences of humpback whales in the New York Bight area (see King *et al.,* 2021).

[c] Calculated percentages of population/stock were based on the population estimates (Nest) found in the NMFS's draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment on NMFS's website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

Adjustments were made for sperm whales (Barkaszi and Kelly, 2019), Risso's dolphin (Baird *et al.,* 1991; Barkaszi and Kelly, 2019), pilot whales *spp.* (CETAP, 1982), and Atlantic spotted dolphins (Jefferson *et al.,* 2008) based on typical group sizes due to estimated takes lower than the predicted group size. The take numbers shown in Table 9 represent those originally calculated and requested by NEETMA with minor modifications adjusted by NMFS for one species.

Based on recent information from King *et al.* (2021) that demonstrated that the humpback whale is commonly sighted along the New York Bight area, NMFS determined that the humpback whale take request may be too low given the occurrence of animals near the survey area. Because of this, NMFS has increased the requested take to account for underestimates to the actual occurrence of this species within the density data.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Mitigation for Marine Mammals and Their Habitat

NMFS requires that the following mitigation measures be implemented during NEETMA's marine site characterization surveys. Pursuant to Section 7 of the ESA, NEETMA will also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Marine Mammal Exclusion Zones and Harassment Zones

Marine mammal EZs will be established around the HRG survey equipment and monitored by NMFS-approved PSOs:

- 500 m EZ for North Atlantic right whales during use of specified acoustic sources (sparkers, boomers, and non-parametric sub-bottom profilers).
- 100 m EZ for all other marine mammals, with certain exceptions specified below, during operation of impulsive acoustic sources (boomer and/or sparker).

If a marine mammal is detected approaching or entering the EZs during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Pre-Start Clearance

Marine mammal clearance zones will be established around the HRG survey equipment and monitored by PSOs:

- 500 m for all ESA-listed marine mammals; and,
- 100 m for all other marine mammals.

NEETMA will implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment (see exception to this requirement in the Shutdown Procedures section below). During this period, clearance zones will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for all other species).

Ramp-Up of Survey Equipment

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the acoustic source when technically feasible. The ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. Operators should ramp up sources to half power for 5 minutes and then proceed to full power.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective exclusion zone. Ramp-up will continue if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals and 30 minutes for all other species).

Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment will be required if a marine mammal is sighted entering or within its respective exclusion zone. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement between the Lead PSO and vessel operator should be discussed only after shutdown has occurred. Subsequent restart of the survey equipment can be initiated if the animal has been observed exiting its respective exclusion zone or until an additional time period has elapsed (*i.e.,* 15 minutes for harbor porpoise, 30 minutes for all other species).

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (refer back to Table 5), shutdown will occur.

If the acoustic source is shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective exclusion zones. If the acoustic source is shut down for a period longer than 30 minutes, then pre-clearance and ramp-up procedures will be initiated as described in the previous section.

The shutdown requirement will be waived for pinnipeds and for small delphinids of the following genera: *Delphinus, Lagenorhynchus, Stenella,* and *Tursiops.* Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgement in making the decision to call for a shutdown. Additionally, shutdown is required if a delphinid or pinniped is detected in the exclusion zone and belongs to a genus other than those specified.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* echosounders), however, these procedure will be required for non-parametric sub-bottom profilers (*e.g.,* CHIRPs).

Vessel Strike Avoidance

NEETMA must adhere to the following measures except in the case where compliance will create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone based on the appropriate separation distance around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.
- Members of the monitoring team will consult NMFS North Atlantic right whale reporting system and WhaleAlert (*http://www.whalealert.org*), as able, for the presence of North Atlantic right whales throughout survey operations, and for the establishment of a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.
- All survey vessels, regardless of size, must observe a 10-kn (5.14 m/s) speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect;
- All vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 will operate at speeds of 10 kn (5.14 m/s) or less at all times;
- All vessels must reduce their speed to 10 kn (5.14 m/s) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel;
- All vessels must maintain a minimum separation distance of 500 m from right whales and other ESA-listed large whales;
- If a whale is observed but cannot be confirmed as a species other than a right whale or other ESA-listed large whale, the vessel operator must assume that it is a right whale and take appropriate action;
- All vessels must maintain a minimum separation distance of 100 m from non-ESA listed whales;
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Project-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, we have determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Monitoring Measures

Visual monitoring will be performed by qualified, NMFS-approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of survey activities. NEETMA will employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for their designated task. On a case-by-case basis, non-independent observers may be approved by NMFS for limited, specific duties in support of approved, independent PSOs on smaller vessels with limited crew capacity operating in nearshore waters.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including exclusion zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established exclusion zones during survey activities. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

During all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Two PSOs will be on watch during nighttime operations. The PSO(s) will ensure 360° visual coverage around the vessel from the most appropriate observation posts and will conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 2 hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals will be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to exclusion zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, night-vision goggles with thermal clip-ons and infrared technology will be used. Position data will be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs will also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources. Any observations of marine mammals by crew members aboard any vessel associated with the survey will be relayed to the PSO team. Data on all PSO observations will be recorded based on standard PSO collection requirements. This will include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances).

Reporting Measures

Within 90 days after completion of survey activities or expiration of this IHA, whichever comes sooner, a draft report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov,nmfs.gar.incidental-take@noaa.gov,* and *ITP.Potlock@noaa.gov.* The report must contain at minimum, the following:

- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort begins and ends;
- Vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including wind speed and direction, Beaufort sea state, Beaufort wind force, swell height, weather conditions, cloud cover, sun glare, and overall visibility to the horizon;
- Factors that may be contributing to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
- Survey activity information, such as type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-start clearance survey, ramp-up, shutdown, end of operations, etc.).

If a marine mammal is sighted, the following information should be recorded:

- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- PSO who sighted the animal;
- Time of sighting;
- Vessel location at time of sighting;
- Water depth;
- Direction of vessel's travel (compass direction);
- Direction of animal's travel relative to the vessel;
- Pace of the animal;
- Estimated distance to the animal and its heading relative to vessel at initial sighting;
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified); also note the composition of the group if there is a mix of species;
- Estimated number of animals (high/low/best);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach and/or closest distance from the center point of the acoustic source;
- Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, data acquisition, other); and
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up, speed or course alteration, etc.) and time and location of the action.

If a North Atlantic right whale is observed at any time by PSOs or personnel on any Project vessels, during surveys or during vessel transit, NEETMA must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System: (866) 755–6622. North Atlantic right whale sightings in any location may also be reported to the U.S. Coast Guard via Channel 16.

In the event that NEETMA personnel discover an injured or dead marine mammal, NEETMA will report the incident to the NMFS Office of Protected Resources (OPR) and the NMFS New England/Mid-Atlantic Stranding Coordinator (978–282–8478 or 978–281–9291) as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, NEETMA will report the incident to the NMFS OPR and the NMFS New England/Mid-Atlantic Stranding Coordinator (978–282–8478 or 978–281–9291) as soon as feasible. The report will include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 3 given that NMFS expects the anticipated effects of the survey to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the North Atlantic right whale—they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality will occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is authorized.

As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section of the proposed **Federal Register** notice (87 FR 27575; May 9, 2022), non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes will be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). Even repeated Level B harassment of some small subset of an

overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. As described previously, Level A harassment is not expected to occur given the nature of the operations and the estimated size of the Level A harassment zones.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activities in estimating take numbers and evaluated here, in reality much of the survey activity will involve use of non-impulsive acoustic sources with a reduced acoustic harassment zone of 48 m, producing expected effects of particularly low severity. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated North Atlantic right whale mortalities began in June 2017 and there is an active UME. Overall, preliminary findings support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, the survey area overlaps a migratory corridor BIA for North Atlantic right whales. Due to the fact that the survey activities are temporary and the spatial extent of sound produced by the survey will be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the survey. Given the relatively small size of the ensonified area, it is unlikely that prey availability will be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during NEETMA's activities. Additionally, only very limited take by Level B harassment of North Atlantic right whales has been requested and is authorized by NMFS, as HRG survey operations are required to maintain a 500 m EZ and shutdown if a North Atlantic right whale is sighted at or within the EZ. The 500 m shutdown zone for right whales is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types planned for use. NMFS does not anticipate North Atlantic right whales takes that will result from NEETMA's survey activities will impact annual rates of recruitment or survival. Thus, any takes that occur will not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of NEETMA's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 3, including those with active UMEs, to the level of least practicable adverse impact. In particular they will provide animals the opportunity to move away from the sound source throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized for this Project.

NMFS expects that takes will be in the form of short-term Level B behavioral harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals will only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures will further reduce exposure to sound that could result in more severe behavioral harassment.

Biologically Important Areas for Other Species

As previously discussed, impacts from the Project are expected to be localized to the specific area of activity and only during periods of time where NEETMA's acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect this action to affect these areas. These important areas are found outside of the range of this survey area, as is the case with fin whales and humpback whales (BIAs found further north), and, therefore, not expected to be impacted by NEETMA's survey activities.

There are three major haul-out sites exist for harbor seals along New Jersey, including at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals will be out of the water, no in-water effects are expected.

Determinations

In summary and as described previously, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely

affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or will be authorized;
- No Level A harassment is anticipated, even in the absence of mitigation measures, or authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only, consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for North Atlantic right whales, the activities will occur in such a comparatively small area such that any avoidance of the survey area due to activities will not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment isopleth (141 m)), which minimizes the effects of the take on the species; and,
- The required mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation, monitoring, and reporting measures, NMFS finds that the total marine mammal take from NEETMA's survey activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take of 15 marine mammal species (with 16 managed stocks). The total amount of takes authorized relative to the best available population abundance is less than 8.5 percent for each stock which NMFS finds are small numbers of marine mammals relative to the estimated overall population abundances for those stocks (Table 3).

Based on the analysis of the specified activity contained herein and in our Notice proposing issuance of the IHA (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing the incidental take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021). The consultation concluded that NMFS' authorization of take incidental to these types of activities under the MMPA is not likely to adversely affect ESA-listed marine mammals.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the final IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to NEETMA for conducting site characterization surveys off New Jersey from July 1, 2022 through June 30, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The final IHA and NEETMA's IHA application can be found on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-nextera-energy-transmission-midatlantic-holdings-llc-marine.*

Dated: July 5, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV188

Request for Information on Industry Needs for Space Situational Awareness Data and Value-Added Services, and Related Liability Considerations

AGENCY: Office of Space Commerce, Department of Commerce, National

Oceanic and Atmospheric Administration.

ACTION: Notice; request for information (RFI).

SUMMARY: The U.S. Department of Commerce (Department), via the Office of Space Commerce (OSC), requests input from all interested parties on spacecraft operator needs for U.S. government space situational awareness (SSA) data and basic spaceflight safety services; private sector concerns regarding usage rights for SSA data and products; and a framework for legal liability associated with the provision and use of SSA data and basic spaceflight safety services. This input will inform OSC's development of capabilities to share SSA data and provide basic spaceflight safety services to all space operators.

DATES: Responses are due on or before August 8, 2022.

ADDRESSES: Interested individuals and organizations should submit written comments on issues addressed in this Notice by either of the following methods:

• *Email: space.commerce@noaa.gov.* Include the title of this request in the subject line of the message.

Instructions: Response to this RFI is voluntary. Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Respondents need not reply to all questions listed. Each individual or institution is requested to submit only one response. All comments received are part of the public record and may be posted, without change, on a Federal website. All identifying information (*e.g.,* name, address) submitted voluntarily by the sender will be publicly accessible. OSC, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Glenn E. Tallia, Chief, NOAA Office of General Counsel, Weather, Satellites, and Research Section, (301) 938–6474.

SUPPLEMENTARY INFORMATION:

I. Background

As described in Space Policy Directive-3 (83 FR 28969; June 21, 2018) and the 2021 United States Space Priorities Framework (*https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Space-Priorities-Framework-_-December-1-2021.pdf*), OSC is developing the capability to share space situational awareness (SSA) data and provide basic spaceflight safety services to all space operators, including conjunction analysis and warning services. OSC may leverage data, products, and services provided from a variety of government, commercial, academic, and international sources, taking over and potentially expanding upon the service currently provided by the Department of Defense.

OSC seeks public input broadly from the space community, including spacecraft operators, SSA data providers (current and prospective, ground and space-based), SSA analytic and value-added service providers, academia, nonprofit entities, space insurance providers, and the legal community.

OSC greatly appreciated responses to prior requests for information, including its request for information about ''Commercial Capabilities in Space Situational Awareness Data and Space Traffic Management Services'' in April 2019 and ''Space Object Commercial Data'' in February 2022. In addition, OSC has conducted numerous Industry Day meetings with companies from November 2020 to January 2021 and provided an opportunity to respond to desired learning objectives from a Commercial Sprint Advanced Concept Training. In addition, OSC is currently engaged in a listening tour with satellite operators and commercial space situational awareness data providers to understand basic services they expect to see when OSC takes over the service currently provided by the Department of Defense. The responses help OSC better understand key aspects of current and future non-governmental space object commercial data, and advanced SSA services that exceed the basic spaceflight safety services described above. This request builds on that input and, in addition, requests comments on usage rights and liability concerns associated with OSC's provision of SSA data and basic spaceflight safety services.

II. Questions To Inform Development of the SSA Products and Services

OSC seeks responses to four categories of questions, and invites any member of the public to provide input:

A. Data, products, and services needed by spacecraft operators;

B. Usage rights in data, products, and services needed and provided by spacecraft operators and value-added providers;

C. Framework for legal liability of spacecraft operators and the private sector; and

D. General feedback.

Respondents are encouraged to explain how the capabilities to be provided by OSC's SSA data and basic spaceflight safety services can be structured for a policy and regulatory environment that enables a competitive and burgeoning U.S. commercial space sector. Responses may also explain how the U.S. Government can work with industry and international partners in the development and implementation of open, transparent, and credible international standards, policies, and practices that establish the foundation for global space traffic coordination.

A. Data, Products, and Services Needed by Spacecraft Operators

Prior requests for information have informed OSC on the specific capabilities commercial entities could currently provide and could provide in the future through an open architecture data repository that provides SSA data and basic spaceflight safety services. OSC is seeking to supplement this information by learning which SSA data and basic spaceflight safety services should be provided by OSC as a government service to spacecraft operators based on the most current needs of spacecraft operators.

Currently OSC is planning to develop a public catalog of tracked space objects and provide basic spaceflight safety services at no cost to satellite owners and operators, commercial service providers, and the public, including international participants. There are multiple basic services currently under consideration. First, OSC would provide on-orbit orbital safety assessments that include ephemeris and tracking-based conjunction assessment screenings, conjunction data message production with a calculated likelihood of collision probability, orbital determination quality assessment, timing of any future expected tracking, and pre-maneuver ephemeris screening. Second, OSC would provide end-of-life reentry assessments that estimate both the actual decay time and the ellipse of possible earth impact as satellites approach decay. Third, OSC would provide pre-launch coordination and launch coordination such as launch collision avoidance assessments, and disposal and reentry of launch detritus assessments. Finally, OSC would provide evaluations of satellite owner and operator data before such data's use in conjunction assessments.

OSC invites public comment on the scope of those SSA data and basic spaceflight safety services and on whether additional services from OSC

would be of value to spacecraft operators.

B. Usage Rights in Acquired Data, Products, and Services

OSC sought public input on its plans to procure SSA data on February 16, 2022 (*https://sam.gov/opp/7611eabcd5a74979a267199ea8689de2/view*), and will be seeking detailed public input later this year on the potential procurement of SSA products and services. This input will help OSC understand what data and products the private sector can provide. OSC may also obtain SSA data from spacecraft operators. OSC now seeks public input regarding the usage rights for the acquired data and products. OSC is inviting comments addressing what usage and sharing rights for acquired SSA data, products, and services will enable spacecraft operators and value-added service providers to best rely on OSC's data and basic spaceflight safety services. OSC also invites comments regarding how usage rights will impact those providing commercial SSA data or products to OSC. Furthermore, OSC invites comment on the following questions:

(1) For value-added service providers, what type of usage rights in SSA data and products would enable use of such data and products to build advanced SSA services beyond basic spaceflight safety services? For example, would a condition prohibiting commercial use be problematic? Name specific acceptable data licenses if known (*e.g.,* Creative Commons Zero Universal Public Domain Dedication (CC0) (*https://creativecommons.org/publicdomain/zero/1.0/legalcode*), Creative Commons Attribution International (CC BY 4.0) (*https://creativecommons.org/licenses/by/4.0/legalcode*), Creative Commons Attribution-NonCommercial International (CC BY–NC 4.0) (*https://creativecommons.org/licenses/by-nc/4.0/legalcode*)). For spacecraft operators, what type of usage rights in SSA data and products, if any, are of value to rely on OSC's SSA data and basic spaceflight safety services?

(2) For value-added service providers, would access to the algorithms used to process SSA data and create products and services be helpful? If so, why, and what type of usage rights would enable use? Name specific acceptable software licenses, if known (*e.g.,* CC0, Apache 2.0 (*https://www.apache.org/licenses/LICENSE-2.0*), MIT, GNU Lesser General Public License (LGPL) (*https://www.gnu.org/licenses/lgpl-3.0.en.html*), GNU General Public License (GPL) (*https://www.gnu.org/licenses/gpl-3.0.en.html*), etc.).

(3) For commercial data and product providers from whom OSC acquires SSA data and products, how would various usage rights in those data and products impact those commercial data and product providers? For example, are SSA data providers willing to provide data under an open license, but only at a significantly higher cost?

(4) For spacecraft operators from whom OSC acquires data, how would various usage rights in those data impact spacecraft operators? For example, are spacecraft operators willing to share some data only on the condition that it is not shared with the public, or only shared with the public on the condition that it is used for noncommercial purposes?

(5) Are non-Federal entities developing SSA products and services willing to share their algorithms with OSC, either freely or under a procurement contract? Would they be willing to share their algorithms with the public, either freely or if OSC procures public sharing and use rights? If so, under what usage rights (name specific acceptable software licenses, if applicable)?

C. Framework for Legal Liability of Spacecraft Operators and the Private Sector

OSC is evaluating the legal liability implications associated with the provision of governmental SSA data and basic spaceflight safety services. In this context, OSC is seeking information to consider whether the provision of governmental SSA data and basic spaceflight safety services that incorporate industry data or products raises liability concerns for those providing the relied on data or products. OSC is also seeking public input on whether there are liability concerns with respect to spacecraft operators or value-added providers that rely on governmental SSA data and basic spaceflight safety services.

By ''liability framework,'' OSC means the set of legal rules that govern—or could govern—liability for a collision. In some of the questions below, OSC asks what the current liability framework is. OSC wants to ensure that it has accurate, comprehensive information about the current state of the world faced by parties involved in providing or using SSA or spaceflight safety services. In other questions, OSC asks what the liability framework could or should be in the future to address any potential liability issue. Responders are encouraged to think about liability broadly and consider mechanisms such as disclaimers of warranty, indemnity, immunity, cross-waivers of liability, and others. OSC invites general responses regarding legal liability. Furthermore, OSC has identified the following questions:

(1) In the event of an on-orbit collision between two U.S. spacecraft operators, what liability framework currently applies and what role, if any, would governmental SSA data or basic spaceflight safety services play in that framework? What liability framework should apply? What incentives or regulatory approaches to liability will increase competitiveness of U.S. industry in the global market and increase spaceflight safety?

(2) In the event of an on-orbit collision between a U.S. spacecraft operator and a foreign spacecraft operator, what liability framework currently applies and what role, if any, would governmental SSA data or basic spaceflight safety services play in that framework? What liability framework should apply? What incentives or regulatory approaches to liability will increase competitiveness of U.S. industry in the global market and increase spaceflight safety?

(3) In the event of an on-orbit collision, what insurance regimes are available to U.S. spacecraft operators? What liability mechanisms (*e.g.,* cross-waiver of liability provisions) can provide stability and risk assurance to both insurers and U.S. spacecraft operators? What role can or should governmental SSA data or basic spaceflight safety services play in insurance regimes?

(4) Are there any liability concerns that would prevent spacecraft operators or commercial SSA data, product, or service providers from providing data, products, or services to OSC? Are there liability concerns caused by OSC creating derived or value-added data, products, or services developed using the provider's data, products, or services? If so, what could be done to address these concerns? With respect to SSA data, products and services released to the public, would the disclaimers included in standard open data licenses (such as CC0 or CC BY 4.0) adequately address those liability concerns?

(5) Are there any liability concerns that would prevent spacecraft operators or commercial SSA data, product, or service providers from providing SSA data, products, or services to the public? What incentives or regulatory approaches to liability will be in the best interest of U.S. spacecraft operators and value-added providers in terms of

international competitiveness and increased spaceflight safety?

(6) Currently, OSC does not have specific space traffic control authority over space objects. What, if any, future space traffic control regimes would be desirable? Should provision of OSC SSA data or basic spaceflight safety services be accompanied with binding directions or procedures to spacecraft operators? What impact, if any, would such directions or procedures have on liability for U.S. spacecraft operators or value-added service providers?

D. General Feedback

OSC welcomes feedback about any other related topics. For example, are there any matters not discussed above that OSC should or must consider before it provides SSA data and basic spaceflight safety services?

III. How To Submit Your Response

To facilitate review of your responses, please reference the subject of the RFI in your response. You may respond to some or all of the topic areas covered in the RFI, and you can suggest other factors or relevant questions. You may also include links to online material or interactive presentations. If including data sets, please make the data available in a downloadable, machine-readable format with accompanying metadata.

Please note that this is a request for information (RFI) only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a request for proposals, applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Choosing not to respond to this RFI does not preclude participation in any future procurement, if conducted.

Dated: July 1, 2022.

Glenn E. Tallia,

Chief, Weather, Satellite and Research Section, NOAA Office of General Counsel.

[FR Doc. 2022–14516 Filed 7–7–22; 8:45 am]

BILLING CODE 3510–HR–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* August 7, 2022.

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) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 9/10/2021, 9/17/2021, 12/10/2021, and 12/17/2021, 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 product(s) and service(s) 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 product(s) and service(s) 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 product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Service(s)

Service Type: Administrative Services
Mandatory for: Internal Revenue Service Mailroom: 1100 Commerce Street, Dallas, TX
Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: TREASURY, DEPARTMENT OF THE, DEPT OF TREAS/

Service Type: Administrative Services
Mandatory for: Internal Revenue Service Collections Department: 1100 Commerce Street, Dallas, TX
Designated Source of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: TREASURY, DEPARTMENT OF THE, DEPT OF TREAS/

Service Type: Custodial service
Mandatory for: White Mountain National Forest, Saco Ranger Administrative Site, Routes 112, 33 Kancamagus Highway, Conway, NH
Designated Source of Supply: Northern New England Employment Services, Portland, ME
Contracting Activity: FOREST SERVICE, ALLEGHENY NATIONAL FOREST

Service Type: Laundry Service
Mandatory for: Virginia Army National Guard, Central Issue Facility, Defense Supply Center Richmond Warehouse 15, 8000 Jefferson Davis Hwy, Richmond, VA
Designated Source of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA
Contracting Activity: DEPT OF THE ARMY, W7N5 USPFO ACTIVITY VA ARNG

Service Type: Custodial service
Mandatory for: US Department of Energy, Jamestown Service Center, 8430 Country Club Street, Jamestown, ND
Designated Source of Supply: Alpha Opportunities, Inc., Jamestown, ND
Contracting Activity: ENERGY, DEPARTMENT OF, WESTERN–UPPER GREAT PLAINS REGION

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–14572 Filed 7–7–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete service(s) that was previously furnished by such agencies.

DATES: Comments must be received on or before: August 7, 2022.

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) 785–6404 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 product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—*Product Name(s)*:
MR 16900—Set, Birthday Bag, Small
MR 16901—Set, All-Occasion Bag, Small
MR 16902—Set, Birthday Bag, Medium
MR 16903—Set, All-Occasion Bag, Medium
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc, Winston-Salem, NC
C*ontracting Activity:* Military Resale-Defense Commissary Agency
Distribution: C-List
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: ESD—Tier 1 Call Center Service
Mandatory for: Defense Logistics Agency, DLA Headquarters, Satellite Offices (NoVA & DC area), CONUS & OCONUS, 700 Robbins Avenue, Philadelphia, PA
Designated Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI
Contracting Activity: DEFENSE LOGISTICS AGENCY, DCSO PHILADELPHIA

Service Type: Janitorial/Custodial
Mandatory for: VA Medical Center: Dental Laboratory, Washington, DC
Designated Source of Supply: Columbia Lighthouse for the Blind
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, NAC, HINES, IL

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–14571 Filed 7–7–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0031]

Submission for OMB Review; Comment Request

AGENCY: Defense Health Agency (DHA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following/proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 8, 2022.

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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Childbirth and Breastfeeding Support Demonstration Survey; OMB Control Number 0720–CBDS.

Type of Request: New.

Number of Respondents: 16,000.

Responses per Respondent: 1.

Annual Responses: 16,000.

Average Burden per Response: 9 minutes.

Annual Burden Hours: 2,400 hours.

Needs and Uses: The Childbirth and Breastfeeding Support Demonstration Survey is necessary to solicit information from TRICARE beneficiaries who have given birth in the specified reporting period (initial survey for beneficiaries who gave birth in calendar year 2021, with follow on surveys sent to beneficiaries who give birth each calendar year quarter through the end of 2026, with the final survey sent in early 2027). Approximately 100,000 TRICARE beneficiaries give birth each year; about 60 percent of those births occur in private sector care and the other 40 percent in direct care (military treatment facilities). The survey is mandated by Section 746 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, enacted on January 1, 2021). The end result of the survey will be data that can be used to develop mandatory Reports to Congress as well as recommendations for permanent implementation of some or all of the demonstration elements into the TRICARE Program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 30, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–14522 Filed 7–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0021]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Navy Recruiting Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 6, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Navy Recruiting Command, 5722 Integrity Drive, Bldg. 784, Millington, Tenn. 38054, or call Ms. Sonya Martin at 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Commission in the U.S. Navy/U.S. Naval Reserve; NAVCRUIT Form 1131/238, OMB Control Number 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or U.S. Navy Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 14,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Annual Responses: 14,000.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: June 30, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–14520 Filed 7–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0022]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Navy Recruiting Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 6, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Financial Operations System Support, Business and Support Services Division, Headquarters, U.S. Marine Corps, 3044 Catlin Ave., Quantico, VA 22134–5009, or call Ms. Sonya Martin at 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Response to the Marine Corps NAF Debt Collection Notice, NAVMC Form 11787, OMB Control Number 0703–0075.

Needs and Uses: The information collection requirement is necessary to maintain a tracking and accounting system for the purpose of repayment management or to transfer the debt collection to the Treasury Offset Program, dependent on the response option elected by the respondent. Respondents are authorized vendors and patrons indebted to Marine Corps Community Services businesses and

services as well as applicable supported Marine Corps Non-Appropriated Fund Instrumentalities. The completed form is maintained to manage the repayment option elected by the respondent. If the form was not completed, the outstanding alleged debt would be automatically submitted to the Treasury Offset Program to withhold or reduce federal payment(s) to satisfy the debt. Having a means to manage outstanding debt collection supports financial accountability.

Affected Public: Business or other for-profit; Individuals or households.

Annual Burden Hours: 173.

Number of Respondents: 2,080.

Responses per Respondent: 1.

Annual Responses: 2,080.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: June 30, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–14521 Filed 7–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information to be Verified for the 2023–2024 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2023–2024 award year, Assistance Listing Numbers 84.007, 84.033, 84.063, and 84.268.

FOR FURTHER INFORMATION CONTACT: Vanessa Gomez, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C179, Washington, DC 20202. Telephone: (202) 453–6708. Email: *Vanessa.Gomez@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group (VTG) in which the applicant has been placed. The VTG indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

To help institutions and applicants deal with the challenges resulting from the novel coronavirus disease (COVID–19) pandemic, the Secretary has provided flexibilities to the verification regulations through the end of the first payment period that begins after the date that the COVID–19 national emergency is rescinded.

The following chart lists, for the 2023–2024 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA information	Acceptable documentation
Income information for tax filers: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) 2021 tax account information of the tax filer that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool and that has not been changed after the information was obtained from the IRS; (2) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government, that lists 2021 tax account information of the tax filer; or (3) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2021 tax account information of the tax filer.
Income information for tax filers with special circumstances: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) For a student, or the parent(s) of a dependent student, who filed a 2021 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2021 joint income tax return— (a) A transcript obtained from the IRS or other relevant tax authority that lists 2021 tax account information of the tax filer(s); or (b) A copy of the income tax return and the applicable schedules that were filed with the IRS or other relevant tax authority that lists 2021 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2021 employment income received or an equivalent document.[2]

FAFSA information	Acceptable documentation
	(2) For an individual who is required to file a 2021 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2021— (a) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2021; [3] (b) Verification of non-filing [4] from the IRS dated on or after October 1, 2022; (c) A copy of IRS Form W–2 [2] for each source of 2021 employment income received or an equivalent document; [2] and (d) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2021. *Note:* An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic 6-month extension submit tax information using the IRS Data Retrieval Tool, by obtaining a transcript from the IRS, or by submitting a copy of the income tax return and the applicable schedules that were filed with the IRS that lists 2021 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA. (3) For an individual who was the victim of IRS tax-related identity theft— (a) A Tax Return DataBase View (TRDBV) transcript [1] obtained from the IRS; and (b) A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft. *Note:* Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Unless the institution has reason to suspect the authenticity of the TRDBV transcript provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (4) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2021 or documentation from the IRS that include the change(s) made to the tax filer's 2021 tax information, in addition to one of the following— (a) IRS Data Retrieval Tool information on an ISIR record with all tax information from the original 2021 income tax return; (b) A transcript obtained from the IRS that lists 2021 tax account information of the tax filer(s); or (c) A signed copy of the 2021 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for non-tax filers: Income earned from work	For an individual who has not filed and, under IRS or other relevant tax authority rules (e.g., the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2021 income tax return— (1) A signed statement certifying— (a) That the individual has not filed and is not required to file a 2021 income tax return; and (b) The sources of 2021 income earned from work and the amount of income from each source; (2) A copy of IRS Form W–2 [2] for each source of 2021 employment income received or an equivalent document [2]; and (3) Except for dependent students, verification of non-filing [4] from the IRS or other relevant tax authority dated on or after October 1, 2022.
Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member for the 2023–2024 award year and the relationship of that household member to the applicant. *Note:* Verification of number of household members is not required if— • For a dependent student, the household size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married or unmarried and living together; or • For an independent student, the household size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married.

FAFSA information	Acceptable documentation
Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents listing the name and age of each household member, excluding the parents, who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2023–2024 award year in a program that leads to a degree or certificate and the name of that educational institution. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain documentation from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— (a) The applicant's institution determines that such documentation is not available because the household member in question has not yet registered at the institution the household member plans to attend; or (b) The institution has documentation indicating that the household member in question will be attending the same institution as the applicant. *Note:* Verification of the number of household members in college is not required if the number in college indicated on the ISIR is "1."
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired valid government-issued photo identification [5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2023–2024. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification,[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2023–2024. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date)

FAFSA information	Acceptable documentation
	(Student's ID Number)

[1] This footnote applies, where applicable, whenever an income tax return, the applicable schedules, or transcript is mentioned in the above chart.

The copy of the 2021 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2021 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

(a) Copies of all IRS Form W–2s for each source of 2021 employment income or equivalent documents; or

(b) If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2021; and

(c) Documentation from the IRS or other relevant tax authority that indicates the individual's 2021 tax account information cannot be located; and

(d) A signed statement that indicates that the individual did not retain a copy of his or her 2021 tax account information.

If an individual who was the victim of IRS tax-related identity theft is unable to obtain a TRDBV, the institution may accept an equivalent document provided by the IRS or a copy of the signed 2021 income tax return the individual filed with the IRS.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.

[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.

[4] If an individual is unable to obtain verification of non-filing from the IRS or other relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of non-filing from the IRS or other relevant tax authority and was unable to obtain the required documentation.

For IRS extension filers, the signed statement must also indicate that the individual has not filed a 2021 income tax return and list the sources of any 2021 income, and the amount of income from each source.

Since individuals without a Social Security number, an Individual Taxpayer Identification Number, or an Employer Identification Number are unable to obtain a verification of non-filing from the IRS, these individuals whose income is below the IRS filing threshold must submit to the institution a signed and dated statement—

(a) Certifying that the individual(s) does not have a Social Security number, an Individual Taxpayer Identification Number, or an Employer Identification Number; and

(b) Listing the sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2021 tax year.

[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Verification Requirements for Individuals Who Are Eligible for an Auto-Zero Expected Family Contribution (EFC)

Only the following FAFSA/ISIR information must be verified:

For dependent students—

- The parents' AGI if the parents were tax filers;
- The parents' income earned from work if the parents were non-tax filers; and
- The student's identity/statement of educational purpose, if required.

For independent students—

- The student's and spouse's AGI if they were tax filers;
- The student's and spouse's income earned from work if they were non-tax filers;
- The student's identity/statement of educational purpose, if required; and
- The number of household members to determine if the independent student has one or more dependents other than a spouse.

Note: Verification of non-filing [4] from the IRS (or other relevant tax authority, if applicable) dated on or after October 1, 2022, must be provided for (1) independent students (and spouses, if applicable) and parents of dependent students who did not file and are not required to file a 2021 income tax return, and (2) individuals who are required to file a 2021 IRS income tax return but have not filed because they have been granted a tax filing extension by the IRS beyond the automatic 6-month extension for the 2021 tax year.

The individual FAFSA items that an applicant must verify are based upon the Verification Tracking Group to which the applicant is assigned as outlined in the following chart.

Verification tracking flag	Verification tracking group name	FAFSA information required to be verified
V1	Standard Verification Group	*Tax Filers:* • Adjusted Gross Income. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions and Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. *Non-Tax Filers:* • Income Earned from Work.

Verification tracking flag	Verification tracking group name	FAFSA information required to be verified
		Tax Filers and Non-Tax Filers: • Number of Household Members. • Number in College.
V2	Reserved	N/A.
V3	Reserved	N/A.
V4	Custom Verification Group	• Identity/Statement of Educational Purpose.
V5	Aggregate Verification Group	*Tax Filers:* • Adjusted Gross Income. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions and Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. *Non-Tax Filers:* • Income Earned from Work. *Tax Filers and Non-Tax Filers:* • Number of Household Members. • Number in College. • Identity/Statement of Educational Purpose.
V6	Reserved	N/A.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources that will be available on the Knowledge Center web page at *https://fsapartners.ed.gov/knowledge-center:*

- *2023–2024 Application and Verification Guide.*
- *2023–2024 ISIR Guide.*
- *2023–2024 SAR Comment Codes and Text.*
- *2023–2024 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1087a–1087j, and 20 U.S.C. 1087–51–1087–58.

Annmarie Weisman,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education.

[FR Doc. 2022–14511 Filed 7–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Draft Supplemental Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the second Draft Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement (Draft Mercury Storage SEIS–II, DOE/EIS–0423–S2D) for public comment. As required by the *Mercury Export Ban Act of 2008* and the 2016 *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (all together referred to as MEBA), DOE proposes to identify an existing facility or facilities for the long-term management and storage of elemental mercury generated within the United States. To this end, DOE issued the *Final Environmental Impact Statement for the Long-Term Management and Storage of Elemental Mercury* (Mercury Storage EIS, DOE/EIS–0423, January 2011) and the first *Final Long-Term Management and Storage of Elemental Mercury Supplemental Environmental Impact Statement* (Mercury Storage SEIS, DOE/EIS–0423–S1, September 2013), which analyzed reasonable alternatives, in accordance with the *National Environmental Policy Act* (NEPA), for locating and developing such a facility. On May 24, 2021, DOE announced its intent to prepare a second supplement to the Mercury Storage EIS to update these previous analyses of potential environmental impacts and analyze additional alternatives, in accordance with NEPA.

DATES: DOE invites public comment on this Draft Mercury Storage SEIS–II during a 45-day public comment period, which commences with the publication of this Notice in the **Federal Register** and continues until August 22, 2022. In preparing the Final Mercury Storage SEIS–II, DOE will consider all comments received by that date. Comments received after that date will be considered to the extent practicable. DOE will hold two web-based public hearings via Zoom. The hearings will cover the same material. The first hearing will be held on August 2, 2022, from 12:00 p.m. to 2:00 p.m. EDT. The second hearing will be held on August 4, 2022, from 1:00 p.m. to 3:00 p.m. EDT. See Section V, ''Public Participation,'' for further information on the public comment process and the web-based hearings.

ADDRESSES: Additional information regarding the SEIS–II, the 2011 Mercury Storage EIS, 2013 Mercury Storage SEIS,

and other related documents is available online at: *https://www.energy.gov/nepa/doeeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage.* Please direct written comments or questions on the Draft Mercury Storage SEIS–II using one of the following methods:

- *Zoom Hearing Room* (during the scheduled dates); details regarding the web-based public hearing are provided in Section V, ''Public Participation:'' *https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09* (copy and paste into web browser).
- *Email: ElementalMercury_NEPA@em.doe.gov.* Please submit comments as an email message or email attachment (*i.e.,* Microsoft Word or PDF file format) without encryption.
- *Postal mail:* Please submit comments by U.S. Mail to Ms. Julia Donkin, NEPA Document Manager, Office of Environmental Management, U.S. Department of Energy, EM–4.22, 1000 Independence Avenue SW, Washington, DC 20585.

The Draft Mercury Storage SEIS–II is available at: *https://www.energy.gov/nepa/doeeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage.*

FOR FURTHER INFORMATION CONTACT: Questions concerning the Draft Mercury Storage SEIS–II or the public hearing can be sent to Ms. Julia Donkin, NEPA Document Manager, Office of Environmental Management, U.S. Department of Energy, EM–4.22, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5000, or to *Julia.Donkin@em.doe.gov.* Direct questions specific to DOE's elemental mercury program to Mr. David Haught, Mercury Program Manager, Office of Environmental Management, U.S. Department of Energy, EM–4.22, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5000, or to *David.Haught@hq.doe.gov.*

For general information concerning the DOE Office of Environmental Management NEPA process, please contact Mr. William Ostrum, Office of Environmental Management NEPA Compliance Officer, U.S. Department of Energy, EM–4.31, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2513, or to *William.Ostrum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The *Mercury Export Ban Act of 2008* (Pub. L. 110–414) and the 2016 *Frank R. Lautenberg Chemical Safety for the 21st Century Act* (Pub. L. 114–182) (all together referred to as MEBA), amended the *Toxic Substances Control Act* (TSCA; 15 U.S.C. 2601–2629) and the *Resource Conservation and Recovery Act* (RCRA; 42 U.S.C. 6939f) to address, among other things, the export and long-term management and storage of elemental mercury. MEBA prohibits the sale, distribution, or transfer by Federal agencies to any other Federal agency, any state or local government agency, or any private individual or entity, of any elemental mercury under the control or jurisdiction of a Federal agency (with certain limited exceptions). MEBA also amended section 266(c) of TSCA to prohibit the export of elemental mercury from the United States (with certain limited exceptions). MEBA directs DOE to designate a facility (or facilities) of DOE for the long-term management and storage of elemental mercury generated within the United States. MEBA further provides the Secretary of Energy with the authority to establish such terms, conditions, and procedures as are necessary to carry out this long-term management and storage function. Although the phrase ''facility (or facilities) of [DOE]'' is not defined in MEBA, DOE has a longstanding practice in various other contexts of leasing facilities to accomplish the Department's core mission. Consistent with that practice, DOE construes the term ''facility of DOE'' to include a facility leased from a commercial entity or by another Federal agency over which the Department provides an appropriate level of oversight and guidance. Accordingly, if DOE were to designate a facility that currently is owned by a commercial entity or by another Federal agency, DOE would obtain an appropriate leasehold interest in that facility to comply with MEBA. DOE would ensure that any such facility currently owned by a commercial entity or by another Federal agency would afford DOE an appropriate level of responsibility and control over the facility.

The primary sources of elemental mercury in the United States include mercury generated as a byproduct of the gold-mining process and mercury reclaimed from recycling and waste recovery activities. In addition, DOE National Nuclear Security Administration (NNSA) stores approximately 1,200 metric tons of elemental mercury at the Oak Ridge Reservation in Tennessee, which was generated in support of NNSA's mission.

The 2011 Mercury Storage EIS evaluated seven candidate locations for the elemental mercury storage facility, as well as a No-Action Alternative. The locations included new facility construction, use of existing facilities, or both. The candidate locations evaluated in 2011 were: DOE Grand Junction Disposal site near Grand Junction, Colorado (new construction); DOE Hanford Site near Richland, Washington (new construction); Hawthorne Army Depot near Hawthorne, Nevada (existing facilities); DOE Idaho National Laboratory near Idaho Falls, Idaho (new construction and an existing facility); Kansas City Plant in Kansas City, Missouri (existing facility); DOE Savannah River Site near Aiken, South Carolina (new construction); and the Waste Control Specialists LLC (WCS) site near Andrews, Texas (new construction and an existing facility).

The 2013 Mercury Storage SEIS evaluated three additional alternative locations, all in the vicinity of the Waste Isolation Pilot Plant near Carlsbad, New Mexico (all new construction). The 2013 Mercury Storage SEIS also updated some of the relevant analyses for alternatives presented in the 2011 Mercury Storage EIS.

For the 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS, DOE estimated that up to approximately 10,000 metric tons of elemental mercury would need to be managed and stored at the DOE facility during the 40-year period of analysis.

On December 6, 2019, DOE issued a Record of Decision (ROD) to document its designation of the WCS site near Andrews, Texas, for the management and storage of up to 6,800 metric tons of elemental mercury in leased portions of existing buildings at the WCS site (84 FR 66890). The ROD was supported by DOE's *Supplement Analysis of the Final Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement* (DOE/EIS–0423–SA–1), which determined that the long-term management and storage of up to 6,800 metric tons of elemental mercury in existing buildings at the WCS site would not constitute a substantial change from the proposal evaluated in the 2011 Mercury Storage EIS and updated in the 2013 Mercury Storage SEIS. On December 23, 2019, DOE published its rule to establish the fee for long-term management and storage of elemental mercury (84 FR 70402; the ''Fee Rule'').

Two domestic generators of elemental mercury subsequently filed complaints in United States District Court challenging, among other things, the validity of the Fee Rule and the ROD (*Coeur Rochester, Inc.* v. *Brouillette et al.,* Case No. 1:19–cv–03860–RJL [D.D.C. filed December 31, 2019] and *Nevada Gold Mines LLC* v. *Brouillette et al.,* Case

No. 1:20–cv–00141–RJL [D.D.C filed January 17, 2020]). On August 21, 2020, DOE and Nevada Gold Mines LLC executed a settlement agreement that resolved Nevada Gold Mines' lawsuit. Consistent with that agreement, on September 3, 2020, DOE filed a motion in the District Court asking the Court to vacate and remand the Fee Rule. The District Court granted the motion to vacate and remand the Fee Rule on September 5, 2020. Given the rulemaking process required to establish a fee for the long-term management and storage of elemental mercury, and the expiration of DOE's lease with WCS in June 2021, DOE also agreed in the settlement with Nevada Gold Mines to withdraw the designation of WCS. DOE subsequently withdrew the designation of WCS under MEBA in an amended ROD on October 6, 2020 (85 FR 63105). On April 25, 2021, the District Court signed a joint stipulation to dismiss Coeur Rochester, Inc.'s lawsuit.

II. Purpose and Need for Action

MEBA established January 1, 2019, as the date by which a DOE facility for the long-term management and storage of elemental mercury generated within the United States must be operational. MEBA requires that DOE adjust fees for generators temporarily accumulating elemental mercury if the DOE facility is not operational by January 1, 2019. If the DOE facility is not operational by January 1, 2020, DOE must: (1) immediately accept the conveyance of title to all elemental mercury that has accumulated on site prior to January 1, 2020,[1] (2) pay any applicable Federal permitting costs, and (3) store, or pay the cost of storage of, until the time at which a facility is operational, accumulated mercury to which the Secretary has title in a facility that has been issued a permit. Because statutory milestone dates have now passed, DOE needs to designate a facility and begin accepting elemental mercury as soon as practicable.

III. Proposed Action

DOE proposes to designate one or more facilities for the long-term management and storage of elemental mercury in accordance with MEBA. Facilities must comply with applicable requirements of section 5(d) in MEBA, ''Management Standards for a Facility,'' including the requirements of the *Solid Waste Disposal Act* as amended by RCRA, and other state-specific permitting requirements. Consistent with the Supplement Analysis prepared in 2019 but updated to account for accumulation of elemental mercury since then, the SEIS–II evaluates the potential environmental impacts of an estimated inventory of up to 7,000 metric tons of elemental mercury that could require management and storage during the 40-year period of analysis.

After completion of DOE's Proposed Action, DOE would establish the fee for long-term management and storage of elemental mercury through a rulemaking conducted pursuant to the *Administrative Procedure Act* (5 U.S.C. 551 *et seq.*). DOE would evaluate the potential environmental impacts of the rulemaking in accordance with NEPA implementing procedures at 10 CFR part 1021 at that time.

IV. Proposed Alternatives

The Mercury Storage SEIS–II evaluates the potential environmental impacts associated with implementation of the Proposed Action in existing facilities at the following reasonable alternative locations:

- Hawthorne Army Depot in Hawthorne, Nevada;
- WCS in Andrews County, Texas;
- Bethlehem Apparatus in Bethlehem, Pennsylvania;
- Perma-Fix Diversified Scientific Services, Inc., in Kingston, Tennessee;
- Veolia North America in Gum Springs, Arkansas; and
- Clean Harbors (facilities in Pecatonica, Illinois; Greenbrier, Tennessee; and Tooele, Utah).

DOE has also updated the analysis of the No-Action Alternative.

For each of the above alternative locations, the Mercury Storage SEIS–II provides an evaluation of the potential environmental impacts for the following resource areas: land use and ownership, and visual resources; geology, soils, and geologic hazards; water resources; air quality and noise; ecological resources; cultural and paleontological resources; site infrastructure; waste management; occupational and public health and safety (including normal operations, facility accidents, transportation, and intentional destructive acts); socioeconomics; and environmental justice. The SEIS–II also includes a description of reasonably foreseeable environmental trends and planned actions within the region of influence for each alternative site. The SEIS–II evaluates the potential cumulative impacts of actions that have a reasonably close causal relationship or that occur at the same time and place as the Proposed Action.

In the 2011 Mercury Storage EIS and the 2013 Mercury Storage SEIS, DOE identified the WCS alternative as the preferred alternative. DOE no longer has a specific preferred alternative. However, DOE does prefer one or more of the alternative locations with existing commercial facilities because selection of one or more of these facilities would best address DOE's schedule urgency established by MEBA.

V. Public Participation in the NEPA Process

DOE has published the Draft Mercury Storage SEIS–II on the internet at: *https://www.energy.gov/nepa/doeeis-0423-s2-supplemental-environmental-impact-statement-long-term-management-and-storage.* Additionally, DOE has scheduled two web-based public hearings to allow DOE to present information about the Draft SEIS–II and to receive oral comments from the public. The first hearing will be held on August 2, 2022, from 12:00 p.m. to 2:00 p.m. EDT. The second hearing will be held on August 4, 2022, from 1:00 p.m. to 3:00 p.m. EDT. Registration details are included below and are also available on the DOE website for long-term management and storage of elemental mercury (*https://www.energy.gov/em/long-term-management-and-storage-elemental-mercury*). If you are joining the web-based public hearing via the internet (the preferred approach), use the link below to log in to the Zoom Meeting Room. If you are joining the web-based public hearing via phone, dial the number below and follow the prompts. Documents and the presentation for the public hearing will be made available on the DOE website for long-term management and storage of elemental mercury (*https://www.energy.gov/em/long-term-management-and-storage-elemental-mercury*). Persons who wish to provide oral comments at the hearing may sign up either before the hearing by submitting a request to *Julia.Donkin@em.doe.gov* (preferred approach) or during the meeting. To join the first web-based public hearing (August 2, 2022) via Zoom Meeting Room*: https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09* (copy and paste into web browser).

To join the second web-based public hearing (August 4, 2022) via Zoom Meeting Room: *https://em-doe.zoomgov.com/j/1608025687?pwd=Zndsbkp6THA4V2lFdXE3ZGExclF6Zz09* (copy and paste into web browser).

Signing Authority

This document of the U.S. Department of Energy was signed on

[1] Conveyance of title pertains to mercury accumulated in accordance with 42 U.S.C. 6939f(g)(2)(D).

June 27, 2022, by William I. White, Senior Advisor for Environmental Management, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with the requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the U.S. Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 30, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–14388 Filed 7–7–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–72–000.

Applicants: Mercer County Solar Project, LLC v. PJM Interconnection, LLC.

Description: Complaint Requesting Fast Track Processing of Mercer County Solar Project, LLC.

Filed Date: 6/28/22.

Accession Number: 20220628–5159.

Comment Date: 5 p.m. ET 7/18/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1821–022.

Applicants: Goshen Phase II LLC.

Description: Triennial Market Power Analysis for the Northwest Region of Goshen Phase II LLC.

Filed Date: 6/30/22.

Accession Number: 20220630–5340.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–2126–006.

Applicants: Idaho Power Company.

Description: Triennial Market Power Analysis for the Northwest Region and Notice of Change in Status of Idaho Power Company.

Filed Date: 6/30/22.

Accession Number: 20220630–5332.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–2575–011.

Applicants: Watson Cogeneration Company.

Description: Triennial Market Power Analysis for the Southwest Region of Watson Cogeneration Company.

Filed Date: 7/1/22.

Accession Number: 20220701–5067.

Comment Date: 5 p.m. ET 8/30/22.

Docket Numbers: ER10–2756–010; ER10–2264–010; ER10–2359–011.

Applicants: Sunrise Power Company, LLC, Long Beach Generation LLC, Griffith Energy LLC.

Description: Triennial Market Power Analysis for the Southwest Region of Griffith Energy LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5337.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–2757–009; ER11–3051–005.

Applicants: Macho Springs Power I, LLC, Arlington Valley, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of Arlington Valley, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5336.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–3310–015; ER18–53–003.

Applicants: CXA La Paloma, LLC, New Harquahala Generating Company, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of New Harquahala Generating Company, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5328.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER12–2178–016; ER10–2192–039; ER13–1536–023; ER10–2178–039.

Applicants: Constellation NewEnergy, Inc., Constellation Energy Generation, LLC, Constellation Energy Commodities Group Maine, LLC, AV Solar Ranch 1, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of AV Solar Ranch 1, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5335.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER13–1865–005.

Applicants: Tesoro Refining & Marketing Company LLC.

Description: Triennial Market Power Analysis for the Southwest Region of Tesoro Refining & Marketing Company LLC.

Filed Date: 7/1/22.

Accession Number: 20220701–5074.

Comment Date: 5 p.m. ET 8/30/22.

Docket Numbers: ER14–1140–002; ER13–1069–015; ER12–2381–012; ER10–1484–026.

Applicants: Shell Energy North America (US), L.P., MP2 Energy NE LLC, MP2 Energy LLC, Inspire Energy Holdings, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of Inspire Energy Holdings, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5339.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER14–1656–012.

Applicants: CSOLAR IV West, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of CSOLAR IV West, LLC.

Filed Date: 6/30/22.

Accession Number: 20220630–5334.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER16–2368–001; ER16–1888–004.

Applicants: Tidal Energy Marketing Inc., New Creek Wind LLC.

Description: Triennial Market Power Analysis for the Northeast Region of New Creek Wind LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5333.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER18–1778–001.

Applicants: CFE International LLC.

Description: Triennial Market Power Analysis for the Southwest Region of CFE International LLC.

Filed Date: 6/30/22.

Accession Number: 20220630–5330.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER18–2033–002; ER21–963–002.

Applicants: Silverstrand Grid, LLC, Saavi Energy Solutions, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of Saavi Energy Solutions, LLC, et al.

Filed Date: 6/30/22.

Accession Number: 20220630–5329.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER21–1297–003; ER13–1562–011; ER20–1910–003; ER20–1911–003; ER20–1915–004; ER20–1916–004; ER21–1502–001; ER21–1503–001; ER12–1931–012; ER10–2504–013; ER12–610–013; ER13–338–011; ER19–2260–001.

Applicants: Valentine Solar, LLC, Shiloh IV Lessee, LLC, Shiloh III Lessee, LLC, Shiloh Wind Project 2, LLC, Pacific Wind Lessee, LLC, Maverick Solar 7, LLC, Maverick Solar 6, LLC, Maverick Solar 4, LLC, Maverick Solar, LLC, Desert Harvest II LLC, Desert Harvest, LLC, Catalina Solar Lessee, LLC, BigBeau Solar, LLC.

Description: Triennial Market Power Analysis for Southwest Region of Big Beau Solar, LLC, et al.

Filed Date: 6/29/22.

Accession Number: 20220629–5193.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER22–110–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Report Filing: Supplement to Jurisdictional Agreement Filing to be effective N/A.
Filed Date: 3/3/22.
Accession Number: 20220303–5025.
Comment Date: 5 p.m. ET 7/11/22.
Docket Numbers: ER22–1927–000; ER22–1945–000; ER22–1929–000; ER22–1928–000.
Applicants: Salt City Solar LLC, ENGIE Solidago Solar LLC, Powells Creek Farm Solar, LLC, Sunnybrook Farm Solar, LLC.
Description: Supplement to May 20 and May 23, 2022 Bracewell LLP, et al., submits tariff filing per 35.12: Application for Market-Based Rate Authorization, Request for Related Waivers to be effective 8/1/2022.
Filed Date: 6/28/22.
Accession Number: 20220628–5176.
Comment Date: 5 p.m. ET 7/12/22.
Docket Numbers: ER22–1979–001.
Applicants: El Paso Electric Company.
Description: Tariff Amendment: Depreciation Rate Update Associated with Rate Schedule No. 18 to be effective 8/1/2022.
Filed Date: 6/30/22.
Accession Number: 20220630–5275.
Comment Date: 5 p.m. ET 7/21/22.
Docket Numbers: ER22–2259–000.
Applicants: Nebraska Public Power District, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Nebraska Public Power District submits tariff filing per 35.13(a)(2)(iii): Nebraska Public Power District Revisions to Formula Rate to be effective 9/1/2022.
Filed Date: 6/30/22.
Accession Number: 20220630–5250.
Comment Date: 5 p.m. ET 7/21/22.
Docket Numbers: ER22–2260–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: July 2022 Membership Filing to be effective 7/1/2022.
Filed Date: 6/30/22.
Accession Number: 20220630–5257.
Comment Date: 5 p.m. ET 7/21/22.
Docket Numbers: ER22–2261–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1977R18 Nemaha-Marshall Electric Cooperative NITSA and NOA to be effective 9/1/2022.
Filed Date: 6/30/22.
Accession Number: 20220630–5263.
Comment Date: 5 p.m. ET 7/21/22.
Docket Numbers: ER22–2262–000.
Applicants: Mississippi Power Company.
Description: § 205(d) Rate Filing: MRA Amended and Restated Shared Service Agrmt (with Cooperative Energy) Filing to be effective 7/1/2022.
Filed Date: 6/30/22.
Accession Number: 20220630–5266.
Comment Date: 5 p.m. ET 7/21/22.
Docket Numbers: ER22–2263–000.
Applicants: Blythe Energy Inc.
Description: Market: Blythe Energy Inc. Triennial Filing to be effective 8/30/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5000.
Comment Date: 5 p.m. ET 8/30/22.
Docket Numbers: ER22–2264–000.
Applicants: Midcontinent Independent System Operator, Inc., Great River Energy, Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2022–07–01_SA 3813 NSP–GRE-Willmar TIA to be effective 8/31/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5025.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2265–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6519; Queue No. AC2–061 to be effective 6/6/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5049.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2266–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–07–01 SA 3853 NSP-Grant Solar GIA (J1169) to be effective 8/31/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5075.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2267–000.
Applicants: 527 Energy.
Description: Tariff Amendment: 527 Energy Inc. Request to Cancel MBR Tariff to be effective 7/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5081.
Comment Date: 5 p.m. ET 7/22/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–50–000.
Applicants: Deerfield Wind Energy 2, LLC.
Description: Amendment to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Deerfield Wind Energy 2, LLC.
Filed Date: 6/28/22.
Accession Number: 20220628–5172.
Comment Date: 5 p.m. ET 7/8/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14594 Filed 7–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX22–5–000]

Sandpiper Energy Storage, LLC; Notice of Filing

Take notice that on July 1, 2022, pursuant to section 211 of the Federal Power Act,[1] and Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (SDG&E TO Tariff), Sandpiper Energy Storage, LLC filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission service for the proposed Sandpiper battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E TO Tariff, CAISO's Fifth Replacement FERC Electric Tariff,[2] and the Large Generator Interconnection Agreement among Sandpiper Energy Storage, LLC, SDG&E,

[1] 16 U.S.C. 824j (2018).

[2] Capitalized terms that are not otherwise defined herein have the meanings set forth in the CAISO Tariff.

and CAISO, dated September 9, 2021, as they may be in effect from time to time.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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.

Comment Date: 5:00 p.m. Eastern Time on July 22, 2022.

Dated: July 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14595 Filed 7–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX22–4–000]

Peregrine Energy Storage, LLC; Notice of Filing

Take notice that on July 1, 2022, pursuant to section 211 of the Federal Power Act,[1] and Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (SDG&E TO Tariff), Peregrine Energy Storage, LLC filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission service for the proposed Peregrine battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E TO Tariff, CAISO's Fifth Replacement FERC Electric Tariff,[2] and the Large Generator Interconnection Agreement among Peregrine Energy Storage, LLC, SDG&E, and CAISO, dated March 18, 2021, as they may be in effect from time to time.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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.

Comment Date: 5:00 p.m. Eastern Time on July 22, 2022.

Dated: July 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14591 Filed 7–7–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2018).

[2] Capitalized terms that are not otherwise defined herein have the meanings set forth in the CAISO Tariff.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1633–003; ER10–1674–004; ER16–2186–001.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Triennial Market Power Analysis for Northwest Region of Deseret Generation & Transmission Co-operative, Inc.

Filed Date: 6/30/22.

Accession Number: 20220630–5360.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–2290–011.

Applicants: Avista Corporation.

Description: Triennial Market Power Analysis for the Northwest Region of Avista Corporation.

Filed Date: 6/30/22.

Accession Number: 20220630–5349.

Comment Date: 5 p.m. ET 8/29/22.

Docket Numbers: ER10–2374–016; ER17–2059–011.

Applicants: Puget Sound Energy, Inc.

Description: Triennial Market Power Analysis for the Northwest Region of Puget Sound Energy, Inc.

Filed Date: 6/30/22.
Accession Number: 20220630–5343.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER10–2812–016; ER10–1291–023; ER10–2843–015.
Applicants: GenConn Middletown LLC, GenConn Energy LLC, GenConn Devon LLC.
Description: Notice of Non-Material Change in Status of GenConn Devon LLC, et al.
Filed Date: 7/1/22.
Accession Number: 20220701–5164.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER10–2822–020; ER16–1238–004; ER16–1250–012; ER17–1392–004; ER10–3158–010; ER21–41–001; ER12–308–010; ER10–3162–010; ER19–2707–004; ER10–3161–010; ER17–1242–003.
Applicants: Tule Wind LLC, Shiloh I Wind Project, LLC, Poseidon Wind, LLC, Mountain View Power Partners III, LLC, Manzana Wind LLC, La Joya Wind, LLC, Dillon Wind LLC, El Cabo Wind LLC, Avangrid Arizona Renewables, LLC, Atlantic Renewable Projects II LLC.
Description: Triennial Market Power Analysis for the Southwest Region of Atlantic Renewable Projects II LLC, et al.
Filed Date: 6/30/22.
Accession Number: 20220630–5348.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER11–4267–018; ER16–2169–006; ER16–2364–006; ER17–692–005; ER10–2774–006; ER10–566–004; ER17–1214–005; ER11–3917–004.
Applicants: Mojave Solar LLC, Coso Geothermal Power Holdings, LLC, Arizona Solar One LLC, Algonquin Power Sanger LLC, Algonquin SKIC 10 Solar, LLC, Algonquin SKIC 20 Solar, LLC, Algonquin Energy Services Inc.
Description: Triennial Market Power Analysis for the Southwest Region of Algonquin Energy Services Inc., et al.
Filed Date: 6/30/22.
Accession Number: 20220630–5355.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER15–957–001; ER11–3634–008.
Applicants: KES Kingsburg, L.P., AltaGas Ripon Energy Inc.
Description: Triennial Market Power Analysis for the Northwest Region and Notice of Change in Status of AltaGas Ripon Energy Inc., et al.
Filed Date: 7/1/22.
Accession Number: 20220701–5162.
Comment Date: 5 p.m. ET 8/30/22.
Docket Numbers: ER16–1999–001; ER16–1998–001; ER16–2000–001; ER16–2003–001; ER16–2006–001; ER16–2002–001; ER16–2001–001; ER19–537–004; ER16–1644–005; ER14–608–005.
Applicants: High Desert Power Project, LLC, MRP Generation Holdings, LLC, MRP San Joaquin Energy, LLC, Malaga Power, LLC, Midway Peaking, LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Panoche LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, CalPeak Power LLC.
Description: Triennial Market Power Analysis for the Southwest Region of CalPeak Power LLC, et al.
Filed Date: 6/29/22.
Accession Number: 20220629–5195.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER17–556–006; ER17–104–008; ER17–105–008; ER10–1362–008; ER12–2639–011; ER21–2330–001; ER21–2331–001; ER21–2333–001; ER21–2336–001.
Applicants: Tecolote Wind LLC, Red Cloud Wind LLC, Duran Mesa LLC, Clines Corners Wind Farm LLC, Ocotillo Express LLC, Hatchet Ridge Wind, LLC, Broadview Energy JN, LLC, Broadview Energy KW, LLC, Grady Wind Energy Center, LLC.
Description: Triennial Market Power Analysis for Southwest Region of Grady Wind Energy Center, LLC, et al.
Filed Date: 6/30/22.
Accession Number: 20220630–5352.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER17–1607–005; ER17–1608–005; ER20–27–005; ER20–59–003.
Applicants: AZ Solar 1, LLC, Wright Solar Park LLC, Sunray Energy 3 LLC, Sunray Energy 2, LLC.
Description: Triennial Market Power Analysis for Southwest Region of Sunray Energy 2, LLC, et al.
Filed Date: 6/29/22.
Accession Number: 20220629–5196.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER18–1077–005; ER18–1076–005; ER13–1430–014; ER13–1561–013; ER21–965–003; ER21–1259–003.
Applicants: Coso Battery Storage, LLC, Ventura Energy Storage, LLC, Centinela Solar Energy, LLC, Arlington Valley Solar Energy II, LLC, GASNA 6P, LLC, GASNA 36P, LLC.
Description: Triennial Market Power Analysis for the Southwest Region of GASNA 36P, LLC, et al.
Filed Date: 6/30/22.
Accession Number: 20220630–5359.
Comment Date: 5 p.m. ET 8/29/22.
Docket Numbers: ER22–2268–000.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment: Cancellation of SA 925 PTP TSA with EKI to be effective 9/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5121.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2269–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: RS 188—Revised Colstrip 1 & 2 Transmission Agreement to be effective 9/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5125.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2270–000.
Applicants: Vermont Transco LLC.
Description: § 205(d) Rate Filing: Annual Exhibit A Information Filing for the 1991 Transmission Agreement to be effective 7/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5129.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2271–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2881R14 City of Chanute, KS NITSA NOA to be effective 9/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5178.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2272–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3675R3 Doniphan Electric Cooperative Assn, Inc. NITSA NOA to be effective 9/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5179.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2273–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5997; Queue No. AF1–249 to be effective 2/11/2021.
Filed Date: 7/1/22.
Accession Number: 20220701–5206.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2274–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3980 Panhandle Solar GIA to be effective 6/28/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5228.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2275–000.
Applicants: Windrose Power and Gas LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Windrose Power and Gas, LLC.
Filed Date: 6/30/22.
Accession Number: 20220630–5346.
Comment Date: 5 p.m. ET 7/21/22.

Docket Numbers: ER22–2276–000.
Applicants: Morgantown Station, LLC.
Description: Tariff Amendment: Notice of Cancellation of Reactive Service Rate Schedule to be effective 10/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5260.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2277–000.
Applicants: Lanyard Power Holdings, LLC.
Description: § 205(d) Rate Filing: Proposed Revisions to Reactive Service Rate Schedule to be effective 10/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5269.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2278–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3215R12 People's Electric Cooperative NITSA NOAs to be effective 6/1/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5309.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2279–000.
Applicants: AltaGas Ripon Energy Inc.
Description: § 205(d) Rate Filing: Normal 2022 to be effective 7/2/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5323.
Comment Date: 5 p.m. ET 7/22/22.
Docket Numbers: ER22–2280–000.
Applicants: KES Kingsburg, L.P.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 7/2/2022.
Filed Date: 7/1/22.
Accession Number: 20220701–5374.
Comment Date: 5 p.m. ET 7/22/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14593 Filed 7–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3309–022]

Marlow Hydro, LLC; Notice of Application for Surrender of License, Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of minor license.
b. *Project No:* 3309–022.
c. *Date Filed:* June 17, 2022.
d. *Applicant:* Marlow Hydro, LLC.
e. *Name of Project:* Nash Mill Dam Hydroelectric Project.
f. *Location:* The 200-kilowatt project is located on the Ashuelot River, in Cheshire County, New Hampshire. The project does not occupy any federal lands.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Anthony B. Rosario and Carol P. Rosario, Owners, Marlow Hydro, LLC, 139 Henniker Street, Hillsborough, NH 03244; email: *t-iem@tds.net* or *cprabr@tds.net.*
i. *FERC Contact:* Elizabeth Moats, (202) 502–6632, *elizabeth.osiermoats@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* August 1, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3309–022. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant proposes to surrender its license for the project. No ground disturbance is proposed and all project facilities would remain in place. In order to decommission the project, the licensee proposes to remove the flashboards on the dam crest and trash rack, fully open the sluice gate, close intake headgate and place impervious material upstream of intake, drain the penstock, and remove the turbines and generators from the powerhouse. The powerhouse, dam, transmission lines, utility poles, footbridge, and maintenance building would remain in place with signage indicating they are private property. The current license expires on November 30, 2022.

l. *Locations of the Application:* A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–14592 Filed 7–7–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–024]

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 27, 2022 10 a.m. EST
Through July 1, 2022
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. 20220091, Draft Supplement, NRC, WI, Environmental Impact Statement Related to the Operating License for the SHINE Medical Isotope Production Facility, Supplement 1, Comment Period Ends: 08/22/2022, Contact: Lance Rakovan 301–415–2589.

EIS No. 20220092, Second Draft Supplemental, DOE, AR, Long Term Management and Storage of Elemental Mercury, Comment Period Ends: 08/22/2022, Contact: Julia Donkin 202–586–5000.

EIS No. 20220093, Draft, FERC, ID, GTN XPress Project, Comment Period Ends: 08/22/2022, Contact: Office of External Affairs 866–208–3372.

EIS No. 20220094, Draft, BLM, NV, Goldrush Mine Project, Comment Period Ends: 08/22/2022, Contact: Scott Distel 775–635–4093.

EIS No. 20220095, Final, USFS, NM, Carson National Forest Revision of Land and Resource Management Plan, Review Period Ends: 08/08/2022, Contact: Peter Rich 575–758–6277.

Dated: July 1, 2022.

Marthea Rountree,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–14555 Filed 7–7–22; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, July 14, 2022.

PLACE: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to observe, at least 24 hours in advance, visit *FCA.gov,* select ''Newsroom,'' then select ''Events.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The following matters will be considered:

Portions Open to the Public:

- Approval of June 9, 2022, Minutes
- Regulatory Burden Solicitation

Portions Closed to the Public:

- Agency and Farm Credit System Cybersecurity Risk Update [1]
- Office of Secondary Market Oversight Periodic Report [2]

CONTACT PERSON FOR MORE INFORMATION: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2022–14653 Filed 7–6–22; 11:15 am]

BILLING CODE 6705–01–P

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(2)(8) and (9).

[2] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0779; FR ID 94827]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 6, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0779.

Title: Sections 90.20(a)(1)(iii), 90.769, 90.767, 90.763(b)(l)(i)(a), 90.763(b)(l)(i)(B), 90.771(b) and 90.743, Rules for Use of the 220 MHz Band by the Private Land Mobile Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 31 respondents; 111 responses.

Estimated Time per Response: 2 hours to 10 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 303(g), 303(r) and 332(a).

Total Annual Burden: 778 hours.

Total Annual Cost: $90,000.

Needs and Uses: The Commission will submit this expiring collection to the Office of Management and Budget (OMB) for approval.

The Commission is requesting approval for an extension of information collection 3060–0779. The collection includes rules to govern the future operation and licensing of the 220–222 MHz and (220 MHz service). In establishing this licensing plan, FCC's goal is to establish a flexible regulatory framework that allows for efficient licensing of the 220 MHz service, eliminates unnecessary regulatory burdens, and enhances the competitive potential of the 220 MHz service in the mobile service marketplace. However, as with any licensing and operational plan for a radio service, a certain number of regulatory and information burdens are necessary to verify licensee compliance with FCC rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–14551 Filed 7–7–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; System of Records

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of a new system of records.

SUMMARY: Federal Mediation and Conciliation Service (FMCS) uses this system to process and administer practical, experience-based conflict resolution training for individuals and groups in the federal, public, and private sectors. FMCS uses this system to register participants, provide accreditation information, and promote training and learning opportunities.

DATES: This system of records will be effective without further notice on August 8, 2022 unless otherwise revised pursuant to comments received. New routine uses will be effective on August 8, 2022. Comments must be received on or before August 8, 2022.

ADDRESSES: You may send comments, identified by FMCS–00010, by any of the following methods:

- *Mail:* FMCS Institute, 250 E Street SW, Washington, DC 20427.
- *Email: register@fmcs.gov.* Include FMCS–00010 on the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Office of FMCS Institute, Heather Brown, Chief Learning Officer, call (202) 606–3627 or email *hbrown@fmcs.gov.*

SUPPLEMENTARY INFORMATION: In connection with FMCS's mission, FMCS created the FMCS Institute to provide training courses concerning conflict resolution, arbitration, and mediation to the federal, public, and private sector employees. FMCS uses this system to store information pertaining to registration, instructors, enrollment, courses, and schedules. This system is comprised of several components including Event Espresso, emails, internal FMCS drives, and internal FMCS databases. Payments for courses are made via *pay.gov.* In connection with this system, FMCS also receives applications for arbitration course instructors every two years.

SYSTEM NAME AND NUMBER:

FMCS–00010 FMCS Institute Records.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, Office of FMCS Institute, 250 E Street SW, Washington, DC 20427.

SYSTEM MANAGER(S):

Chief Learning Officer, Heather Brown, 250 E Street SW, Washington, DC 20427, email *hbrown@fmcs.gov* or call (202) 606–5462. Event Espresso (Computer Technology Consultants), send mail to 10411 Motor City Drive, Suite 325, Bethesda, MD 20817, or call (240) 547–0076.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C § 172, *et seq.,* and 29 CFR part 1403.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is for collecting, processing, and maintaining participants' basic contact registration information to provide training and education services. The registration information is required to provide training, accreditation information, and to help determine locations for agency resources. The system assists in processing the online registration of participants for the training activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals in this system include members of the public, federal, public, and private sector employees who register for training, and federal employees who provide and support FMCS training services and course instructors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained in the system include the list of training programs, course descriptions, instructor applicant information, rosters, course evaluations, and registration details. The registrant information collected includes: first name, last name, email address, title, office, organization, address, room #/mail code, city, state/province, zip/postal code, telephone and fax number, and country.

RECORD SOURCE CATEGORIES:

Information is provided by registrants through the online database registration program. Course instructors and applicants to be course instructors also provide information about education, background, and experience.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FMCS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) To disclose pertinent information to the appropriate Federal, State, or

local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation or order where the record, either alone or in conjunction with other information creates an indication of a violation or potential violation of civil or criminal laws or regulations.

(b) To the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

(c) To disclose information to the National Archives and Records Administration (NARA) or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(d) To a former employee of the Agency for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(e) To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government when necessary to accompany an agency function related to this system of records.

(f) To officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accordance with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(g) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

(h) To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

(1) FMCS, or any component thereof.

(2) Any employee or former employee of FMCS in their official capacity.

(3) Any employee or former employee of FMCS in their capacity where the Department of Justice or FMCS has agreed to represent the employee.

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the FMCS General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

(i) To any federal agency, organization, or person for the purposes of performing audit or oversight operations related to the operation of this system of records as authorized by law, but only information necessary and relevant to such audit or oversight function.

(j) To facilitate the agency's response to a suspected or confirmed breach of its own records and to disclose information to appropriate agencies, entities, and persons when: (1) FMCS suspects or has confirmed that there has been a breach of the system of records; (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(k) To disclose information to another Federal agency or Federal entity, when FMCS determines that information from this systems of records may reasonably be needed by another agency in responding to a suspected or confirmed breach in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(l) To disclose to professional affiliations, licensing entities, and employers to verify attendance and course completion.

(m) To disclose, in a limited capacity, to a vendor or third party to provide requested accommodations associated with attendance, participation, registration, or instructor applicant information.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in hard copy and electronic form in locations only accessible to authorized personnel. Electronic records are stored on the agency's internal servers with restricted access to authorized Human Resources staff and designated deciding officials as determined by agency officials. Hard copy records are stored in a lock cabinet accessible to authorized Human resource staff and designated deciding officials as determined by agency policy.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the name or other programming identifier assigned to an individual in the electronic database.

POLICIES AND PRACTICES FOR RETENTION OF DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with General Records Schedule 6.5, issued by the National Archives and Records Administration.

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Administrative, technical, and physical security controls required for the system are defined in National Institute of Standards and Technology (NIST) Special Publication (SP)800–53 Rev 5, ''Security and Privacy Controls for Federal Information Systems and Organizations''. These controls strengthen the information systems and the environment in which it operates.

The physical security safeguard is 24 hours on-site professional security staff who monitor access points. The use of equipment such as, hand scanners or video monitoring of activity, are kept in protected areas. Management ensures that only authorized parties are allowed physical access. The FMCS buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

Records are in a locked file storage area or stored electronically in locations only accessible to authorize personnel requiring agency security credentials. Access is restricted, and accessible to limited Human Resources and/or individuals in a need-to-know capacity. The Technical controls used on the system include a protected network developed by a trusted third-party

contractor and only accessible to system administrators. The system is protected using a two-factor authentication log in system access.

RECORD ACCESS PROCEDURES:

Individuals must provide the following information for their records to be located and identified: (1) Full name, (2) Address, and (3) A reasonably identifying description of the record content requested. Requests can be submitted via *fmcs.gov/foia/,* via email to *privacy@fmcs.gov,* or via mail to FMCS, Privacy Office, 250 E Street SW, Washington, DC 20427. See 29 CFR 1410.3, Individual Access Requests. Certificates of course completion may be requested via email to *fmcs_institute@fmcs.gov.*

CONTESTING RECORDS PROCEDURES:

See 29 CFR 1410.6, Requests for correction or amendment of records, on how to contest the content of any records. Privacy Act requests to amend or correct records may be submitted to the Privacy Office at *privacy@fmcs.gov* or send mail to FMCS, Privacy Office, 250 E Street SW, Washington, DC 20427. Also, see *https://www.fmcs.gov/privacy-policy/.*

NOTIFICATION PROCEDURES:

See 29 CFR 1410.3(a), Individual access requests.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None

Dated: July 5, 2022.

Anna Davis,

Deputy General Counsel.

[FR Doc. 2022–14598 Filed 7–7–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Securities of State Member Banks as Required by Regulation H (FR H–1; OMB No. 7100–0091).

DATES: Comments must be submitted on or before September 6, 2022.

ADDRESSES: You may submit comments, identified by FR H–1, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

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

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

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

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

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

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Securities of State Member Banks as Required by Regulation H.

Collection identifier: FR H–1.

OMB control number: 7100–0091.

Frequency: Annually, quarterly, and on occasion.

Respondents: State member banks (SMBs).

Estimated number of respondents: 2.

Estimated average hours per response: Reporting: Form 10 (17 CFR 249.210): 219.53; Form 8–A (17 CFR 249.208a): 3; Regulation 12B (17 CFR 240.12b–1 through 240.12b–37): 1; Rule 13e–l (17 CFR 240.13e–1): 13; Regulation 14D (17 CFR 240.14d–1 through 240.14d–103) & Schedule 14D–9 (17 CFR 240.14d–101): 65.14; Form 8–K (17 CFR 249.308): 9.21; Form 10–Q (17 CFR 249.308a): 185.08; Form 10–K (17 CFR 249.310): 2,281.4; *Reporting and Disclosure:* Rule 13e–3 (17 CFR 240.13e) & Schedule 13E–3 (17 CFR 240.13e–100): 34.36; Regulation 14A (17 CFR 240.14a–1 *et seq.*) & Schedule 14A (17 CFR 240.14a–101): 12.75; Regulation 14C (17 CFR 240.14c–1 *et seq.*) & Schedule 14C (17 CFR 240.14c–101): 98.2; Rule 14f–l (17 CFR 240.14f–l): 2; Rule 12b–25 (17 CFR 240.12b–25) & Form 12b–25 (17 CFR 249.322): 2.5; Form 15 (17 CFR 249.323): 1.5; *Disclosure:* Form 3 (17 CFR 240.16a–3(k)): 0.5; Form 4 (17 CFR 240.16a–3(k)): 0.5; Form 5 (17 CFR 240.16a–3(k)): 1.

Estimated annual burden hours: Reporting: Form 10 (17 CFR 249.210): 439; Form 8–A (17 CFR 249.208a): 6; Regulation 12B (17 CFR 240.12b–1 through 240.12b–37): 2; Rule 13e–l (17 CFR 240.13e–1): 26; Regulation 14D (17 CFR 240.14d–1 through 240.14d–103) & Schedule 14D–9 (17 CFR 240.14d–101): 130; Form 8–K (17 CFR 249.308): 18; Form 10–Q (17 CFR 249.308a): 1,110; Form 10–K (17 CFR 249.310): 4,563; *Reporting and Disclosure:* Rule 13e–3 (17 CFR 240.13e) & Schedule 13E–3 (17 CFR 240.13e–100): 69; Regulation 14A (17 CFR 240.14a–1 *et seq.*) & Schedule 14A (17 CFR 240.14a–101): 26; Regulation 14C (17 CFR 240.14c–1 *et seq.*) & Schedule 14C (17 CFR 240.14c–101): 196; Rule 14f–l (17 CFR 240.14f–l): 4; Rule 12b–25 (17 CFR 240.12b–25) & Form 12b–25 (17 CFR 249.322): 5; Form 15 (17 CFR 249.323): 3; *Disclosure:* Form 3 (17 CFR 240.16a–3(k)): 1; Form 4 (17 CFR 240.16a–3(k)): 35; Form 5 (17 CFR 240.16a–3(k)): 16.

General description of collection: The Board's Regulation H requires SMBs whose securities are subject to registration pursuant to the Securities Exchange Act of 1934 (Exchange Act) to disclose certain information to shareholders and securities exchanges and to report information relating to their securities to the Board using forms adopted by the Securities and Exchange Commission (SEC) and in compliance with certain rules and regulations adopted by the SEC.

Legal authorization and confidentiality: The FR H–1 is authorized under sections 12(c) and 23(a)(1) of the Exchange Act. The FR H–1 is also authorized by section 11 of the Federal Reserve Act, which authorizes the Board to require such statements and reports of SMBs as the Board may deem necessary.[1] The FR H–1 is mandatory for SMBs whose securities are subject to registration pursuant to the Exchange Act.

Reports filed with the Board under the FR H–1 must be available for public inspection under Regulation H.[2] An SMB may request confidential treatment for information contained within a report in accordance with the procedures established in Regulation H.[3] Information may be kept confidential to the extent it is nonpublic commercial or financial information that is both customarily and actually treated as private within the meaning of exemption 4 of the Freedom of Information Act (FOIA). Information collected on the FR H–1 may also be kept confidential if it is obtained as part of an examination or supervision of a financial institution within the meaning of exemption 8 of the FOIA.

Consultation outside the agency: The reporting and disclosure requirements discussed in this supporting statement were promulgated by the SEC. The Board has consulted with the SEC to confirm our coordinated burden estimates.

Board of Governors of the Federal Reserve System, June 30, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–14547 Filed 7–7–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077; Docket No. 2022–0053; Sequence No. 17]

Information Collection; Federal Acquisition Regulation Part 46 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning Federal Acquisition Regulation part 46 requirements. DoD, GSA, and NASA invite comments on: whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through October 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by September 6, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0077, Federal Acquisition Regulation Part 46 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0077, Federal Acquisition Regulation Part 46 Requirements.

[1] 12 U.S.C. 248(1)(1).

[2] 12 CFR 208.36(c)(3).

[3] 12 CFR 208.36(d).

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of OMB Control No. 9000–0077 and combines it with the previously approved information collections under OMB Control No. 9000–0187, with the new title ''Federal Acquisition Regulation Part 46 Requirements''. Upon approval of this consolidated information collection, OMB Control No. 9000–0187 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0077.

This clearance covers the information that contractors may be required to submit to comply with the following FAR clauses:

- FAR Inspection Clauses
- 52.246–2, Inspection of Supplies—Fixed-Price
- 52.246–3, Inspection of Supplies—Cost-Reimbursement
- 52.246–4, Inspection of Services—Fixed-Price
- 52.246–5, Inspection of Services—Cost-Reimbursement
- 52.246–6, Inspection—Time-and-Material and Labor-Hour
- 52.246–7, Inspection of Research and Development—Fixed-Price
- 52.246–8, Inspection of Research and Development—Cost-Reimbursement
- 52.246–12, Inspection of Construction

These FAR clauses require the contractor to provide and maintain an inspection system that is acceptable to the Government, and to keep complete records of all inspection work performed and make it available to the Government. These clauses give the Government the right to inspect and test all work.

Records required under these clauses are kept as a part of a contractor's normal business operations. To ensure they provide a quality product or service, every business must have standards and methods for reviewing or inspecting the quality of their product or service. These standards will differ by industry and the complexity of the product or service provided.

The Government relies on a contractor's existing quality assurance system for contracts for commercial products. The Government relies on the contractor to accomplish all inspection and testing needed to ensure that acquired commercial services conform to contract requirements before they are tendered to the Government. See FAR 12.208 and 46.202–1. Likewise, when the contract amount is expected to be less than the simplified acquisition threshold, these clauses do not apply.

The FAR ''inspection clauses'' are used for quality assurance depending on the type of contract, or the product or service being provided. These clauses do not require the transmittal or sending of documentation to the Government, but they have record keeping requirements. The Government may review these records to confirm the contract quality requirements are being met. This review is risk-based and may or may not include the review of all quality assurance records. Generally, the records are more likely to be reviewed when the contractor is not meeting quality standards or as part of Government Contract quality assurance surveillance for complex requirements. Subject matter experts estimate these records are requested from 10 percent or fewer of contractors.

The information is used to assure that supplies and services provided under Government contracts conform to contract requirements.

- FAR 52.246–15, Certificate of Conformance. This clause requires the contractor to complete and sign a certificate of conformance (CoC). This clause is used in solicitations and contracts for supplies or services at the discretion of the contracting officer when it is in the Government's interest, small losses would be incurred in the event of a defect; or because of the contractor's reputation or past performance, or when it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest.
- FAR 52.246–26, Reporting Nonconforming Items. This clause requires contractors to provide written notification to the contracting officer within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit. This clause requires certain contractors to submit a report to the Government-Industry Data Exchange Program (GIDEP) system at *www.gidep.org* within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the contractor for delivery to, or for, the Government is a counterfeit or suspect counterfeit item; or a common item that has a major or critical nonconformance.

This information will be used by the Government to address and detect nonconforming and counterfeit items. Perhaps more important, this information will be available to businesses for searching prior to placing orders, thus enabling the avoidance of purchasing counterfeit items in the first place.

C. Annual Burden

Respondents: 7,859.
Total Annual Responses: 9,301.
Total Burden Hours: 33,015.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0077, Federal Acquisition Regulation Part 46 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–14557 Filed 7–7–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2022–0005]

Proposed Substances To Be Evaluated for Toxicological Profile Development

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR) within the Department of Health and Human Services is initiating the development of another set of

Toxicological Profiles. This notice solicits public nominations of substances for ATSDR to evaluate for Toxicological Profile development.

DATES: All nominations, whether for substances on the Substance Priority List or for other substances, must be received by August 8, 2022.

ADDRESSES: You may submit nominations, identified by Docket No. ATSDR–2022–0005, by either of the following methods:

- Federal eRulemaking portal at *www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 4770 Buford Highway, Mail Stop S102–1, Atlanta, GA 30341–3717. Attn: Docket No. ATSDR–2022–0005.

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit comments by email. ATSDR does not accept comments by email. This means that no confidential business information or other confidential information should be submitted in response to this notice. Refer to the Submission of Nominations section (below) for the specific information required to be included in a nomination.

FOR FURTHER INFORMATION CONTACT: Kambria Haire, Office of Innovation and Analytics, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd. NE, Mail Stop S102–1, Atlanta, GA 30329–4027; Email: *ATSDRToxProfileFRNs@cdc.gov;* Phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) concerning hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) (*https://www.epa.gov/superfund/superfund-national-priorities-list-npl*). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare Toxicological Profiles for each substance included on the Priority List of Hazardous Substances, also known as the Substance Priority list (SPL). This list identifies 275 hazardous substances found at NPL sites that ATSDR and EPA have determined currently pose the most significant potential threat to human health.

Substances To Be Evaluated for Toxicological Profile Development

Each year, ATSDR develops a list of substances to be considered for Toxicological Profile development. The nomination process includes consideration of all substances on ATSDR's SPL, as well as other substances nominated by the public. For more information on ATSDR's SPL, visit *https://www.atsdr.cdc.gov/SPL/.*

Submission of Nominations for Toxicological Profile Development

Today's notice invites voluntary public nominations of substances for toxicological profile development. If nominating a substance that is not on the SPL, please include the rationale for the nomination and any supporting data. ATSDR will evaluate data and information associated with nominated substances and will determine the final list of substances to be chosen for Toxicological Profile development. Substances will be chosen according to ATSDR's specific guidelines for selection. These guidelines can be found in the *Selection Criteria,* which may be accessed at *https://www.atsdr.cdc.gov/toxprofiles/guidance/ATSDR_TP_Selection%20Criteria.pdf.*

Pamela I. Protzel Berman,

Associate Director, Office of Policy, Planning and Partnerships, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2022–14590 Filed 7–7–22; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0014]

Draft Supplemental Environmental Impact Statement; Notice of Public Meeting and Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) announces the opening of a docket and public meeting to obtain comments on the Draft Supplemental Environmental Impact Statement (SEIS) for CDC's Roybal Campus in Atlanta, Georgia. The Draft SEIS was prepared to address changes proposed since completing the 2014 Final Environmental Impact Statement (EIS) for the CDC Roybal Campus 2025 Master Plan (2014 Final EIS) and issuing the Record of Decision dated November 7, 2014. The 2014 Final EIS analyzed the potential impacts associated with implementing a new long-range Master Plan to guide the future physical development of the Roybal Campus for the planning horizon of 2015 to 2025.

DATES: Written comments must be received on or before August 22, 2022.

A virtual public meeting will be held on July 27, 2022, from 6:00 p.m. EST to 8:00 p.m. EST. This meeting will occur via the Zoom platform.

Please register at *https://us06web.zoom.us/meeting/register/tZ0vduiqrT8oEtfyyzvqDUn_oUl5nS-LvfUE.*

Registration is required prior to the meeting. Once registered, you will receive an email with the meeting link and call-in number. The meeting will be recorded using the Zoom platform and a stenographer will transcribe the public meeting. The transcript will be posted on the Docket and included in the Final SEIS.

ADDRESSES: You may submit comments, identified by Docket Number CDC–2022–0014, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *U.S. Mail:* Thayra Riley, NEPA Coordinator, Office of Safety, Security, and Asset Management, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329.

Instructions: All submissions received must include the Agency name and Docket Number (CDC–2022–0014). CDC will post, without change, all relevant comments to *https://www.regulations.gov,* including any personal information provided. *Do not submit comments by email. CDC does not accept comments by email.* For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Oral comments on the Draft SEIS will also be accepted during the virtual public meeting scheduled for July 27, 2022.

FOR FURTHER INFORMATION CONTACT: Thayra Riley, NEPA Coordinator, Office of Safety, Security, and Asset Management, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329. Email: *cdc-roybalga-*

seis@cdc.gov. Telephone: 770–488–8170.

SUPPLEMENTARY INFORMATION: On January 28, 2022, CDC published a Notice of Intent to prepare an SEIS in the **Federal Register** (87 FR 4603). CDC has prepared a Draft SEIS to analyze the potential impacts of additional proposed components that were not analyzed in the 2014 Final EIS. The proposed components include the addition of a Hospital, Medical, and Infectious Waste Incinerator (HMIWI) in a new laboratory and two emergency standby power diesel generators. The construction of a new laboratory was included in the 2014 Final EIS and will not be re-evaluated in the SEIS.

In accordance with the National Environmental Policy Act (NEPA) as implemented by Council on Environmental Quality (CEQ) regulations (*Code of Federal Regulations* Title 40, Section 1507.3) and HHS environmental procedures, CDC prepared a Draft SEIS to analyze the effects of additional proposed components that were not analyzed in the 2014 Final EIS. The potential impacts of construction and operation of these components on the natural and built environment are being evaluated.

Under NEPA, federal agencies are required to evaluate the environmental effects of their proposed actions and a range of feasible alternatives to the proposed actions prior to making a final decision about what actions to take. The Draft SEIS incorporates the 2014 Final EIS by reference and builds upon that document to focus on specific resource areas that would have potential effects that will differ from those analyzed in the 2014 Final EIS.

Alternatives Considered

CDC analyzed two alternatives in the Draft SEIS: The Proposed Action (Alternative 1) and the No Action Alternative. Alternative 1 consists of the construction and operation of a HMIWI in a new laboratory building and the operation of two emergency standby power diesel generators. The No Action Alternative consists of the construction of the new laboratory without the HMIWI and two emergency standby power generators.

The Draft SEIS evaluates the environmental impacts that may result from Alternative 1 and the No Action Alternative on the following resource categories: air quality, climate change and sustainability, environmental justice, and hazardous/medical/infectious waste. The Draft SEIS identifies measures to mitigate potential adverse impacts.

Availability of the Draft SEIS: Notice of the Availability of the Draft SEIS has been provided to Federal, State, and local agencies and organizations via hard copy letter or electronic mail to the interested parties list. The public is being notified of the availability of the Draft SEIS through this **Federal Register** publication and a notice published in *The Atlanta Journal—Constitution.* The Draft SEIS is available online on the Federal eRulemaking Portal identified by Docket No. CDC–2022–0014. Hard copies of the Draft SEIS are available at the following six locations: Decatur Library, 215 Sycamore Street, Decatur, GA 30030; Toco Hill-Avis G. Williams Library, 1282 McConnell Drive, Decatur, GA 30030; Atlanta-Fulton Public Library, Ponce de Leon Branch, 980 Ponce de Leon Ave. NE, Atlanta, GA 30306; Atlanta-Fulton Public Library, Central Library, One Margaret Mitchell Square, Atlanta, GA 30303; Atlanta-Fulton Public Library, Kirkwood Branch, 11 Kirkwood Rd. NE, Atlanta, GA 30317; and Emory University Robert W. Woodruff Library, 540 Asbury Cir., Atlanta, GA 30322.

Public Meeting: A virtual public meeting will be held on July 27, 2022, from 6:00 p.m. EST to 8:00 p.m. EST. This meeting will occur via the Zoom platform. Please register at *https://us06web.zoom.us/meeting/register/tZ0vduiqrT8oEtfyyzvqDUn_oUl5nS-LvfUE.*

Registration is required prior to the meeting. Once registered, you will receive an email with the meeting link and call-in number.

The meeting will start with a formal presentation and will be followed by a period during which the public can comment or ask questions. A stenographer will transcribe the public meeting. A transcript of the meeting will be made available to the public and will be posted to the public docket at *www.regulations.gov,* identified by Docket No. CDC–2012–0014. CDC will provide a response to comments in the Final SEIS.

Dated: July 1, 2022.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–14518 Filed 7–7–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; National and Tribal Evaluation of the 2nd Generation of the Health Profession Opportunity Grants (OMB #0970–0462)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Health Profession Opportunity Grants (HPOG) Program provides healthcare occupational training for Temporary Assistance for Needy Families recipients and other individuals with low incomes. The Office of Management and Budget (OMB) has approved various data collection activities for the National and Tribal Evaluation of the 2nd Generation of HPOG (HPOG 2.0 National and Tribal Evaluation) under OMB #0970–0462. The Administration for Children and Families' (ACF) Office of Planning, Research, and Evaluation (OPRE) is now preparing to conduct the HPOG 2.0 Long-Term Follow-Up Study of HPOG 2.0 participants 5½ years after study enrollment, using a long-term survey (LTS) and administrative data. This notice provides a summary for public review and comment of the use and burden associated with the LTS instrument.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about 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. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The HPOG 2.0 evaluation of non-tribal programs is assessing the implementation and impacts of HPOG

in non-tribal HPOG programs and will include a cost-benefit analysis. Key participant outcomes of interest include (but are not limited to) educational progress, employment, and earnings.

The HPOG 2.0 Long-Term Follow-Up Study will use survey and administrative data to estimate longer-term (approximately 5½ years after random assignment) program impacts at the local and national level and to explore characteristics of local programs that are associated with more favorable outcomes. By extending data collection to include an LTS, OPRE can address important unanswered questions for policymakers and practitioners. The HPOG 2.0 LTS specifically will provide insights into the long-term impacts of HPOG 2.0 for outcomes that are not captured in administrative records, such as details about educational experiences, characteristics of employment, self-employment, and earnings from jobs not covered in administrative data, receipt of public assistance, physical and mental well-being, and child outcomes. There are two versions of the HPOG 2.0 LTS, the full version (Instrument 21) and a shorter version with critical items of interest only (Instrument 21a). Instrument 21a will be offered to reluctant participants who would otherwise not complete the survey to help maximize response rates and reduce item non-response for the most critical outcomes in the study.

Respondents: HPOG 2.0 impact study participants from the 27 non-tribal HPOG 2.0 grantees (treatment and control group members) who enrolled between September 2017 and January 2018.

Annual Burden Estimates: This request is specific to the HPOG 2.0 Long-Term Follow-Up Survey (LTS) (both the full and critical items only versions). Currently approved materials and associated burden, which we plan to continue to use can be found at: *https://www.reginfo.gov/public/do/PRAICList?ref_nbr=201904-0970-006.*

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Instrument 21a: HPOG 2.0 Long-Term Survey	3,064	1	1	3,064	1,021
Instrument 21a: HPOG 2.0 Long-Term Survey Critical Items Instrument	541	1	0.33	179	60
Total	3,605			3,243	1,081

Estimated Total Annual Burden Hours: 1,081.

Authority: Section 2008 of the Social Security Act as enacted by section 5507 of the Affordable Care Act and section 413 of the Social Security Act, 42 U.S.C. 613.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–14580 Filed 7–7–22; 8:45 am]

BILLING CODE 4184–72–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–0388]

Hazard Analysis and Risk-Based Preventive Controls for Food for Animals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry #245 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' This final guidance document is intended to help animal food facilities comply with the requirements for hazard analysis and risk-based preventive controls under our regulation ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.'' The guidance announced in this notice finalizes the draft guidance of the same title dated January 23, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on July 8, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–0388 for ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jennifer Erickson, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7382, *Jennifer.erickson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 2018 (83 FR 3163) and a correction in the **Federal Register** of February 5, 2018 (83 FR 5106), FDA published the notice of availability for a draft guidance #245 entitled ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals,'' giving interested persons until July 23, 2018, to comment on the draft guidance. FDA received numerous comments on the draft guidance and those comments were considered as the guidance was finalized. We have made some changes and updates. First, we removed Appendix E: ''Aid to Identifying Animal Food Hazards'' based on comments questioning how it should be used and concerns about how to distinguish whether a listed hazard is known or reasonably foreseeable for a facility, specific ingredient, or type of animal food. Second, we provided additional clarity, based on comments, that not all the known or reasonably foreseeable hazard examples in the guidance are applicable to all animal food. Third, we included additional examples of certain hazards in animal food, preventive controls, and situations that would require a reanalysis of a food safety plan. Fourth, we updated some of the references used throughout the guidance. Lastly, editorial and formatting changes were made to improve clarity and consistency. The guidance announced in this notice finalizes the draft guidance dated January 23, 2018.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Hazard Analysis and Risk-Based Preventive Controls for Food for Animals.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 507 have been approved under OMB Control No. 0910–0751.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: June 29, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14567 Filed 7–6–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–1909; FDA–2020–E–1906; FDA–2020–E–1901; FDA–2020–E–1899]

Determination of Regulatory Review Period for Purposes of Patent Extension; PADCEV

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for PADCEV and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 6, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 4, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing

system will accept comments until 11:59 p.m. Eastern Time at the end of September 6, 2022. 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 Nos. FDA–2020–E–1909; FDA–2020–E–1906; FDA–2020–E–1901; FDA–2020–E–1899, for ''Determination of Regulatory Review Period for Purposes of Patent Extension; PADCEV.'' 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, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product PADCEV (enfortumab vedotin-ejfv). PADCEV is indicated for the treatment of adult patients with locally advanced or metastatic urothelial cancer who have previously received a programmed death receptor-1 or programmed death-ligand inhibitor, and a platinum-containing chemotherapy in the neoadjuvant/adjuvant, locally advanced or metastatic setting. This indication is approved under accelerated approval based on tumor response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Subsequent to this approval, the USPTO received patent term restoration applications for PADCEV (U.S. Patent Nos. 9,078,931; 9,314,538; 9,962,454; RE48,389 (previously U.S. Patent No. 8,637,642)) from AGENSYS, Inc. and SEATTLE GENETICS, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of PADCEV represented the first permitted

commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for PADCEV is 2,546 days. Of this time, 2,389 days occurred during the testing phase of the regulatory review period, while 157 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 30, 2012. The applicants' claim January 4, 2013, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 30, 2012, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 15, 2019. FDA has verified the applicants' claims that the biologics license application (BLA) for PADCEV (BLA 761137) was initially submitted on July 15, 2019.

3. *The date the application was approved:* December 18, 2019. FDA has verified the applicants' claims that BLA 761137 was approved on December 18, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 374 days, 748 days, or 811 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14548 Filed 7–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2020–E–2333; FDA–2020–E–2334; FDA–2020–E–2336; and FDA–2020–E–2337]

Determination of Regulatory Review Period for Purposes of Patent Extension; ROZLYTREK INJECTION

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ROZLYTREK INJECTION and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by September 6, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 4, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 6, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received 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 Nos. FDA–2020–E–2333; FDA–2020–E–2334; FDA–2020–E–2336; and FDA–2020–E–2337 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ROZLYTREK INJECTION.'' 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, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ROZLYTREK INJECTION (entrectinib) NDA 212726 indicated for the treatment of:

• Adult patients with metastatic non-small cell lung cancer whose tumors are *ROSI*-positive.

• Adult and pediatric patients 12 years of age and older with solid tumors that:

○ have a neurotrophic tyrosine receptor kinase gene fusion without a known acquired resistance mutation,

○ are metastatic or where surgical resection is likely to result in severe morbidity, and

○ have progressed following treatment or have no satisfactory alternative therapy.

This indication is approved under accelerated approval based on tumor response rate and durability of response. Continued approval for this indication may be contingent upon verification and description of clinical benefit in the confirmatory trials.

Subsequent to this approval, the USPTO received patent term restoration applications for ROZLYTREK INJECTION (U.S. Patent Nos. 8,299,057; 8,673,893; 9,029,356; and 9,085,565) from Genentech, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 1, 2021, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ROZLYTREK INJECTION represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ROZLYTREK INJECTION is 1,968 days. Of this time, 1,727 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* March 28, 2014. The applicant claims March 29, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 28, 2014, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 18, 2018. FDA has verified the applicant's claims that the new drug application (NDA) for ROZLYTREK INJECTION (NDA 212726) was initially submitted on December 18, 2018.

3. *The date the application was approved:* August 15, 2019. FDA has verified the applicant's claims that NDA 212726 was approved on August 15, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 864 days, 899 days, or 1,104 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14546 Filed 7–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2202]

Determination of Regulatory Review Period for Purposes of Patent Extension; UPLIZNA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for UPLIZNA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 6, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 4, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 6, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 6, 2022. 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

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- 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–E–2202 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; UPLIZNA.'' 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, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product UPLIZNA (inebilizumab-cdon). UPLIZNA is indicated for the treatment of neuromyelitis optica spectrum disorder in adult patients who are anti-aquaporin-4 antibody positive. Subsequent to this approval, the USPTO received a patent term restoration application for UPLIZNA (U.S. Patent No. 8,323,653) from Viela Bio, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 14, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of UPLIZNA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for UPLIZNA is 4,033 days. Of this time, 3,666 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 29, 2009. The applicant claims July 5, 2009, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 29, 2009, which was the first date after receipt of an earlier IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 11, 2019. FDA has verified the applicant's claim that the biologics license application (BLA) for UPLIZNA (BLA 761142) was initially submitted on June 11, 2019.

3. *The date the application was approved:* June 11, 2020. FDA has verified the applicant's claim that BLA 761142 was approved on June 11, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,557 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.)

Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–14539 Filed 7–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Committee on Seniors and Disasters and National Advisory Committee on Individuals With Disabilities and Disasters Public Meeting

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Office of the Assistant Secretary for Preparedness and Response, Department of the Health and Humans Services is hereby giving notice that the National Advisory Committee on Seniors and Disasters (NACSD) and the National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD) will hold public meetings on August 4, 2022.

DATES: The NACSD and the NACIDD will conduct a joint virtual inaugural public meeting on August 4, 2022. The NACSD and the NACIDD will vote on possible recommendations for national public health and medical preparedness, response, and recovery, specific to the needs of older adults and people with disabilities in disasters. A more detailed agenda and meeting registration link will be available on the NACSD and the NACIDD meeting websites which are located at *https://www.phe.gov/nacsd* and at *https://www.phe.gov/nacidd,* respectively.

ADDRESSES: Members of the public may attend the meetings via a toll-free phone number or Zoom teleconference, which requires pre-registration. The meeting links to pre-register will be posted on *https://www.phe.gov/nacsd* and *https://www.phe.gov/nacidd.* Members of the public may provide written comments or submit questions for consideration by the NACSD and NACIDD at any time via

email to *NACSD@hhs.gov* and *NACIDD@hhs.gov,* respectively. Members of the public are also encouraged to provide comments after the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Maxine Kellman, NACSD Designated Officer, 202–260–0447, *NACSD@hhs.gov* and Tabinda Burney, NACIDD Designated Federal Officer, 202–699–1779, *NACIDD@hhs.gov;* Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS), Washington, DC.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Seniors and Disaster (NACSD) is required by section 2811B of the Public Health Service Act (42 U.S.C. 300hh–10c), as amended, by the Pandemic and All-Hazards Preparedness and Advancing Innovation Act (PAHPAIA), Public Law 116–22. The NACSD is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The NACSD shall provide advice and consultation to the Secretary of HHS to assist them in carrying out these and related activities as they pertain to the unique needs of older adults in preparation for, responses to, and recovery from all-hazards emergencies and disasters. The Secretary of HHS has formally delegated authority to operate the NACSD to ASPR.

The National Advisory Committee on Individuals with Disabilities and Disasters (NACIDD) is required by section 2811C of the PHS Act (42 U.S.C. 300hh–10d) as amended by the Pandemic and All Hazards Preparedness and Advancing Innovation Act (PAHPAIA) of 2019, Public Law 116–22. The Committee is governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) and the General Services Administration FACA Final Rule. The NACIDD shall evaluate issues and programs and provide findings, advice, and recommendations to the Secretary of HHS to support and enhance all-hazards public health and medical preparedness, response, and recovery aimed at meeting the needs of people with disabilities (PWD). The Secretary of HHS has formally delegated authority to operate the NACIDD to ASPR.

The NACSD and the NACIDD invite those who are involved in or represent a relevant industry, academia, profession, organization, or U.S. state, tribal, territorial, or local government to request up to four minutes to address the committees via Zoom. Requests to provide remarks to the NACSD and/or the NACIDD during the public meeting must be sent to *NACSD@hhs.gov* and/or *NACIDD@hhs.gov* at least 15 days prior to the meeting along with a brief description of the topic. We would specifically like to request inputs from the public on challenges, opportunities, and strategic priorities for national public health and medical preparedness, response, and recovery specific to the needs of people with disabilities and/or older adults before, during, and after disasters. Presenters who are selected for the public meeting will have audio only for up to four minutes during the meeting. Slides, documents, and other presentation material sent along with the request to speak will be provided to the committee members separately. Please indicate additionally whether the presenter will be willing to take questions from the committee members (at their discretion) immediately following their presentation (for up to four additional minutes).

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2022–14426 Filed 7–7–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Asthma Education Prevention Program Coordinating Committee.

The meeting will be open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Asthma Education Prevention Program Coordinating Committee.

Date: August 16, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: Programmatic and Scientific Updates

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Virtual Access: https://nih.zoomgov.com/j/1603194596?pwd=ZnhJV3BLcEFOVThvUUdhQnNGOG5xZz09.

Telephone Access: Meeting ID: 160 319 4596. Passcode: 748944. +1 669 254 5252 US (San Jose). +1 646 828 7666 US (New York). +1 551 285 1373 US. +1 669 216 1590 US (San Jose).

Contact Person: Susan Shero, MS, Program Officer, CTRIS, Center for Translational Research and Implementation Science, National Heart, Lung and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892, 301–496–1051, *susan.shero@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nhlbi.nih.gov/advisory-and-peer-review-committees/national-asthma-education-and-prevention-program-coordinating,* where an agenda and any additional information for the meeting will be posted when available.

Information is also available on the Institute's/Center's home page: *https://www.nhlbi.nih.gov/advisory-and-peer-review-committees/national-asthma-education-and-prevention-program-coordinating*, where an agenda and any additional information for the meeting will be posted when available.

(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 1, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14559 Filed 7–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Review of EHS Conferences Grant Applications.

Date: August 2, 2022.

Time: 1:00 p.m. to 2:20 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Qingdi Quentin Li, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute Environmental Health Sciences, Research Triangle Park, NC 27709, (240) 858–3914, *liquenti@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 1, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–14553 Filed 7–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Center for Substance Abuse Prevention's (CSAP) ''Talk. They Hear You.'' Screen 4 Success Instruments and Consent Form. (Office of Management [OMB] No. 0930–XXXX)

SAMHSA is requesting approval for its ''Talk. They Hear You.'' media campaign's ''Screen 4 Success'' Consent Form and Screener. The ''Talk. They Hear You.'' campaign aims to reduce underage drinking and substance use among youths under the age of 21 by providing parents and caregivers with information and resources they need to address alcohol and other drug use with their children early. The new ''Talk. They Hear You.'' campaign's ''Screen 4 Success'' mobile app is an interactive tool to help parents and caregivers, educators, and communities get informed, be prepared, and take action to prevent underage drinking and other drug use. Specifically, it provides these groups with the ability to self-screen and self-manage referrals as a prevention service. Parents have a significant influence in their children's decisions to experiment with alcohol and other drugs.

SAMHSA and its Centers will use the data for annual reporting: (1) reporting results of the campaign's performance, (2) evaluating the effectiveness of the application and its utility and (3) assessing the accountability and performance of this component and the overall media campaign, including a focus on health equity.

The tools reflect CSAP's desire to elicit pertinent participant level data that can be used to not only guide future programs and practice, but also respond to stakeholder, congressional and agency inquiries. For a more in-depth review of the screener and consent form, please see Attachments A–C.

This information will be used by SAMHSA to help improve the accountability and performance of its ''Talk. They Hear You.'' program and social media campaign (each of which refer to this component and other resources). Specifically, the program evaluators will use the information collected through this request to generate annual performance reports that assess the impact of this SAMHSA program outcomes. This information will also be used to inform recommendations regarding future programming should the program continue to be funded.

The information collected from these forms is captured by the ''Screen 4 Success'' mobile app and made available to the ''Talk. They Hear You.'' media campaign evaluators in real time. Approval of this data collection activity will allow SAMHSA to continue to assist those under the age of 21, and parents to screen themselves, the parents and client in identifying individuals that may need further assessment or intervention for the alcohol use, drug use, suicide prevention, and other mental health needs. Many of these issues occur at the same time in youth and require referral to co-occurring programs so there is significant value in screening quickly for all of them at the same time. By implementing this screener, we hope to be able to divert individuals who might be at risk of alcohol dependence and these other problems to effective programs and services.

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours	Estimated hourly wage [1]	Total hour cost
Parent/Guardian Consent	100,000	1	100,000	0.04	10,000	$ 26.92	$107,680
Youth Assent Forms	100,000	1	100,000	0.04	10,000	26.92	107,680
Screener	100,000	1	100,000	0.30	60,000	26.92	807,600
CSAP Total	300,000		300,000		38,000	26.92	1,022,960

[1] The information is collected via and online application and does not require project staff to administer the consent or screener. The application has internal checks to ensure appropriate completion. The hourly wage estimate is $26.92 based on the Occupational Employment and Wages, Mean Hourly Wage Rate for 19–4061 Social Science Research Assistants as of 10/21/2021. (*http://www.bls.gov/oes/current/oes211011.htm.* Accessed on October 21, 2021.)

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.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–13939 Filed 7–7–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Harm Reduction Grant Program Target Setting and Quarterly Aggregate Reporting Instrument—(OMB No. 0930–XXXX)

SAMHSA is requesting approval for its Harm Reduction Grant Program Annual Target Setting and Aggregate Quarterly Reporting Instrument. In developing the instrument, we sought to elicit programmatic information that demonstrates impact at the program level aligned with the Notice of Funding Opportunity. In this way, data from the Government Performance and Results Act (GPRA) tool can be used to assess resource allocation and to delineate who we serve, how we serve them, and program impacts. The tool reflects SAMHSA's desire to elicit pertinent program level data that can be used to not only guide future programs and practice, but to also respond to stakeholder, congressional, and agency enquiries.

The information collected from these forms is to be entered and stored in SAMHSA's Performance Accountability and Reporting System (SPARS), which is a real-time, performance management system that captures information on the substance misuse treatment and mental health services delivered in the United States. Approval of this information collection will allow SAMHSA to continue to meet GPRA reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA and its Centers will use the data for annual reporting required by the Government Performance and Results Act Modernization Act of 2010 (GPRMA). GPRMA requires that SAMHSA's fiscal year report include actual results of performance monitoring for the three preceding fiscal years. The additional information collected through this process will allow SAMHSA to (1) report results of these performance outcomes; (2) maintain consistency with SAMHSA-specific performance domains, and (3) assess the accountability and performance of its discretionary and formula grant programs.

The instruments have been revised to reflect comments received during the 60-Day **Federal Register** comment period. Changes include replacing reporting individuals being served with service encounters throughout the instruments. This will ease burden on respondents. Additionally, adjustments have been made in the language related to reporting age and race/ethnicity.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours	Hourly wage estimate	Total hour cost
Target Setting Tool	25	1	25	0.6	15	[1] $24.78	$372
Aggregate Program Level Tool [2]	25	4	100	0.6	60	24.78	1,487
Total	25	.....	125	.....	75	.....	1,859

[1] The hourly wage estimate is based on the Occupational Employment and Wages, Mean Hourly Wage Rate for 21–1011 Substance Abuse and Behavioral Disorder Counselors = $24.78/hr. (*http://www.bls.gov/oes/current/oes211011.htm.* Accessed on May 11, 2021.)

[2] This is an aggregate tool and collection is based on encounters.

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.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–14570 Filed 7–7–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0040]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Employment Authorization

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 8, 2022.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://*

www.regulations.gov under e-Docket ID number USCIS–2005–0035. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter, the agency name and Docket ID USCIS–2005–0035.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on March 29, 2022, at 87 FR 18078, allowing for a 60-day public comment period. USCIS did not receive comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2005–0035 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of work authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the Immigration and Nationality Act (INA) or under regulations issued by DHS. Pursuant to statutory or regulatory authorization, certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes of aliens authorized to accept employment are listed in 8 CFR 274a.12. USCIS also collects biometric information from certain EAD applicants to verify the applicant's identity, check or update their background information, and produce the EAD card. An applicant for employment authorization can apply for a Social Security Number (SSN) and Social Security card using Form I–765.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 (paper) is 2,178,820 and the estimated hour burden per response is 4.5 hours; the estimated total number of respondents for the information collection I–765 (electronic) is 107,180 and the estimated hour burden per response is 4 hours; the estimated total number of respondents for the information collection Form I–765WS is 302,000 and the estimated hour burden per response is .50 hours; the estimated total number of respondents for the information collection Biometric Processing is 302,353 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Passport-Style Photographs is 2,286,000 and the estimated hour burden per response is .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,881,376 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

Dated: July 1, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–14532 Filed 7–7–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0123]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Provisional Unlawful Presence Waiver

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until September 6, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0123 in the body of the letter, the agency name and Docket ID USCIS–2012–0003. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2012–0003.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2012–0003 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (INA or the Act) provides for the inadmissibility of certain individuals who have accrued unlawful presence in the United States. There is also a waiver provision incorporated into section 212(a)(9)(B)(v) of the Act, which allows the Secretary of Homeland Security to exercise discretion to waive the unlawful presence grounds of inadmissibility on a case-by-case basis. The information collected from an applicant on an Application for Provisional Unlawful Presence Waiver of Inadmissibility, Form I–601A, is necessary for U.S. Citizenship and Immigration Services (USCIS) to determine not only whether the applicant meets the requirements to participate in the streamlined waiver process provided by regulation, but also whether the applicant is eligible to receive the provisional unlawful presence waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601A is 63,000 and the estimated hour burden per response is 1.5 hours. The estimated total number of respondents for the collection of biometrics is 63,000 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 168,210 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $3,212,390.

Dated: July 1, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–14533 Filed 7–7–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0047]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Employment Eligibility Verification

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 8, 2022.

ADDRESSES: Written comments and/or suggestions regarding the item(s)

contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2006–0068. All submissions received must include the OMB Control Number 1615–0047 in the body of the letter, the agency name and Docket ID USCIS–2006–0068.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on March 30, 2022, at 87 FR 18377, allowing for a 60-day public comment period. USCIS received 184 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and entering USCIS–2006–0068 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–9; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit; Not-for-profit institutions. The Form I–9 was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, making employment of unauthorized aliens unlawful and diminishing the flow of illegal workers in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–9 Employers is 75,295,000 and the estimated hour burden per response is 0.33 hour. The estimated total number of respondents for the information collection I–9 Employees is 75,295,000 and the estimated hour burden per response is 0.15 hour. The estimated total number of respondents for the information collection by Record Keepers is 27,200,000 and the estimated hour burden per response is 0.08 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 38,317,600 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any requirements to support the verification process are already available through other approved collections of information that may be employment related or occur as a part of the hiring process. There is no submission to USCIS of materials which eliminates mailing and photocopying costs.

Dated: July 1, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–14531 Filed 7–7–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLHQ320.22X; OMB Control No. 1004–0121]

Agency Information Collection Activities; Leasing of Solid Minerals Other Than Coal and Oil Shale (43 CFR 3500–3590)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 8, 2022.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Elaine Guenaga by email at *eguenaga@blm.gov,* or by telephone at 775–276–0287. Individuals in the

United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on February 18, 2022 (87 FR 9375). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

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

(2) The accuracy of 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) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BLM seeks to renew the Control Number (1004–0121) pertaining to the leasing of solid minerals other than coal and oil shale other than coal and oil shale on Federal land, and the development of those lease. The BLM's regulations at 43 CFR part 3500 apply to certain types of leasable minerals (*i.e.,* solid minerals other than coal and oil shale), but not to Indian lands or minerals except where expressly noted. The regulations at 43 CFR part 3580 apply to gold, silver, and quicksilver in confirmed private land grants, and to leasable minerals in specified locations. The information collections contained in 43 CFR part 3590 are necessary to enable the BLM to fulfill its statutory responsibilities under certain Federal mineral leasing laws and BLM's regulations at 43 CFR part 3500 and serve to help the BLM to govern the leasing of minerals other than coal and oil shale on Federal land, and the development of those leases. Accordingly, the respondents affected by this information collection request are those who desire to obtain lease for Federal minerals other than coal and oil shale, and operators of such leases. The regulations at 43 CFR part 3590 apply to operations for discovery, testing, development, mining, reclamation, and processing. This OMB Control Number is scheduled to expire on October 31, 2022. The BLM is requesting that OMB renew this OMB Control Number for an additional three years.

Title of Collection: Leasing of Solid Minerals Other Than Coal and Oil Shale (43 CFR 3500–3590).

OMB Control Number: 1004–0121.

Form Numbers: BLM Form 3504–001; BLM Form 3504–003; BLM Form 3504–004; BLM Form 3510–001; BLM Form 3510–002; and BLM Form 3520–007.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Holders of Federal leases of solid minerals other than coal and oil shale.

Total Estimated Number of Annual Respondents: 507.

Total Estimated Number of Annual Responses: 507.

Estimated Completion Time per Response: Varies from 1 hour to 400 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 27,296.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $2,051,105.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

The authority for this action is the PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2022–14515 Filed 7–7–22; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[BOEM–2022–0031]

Notice of Availability of the 2023–2028 National Outer Continental Shelf Oil and Gas Leasing Proposed Program and Draft Programmatic Environmental Impact Statement

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice; request for comments.

SUMMARY: BOEM is announcing the availability of, and requests comments on, the Proposed Program for the 2023–2028 National Outer Continental Shelf Oil and Gas Leasing Program (2023–2028 Program, National OCS Program, or Program), as well as the Draft Programmatic Environmental Impact Statement for the 2023–2028 Program (Draft Programmatic EIS).

DATES: Comments should be submitted by October 6, 2022 to the address specified in the **ADDRESSES** section of this notice. Dates of virtual public meetings to be held between now and October 6, 2022 will be posted on *https://www.BOEM.gov/National-OCS-Program.*

ADDRESSES: Comments on the Proposed Program or Draft Programmatic EIS may be submitted in one of the following ways:

1. Through the *Regulations.gov* web portal: Navigate to *http://www.regulations.gov* and under the Search tab, in the space provided, type in Docket ID: BOEM–2022–0031 to submit comments and to view other comments already submitted. Information on using *www.regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the links

under the box entitled, ''Are you new to this site?''

2. Mailed in an envelope labeled ''Comments for the 2023–2028 National OCS Oil and Gas Leasing Proposed Program'' and mailed or sent by delivery service to Ms. Kelly Hammerle, Chief, National OCS Oil and Gas Leasing Program Development and Coordination Branch, Leasing Division, Office of Strategic Resources, Bureau of Ocean Energy Management (VAM–LD), 45600 Woodland Road, Sterling, VA 20166–9216, telephone (703) 787–1613.

FOR FURTHER INFORMATION CONTACT: For information on the 2023–2028 Program process or BOEM's policies associated with this notice, please contact Ms. Kelly Hammerle, Chief, National OCS Oil and Gas Leasing Program Development and Coordination Branch at (703) 787–1613. For information on the 2023–2028 Draft Programmatic EIS, submission of comments related to potential environmental impacts, or Cooperating Agency status, please contact Jennifer Bosyk, Chief, Branch of Environmental Coordination, at (703) 787–1834.

SUPPLEMENTARY INFORMATION: BOEM is responsible for administering the leasing program for oil and gas resources on the Outer Continental Shelf (OCS) and advising the Secretary of the Interior on the National OCS Program. The three analytical phases required to develop a new National OCS Program are the (1) Draft Proposed Program (DPP); (2) Proposed Program; and (3) Proposed Final Program (PFP). The 2023–2028 Program (originally proposed as the Draft 2019–2024 Program), once approved, will follow the 2017–2022 Program. The Proposed Program is the second in a series of three proposals made by the Secretary, pursuant to section 18 of the OCS Lands Act, before final action may be taken to approve the 2023–2028 National OCS Program.

The DPP was published on January 9, 2018, with a 60-day comment period and proposed a lease sale schedule of 47 lease sales in all four OCS regions. It included 25 of the 26 OCS planning areas and proposed 19 lease sales in the Alaska Region (three in the Chukchi Sea, three in the Beaufort Sea, two in Cook Inlet, and one sale each in the 11 other available planning areas in Alaska), seven lease sales in the Pacific Region (two each for Northern California, Central California, and Southern California, and one for Washington/Oregon), 12 lease sales in the Gulf of Mexico (GOM) Region (ten regionwide lease sales for the portions of the Central, Western, and Eastern GOM planning areas that are not currently under moratorium, and two sales for the remaining portions of the Central and Eastern GOM planning areas after the Congressional moratorium against leasing was set to expire), and nine lease sales in the Atlantic Region (three sales each for the Mid- and South Atlantic, two for the North Atlantic, and one for the Straits of Florida). The Proposed Program analysis and the companion Draft Programmatic EIS analyze the full lease sale schedule presented in the DPP for the purpose of informing the Secretary prior to advancing the Proposed Program.

Following the January 2018 publication of the DPP, BOEM received more than 2 million comments from stakeholders, including governors, Federal agencies, state agencies, local agencies, energy and non-energy industries, Tribal governments, non-governmental organizations, including environmental advocacy groups, and the general public (see Appendix A of the Proposed Program document for more information).

After careful consideration of the OCS Lands Act Section 18(a) factors, as well as input from governors and the public, this Proposed Program offers up to ten potential sales in the Gulf of Mexico (GOM) Region Program Area 1 (which contains the Western GOM Planning Area, most of the Central GOM Planning Area, and a small portion of the Eastern GOM Planning Area), and one potential lease sale in the northern portion of the Cook Inlet Planning Area offshore Alaska. Two Subarea Options have been identified that will be analyzed in the PFP and Final Programmatic EIS: a 15-mile no leasing buffer offshore Baldwin County, Alabama, and a targeted leasing approach in the GOM Program Area 1. There are no potential lease sales scheduled for planning areas in the Pacific Region, Atlantic Region, GOM Program Area 2 (which contains most of the Eastern GOM Planning Area), or Alaska Region (other than Cook Inlet). During the development of the National OCS Program, once a defined area is included in the National OCS Program, it becomes known as a program area. Program areas are therefore the portions of the original 26 OCS planning areas that remain under consideration for leasing during the National OCS Program development process.

The schedule shown in Table 1 reflects the potential lease sales for the 2023–2028 Proposed Program. Figures 1 and 2 depict the program areas included in the 2023–2028 Proposed Program.

The size, timing, location, and number of potential lease sales in this Proposed Program will be robustly analyzed in the PFP and Final Programmatic EIS and may be further narrowed or excluded. The Secretary is requesting public and stakeholder input on the Proposed Program to inform the PFP and Final Programmatic EIS analyses.

BOEM also seeks feedback and input on additional data sources, reasonable assumptions and methodological approaches which could help BOEM quantitatively and/or qualitatively estimate how demand for OCS oil and gas and energy market substitutions might differ in the future under various climate pathways that would be required to reach net zero domestic greenhouse gas emissions by 2050, as President Biden and the parties to the Paris Agreement have staked out as objectives.

Chapter 5 of the Proposed Program describes BOEM's current approach to analyzing net benefits. Section 5.3.4 provides a qualitative description of the likely impacts and changes to the net benefits that could result under a hypothetical net-zero scenario. BOEM seeks input and feedback on this approach as it continues to refine its analysis going forward.

This Proposed Program will be analyzed to inform the Secretary's PFP, which will be published with a Final Programmatic EIS and be provided to the President and Congress. Upon consideration of the PFP and Final Programmatic EIS, and comments received as part of the National OCS Program development process, the Secretary will approve a 2023–2028 Program, determining the program areas to be potentially leased in the 2023–2028 timeframe.

TABLE 1—2023–2028 PROPOSED PROGRAM LEASE SALE SCHEDULE

Count	Sale No.	Year	OCS region and program area
1.	262	2023	Gulf of Mexico: GOM Program Area 1.
2.	263	2024	Gulf of Mexico: GOM Program Area 1.
3.	264	2024	Gulf of Mexico: GOM Program Area 1.

TABLE 1—2023–2028 PROPOSED PROGRAM LEASE SALE SCHEDULE—Continued

Count	Sale No.	Year	OCS region and program area
4.	265	2025	Gulf of Mexico: GOM Program Area 1.
5.	266	2025	Gulf of Mexico: GOM Program Area 1.
6.	267	2026	Alaska: Cook Inlet Program Area.
7.	268	2026	Gulf of Mexico: GOM Program Area 1.
8.	269	2026	Gulf of Mexico: GOM Program Area 1.
9.	270	2027	Gulf of Mexico: GOM Program Area 1.
10.	271	2027	Gulf of Mexico: GOM Program Area 1.
11.	272	2028	Gulf of Mexico: GOM Program Area 1.

The Proposed Program is the proposed action evaluated in the Draft Programmatic EIS. BOEM has elected to prepare the Draft Programmatic EIS to help address certain environmental components outlined in Section 18 of the OCS Lands Act. The National Aeronautics and Space Administration and the National Park Service are Cooperating Agencies on the Draft Programmatic EIS. BOEM analyzed several environmentally important areas in the Draft Programmatic EIS for possible exclusion from the 2023–2028 Program and is soliciting public comment on these or other areas that should be considered for exclusion.

Please go to *https://www.boem.gov/National-OCS-Oil-and-Gas-Leasing-Program-for-2023-2028/* for additional information about the Draft Programmatic EIS and the National OCS Program for 2023–2028.

Public Comment: All interested parties, including Federal, state, Tribal, and local governments, oil and gas producers, and others, can submit written comments on the Proposed Program and the Draft Programmatic EIS, including any significant issues that should be addressed in the PFP and Final Programmatic EIS. Comments that provide scientific information, geospatial or other data, or other evidence to support your input are most useful, and such information can be provided as attachments to comments.

BOEM will protect privileged or proprietary information that you submit in accordance with the Freedom of Information Act (FOIA) and OCS Lands Act requirements. To avoid inadvertent release of such information, interested parties should mark all documents and every page containing such information with ''Confidential—Contains Proprietary Information.'' To the extent a document contains a mix of proprietary and nonproprietary information, interested parties should mark clearly the portions of the document that are proprietary and those that are not. Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. Section 18 of the OCS Lands Act also states that the ''Secretary shall maintain the confidentiality of all privileged or proprietary data or information for such period of time as is provided for in this subchapter, established by regulation, or agreed to by the parties'' (43 U.S.C. 1344(g)).

Please be aware that BOEM's practice is to make all other comments, including the names and addresses of individuals, available for public inspection. Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. Even if BOEM withholds your information in the context of this Program development process, your submission is subject to the Freedom of Information Act (FOIA), and if your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

In order for BOEM to consider withholding from disclosure your personal identifying information, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury or other harm. Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Public Meetings: BOEM will hold a series of virtual public meetings to provide information and the opportunity for public comment on the Proposed Program and the Draft Programmatic EIS. BOEM's public meetings will be held online using an open house format, with several information stations, hosted by BOEM subject matter experts, each of which will focus on different aspects of BOEM's Proposed Program and Draft Programmatic EIS analysis. The virtual open house format allows members of the public to view information, discuss the 2023–2028 National OCS Program and the Draft Programmatic EIS with BOEM staff, and to receive instructions about how to provide comments on the documents.

Virtual public meetings will be scheduled between now and October 6, 2022. Specific dates and times, will be posted on *https://www.boem.gov/National-OCS-Program.*

Authority: This Notice of Availability for the 2023–2028 Proposed Program is published in accordance with Section 18 of the OCS Lands Act and its implementing regulations (30 CFR part 556 subpart B). This Notice of Availability for the 2023–2028 Draft Programmatic EIS is published pursuant to the regulations (40 CFR 1506.6 and 43 CFR 46.435) implementing the provisions of the National Environmental Policy Act.

Amanda Lefton,

Director, Bureau of Ocean Energy Management.

BILLING CODE 4340–98–P

Figure 1: Proposed Program Map – Alaska Region

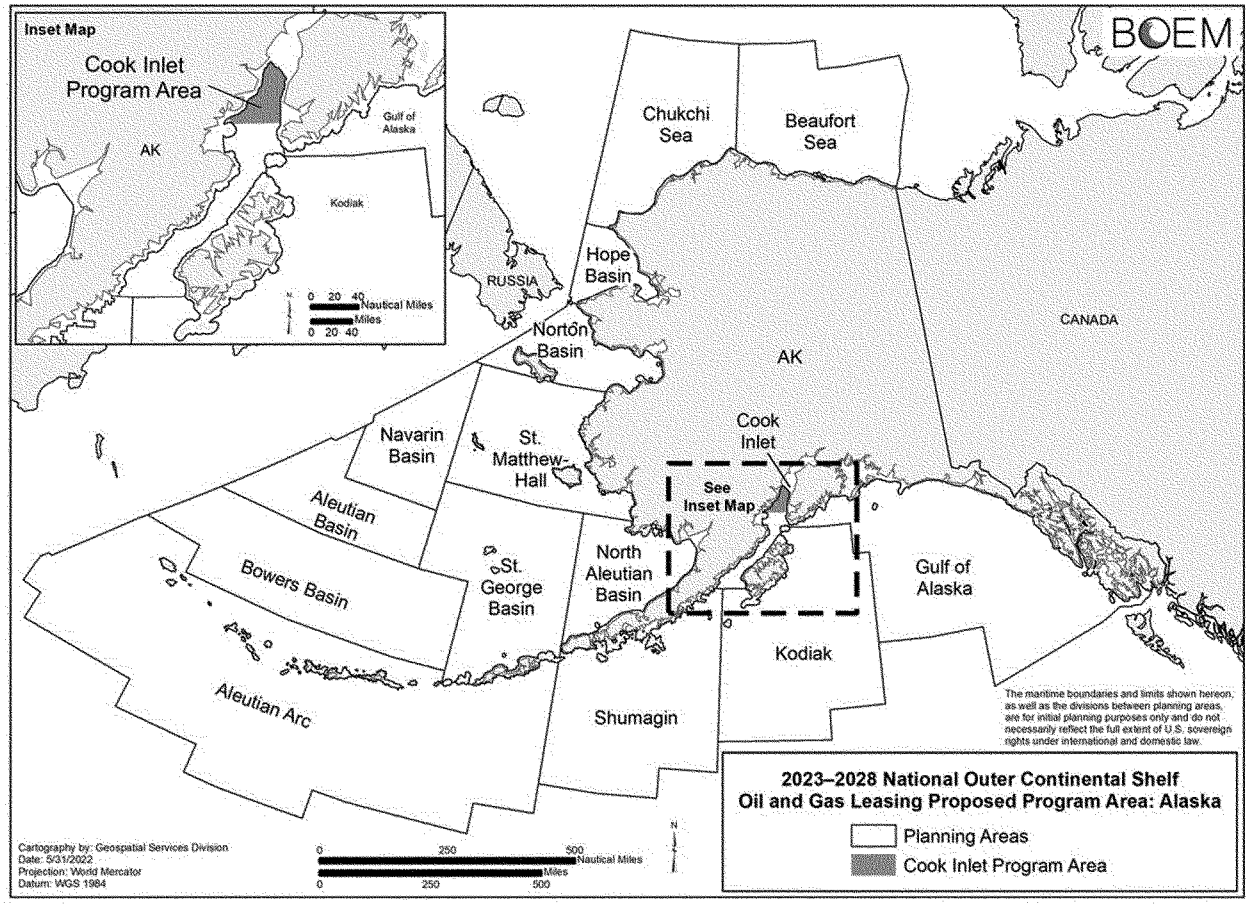
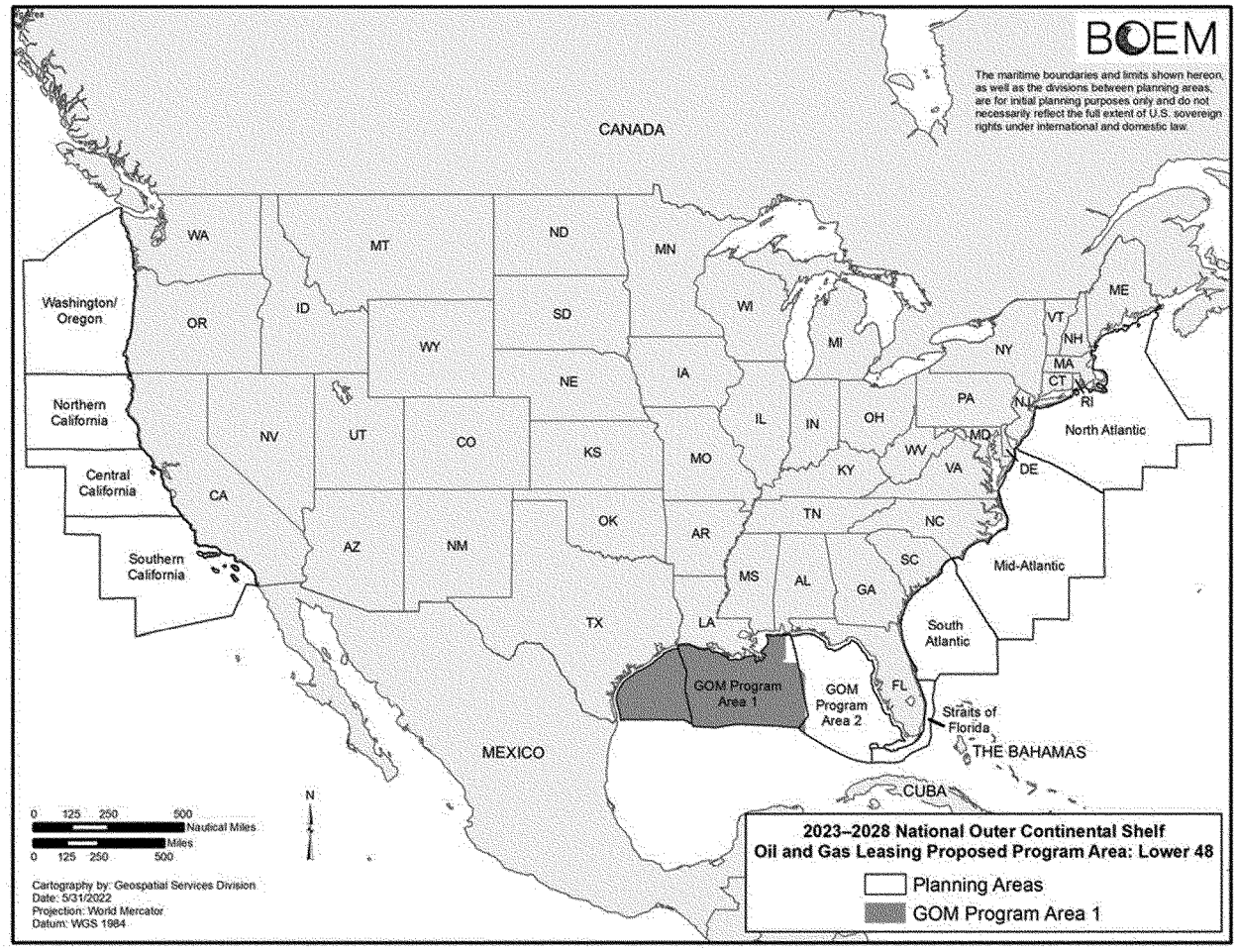


Figure 2: Proposed Program Map – Continental United States



[FR Doc. 2022–14524 Filed 7–7–22; 8:45 am]
BILLING CODE 4340–98–C

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Video Processing Devices and Products Containing the Same, DN 3626;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of VideoLabs, Inc. on July 1, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video processing devices and products containing the same. The complainant names as respondents: Acer Inc. of Taiwan; Acer America Corporation of San Jose, CA; ASUSTeK Computer Inc. of Taiwan; ASUS Computer International of Fremont, CA; Lenovo Group Limited of China; Lenovo (United States) Inc. of Morrisville, NC; Micro-Star International Co., Ltd. of Taiwan; Motorola Mobility LLC of Chicago, IL; and MSI Computer Corp. of City of Industry, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondent, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should

address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3626'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during 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. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: July 5, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–14579 Filed 7–7–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number XXXX–XXXX]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Generic Clearance for the Collection of Qualitative Data To Support National Institute of Justice Research and Assessment

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until August 8, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Benjamin Adams, Social Science Analyst, National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531 (email: *benjamin.adams@usdoj.gov;* telephone: 202–616–3687).

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 agency, including whether the information shall have practical utility;

—Evaluate whether the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions that were used;

—Evaluate whether and if so how the quality, utility, and clarity of the information collected can be enhanced; and

—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, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Data to Support National Institute of Justice Research and Assessment.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Not applicable (new collection).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Respondents/affected entities: Administrators or staff of state and local agencies or programs in the relevant fields; administrators or staff of non-government agencies or programs in the relevant fields; individuals; policymakers at various levels of government.

Abstract: The National Institute of Justice (NIJ) is requesting a generic clearance for the purpose of conducting qualitative research and assessment. NIJ's mission is to advance scientific research, development, and evaluation to enhance the administration of justice and public safety. The proposed information collection activities will enable NIJ to better understand emerging crime and justice issues pertinent to its research mission, inform the development of intramural and extramural research projects, and ensure relevant information is available for use in the planning, management, and assessment of NIJ research portfolios. NIJ anticipates using a variety of techniques including, but not limited to, individual in-depth interviews, semi-structured small group discussions, focus groups, and questionnaires to reach these goals.

NIJ will only submit a collection for approval under this generic clearance if the collections are voluntary; the collections are low burden for respondents and are low- or no-cost for both the respondents and the Federal Government; the collections are noncontroversial; personally identifiable information is collected only to the extent necessary and is not retained; information gathered will not be used for the purpose of substantially informing influential policy decisions; and information gathered will yield qualitative information.

Following standard Office of Management and Budget (OMB) requirements, NIJ will submit an individual request to OMB for every group of data collection activities undertaken under this generic clearance. NIJ will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project. Currently, NIJ anticipates the need to conduct qualitative research that will include the collection of information from law enforcement agencies, jails, prisons, and the state agencies, local governments, and nonprofit organizations.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 2,500 respondents will be involved in the anticipated qualitative research over the 3-year clearance period. Specific estimates for the average response time are not known for the work covered under a generic clearance, however, an estimate of overall burden is included in item 6 below.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 3,000 hours.

If additional information is required contact: Robert Houser, Assistant Director, 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 5, 2022.

Robert Houser,

Assistant Director, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2022–14583 Filed 7–7–22; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: [22–051]

Name of Information Collection: Remote Psychoacoustic Test, Phase 1, for Urban Air Mobility Vehicle Noise Human Response

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 8, 2022.

ADDRESSES: Written comments and recommendations for this 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: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is leading an Urban Air Mobility (UAM) vehicle noise cooperative human response study involving multiple testing locations, other US government agencies, academia, and industry. Overarching study goals are:

1. Obtain a wide range of UAM vehicle sounds for use in human response studies.

2. Provide insights into human response of UAM vehicle noise that will collectively be challenging for any single agency or organization to acquire.

3. Create an open database of human response to UAM vehicle noise to support follow-on studies.

The UAM vehicle noise cooperative human response study is currently divided into two phases: a Feasibility Phase (Phase 1) and Phase 2. Each phase executes one or more psychoacoustic tests. Phase 1 seeks to demonstrate and refine the test methodology that will be used in Phase 2. Since UAM vehicle noise may be challenging to acquire as stimuli, the Phase 1 psychoacoustic test will use other types of aircraft noise as stimuli. Phase 2 will focus on capturing human response to UAM vehicle noise stimuli.

This information collection is for the Phase 1 psychoacoustic test. A remote psychoacoustic testing platform will allow recruited test subjects to listen to NASA-provided test sound stimuli over the internet using their own computers and headphones and register their annoyance rating for each.

The outcome of the Phase 1 psychoacoustic test is a demonstrated capability for ranking of sound stimuli by annoyance ratings from remote test subjects.

II. Methods of Collection

Test subjects will electronically indicate their annoyance rating to test stimuli into an interface displayed on their own computers.

III. Data

Title: Remote Psychoacoustic Test for Urban Air Mobility Vehicle Noise Human Response.

OMB Number:

Type of review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 1.

Estimated Number of Respondents per Activity: 80.

Annual Responses: 80.

Estimated Time per Response: 80 minutes.

Estimated Total Annual Burden Hours: 107 hours.

Estimated Total Annual Cost: $4,280.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–14578 Filed 7–7–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–050]

Name of Information Collection: X–59 Quiet SuperSonic Community Response Survey Preparation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 8, 2022.

ADDRESSES: Written comments and recommendations for this 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: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202–358–2375 or email *claire.a.little@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Supersonic passenger flight over land is currently restricted in the U.S. and many countries because sonic booms have been known to disturb people on the ground. There is a potential for a change in federal and international regulations if supersonic flight can occur at acceptably low noise levels. NASA is preparing a series of Community Response Surveys coupled with research flights to gather data on the public acceptability of low noise supersonic flight.

Prior to the Community Response Surveys, NASA will conduct a check of the overall survey process without accompanying flights (Community Response Survey Preparation). This is necessary to minimize the risk of problems or errors with the actual Community Response Surveys, which will involve coordinating efforts with preparing and scheduling flights of the X–59 Quiet SuperSonic Technology aircraft.

NASA has supported two prior field tests to evaluate data collection methods for community response to low noise supersonic flight; one test was at Edwards Air Force Base, California in 2011 and the second was the Quiet Supersonic Flights 2018 (QSF18) study in Galveston, Texas. The findings from these prior tests were not intended for gathering data supporting regulatory changes but to provide lessons learned in the survey methodology that will be employed in this study.

After the Community Response Survey Preparation, NASA plans to conduct up to five Community Response Surveys in different areas of the contiguous U.S. Each Community Response Survey will have a maximum of 113 responses (''activities'') per respondent, spread across a 30-day period. Some responses are collected up to six times per day, while other responses are collected once per day.

II. Methods of Collection

Participants from the public will receive mailings prompting them to complete a web survey that will be available through a direct URL and through a custom app that they will have the option of downloading to their phone or mobile device.

III. Data

Title: X–59 Quiet SuperSonic Community Response Survey Preparation.

OMB Number:

Type of Review: New.

Affected Public: Individuals and Households.

Estimated Annual Number of Activities: 113.

Estimated Number of Respondents per Activity: 500.

Annual Responses: 56,500.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 1,883 hours.

Estimated Total Annual Cost: $58,806.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–14576 Filed 7–7–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a quarterly business meeting on Monday, July 25, 2022, 12 p.m.–4 p.m., Eastern Daylight Time (EDT).

PLACE: This meeting will occur via Zoom videoconference. Registration is not required. Interested parties are encouraged to join the meeting in an attendee status by Zoom Desktop Client, Mobile App, or Telephone to dial-in. Updated information is available on NCD's event page at *https://ncd.gov/events/2022/upcoming-council-meeting.* To join the Zoom webinar, please use the following URL: *https://us06web.zoom.us/j/89005709606?pwd=TXBSc1Q5QlZPODQ1T09IQm1qeW5YUT09* or enter Webinar ID: 890 0570 9606 in the Zoom app. The Passcode is: 886525. To join the Council Meeting by telephone, dial one of the preferred numbers listed. The following numbers are (for higher quality, dial a number based on your current location): (669) 900–6833; (408) 638–0968; (312) 626–6799; (346) 248–7799; (253) 215–8782; (646) 876–9923; or (301) 715–8592. You will be prompted to enter the meeting ID 890 0570 9606 and passcode 886525. International numbers are also available: *https://us06web.zoom.us/u/kU5ELNoTI.*

In the event of audio disruption or failure, attendees can follow the meeting by accessing the Communication Access Realtime Translation (CART) link provided. CART is text-only translation that occurs real time during the meeting and is not an exact transcript.

MATTERS TO BE CONSIDERED: Following welcome remarks and introductions, the Chairman and Executive Committee will provide reports; followed by an Administration, Finance, and Operations (AFO) Team update; a Policy Team update; a discussion on proposed additions to the NCD Health Equity Framework; a panel on the U.S. Supreme Court's Cummings decision with Q&A; public comment period on the Cummings decision; annual ethics training for the Council Members and staff; legislative and public affairs updates; and any old or new business, before adjourning.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Daylight Time):

Monday, July 25, 2022

12–12:05 p.m.—Welcome and Call to Order
12:05–12:15 p.m.—Chairman's Report
12:15–12:30 p.m.—Executive Committee Report
12:30–12:35 p.m.—Administration, Finance and Operations (AFO) Team Update
12:35–1:15 p.m.—Policy Report, Employment Program Inventory Report Out
1:15–1:45 p.m.—Health Equity Framework Proposed Additions
1:45–2:30 p.m.—Cummings panel, Q&A
2:30–3 p.m.—Public Comment (Cummings prompt)
3:00–3:50 p.m.—Annual Ethics Training
3:50–4 p.m.—Legislative Affairs and Outreach (LAO) Team Update
3:55–4 p.m.—Old Business/New Business
4 p.m.–Adjourn

PUBLIC COMMENT: Your participation during the public comment period provides an opportunity for us to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are important in bringing to the Council's attention issues and priorities of the disability community.

For the July 25 Council meeting, NCD will designate its half-hour of public comment exclusively for community feedback on the recent U.S. Supreme Court decision *Cummings* v. *Premier Rehab Keller, P.L.L.C.* In April 2022, the U.S. Supreme Court issued a decision in *Cummings* v. *Premier Rehab Keller, P.L.L.C.,* holding that emotional distress damages are not recoverable in a private action to enforce either the Rehabilitation Act or the Affordable Care Act. NCD seeks public comment on the impact of this holding on people with disabilities who seek redress for discrimination under these Federal statutes. In particular, NCD invites comments on the following or related topics:

1. What was the importance of emotional distress damages under these statutes prior to the Cummings decision?

2. What remedy/remedies remain available, under these statutes, in a private action alleging disability discrimination after Cummings, and what role can state civil or human rights laws play in providing an equivalent remedy?

3. What is the overall impact on civil rights protections for people with disabilities as a result of this decision?

Because of the virtual setting, there will be a hybrid option for submitting public comment. The Council is soliciting public comment by email or via video or audio over Zoom. Emailed public comment submissions will be reviewed during the meeting and delivered to members of the Council at its conclusion. You can also present public comment during the session by clicking the ''Hand Raise'' button in Zoom and waiting to be called on. If you plan to present over Zoom, please provide advance notice. To provide comments or notice to present public comment, please send an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' and your name, organization, state, and topic of comment included in the body of your email. Submission should be received no later than July 24, 5 p.m. EDT to ensure inclusion.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or *nsabula@ncd.gov.*

ACCOMMODATIONS: An ASL interpreter will be on-camera during the entire meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: *https://www.streamtext.net/player?event=NCD.*

If you require additional accommodations, please notify Anthony Simpson by sending an email to *asimpson.cntr@ncd.gov* as soon as possible and no later than 24 hours prior to the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: July 6, 2022.

Sharon M. Lisa Grubb,

Director of Administration, Finance and Operations.

[FR Doc. 2022–14703 Filed 7–6–22; 4:15 pm]

BILLING CODE 8421–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0170]

Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan Required for Special Nuclear Material of Moderate Strategic Significance

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–2159, Revision 1, ''Acceptable Standard Format and Content for the Fundamental Nuclear Material Control Plan Required for Special Nuclear Material of Moderate Strategic Significance.'' This NUREG provides information to facilitate compliance with NRC regulations applicable to the fundamental nuclear material control plans required of certain types of licensees.

DATES: NUREG–2159, Revision 1 is available on July 8, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0170 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–2021–0170. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals 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.* 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.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Suzanne Ani, telephone: 301–415–7336, email: *Suzanne.Ani@nrc.gov* and Glenn Tuttle, telephone: 301–415–7230, email: *Glenn.Tuttle@nrc.gov.* Both are staff of the Office of Nuclear Material Safety and Safeguards at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

NUREG–2159, Revision 1, (ADAMS Accession No. ML22143A963) provides guidance to facilitate compliance with applicable provisions in Subpart D of Part 74 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Material Control and Accounting of Special Nuclear Material.'' NUREG–2159, Revision 1, provides guidance for fuel cycle and other licensees and applicants who may request authorization to hold special nuclear material of moderate strategic significance. Generally, this guidance document discusses acceptable methods licensees and applicants may use to prepare and implement their fundamental nuclear material control plans, and how the NRC will review and inspect these plans.

II. Additional Information

Draft NUREG–2159, Revision 1, was published in **Federal Register** on September 23, 2021 (86 FR 52926) with a 60-day public comment period. The NRC received a request for an extension of the public comment period, granted that request, and extended the comment period by an additional 14 days, ending on December 3, 2021 (86 FR 61795, November 8, 2021). The NRC received four comment submissions from individual commenters during the comment period. All of these submissions were from members of the nuclear industry representing different organizations. In summary, the Nuclear Energy Institute (NEI) incorporated the comments from Centrus/American Centrifuge Operating (Centrus) and Global Nuclear Fuel—Americas (GNF–A), and X-Energy endorsed the NEI's consolidated comments. The four comment submissions can be found in ADAMS under Accession Nos. ML21337A083 (NEI), ML21300A135 (Centrus), ML21347A942 (GNF–A), and ML21344A034 (X-Energy). The NRC responses to these public comments can be found in ADAMS under Accession No. ML22080A123. This document explains the changes made to the draft version in response to the public comments.

III. Congressional Review Act

This NUREG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: July 1, 2022.

For the Nuclear Regulatory Commission.

James L. Rubenstone,

Chief, Material Control and Accounting Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–14543 Filed 7–7–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–608; NRC–2022–0135]

SHINE Medical Technologies, LLC; Medical Isotope Production Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplement to the final environmental impact statement; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft Supplement 1 to NUREG–2183, Environmental Impact Statement for the Construction Permit for the SHINE Medical Radioisotope Production Facility, issued October 2015. SHINE Medical Technologies, LLC (SHINE) is requesting a license to operate the Medical Isotope Production Facility (SHINE facility) in Janesville, Wisconsin. The NRC is seeking public comment on this action and has scheduled a public meeting that will take place as an online webinar and teleconference.

DATES: The NRC staff will hold a public meeting as an online webinar and teleconference on July 27, 2022, from 7:00 p.m. to 9:00 p.m. Eastern Time (ET). Submit comments by August 22, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0135. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Email comments to: SHINEEnvironmental@nrc.gov*.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lance J. Rakovan, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–2589; email: *Lance.Rakovan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0135 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document by any of the following methods:

• *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0135.

• *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.* Draft Supplement 1 to NUREG–2183 is available in ADAMS under Accession No. ML22179A346.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. ET, Monday through Friday, except Federal holidays.

• *Public Library:* A copy of draft Supplement 1 to NUREG–2183 is available at the Hedberg Public Library, 316 South Main Street, Janesville, Wisconsin 53545.

B. Submitting Comments

The NRC encourages the electronic submission of comments through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0135 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC staff is issuing for public comment draft Supplement 1 to NUREG–2183. When a final environmental impact statement (FEIS) has been prepared in connection with the issuance of a construction permit for a production or utilization facility, the NRC staff is required to prepare a supplement to the FEIS on the construction permit in connection with any issuance of an operating license for that facility in accordance with paragraph 51.95(b) of title 10 of the *Code of Federal Regulations.*

Draft Supplement 1 to NUREG–2183 updates the prior environmental review by the NRC staff for the SHINE facility construction permit. This supplement only covers matters that differ from or that reflect significant new information concerning matters discussed in NUREG–2183. Draft Supplement 1 to NUREG–2183 includes the NRC staff's preliminary analysis of the environmental impacts of the proposed action of deciding whether to issue a license to SHINE to operate the SHINE facility for a period of 30 years. After weighing the environmental, economic, technical, and other benefits against environmental and other costs, the NRC staff's preliminary recommendation, unless safety issues mandate otherwise, is that the operating license be issued as requested.

III. Request for Comment and Public Meeting

The NRC staff will hold a public meeting as an online webinar and teleconference to present an overview of its preliminary analysis and to receive comments on draft Supplement 1 to NUREG–2183. A court reporter will transcribe all comments received during the public meeting and the transcript will be made publicly available. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed in the **ADDRESSES** section of this document. The date and time for the public meeting is as follows:

Date	Time	Location
07/27/2022	7:00 p.m. to 9:00 p.m. ET.	Webinar Information: *https://teams.microsoft.com/registration/dRTQ6LXDakOgZV3vTGT1Lg,br1bC5dwN0i7oarti0hkXg,H76ZUH0IuEGKXQCsPEQQ7Q,AAKS08D4n0-CjPObqCUTNg,6ol9VW_NI0-buX-ScVZ_sg,brBWRDkbGESX_OUAsVVjvw?mode=read&tenantId=e8d01475-c3b5-436a-a065-5def4c64f52e&webinarRing=gcc.* Telephone Access: Bridgeline: 301–576–2978. Participant Access Code: 438638044#.

Persons interested in attending this public meeting should monitor the NRC's Public Meeting Schedule website at *https://www.nrc.gov/pmns/mtg* for additional information, agendas for the meeting, and access information. Those wishing to speak and voice comments at the public meeting should follow the instructions listed on the NRC's Public Meeting Schedule website. Please contact Mr. Lance Rakovan no later than July 20, 2022, if accommodations or special equipment is needed to attend or to provide comments, so that the NRC staff can determine whether the request can be accommodated. Participants should register in advance of the public meeting by selecting the Webinar Information website previously noted. A confirmation email will be generated providing additional details and a link to the public meeting.

Dated: June 30, 2022.

For the Nuclear Regulatory Commission.

Theodore B. Smith,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–14384 Filed 7–7–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2022–0127]

Omaha Public Power District, Fort Calhoun Station, Unit 1; License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Public meeting and request for comment.

SUMMARY: On August 3, 2021, as supplemented on January 13, 2022, the U.S. Nuclear Regulatory Commission (NRC) received from the Omaha Public Power District (OPPD, the licensee) a license amendment request to add a license condition to include the requirements of a License Termination Plan (LTP) for the Fort Calhoun Station, Unit 1 (FCS). The LTP provides details about the known radiological information for the site, the planned demolition and decommissioning tasks to be completed, and the final radiological surveys and data that must be obtained for termination of the NRC's license for FCS. The NRC is requesting public comments on FCS's LTP and will hold a public meeting to discuss the LTP.

DATES: The public meeting will be held on Wednesday, July 13, 2022, from 6:00 p.m. to 7:30 p.m., Central Time (CT), at the Blair Public Library & Technology Center, 2233 Civic Dr., Blair, NE. The public meeting is also available through an online webinar. Submit comments by September 6, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. See Section IV ''Request for Comment and Public Meeting'' of this document for additional information.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0127. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: 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:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0127 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0127.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0127 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

Omaha Public Power District (OPPD or licensee) is the holder of Facility Operating License No. DPR–40. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility is a pressurized-water reactor located in Washington County, NE.

On June 24, 2016, OPPD formally notified the NRC of its intent to permanently cease operations at FCS. By letter dated November 13, 2016, the licensee notified the NRC that it had

permanently ceased power operations at FCS on October 14, 2016, and certified that as of November 13, 2016, all fuel had been permanently removed from the FCS reactor vessel and placed in the FCS spent fuel pool.

The licensee submitted its Post-Shutdown Decommissioning Activities Report (PSDAR) on March 20, 2017. The PSDAR described the licensee's proposed decommissioning activities and schedule. At that time, the licensee selected to place the facility in long-term storage (*i.e.,* the ''SAFSTOR'' decommissioning option) as described in the PSDAR. SAFSTOR is a method of decommissioning in which a nuclear facility is placed and maintained in a condition that allows the facility to be safely stored and subsequently decontaminated (deferred decontamination) to levels that permit release for unrestricted use. The licensee planned to continue in SAFSTOR until 2058.

By letter dated December 16, 2019, OPPD submitted an updated PSDAR to reflect that the decommissioning approach for the FCS was changing from SAFSTOR to the immediate decontamination and dismantlement of the facility (*i.e.,* the DECON decommissioning option). DECON is a method of decommissioning in which structures, systems, and components that contain radioactive contamination are removed from the site and safely disposed at a commercially operated low-level waste disposal facility or decontaminated to a level that permits the site to be released for unrestricted use as soon as possible after removal of the spent fuel from the spent fuel pool. On May 13, 2020, FCS removed the last canister of fuel and all special nuclear material from the spent fuel pool.

On August 3, 2021, FCS submitted their LTP to the NRC as supplemented by letter dated January 13, 2022. Paragraph 50.82(a)(9) of title 10 of the *Code of Federal Regulations* (10 CFR), ''Termination of license,'' specifies that an application for license termination must be accompanied or preceded by a LTP, which is subject to NRC review and approval. The LTP addresses site characterization to ensure that the scope of final status surveys (FSS) of the site cover all areas where contamination existed, remains, or has the potential to exist or remain, identification of remaining dismantlement activities, plans for site remediation, a description of the FSS plans to confirm that FCS will meet the release criteria in 10 CFR part 20, subpart E, ''Radiological Criteria for License Termination,'' dose-modeling scenarios that ensure compliance with the radiological criteria for license termination, an estimate of the remaining site-specific decommissioning costs, a supplement to the FCS Defueled Safety Analysis Report and an updated assessment of the environmental effects of decommissioning FCS.

According to 10 CFR 50.82(a)(9)(iii), after the licensee submits an LTP the NRC must hold a public meeting near the site. The purpose of the meeting is for the NRC staff to discuss the NRC's review of the LTP and to request public comments on the LTP.

III. Availability of Documents

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

Document	ADAMS accession No.
OPPD notification of its intent to permanently cease operations at Fort Calhoun Station, dated June 24, 2016	ML16176A213.
OPPD certification that all fuel had been permanently removed from the FCS reactor vessel and placed in the FCS spent fuel pool, dated November 13, 2016.	ML16319A254.
OPPD submittal of PSDAR for FCS, dated March 30, 2017	ML17089A759.
OPPD submittal of an updated PSDAR for FCS to reflect the change from SAFSTOR to DECON, dated December 16, 2019.	ML19351E355.
OPPD notification of the removal of the last canister of fuel and all special nuclear material from the spent fuel pool, dated May 18, 2020.	ML20139A138.
OPPD submittal of their LTP to the NRC	ML21271A178 (Package).
OPPD supplement to the LTP	ML22034A602 (Package).

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2022–0127. The Federal rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2022–0127); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

IV. Request for Comment and Public Meeting

The NRC is requesting public comments on the FCS LTP. The NRC will conduct a public meeting to discuss the LTP and receive comments on Wednesday, July 13, 2022, from 6:00 p.m. to 7:30 p.m., CT, at the Blair Public Library & Technology Center, 2233 Civic Dr., Blair, NE. Please contact Mr. Jack Parrott no later than July 11, 2022, if accommodations or special equipment is needed to attend or to provide comments, so that the NRC staff can determine whether the request can be accommodated. For additional information regarding the meeting, see the NRC's Public Meeting Schedule website at *https://meetings.nrc.gov/pmns/mtg.* The agenda will be posted no later than 10 days prior to the meeting.

Dated: July 4, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–14552 Filed 7–7–22; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Virtual Public Meeting; Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Salary Council will meet virtually on Friday, August 5, 2022, at the time shown below. There will be no in-person gathering for this meeting.

The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay,

and the level of comparability payments that should be paid.

The Council will hear public testimony about the locality pay program, review the results of pay comparisons, and formulate its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2023.

This meeting is open to the public through advance registration. Individuals who wish to provide testimony or present material at the meeting should contact the Office of Personnel Management using the email address provided below. In addition, please be aware that the Council may need to set limits on the time that will be provided for hearing oral testimony in the meeting. However, the Council can consider lengthier input in written material provided in advance of the public meeting. There are no restrictions on format for such written input.

DATES: The virtual meeting will be held on Friday, August 5, 2022, beginning at 10:00 a.m. Eastern Daylight Time.

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe at 202–936–3081, or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code.

Public Participation: The August 5, 2022, meeting of the Federal Salary Council is open to the public through registration. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''August 5 FSC Public Meeting'' no later than Wednesday, August 3, 2022.

The following information must be provided when registering:

- Name/Title,
- Organization,
- Email address, and
- Area represented (if applicable).

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by August 3, 2022.

A confirmation email will be sent upon receipt of the registration. If you do not receive the confirmation email within a business day of registering, please check your spam filter or junk email folder. Information for participation will be sent to registrants the day before the virtual meeting.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2022–14587 Filed 7–7–22; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–77 and CP2022–83]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 12, 2022.

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).:* MC2022–77 and CP2022–83; *Filing Title:* USPS Request to Add Priority Mail Contract 751 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 1, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* July 12, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–14549 Filed 7–7–22; 8:45 am]

BILLING CODE 7710–FW–P

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 will hold an Open Meeting on Wednesday, July 13, 2022 at 10:00 a.m.

[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).

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to the proxy rules governing proxy voting advice.

2. The Commission will consider whether to propose amendments to update certain substantive bases for exclusion of shareholder proposals under the Commission's shareholder proposal rule (Rule 14a–8).

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: July 6, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–14693 Filed 7–6–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34642; File No. 812–15330]

Prospect Capital Corporation, et al.

July 5, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Prospect Capital Corporation, Priority Income Fund, Inc., Prospect Sustainable Income Fund, Inc., Prospect Yield Corporation, LLC, Prospect Capital Management L.P., Priority Senior Secured Income Management, LLC, Prospect Capital Funding LLC and National Property REIT Corp.

FILING DATES: The application was filed on April 29, 2022, and amended on June 3, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, August 1, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Russell Wininger, Prospect Capital Corporation, at *rwininger@prospectcap.com,* and Steven B. Boehm, Esq. and Anne G. Oberndorf, Esq., Eversheds Sutherland (US) LLP, at *anneoberndorf@eversheds-sutherland.us.*

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated June 3, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–14581 Filed 7–7–22; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36624]

Mountain Pacific Railroad LLC—Lease and Operation Exemption—Moss Landing Commercial Park LLC at Moss Landing, Monterey County, Cal.

Mountain Pacific Railroad LLC (MPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease and operate approximately 6,818.7 feet of track, totaling 1.29 miles, located at Moss Landing Commercial Park, LLC (MLCP), Moss Landing, Monterey County, Cal. (the Line).

According to MPR, the Line is currently private track owned by MLCP. MPR states that it has entered into a lease agreement with MLCP under which MPR will operate and provide all rail common carrier service on the Line. The verified notice indicates that initial operations will consist of transloading propane from railcars into truck for local delivery.

MPR certifies that its projected annual revenues from this transaction will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. MPR also certifies that the proposed transaction does not include an interchange commitment.

The transaction may be consummated on or after July 23, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 15, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36624, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on MPR's representative, Thomas F. McFarland, Thomas F.

McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422–1336.

According to MPR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 30, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2022–14536 Filed 7–7–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0052]

Hours of Service (HOS) of Drivers; Application by American Pyrotechnics Association for Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemptions; request for comments.

SUMMARY: FMCSA announces that it has received an application from the American Pyrotechnics Association (APA) requesting exemptions from certain hours of service (HOS) regulations. Previous similar exemptions expired on July 8, 2021, and APA now requests the exemptions on behalf of 45 member companies. The exemptions would allow drivers to exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit and to use paper records of duty status (RODS) in lieu of an electronic logging device (ELD) during the designated Independence Day periods. The requests are for the transportation of pyrotechnics from June 28 through July 8 of every year from 2022 through 2026.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket ID FMCSA–2021–0052 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2021–0052) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, (202) 366–4225 or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2021–0052), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2021–0052'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Requests

APA requests renewal of its HOS exemptions from the 14-hour rule in 49 CFR 395.3(a)(2) and the ELD rule in 49 CFR 395.8(a)(1)(i) for 42 of 60 companies included in the 2021 HOS exemptions, which expired on July 8, 2021 [86 FR 34834]. The application also requests the exemptions on behalf of 3 additional companies not included in the 2021 HOS exemptions. A copy of the request and additional correspondence modifying the request are in the docket at the beginning of this notice.

APA member companies have held waivers or exemptions during Independence Day periods each year since 2005. Copies of the initial request for an exemption, subsequent renewal requests, and all public comments received may be reviewed at *www.regulations.gov* under docket numbers FMCSA–2005–21104, FMCSA–2007–28043, FMCSA–2018–0140, and FMCSA–2021–0052.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on APA's application for exemptions from 49 CFR 395.3(a)(2) and 395.8(a)(1)(i). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

Appendix to Notice of Applications for Renewal of APA Exemptions From the 14-Hour and ELD HOS Rules for Independence Day Periods

JUNE 28, 2022 THROUGH JULY 8, 2026, FOR 45 MOTOR CARRIERS

	Motor carrier	Street address	City, state, zip code	DOT No.
1	American Fireworks Display, LLC	105 County Route 7	McDonough, NY 13801	2115608
2	AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
3	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
4	Artisan Pyrotechnics, Inc	82 Grace Road	Wiggins, MS 39577	1898096
5	Atlas PyroVision Entertainment Group, Inc.	136 Sharon Road	Jaffrey, NH 03452	789777
6	Celebration Fireworks, Inc	7911 7th Street	Slatington, PA 18080	1527687
7	*CP Transport, LLC	6377 Hwy. 62 NE	Lanesville, IN 47136	3076205
8	Dominion Fireworks, Inc	669 Flank Road	Petersburg, VA 23805	540485
9	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
10	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
11	Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490
12	Aluminum King Mfg., Ltd. dba Flashing Thunder Fireworks.	700 E Van Buren Street	Mitchell, IA 50461	420413
13	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
14	Hale Artificier, Inc	3185 East US Hwy. 64	Lexington, NC 27292	981325
15	Hamburg Fireworks Display, Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
16	Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
17	J&J Computing dba Fireworks Extravaganza.	174 Route 17 North	Rochelle Park, NJ 07662	2064141
18	J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
19	Johnny Rockets Fireworks Display Company.	3240 Love Rock	Steger, IL 60475	1263181
20	Las Vegas Display Fireworks, Inc	4325 West Reno Ave	Las Vegas, NV 89118	3060878
21	Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
22	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.O. Box 322	Hallowell, ME 04347	734974
23	Miand Inc. dba Planet Productions (Mad Bomber).	P.O. Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
24	Montana Display Fireworks, Inc	9480 Inspiration Road	Missoula, MT 59808	1030231
25	*Pyro Productions Inc	2083 Helms Road	Rehobeth, AL 36301	3723192
26	*Pyro Shows East Coast	4652 Catawba River Road	Catawba, SC 29704	3709087
27	Pyro Shows, Inc	115 N 1st Street	LaFollette, TN 37766	456818
28	Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005	2859710
29	Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd	Fort Worth, TX 76135	2432196
30	Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
31	Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
32	Pyrotecnico Fireworks Inc	299 Wilson Rd	New Castle, PA 16105	526749
33	Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
34	RES Specialty Pyrotechnics dba RES Pyro.	21595 286th St	Belle Plaine, MN 56011	523981
35	RKM Fireworks Company	27383 May St	Edwardsburg, MI 49112	1273436
36	Rozzi's Famous Fireworks, Inc	118 Karl Brown Way	Loveland, OH 45140	0483686
37	Santore's World Famous Fireworks, LLC.	846 Stillwater Bridge Road	Schaghticoke, NY 12154	2574135
38	Southern Sky Fireworks, LLC	6181 Denham Rd	Sycamore, GA 31790–2603	3168056
39	Spielbauer Fireworks Co, Inc	1976 Lane Road	Green Bay, WI 54311	046479
40	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
41	Vermont Fireworks Co., dba Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632

JUNE 28, 2022 THROUGH JULY 8, 2026, FOR 45 MOTOR CARRIERS—Continued

	Motor carrier	Street address	City, state, zip code	DOT No.
42	Western Display Fireworks, Ltd	10946 S. New Era Rd	Canby, OR 97013	498941
43	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
44	Young Explosives Corp	2165 New Michigan Rd	Canandaigua, NY 14618	450304
45	Zambelli Fireworks MFG, Co., Inc	120 Marshall Drive	Warrendale, PA 15086	033167

[FR Doc. 2022–14510 Filed 7–7–22; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0135]

Entry-Level Driver Training: Railsback HazMat Safety Professionals, LLC; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from Rex Railsback, Owner, Railsback HazMat Safety Professionals, LLC (Railsback HMSP), for an exemption from the theory instructor qualification requirements in the entry-level driver training (ELDT) regulations. Mr. Railsback would perform theory (*i.e.,* classroom) training relating to the transportation of hazardous materials for driver-trainees seeking to obtain a hazardous materials endorsement on their commercial driver's license (CDL). FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2022–0135 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2022–0135) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL 14—FDMS, which can be reviewed at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366–2722 or by email at *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0135), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number (''FMCSA–2022–0135'') in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the

exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Rex Railsback, Owner, Railsback HMSP, seeks an exemption from the requirement that a driver training instructor must possess a CDL with all applicable endorsements to perform ELDT theory instruction. Mr. Railsback would perform theory (*i.e.,* classroom) training of 49 CFR parts 100–185 relating to the transportation of hazardous materials for driver-trainees seeking to obtain a hazardous materials endorsement on their CDL.

A copy of the application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on Mr. Railsback's application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–14509 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0049]

North County Transit District's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on June 22, 2022, North County Transit District (NCTD) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by July 28, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0049. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on June 22, 2022, NCTD submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS) and that RFA is available in Docket No. FRA–2010–0049.

Interested parties are invited to comment on NCTD's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–14561 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Federal Support for Local Decision-Making Public Listening Session

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation (DOT).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting hosted by the Bureau of Transportation Statistics (BTS) in support of the Infrastructure Investment and Jobs Act (IIJA). The meeting will be a facilitated listening session that will document data and analytical challenges local decision-makers face

making informed infrastructure investments. Based on feedback shared during the meeting, BTS will review the data and data analysis tools needed to assist local officials and will develop a road map to prioritize the Federal Government's support and funding requests for updating and developing the data assets.

DATES: The meeting will be held July 14, 2022, from 1 to 3 p.m. (Eastern Time).

ADDRESSES: This meeting will be conducted in an electronic format. Interested persons may register on the Agency website at *https://www.bts.gov/local-outreach.* Web conference information will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: For specific questions related to the meeting, please contact Jordan Riddle, 202–366–8069.

SUPPLEMENTARY INFORMATION:

Public Participation: The meeting is open to the interested public, but the limited number of registrations will be available on a first come, first served basis. It is intended for a broad range of attendees, including stakeholders and representatives from States, political subdivisions of States, cities, metropolitan planning organizations, regional transportation planning organizations, and federally recognized Indian Tribes. Members of the public who wish to participate must register.

Accommodations: The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC, on June 29, 2022.

Patricia Sie-Tseng Hu,

Director, Bureau of Transportation Statistics.

[FR Doc. 2022–14387 Filed 7–7–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Lending Limits

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take the opportunity to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled, ''Lending Limits.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before August 8, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0221, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0221'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also 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.

On April 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 20935. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- Viewing Comments Electronically: Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0221'' or ''Lending Limits.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this document.

Title: Lending Limits.

OMB Control No.: 1557–0221.

Affected Public: Businesses or other for-profit.

Type of Review: Extension of a currently approved collection.

Abstract: Twelve CFR 32.7(a) provides that, in addition to the amount that a national bank or savings association may lend to one borrower under 12 CFR 32.3, an eligible bank or savings association may make:

- Residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for residential real estate

loans or unsecured loans in the State where the main office of the national bank or savings association is located. Any such loan or extension of credit must be secured by a perfected first-lien security interest in 1–4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made;

• Loans to small businesses to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the State lending limit that is available for loans to small businesses or unsecured loans in the State where the main office of the national bank or home office of the savings association is located; and

• Loans or extensions of credit to small farms to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for loans or extensions of credit to small farms or unsecured loans in the State where the main office of the national bank or savings association is located.

An eligible national bank or savings association must submit an application to, and receive approval from, its supervisory office before using the supplemental lending limits in 12 CFR 32.7(a)(1)–(3). The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. Section 32.7(b) provides that, in order for an application to be deemed complete, the application must include:

• Certification that the bank or savings association is an ''eligible bank'' or ''eligible savings association;''

• Citations to relevant state laws or regulations;

• A copy of a written resolution by a majority of the bank's or savings association's board of directors approving the use of the limits in § 32.7(a) and confirming the terms and conditions for use of this lending authority; and

• A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

Twelve CFR 32.9(b)(1) outlines three alternative methods (the Internal Model Method, the Conversion Factor Matrix Method, and the Current Exposure Method) for national banks and savings associations to use in calculating the credit exposure to a counterparty of non-credit derivative transactions. Twelve CFR 32.9(c) outlines two alternative methods for national banks and savings associations to use in calculating credit exposure arising from their securities financing transactions (the Internal Model Method and the Basic Method).

Under 12 CFR 32.9(b)(1)(i)(C), the use of a model (other than the model approved for purposes of the Advanced Measurement Approach in the capital rules) must be approved in advance and in writing by the OCC specifically for part 32 purposes. If a national bank or savings association proposes to use an internal model that has been approved by the OCC for purposes of the Advanced Measurement Approach, the institution must provide prior written notification to the OCC prior to use of the model for lending limits purposes. OCC approval is also required for any substantive revisions to an approved model before that model is used for lending limit purposes.

Estimated Number of Respondents: 295.

Estimated Annual Burden: 1,958 hours.

On April 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 20935. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–14585 Filed 7–7–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Disclosure and Reporting of CRA-Related Agreements

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

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). Pursuant to the PRA, an agency 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 OCC is soliciting comment concerning its information collection titled ''Disclosure and Reporting of CRA-Related Agreements.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by August 8, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

• *Email: prainfo@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0219, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0219'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed

information collection should also 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.

On April 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 20933. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0219'' or ''Disclosure and Reporting of CRA-Related Agreements.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks that OMB extend its approval of the collection in this notice.

Title: Disclosure and Reporting of CRA-Related Agreements.

OMB Control No.: 1557–0219.

Description: National banks, Federal savings associations, and their affiliates occasionally enter into agreements with nongovernmental entities or persons (NGEPs) related to their Community Reinvestment Act (CRA) responsibilities. Section 48 of the Federal Deposit Insurance Act (FDI Act) requires disclosure of certain of these agreements and imposes related reporting requirements on insured depository institutions (IDIs), their affiliates, and NGEPs.[1]

Section 48 of the FDI Act generally applies to written agreements that: (1) are made in fulfillment of the CRA; (2) involve funds or other resources of an IDI or affiliate with an aggregate value of more than $10,000 in a year or loans with an aggregate principal value of more than $50,000 in a year; [2] and (3) are entered into by an IDI or affiliate and an NGEP.[3]

Under section 48, the parties to a covered agreement must make the covered agreement available to the public and the appropriate Federal banking agency.[4] This section also requires the parties to file a report annually with the appropriate Federal banking agency concerning the disbursement, receipt, and use of funds or other resources under the agreement.[5]

As mandated by the FDI Act, the OCC, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System issued regulations to implement section 48. The OCC's regulation, codified at 12 CFR 35, is known as the ''CRA Sunshine'' regulation. The disclosure and reporting provisions of this regulation, which are collections of information under the PRA, implement the statutorily mandated disclosure and reporting requirements.

The information collections are found in sections 35.4(b); 35.6; and 35.7 and require:

• IDIs or affiliates to notify each NGEP that is a party to a covered agreement that the agreement concerns a CRA affiliate;

• NGEPs and IDIs or affiliates to make a copy of a covered agreement available to any individual or entity upon request;

• NGEPs to provide a copy of the covered agreement within 30 days of receiving a request from the relevant supervisory agency;

• Each IDI and affiliate to provide each relevant supervisory agency with a copy of each covered agreement or a list of all covered agreements entered into during a calendar quarter within 60 days of the end of the calendar quarter; [6] and

• Annual reporting by NGEPs, IDIs or affiliates concerning the disbursement, receipt, and uses of funds under each covered agreement.

The parties to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or annual report and may withhold from public disclosure confidential or proprietary information in a covered agreement.[7]

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 9.

Estimated Total Annual Burden: 534.

On April 8, 2022, the OCC published a 60-day notice for this information collection, 87 FR 20933. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–14584 Filed 7–7–22; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 1831y.

[2] The definition includes groups of substantially related agreements that satisfy these amounts in the aggregate.

[3] 12 U.S.C. 1831y(e). The statutory definition of ''agreement'' excludes any agreement entered into with an NGEP ''who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the [CRA].'' *Id.*

[4] 12 U.S.C. 1831y(a).

[5] 12 U.S.C. 1831y(b)–(c).

[6] If providing a list of covered agreements, the IDI or affiliate must provide a copy and public version of any agreement referenced in the list to any relevant supervisory agency within seven calendar days of receiving a request from the agency.

[7] 12 CFR 35.6(b)(2), 35.8; *see* 12 U.S.C. 1831y(h)(2)(A).

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the United States Treasury Department, 15th Street and Pennsylvania Avenue NW, Washington, DC on August 2, 2022 at 10:45 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee.

At this meeting, the Treasury is seeking advice from the Committee on topics related to the economy, financial markets, Treasury financing, and debt management. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: July 1, 2022.

Frederick E. Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2022–14530 Filed 7–7–22; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Ensuring Responsible Development of Digital Assets; Request for Comment

AGENCY: Departmental Offices, Treasury.

ACTION: Request for comment.

SUMMARY: This notice invites interested members of the public to provide input pursuant to Executive Order 14067 of March 9, 2022, ''Ensuring Responsible Development of Digital Assets.'' In particular, the Department invites input, data, and recommendations pertaining to the implications of development and adoption of digital assets and changes in financial market and payment infrastructures for United States consumers, investors, businesses, and for equitable economic growth.

DATES: Comments must be received on or before August 8, 2022.

ADDRESSES: You may submit comments via the Federal eRulemaking Portal: *www.regulations.gov.* Follow the instructions on the website for submitting comments.

In general, all comments will be available for inspection at *www.regulations.gov.* Comments, including attachments and other supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Natalia Li, Deputy Director, Office of Financial Institutions Policy, 202–622–1388, *natalia.li@treasury.gov;* Amanda Shulak, Attorney-Advisor, Office of General Counsel, 202–622–8906, *amanda.shulak@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order 14067 of March 9, 2022, ''Ensuring Responsible Development of Digital Assets'' (hereafter ''Executive Order'') (87 FR 14143; March 14, 2022), outlines principal U.S. policy objectives with respect to digital assets.[1] These principal policy objectives are:

a. Protection of consumers, investors, and businesses in the United States
b. Protection of United States and global financial stability and the mitigation of systemic risk
c. Mitigation of illicit finance and national security risks posed by misuse of digital assets
d. Reinforcement of U.S. leadership in the global financial system and in technological and economic competitiveness, including through the responsible development of payment innovations and digital assets
e. Promotion of access to safe and affordable financial services
f. Support of technological advances that promote responsible development and use of digital assets

Section 5(a) provides that the increased use of digital assets and digital asset exchanges and trading platforms may increase the risks of crimes such as fraud and theft, other statutory and regulatory violations, privacy and data breaches, unfair and abusive acts and practices, and other cyber incidents faced by consumers, investors, and businesses. The rise in use of digital assets, and differences across communities, may also present disparate financial risk to less informed market participants or exacerbate inequities. It is critical to ensure that digital assets do not pose undue risks to consumers, investors, or businesses, and to put in place protections as a part of efforts to expand access to safe and affordable financial services experienced by more vulnerable populations.

Section 5(b)(i) directs the Secretary of the Treasury, in consultation with the Secretary of Labor and the heads of other relevant agencies, including, as appropriate, the heads of independent regulatory agencies, such as the FTC, the SEC, the CFTC, Federal banking regulators, and the CFPB, to report to the President on the implications of development and adoption of digital assets and changes in financial market and payment infrastructures for United States consumers, investors, businesses,

[1] *https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets.*

and for equitable economic growth. The report must address the conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to United States consumers, investors, and businesses, including a focus on how technological innovation may impact these efforts and with an eye toward those most vulnerable to disparate impacts.

II. Objective

Through this request for comment (RFC), Treasury is requesting input from the public that will inform its work in carrying out its mandate under section 5(b)(i) of the Executive Order. This RFC offers an opportunity for all interested parties to provide relevant input, data, and recommendations pertaining to the implications of development and adoption of digital assets and changes in financial market and payment infrastructures for United States consumers, investors, businesses, and for equitable economic growth.

III. Request for Comments

Treasury welcomes input on any matter that commenters believe is relevant to Treasury's development of the report on the implications of developments and adoption of digital assets and changes in financial market and payment infrastructures for United States consumers, investors, businesses, and for equitable economic growth as directed by Section 5(b)(i) of the Executive Order.

Commenters are encouraged to address any or all of the following questions, or to provide any other comments relevant to the development of the report. When responding to one or more of the questions below, please note in your response the number(s) of the questions to which you are responding. In all cases, to the extent possible, please cite any public data related to or that support your responses. If data are available, but non-public, describe such data to the extent permissible.

(A) Adoption to Date and Mass Adoption

(1) What explains the level of current adoption of digital assets? Please identify key trends and reasons why digital assets have gained popularity and increased adoption in recent years. In your responses, please address the following:

a. Who are the users, consumers, and investors that are adopting digital assets? What is the geographic composition and demographic profile of consumers and investors in digital assets?

b. What businesses are adopting digital assets and for what purposes?

c. What are the main use cases for digital assets for consumers, investors, and businesses?

d. What are the implications for equitable economic growth?

(2) Factors that would further facilitate mass adoption

a. Describe a set of conditions or pre-conditions that would facilitate mass adoption of digital assets in the future. To the extent possible, please cite any public data related to the responses above.

b. What developments in technology, products, services, or markets account for the current adoption of digital assets? Are there specific statutory, technology, or infrastructural developments that would facilitate further adoption?

(B) Opportunities for Consumers, Investors, and Businesses

(3) What are the main opportunities for consumers, investors, and businesses from digital assets? For all opportunities described, please provide data and specific use cases to date (if any). In your responses, please consider:

a. Potential benefits of decentralized and disintermediated systems
b. Creation of new types of financial products and contracts
c. Potential for improved access to and greater ease of use of financial products
d. Potential opportunities for building wealth
e. Potential benefits of interacting with counterparties, suppliers, vendors, and customers directly
f. Potential for improved cross-border payments and trade finance

(C) General Risks in Digital Assets Financial Markets

(4) Please identify and describe any risks arising from current market conditions in digital assets and any potential mitigating factors. Identify any such responses that directly relate to:

a. Market transparency, including pre- and post-trade transparency
b. Accuracy and reliability of market data
c. Technological risks, including attacks, bugs, and network congestion
d. Smart contract design and security
e. Settlement and custody
f. Jurisdictional and legal conditions

(D) Risks to Consumers, Investors, and Businesses

(5) Please identify and describe potential risks to consumers, investors, and businesses that may arise through engagement with digital assets. Identify any such responses that directly relate to:

a. Frauds and scams
b. Losses due to theft
c. Losses of private keys
d. Losses from the failure/insolvency of wallets, custodians, or other intermediaries
e. Potential losses associated with interacting with counterparties directly
f. Disclosures and amount of fees
g. Disclosures of other relevant terms
h. Authenticity of digital assets, including NFTs
i. Ability of consumers, investors, and businesses to understand contracts, coding, protocols

(E) Impact on the Most Vulnerable

(6) According to the FDIC's 2019 ''How America Banks'' survey, approximately 94.6 percent (124 million) of U.S. households had at least one bank or credit union account in 2019, while 5.4 percent (7.1 million) of households did not. And roughly 25 percent of U.S. households have a checking or savings account while also using alternative financial services. Can digital assets play a role in increasing these and other underserved Americans' access to safe, affordable, and reliable financial services, and if so, how?

a. In your responses, please describe specific ways in which digital assets can benefit the underserved and the most vulnerable vis-à-vis traditional financial products and services. Address factors such as identify verification process, costs, speed, ease of use, and access.

b. In your responses, please describe specific ways in which digital assets can pose risks to the underserved and the most vulnerable given rapidly developing and highly technical and nature of the industry. Address factors such as financial and technical literacy and accessibility.

Notes

The term ''mass adoption'' is defined as a scenario where digital assets are accepted and used by the U.S. public on a large scale. For example, mass adoption of digital assets as a payment method would translate to use and acceptance of cryptocurrencies as a common and regular payment method for goods and services.

The term ''digital assets'' refers to all CBDCs, regardless of the technology used, and to other representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent

thereof, that are issued or represented in digital form through the use of distributed ledger technology. For example, digital assets include cryptocurrencies, stablecoins, and CBDCs. Regardless of the label used, a digital asset may be, among other things, a security, a commodity, a derivative, or other financial product. Digital assets may be exchanged across digital asset trading platforms, including centralized and decentralized finance platforms, or through peer-to-peer technologies.[2]

Daniel J. Harty,

Director, Office of Capital Markets.

[FR Doc. 2022–14588 Filed 7–7–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Interest Rate Paid on Cash Deposited To Secure U.S. Immigration and Customs Enforcement Immigration Bonds

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2022, and ending on September 30, 2022, the U.S. Immigration and Customs Enforcement Immigration Bond interest rate is 1.14. per centum per annum.

DATES: Rates are applicable July 1, 2022, to September 30, 2022.

ADDRESSES: Comments or inquiries may be mailed to Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328.

You can download this notice at the following internet addresses: <*http://www.treasury.gov*> or <*http://www.federalregister.gov*>.

FOR FURTHER INFORMATION CONTACT: Ryan Hanna, Manager, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Service, Parkersburg, West Virginia 261006–1328 (304) 480–5120; Will Walcutt, Supervisor, Funds Management Branch, Funds Management Division, Fiscal Accounting, Bureau of the Fiscal Services, Parkersburg, West Virginia 26106–1328, (304) 480–5117.

SUPPLEMENTARY INFORMATION: Federal law requires that interest payments on cash deposited to secure immigration bonds shall be ''at a rate determined by the Secretary of the Treasury, except that in no case shall the interest rate exceed 3 per centum per annum.'' 8 U.S.C. 1363(a). Related Federal regulations state that ''Interest on cash deposited to secure immigration bonds will be at the rate as determined by the Secretary of the Treasury, but in no case will exceed 3 per centum per annum or be less than zero.'' 8 CFR 293.2. Treasury has determined that interest on the bonds will vary quarterly and will accrue during each calendar quarter at a rate equal to the lesser of the average of the bond equivalent rates on 91-day Treasury bills auctioned during the preceding calendar quarter, or 3 per centum per annum, but in no case less than zero. [FR Doc. 2015–18545]. In addition to this Notice, Treasury posts the current quarterly rate in Table 2b—Interest Rates for Specific Legislation on the TreasuryDirect website.

The Deputy Assistant Secretary for Public Finance, Gary Grippo, having reviewed and approved this document, is delegating the authority to electronically sign this document to Heidi Cohen, Federal Register Liaison for the Department, for purposes of publication in the **Federal Register**.

Heidi Cohen,

Federal Register Liaison.

[FR Doc. 2022–14550 Filed 7–7–22; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0036]

Agency Information Collection Activity Under OMB Review: Statement of Disappearance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden 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. 2900–0036.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0036'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 108.

Title: Statement of Disappearance (VA Form 21P–1775).

OMB Control Number: 2900–0036.

Type of Review: Extension currently approved collection.

Abstract: The major use of the form is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes. 38 U.S.C. 108 requires a formal ''presumption of death'' when a veteran has been missing for seven years. It would be impossible to administer the survivor benefits program without this collection of information. This is an extension only, no substantive changes.

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 87 FR 87 on May 5, 2022, page 26804.

Affected Public: Individuals and households.

Estimated Annual Burden: 28 hours.

Estimated Average Burden per Respondent: 2.75 hours.

Frequency of Response: Once.

Estimated Number of Respondents: 10.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–14541 Filed 7–7–22; 8:45 am]

BILLING CODE 8320–01–P

[2] *https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets.*

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0822]

Agency Information Collection Activity Under OMB Review: Camp Lejeune Family Member Program—Reimbursement of Certain Medical Expenses

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health 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. 2900–0822.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0822'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Camp Lejeune Family Member Program—Reimbursement of Certain Medical Expenses, VA Forms 10–10068, 10–10068a, 10–10068b, 10–10068c.

OMB Control Number: 2900–0822.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Under 38 U.S.C. 1787, VA is required to furnish hospital care and medical services to the family members of certain veterans who were stationed at Camp Lejeune between 1953 and 1987 and have specified medical conditions. In order to furnish such care, VA must collect necessary information from the family members to ensure that they meet the requirements of the law. The specific hospital care and medical services that VA must provide are for a number of illnesses and conditions connected to exposure to contaminated drinking water while at Camp Lejeune. The forms in this collection will be used to determine eligibility and reimbursement for this medical care.

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 87 FR 53 on March 18, 2022, pages 15492 and 15493.

Total Estimated Annual Burden: 5,838 hours.

Total Estimated Annual Number of Responses: 21,720.

VA Form 10–10068: Application Form

Affected Public: Individuals or households.

Estimated Annual Burden: 815 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,629.

VA Form 10–10068a: Claim Form

Affected Public: Individuals or households.

Estimated Annual Burden: 4,480 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: 11 times per year.

Estimated Number of Respondents: 1,629.

VA Form 10–10068b: Treating Physician Form

Affected Public: Individuals or households.

Estimated Annual Burden: 407 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 1,629.

VA Form 10–10068c: Information Update Form

Affected Public: Individuals or households.

Estimated Annual Burden: 136 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 543.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–14540 Filed 7–7–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0853]

Agency Information Collection Activity under OMB Review: Application for Approval of a Program in a Foreign Country

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection revision 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. 2900–0853.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0853'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 CFR 21.4260; Public Law 115–407; Public Law 116.135, sections 1019 and 1020.

Title: Application for Approval of a Program in a Foreign Country.

OMB Control Number: 2900–0853.

Type of Review: Revision of a currently approved collection.

Abstract: VA will use the information collected to determine if a program in a foreign country is approvable under

CFR 21.4260. In order for a review and decision to be made, the VA needs supporting information from a foreign educational institution. The Application for Approval of a Program in a Foreign Country, VA Form 22–0976 OMB ICR #2900–0853 is being submitted as a ''Revision''. We are changing the formatting of the form, as well as changing most of the existing questions to be written in the form of a statement. There is no change to the current burden as a result of making these revisions.

Currently, the VA Form 22–0976 questions are written to solicit YES/NO responses regarding compliance to the current and new provisions established for foreign institutions. We believe the questions should be instead written and displayed in the form of a statement to indicate the VA requirements necessary for the achievement of compliance for foreign institutions.

Public Law 116–135, Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 amended a number of VA benefits that requires the revision of VA Form 22–0976 to comply with these changes. The VA Form 22–0976 is the official application that all foreign institutions outside of the United States must use to formally request foreign program approval for GI Bill benefits from VA.

The current form is inadequate to comply with both the current and new changes in the law. Therefore, the purpose of revising VA Form 22–0976 is to support the provisions of Public Law 116–135, and the Veterans Benefits and Transition Act of 2018, Public Law 115–407 necessary in order for foreign institutions to acknowledge and adhered to the requirement of Section 104 of this law. The provisions of this law require foreign institutions to allow eligible individuals to stay enrolled in courses of education pending the receipt of educational assistance from Department of Veterans Affairs. The institution's policy must ensure that they will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or make it a requirement that a covered individual borrow additional funds because of the individual's inability to meet his or her financial obligations to the institution due to the delayed disbursement funding from VA under chapter 31 or 33.

The purpose of revising this form also supports the provisions of Isakson and ROE, Public Law 116–315, Sections 1019 and 1020. Section 1019 requires schools and training programs to be financially responsible (School Liability), instead of the student, for payments which are directly paid to an educational institution pursuant to the Post-9/11 GI Bill, (*i.e.*, payments paid to an educational institution pursuant to the Yellow Ribbon GI Education Enhancement program and the Advance payments of the initial educational assistance to an institution.). Section 1020 limits the type of Advertising, Sales, and Marketing that schools can conduct and remain eligible for GI Bill funds. This section would also create a tiered penalty system against institutions that do not comply with the law and set up a mechanism for institutions to work with the SAAs and VA on coming back into compliance, and for institutions to not engage in advertising and/or enrollment practices of any type, which are erroneous, deceptive, or misleading either by actual statement, omission, or intimidation.

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 87 FR 85 on May 3, 2022, pages 26264 and 26265.

Affected Public: Education Institutions.

Estimated Annual Burden: 338 hours.

Estimated Average Burden Time per Respondent: 20 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 1014.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–14544 Filed 7–7–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of U.S. Department of Veterans Affairs (VA) Real Property for the Development of Permanent Supportive Housing at the Carl Vinson VA Medical Center (VAMC) Campus in Dublin, Georgia

AGENCY: U.S. Department of Veterans Affairs.

ACTION: Notice of intent to enter into an EUL.

SUMMARY: The purpose of this **Federal Register** notice is to provide the public with notice that the Secretary of Veterans Affairs intends to enter into an EUL of Buildings 34 and 35 on approximately 4.7 acres of underutilized land on the campus of the Carl Vinson VAMC.

FOR FURTHER INFORMATION CONTACT: C. Brett Simms, Executive Director, Office of Asset Enterprise Management, Office of Management, 810 Vermont Avenue NW, Washington, DC 20420, 202–632–7092. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 8161–8169, the Secretary of Veterans Affairs is authorized to enter into an EUL for the provision of supportive housing for a term of up to 75 years, if the lease is not inconsistent with and will not adversely affect the mission of VA. Consistent with this authority, the Secretary intends to enter into an EUL for the purpose of outleasing Buildings 34 and 35 on approximately 4.7 acres of underutilized land on the campus of the Carl Vinson VAMC, to develop approximately 50 units of permanent supportive housing for Veterans and their families. The competitively selected EUL lessee/developer, Dublin Veterans Residences Limited Partnership, will finance, design, develop, rehabilitate, construct, manage, maintain and operate housing for eligible homeless Veterans or Veterans at risk of homelessness on a priority placement basis. Additionally, the lessee/developer will be required to provide supportive services that guide Veteran residents towards long-term independence and self-sufficiency.

Signing Authority: Denis McDonough, Secretary of Veterans Affairs, approved this document on June 23, 2022, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2022–14560 Filed 7–7–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0747]

Agency Information Collection Activity: Application for Disability Compensation and Related Compensation Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 6, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0747'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0747'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 110–389 Section 221, 38 U.S.C. 5101.

Title: Application for Disability Compensation and Related Compensation Benefits (VA Form 21–526EZ).

OMB Control Number: 2900–0747.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–526EZ is used to collect the information needed to process a fully developed claim for disability compensation and/or related compensation benefits. Though the law requires the claimant submit a certification in writing that states no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated via the fully developed claim program, the form has evolved into a standard claim form to be used for any benefit associated with disability compensation; to include new or initial claims, reopened claims, and claims for increase. Without this information, determination of entitlement would not be possible.

No changes have been made to this form at this time. However, the respondent burden for VA Form 21–526EZ has increased due to: the number of receivables averaged over the past year, general program changes—such as regulatory changes, and the continuing improvement of VA's electronic claims processing systems.

Affected Public: Individuals or Households.

Estimated Annual Burden: 587,815.

Estimated Average Burden per Respondent: 17.5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,015,367.

By direction of the Secretary:

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

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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 Point Mugu Sea Range Study Area; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[220629–0147]

RIN 0648–BK07

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Point Mugu Sea Range Study Area

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

ACTION: Final rule; notification of issuance of Letter 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 Point Mugu Sea Range (PMSR) Study Area. The Navy's activities qualify as military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA). These regulations, which allow for the issuance of a Letter of Authorization (LOA) for the incidental take of marine mammals during the described activities and timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and establish requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from July 7, 2022, through July 7, 2029.

ADDRESSES: A copy of the Navy's application, NMFS' proposed and final rules and subsequent LOA for the existing regulations, and other supporting documents and documents cited herein may be obtained online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please use the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Leah Davis, 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.*), provide the framework for authorizing the take of marine mammals incidental to the Navy's training and testing activities (which qualify as military readiness activities) from the use of at-surface and near-surface explosive detonations throughout the PMSR Study Area, as well as launch events from San Nicolas Island (SNI). The PMSR Study Area includes 36,000 square miles and is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California (see Figure 1.1 of the application). The two primary components of the PMSR are the Special Use Airspace (SUA) and the ocean Operating Areas (PMSR-controlled sea space). The PMSR-controlled sea space parallels the California coast for approximately 225 nautical miles (nmi) (417 km) and extends approximately 180 nmi seaward (333 km; see Figure 1–1 of the application).

NMFS received an application from the Navy requesting 7-year regulations and an authorization to incidentally take individuals of multiple species of marine mammals (''Navy's rulemaking/LOA application'' or ''Navy's application''). Take is anticipated to occur by Level A harassment and Level B harassment incidental to the Navy's training and testing activities, with no serious injury or mortality anticipated or authorized.

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 LOA. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Summary of Major Provisions Within the Final Rule

The 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:

- Measures to reduce the probability and/or severity of impacts expected to result from exposure to explosives and launch activities (*i.e.,* minimize the likelihood or severity of permanent threshold shift or other injury, and reduce instances of temporary threshold shift or more severe behavioral disruption caused by explosives and launch activities);
- Activity limitations in certain areas and times that are biologically important (*e.g.,* pupping season on San Nicolas Island) for marine mammals;
- Measures to reduce the likelihood of ship strikes;
- Implementation of a Notification and Reporting Plan (for dead or live stranded marine mammals); 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''). NMFS also must prescribe the 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 the least practicable adverse impact analysis shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115–232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to 7 years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to 5 years.

Summary and Background of Request

On March 9, 2020, NMFS received an application from the Navy for authorization to take marine mammals by Level A harassment and Level B harassment incidental to training and testing activities (categorized as military readiness activities) from (1) the use of at-surface or near-surface explosive detonations in the PMSR Study Area, as well as (2) launch events from SNI, over a 7-year period beginning June 2022 through June 2029. We received a revised application on August 28, 2020, which provided minor revisions to the mitigation and monitoring sections, and upon which the Navy's rulemaking/LOA application was found to be adequate and complete. On September 4, 2020, we published a notice of receipt (NOR) of application in the **Federal Register** (85 FR 55257), requesting comments and information related to the Navy's request for 30 days. On July 16, 2021, we published a notice of proposed rulemaking (86 FR 37790) and requested comments and information related to the Navy's request for 45 days (''PMSR proposed rule''). All comments received during the NOR and the proposed rulemaking comment periods were considered in this final rule. Comments received on the proposed rule are addressed in this final rule in the *Comments and Responses* section.

The following types of training and testing, which are classified as military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA, will be covered under the regulations and LOA: air warfare (air-to-air, surface-to-air), electronic warfare (directed energy—lasers and high-powered microwave systems), and surface warfare (surface-to-surface, air-to-surface, and subsurface-to surface). The activities will not include any underwater detonations, sonar, pile driving/removal, or use of air guns.

The Navy's mission is to organize, train, equip, and maintain combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. This mission is mandated by Federal law (10 U.S.C. 8062), which requires the readiness of the naval forces of the United States. The Navy executes this responsibility by training and testing at sea, often in designated operating areas (OPAREA) and testing and training ranges. The Navy must be able to access and utilize these areas and associated sea space and air space in order to develop and maintain skills for conducting naval operations. The Navy's testing activities ensure naval forces are equipped with well-maintained systems that take advantage of the latest technological advances. The Navy's research and acquisition community conducts military readiness activities that involve testing. The Navy tests ships, aircraft, weapons, combat systems, sensors, and related equipment, and conducts scientific research activities to achieve and maintain military readiness.

The Navy has been conducting testing and training activities in the PMSR Study Area since the PMSR was established in 1946. The tempo and types of training and testing activities fluctuate because of the introduction of new technologies, the evolving nature of international events, advances in warfighting doctrine and procedures, and changes in force structure (*e.g.,* organization of ships, submarines, aircraft, weapons, and personnel). Such developments influence the frequency, duration, intensity, and location of required training and testing activities. The activities include current activities, previously analyzed in the 2002 PMSR Environment Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS), and increases in the testing and training activities as described in the 2022 PMSR Final EIS/OEIS (FEIS/OEIS). NMFS promulgated MMPA incidental take regulations relating to missile launches from SNI from June 3, 2014, through June 3, 2019 (79 FR 32678; June 6, 2014). Since then, the Navy has been operating under incidental harassment authorizations (IHAs) (84 FR 28462, June 19, 2019; 85 FR 38863, June 29, 2020; and 86 FR 32372, June 21, 2021) for those similar activities on SNI. For this rulemaking, the Navy is requesting authorization for marine mammal take incidental to activities on SNI similar to those they have conducted under these and previous authorizations, as well as the use of at-surface and near-surface explosive detonations throughout the PMSR Study Area. The testing and training activities are deemed necessary to accomplish Naval Air System Command's mission of providing for the safe and secure collection of decision-quality data; and developing, operating, managing and sustaining the interoperability of the Major Range Test Facility Base at the PMSR into the foreseeable future.

The Navy's rulemaking/LOA application reflects the most up-to-date compilation of training and testing activities deemed necessary to accomplish military readiness requirements. The types and numbers of activities included in the rule account for fluctuations in training and testing in order to meet evolving or emergent military readiness requirements. These regulations will cover training and testing activities over a 7-year period beginning June 2022.

Description of the Specified Activity

A detailed description of the specified activity was provided in our **Federal Register** notice of proposed rulemaking (86 FR 37790; July 16, 2021); please see that notice of proposed rulemaking or the Navy's application for more information. The Navy has determined that explosive stressors and missile launch activities are most likely to result in impacts on marine mammals that could rise to the level of

harassment, and NMFS concurs with this determination. Descriptions of these activities are provided in section 2 of the 2021 PMSR FEIS/OEIS (U.S. Department of the Navy, 2021) and in the Navy's rulemaking/LOA application (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*), and are summarized here.

Dates and Duration

The specified activities can occur at any time during the 7-year period of validity of the regulations, with the exception of the activity types and time periods for which limitations have explicitly been identified (to the maximum extent practicable; see *Mitigation Measures* section). The amount of training and testing activities are described in the *Detailed Description of the Specified Activity* section (Table 1).

Geographical Region

The PMSR Study Area is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California and includes a 36,000-square-mile sea range (see Figure 1 of the proposed rule). It is a designated Major Range Test Facility Base and is considered a national asset that exists primarily to provide test and evaluation information for Department of Defense (DoD) decision makers and to support the needs of weapon system development programs and DoD research needs. The two primary components of the PMSR Study Area are Special Use Airspace and the ocean Operating Areas. Additional detail can be found in Chapter 2 of the Navy's rulemaking/LOA application. The Navy plans to conduct launch activities on San Nicolas Island (SNI), California, for testing and training activities associated with operations within the PMSR Study Area.

Overview of Training and Testing Within the PMSR Study Area

The Navy categorizes its at-sea activities into functional warfare areas called primary mission areas. Each warfare community may train in some or all of these primary mission areas. The Navy also categorizes most, but not all, of its testing activities under these primary mission areas. Activities addressed for the PMSR Study Area are categorized under three primary mission areas: Air warfare (air-to-air, surface-to-air); Electronic warfare (directed energy—lasers and high-powered microwave systems); and Surface warfare (surface-to-surface, air-to-surface, and subsurface-to-surface). Within those three primary mission areas, there are more specific categories or activity scenarios that reflect testing and training activities. A description of the munitions, targets, systems, and other material used during training and testing activities within these primary mission areas is provided in Appendix A (Training and Testing Activities Descriptions) of the 2022 PMSR FEIS/OEIS.

The Navy also plans to continue a target and missile launch program from two launch sites on SNI for testing and training activities associated with operations within the PMSR Study Area. Missiles vary from tactical and developmental weapons to target missiles used to test defensive strategies and other weapons systems. Some launch events involve a single missile or target, while others involve the launch of multiple missiles or targets in quick succession. Missiles or targets launched from SNI fly generally west, southwest, and northwest through the PMSR Study Area. The primary launch locations are the Alpha Launch Complex, located 190 meters (m) above sea level on the west-central part of SNI and the Building 807 Launch Complex, which accommodates several fixed and mobile launchers, at the western end of SNI at approximately 11 m (12 yd) above sea level.

Description of Stressors

The Navy uses a variety of platforms, weapons, and other devices, including ones used to ensure the safety of Sailors and Marines, to meet its mission. Training and testing with these systems may introduce acoustic (sound) energy or shock waves from explosives into the environment. The following subsections describe explosives detonated at or near the surface of the water and launch noise associated with missiles launched from SNI for marine mammals and their habitat (including prey species) within the PMSR Study Area. Because of the complexity of analyzing sound propagation in the ocean environment, the Navy relied on acoustic models in its environmental analyses and rulemaking/LOA application that considered sound source characteristics and varying ocean conditions across the PMSR Study Area. Stressor/resource interactions that were determined to have de minimis or no impacts (*i.e.,* vessel, aircraft, or weapons noise) were not carried forward for analysis in the Navy's rulemaking/LOA application. NMFS reviewed the Navy's analysis and conclusions on de minimis sources and finds them complete and supportable.

Acoustic stressors include incidental sources of broadband sound produced as a byproduct of vessel movement and use of weapons or other deployed objects. Explosives also produce broadband sound but are characterized separately from other acoustic sources due to their unique hazardous characteristics. There are no sonar activities planned in the PMSR Study Area. Characteristics of explosives are described below.

In order to better organize and facilitate the analysis of various explosives used for training and testing by the Navy, including sonar and other transducers and explosives, a series of source classifications, or source bins, was developed by the Navy. The source classification bins do not include the broadband sounds produced incidental to vessel or aircraft transits, weapons firing, and bow shocks.

The use of source classification bins provides the following benefits:

- Provides the ability for new sensors or munitions to be covered under existing authorizations, as long as those sources fall within the parameters of a bin;
- Improves efficiency of source utilization data collection and reporting requirements anticipated under the MMPA authorizations;
- Ensures a conservative approach to all impact estimates, as all sources within a given class are modeled as the most impactful source (having the largest net explosive weight) within that bin;
- Allows analyses to be conducted in a more efficient manner, without any compromise of analytical results; and
- Provides a framework to support the reallocation of source usage (number of explosives) between different source bins, as long as the total numbers of takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving Navy training and testing requirements, which are linked to real world events.

Explosives

This section describes the characteristics of explosions during naval training and testing. The activities analyzed in the Navy's rulemaking/LOA application that use explosives are described in Appendix A (PMSR Scenario Descriptions) of the 2022 PMSR FEIS/OEIS.

To more completely analyze the results predicted by the Navy's acoustic effects model from detonations occurring in-air above the ocean surface, it is necessary to consider the transfer of energy across the air-water interface.

Detonation of an explosive in air creates a supersonic high pressure shock wave that expands outward from the point of detonation (Kinney and Graham, 1985; Swisdak, 1975). The near-instantaneous rise from ambient pressure to an extremely high peak pressure is what makes the explosive shock wave potentially injurious to an animal experiencing the rapid pressure change (U.S. Department of the Navy, 2017e). Farther from an explosive, the peak pressures decay and the explosive waves propagate as an impulsive, broadband sound. As the shock wave-front travels away from the point of detonation, it slows and begins to behave as an acoustic wave-front travelling at the speed of sound. Whereas a shock wave from a detonation in-air has an abrupt peak pressure, that same pressure disturbance when transmitted through the water surface results in an underwater pressure wave that begins and ends more gradually compared with the in-air shock wave, and diminishes with increasing depth and distance from the source (Bolghasi *et al.* 2017; Chapman and Godin, 2004; Cheng and Edwards, 2003; Moody, 2006; Richardson *et al.* 1995; Sawyers, 1968; Sohn *et al.* 2000; Swisdak, 1975; Waters and Glass, 1970; Woods *et al.* 2015). The propagation of the shock wave in air and then transitioning underwater, is very different from a detonation occurring deep underwater where there is little interaction with the surface. In the case of an underwater detonation occurring just below the surface, a portion of the energy from the detonation would be released into the air (referred to as surface blow off), and at greater depths a pulsating, air-filled cavitation bubble would form, collapse, and reform around the detonation point (Urick, 1983). The Navy's acoustic effects model for analyzing underwater impacts on marine species does not account for the loss of energy due to surface blow-off or cavitation at depth. Both of these phenomena would diminish the magnitude of the acoustic energy received by an animal under real-world conditions (U.S. Department of the Navy, 2018c).

Propagation of explosive pressure waves in water is highly dependent on environmental characteristics such as bathymetry, bottom type, water depth, temperature, and salinity, which affect how the pressure waves are reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency components of explosive broadband noise can propagate. Because of the complexity of analyzing sound propagation in the ocean environment, the Navy relies on acoustic models in its environmental analyses that consider sound source characteristics and varying ocean conditions across the PMSR Study Area (Navy, 2019a).

Missiles, rockets, bombs, and medium and large-caliber projectiles may be explosive or nonexplosive, depending on the objective of the testing or training activity in which they are used. The planned activities do not include explosive munitions used underwater. Missiles, bombs, and projectiles that detonate at or near (within 10 m (11 yd) of) the water's surface are considered for the potential impact they may have on marine mammals. All explosives used during testing and training activities within the PMSR Study Area will detonate at or near the surface or in-air. Several parameters influence the acoustic effect of an explosive: the weight of the explosive warhead, the type of explosive material, the boundaries and characteristics of the propagation medium(s); and the detonation depth underwater and the depth of the receiver (*i.e.,* marine mammal). The net explosive weight (NEW), which is the explosive power of a charge expressed as the equivalent weight of trinitrotoluene (TNT), accounts for the first two parameters.

Land-Based Launch Noise on San Nicolas Island

Noise from target and missile launches on SNI can also occur. These ongoing activities affecting pinnipeds hauled out in the vicinity of launch sites have been analyzed previously (NMFS 2014, 2019, 2020) and are summarized below as part of the Navy's rulemaking/LOA application. As part of previous authorizations, the Navy could conduct up to 40 launch events annually from SNI, but the total may be less than 40 depending on operational requirements. Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 of the 40 launches may occur at night, but this is also dependent on operational requirements, and night-time launches are only conducted when required by test objectives.

Vessel Strike

Vessel strikes have the potential to result in incidental take from serious injury and/or mortality. Vessel strikes are not specific to any particular training or testing activity, but rather are a limited, sporadic, and incidental result of Navy vessel movement within a study area.

The number of Navy vessels in the PMSR Study Area at any given time varies and is dependent on scheduled testing and training requirements. Navy vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. Additional detail on vessel strike was provided in our **Federal Register** notice of proposed rulemaking (86 FR 37790; July 16, 2021); please see that notice of proposed rulemaking or the Navy's application for more information. Information on Navy vessel movement in the PMSR Study Area is provided in the *Vessel Movement* section of this rule.

Detailed Description of the Specified Activities

Planned Training and Testing Activities

Training and testing activities will be conducted at sea, in designated airspace, and on SNI, within the PMSR Study Area.

The training and testing activities are deemed necessary to accomplish Naval Air Systems Command's mission of providing for the safe and secure collection of decision-quality data; and developing, operating, managing and sustaining the interoperability of the Major Range Test Facility Base at the PMSR into the foreseeable future. Collectively, the training and testing activities support current and projected military readiness requirements into the foreseeable future, as shown in Table 1.

TABLE 1—MAXIMUM NUMBER OF ANNUAL PLANNED ACTIVITIES IN THE PMSR STUDY AREA

[Inclusive of SNI launches]

Activity	Activity sub category	Planned activities
Aerial Targets (# of targets)		176
Surface Targets (# of targets)		522
Ordnance (# of ordnance)	Bombs	30
	Gun Ammunition	281,230
	Missiles	584
	Rockets	40

Most of the factors influencing frequency and types of activities are fluid in nature (*i.e.,* continually evolving and changing), and the annual activity level in the PMSR Study Area will continue to fluctuate. The number of events may not be the same year to year, but the maximum number of events were predicted annually. Total annual events will not exceed what is planned in Table 1 above. Training and testing duration and frequency varies depending on Fleet requirements, and funding and does not occur on a predictable annual cycle.

Fleet training activities occur over scheduled continuous and uninterrupted blocks of time, focusing on the development of core capabilities/skills. Training events in the PMSR Study Area are conducted to ensure Navy forces can sustain their training cycle requirements. Primarily, changes occur with increases or decreases in annual operational tempo of activities, in addition to changes in the types of aircraft, vessels, targets, ordnance, and tasks that are actions or processes performed as part of Navy operations.

Future testing depends on scientific and technological developments that are not easy to predict, and experimental designs may evolve with emerging science and technology. Even with these challenges, the Navy makes every effort to forecast all future testing requirements. As a result, testing requirements are driven by the need to support Fleet readiness based on emerging national security interests, and alternatives must have sufficient annual capacity to conduct the research, development, and testing of new systems and technologies, with upgrades, repairs, and maintenance of existing systems.

Fleet Training

Fleet training within the PMSR Study Area includes the same types of warfare of the primary mission areas. Training conducted in conjunction with testing activities provide Fleet operators unique opportunities to train with ship and aircraft combat weapon systems and personnel in scripted warfare environments, including live-fire events. For example, Fleet training would occur while testing a weapon system, in which Sailors would experience (be trained in) the use of the system being tested. Combat ship crews train in conjunction with scheduled ship testing and qualification trials, to take advantage of the opportunity to provide concurrent training and familiarization for ship personnel in maintaining and operating installed equipment, identifying design problems, and determining deficiencies in support elements (*e.g.,* documentation, logistics, test equipment, or training). Live and inert weapons, along with chaff, flares, jammers, and lasers may be used.

Typically concurrent with testing, surface training available within the PMSR Study Area includes tracking events, missile-firing events, gun-firing events, high-speed anti-radiation missile events, and shipboard self-defense system training, (*e.g.,* Phalanx (Close-in Weapons System), Rolling Airframe Missile, and Evolved Sea Sparrow Missile). These events are limited in scope and generally focus on one or two tasks. Missiles may be fired against subsonic, supersonic, and hypersonic targets. Certain training events designed for single ships are conducted to utilize unique targets only available for training in the PMSR Study Area.

Aviation warfare training conducted in the PMSR Study Area, categorized as unit-level training, is designed for a small number of aircraft up to a squadron of aircraft. These training events occur within the PMSR Study Area, as it is the only West Coast Navy venue to provide powered air-to-air targets. They are limited in scope and generally focus on one or two tasks. These scenarios require planning and coordination to ensure safe and effective training.

Combat Systems Testing

The System Command Program Executive Offices are tasked with conducting extensive combat systems tests and trials on each new platform prior to releasing the platform to the Fleet, to include ships that have been in an extended upgrade or overhaul status. The PMSR Study Area is the preferred site to conduct these tests, as it offers a venue for a thorough evaluation of combat and weapons system performance through the actual employment of weapon systems. The comprehensive tests are conducted by the responsible Test or Program Manager, with close cooperation from the Fleet Type Commanders (Surface Force, Air Force, or Submarine Force). Frequent tests conducted in the PMSR Study Area are Combat Systems Ship Qualification Trials (CSSQTs). This is a series of comprehensive tests and trials designed to show that the equipment and systems included in the CSSQT program meet combat system requirements. Live and inert weapons, along with chaff, flares, jammers, and lasers may be used. Naval Sea Systems Command has recently developed two new reporting programs to test and evaluate combat and weapons system performance on new classes of ships, resulting in an increased tempo in the PMSR Study Area.

Explosives At-Surface or Near the Surface

Missiles, bombs, and projectiles that detonate at or near (within 10 m (11 yd) of) the water's surface are considered for the potential that they could result in an acoustic impact to marine mammals that may be underwater and nearby. The maximum number of explosives and the appropriate events modeling bin for the planned activities are provided in Table 2. Table 2 describes the maximum number of explosives that could be used in any year under the planned training and testing activities. Under the planned activities, bin use could vary annually (but will not exceed the maximum), and the 7-year totals for the planned training and testing activities take into account that annual variability.

TABLE 2—EXPLOSIVES DETONATING AT OR NEAR THE SURFACE BY BINS ANNUALLY AND FOR A 7-YEAR PERIOD FOR TRAINING AND TESTING ACTIVITIES WITHIN THE PMSR STUDY AREA

[Inclusive of SNI launches]

Primary mission area activity scenarios	Explosive bin	Munition Type	Maximum number of high explosive munitions used annually	Maximum number of high explosives used over a 7-year period planned activity
Surface-Surface	E1	Gunnery	22,110	154,770
	E3	Gunnery	4,909	34,363
	E5	Gunnery	1,666	11,662
Air-Surface	E5	Rockets	24	168
Air-Surface; Surface-Air	E6	Missiles	72	504
Air-Surface	E7	Missiles, Bombs	45	315
Air-Surface; Surface-Air	E8	Missiles	45	315
Air-Surface; Surface-Surface	E9	Missiles, Bombs, Rockets	58	406
Surface-Surface; Subsurface-Surface	E10	Missiles	13	91

Note: Bins E1–E5 are gunnery events that involve guns with high rates of firing ''clusters'' of munitions (*e.g.,* >80–200 rounds per minute for Bin E1, 500–650 rounds per minute for Bin E3, and 16–20 rounds per minutes for Bin E5), hence the high number of HE munitions used during these activities. The numbers above do not reflect the actual number of events, which can vary and typically last 1–3 hrs. The increase in tempo under the planned action is a result of an increase in Combat Systems Ship Qualification Trials as discussed in Section 2.2.1 (Current and Proposed Activities) of the 2021 PMSR FSEIS/OEIS.

Explosions that occur during air warfare will typically be at a sufficient altitude that a large portion of the sound refracts upward due to cooling temperatures with increased altitude. Based on an understanding of the explosive energy released by detonations in air, detonations occurring in air at altitudes greater than 10 m (11 yd) are not likely to result in acoustic impacts to marine mammals and thus are not carried forward in the analysis.

Missile Launch Activities on SNI

A combination of missiles and targets are launched from SNI, including aerial targets, surface-to-surface missiles, and surface-to-air missiles, with aerial targets representing the majority of the launches from SNI. For information on the sound levels these missiles produce please refer to Section 1.2 of the application. Under this rule, missiles launched from SNI will have sound source levels the same or lower than missiles described above or previously launched from the island.

Table 3 shows the number of launches that have occurred at SNI since 2001 and the number of launch events that have occurred during the associated comprehensive reporting timeframes. There have not been more than 25 launch events conducted in any given year since 2001. However, as part of the planned activities, 40 launch events per year from SNI involving various missiles and aerial targets are requested for take authorization.

TABLE 3—THE TOTAL NUMBER OF LAUNCHES THAT HAVE OCCURRED SINCE 2001 AT SNI

Time period	Number of launches
August 2001 to March 2008	77
June 2009 to June 2014	36
June 2014 to June 2019	27

Vessel Movement

The number and type of scheduled Navy vessels or Navy support vessels operating within the PMSR Study Area depends on the requirements for mission-essential activities, such as the test and evaluation of new weapon systems or qualification trials for upgraded existing ships. The types of Navy vessels or Navy support vessels operating within the PMSR are highly variable and range from small work boats used for nearshore work to major Navy combatants, up to and including aircraft carriers. Navy activities are conducted in large subdivisions of the total PMSR Study Area, and blocks of range times are allocated based on activity requirements. Most activities include either one or two vessels and may last from a few hours to 2 weeks. Vessel movement as part of the planned activities will be widely dispersed throughout the PMSR Study Area.

The PMSR Study Area military vessel activity can be divided into two categories: project ships and support boats. Project ships are larger Navy combatant vessels, such as destroyers, cruisers, or any other commissioned Navy or foreign military ship directly involved in events. They may operate anywhere within the PMSR Study Area depending on activity needs, although most ship operations occur within 60 nmi (111 km) of SNI. Most project ships and scheduled training ships operating in the PMSR Study Area transit there from off-range (*e.g.,* San Diego). Support boats are smaller vessels directly involved in test activities and operate from the Port Hueneme Harbor. While they may also operate throughout the PMSR Study Area, support boat operations occur mainly within the range areas receiving the most use. Smaller support boats have limited range and usually operate close to shore near Point Mugu and SNI. The activity level of ships or boats is characterized by a ship or boat event.

The Navy tabulated annual at-sea vessel steaming days for training and testing activities projected for the PMSR Study Area. Approximately 333 annual events of Navy at-sea vessel usage will occur over 2,085 hours (approximately 87 at-sea days) in the PMSR Study Area (Table 4). In comparison to the Southern California portion (SOCAL) of the Hawaii-Southern California Training and Testing (HSTT) Study Area, the estimated number of annual at-sea days in the PMSR Study Area is less than 3 percent of what occurs in SOCAL annually.

TABLE 4—ANNUAL AT-SEA VESSEL STEAMING DAYS FOR TRAINING AND TESTING ACTIVITIES PROJECTED FOR THE PMSR STUDY AREA

Vessel	Ship type	Planned activity	
		Events	Hours
CG	Guided Missile Cruiser	41	275
DDG–51	Guided Missile Destroyer	36	132
LHA	Amphibious Assault Ship	40	200
SDTS	Self-Defense Test Ship	50	190
WMSL–751/OPC	Coast Guard Cutter	6	28
LCS Variant (LCS 1)	Littoral Combat Ship	40	360
LCS Variant (LCS 2)		40	360
FF	Future Frigate	40	360
DDG 1000 Zumwalt Class	Guided Missile Destroyer	3	30
LHD	Amphibious Assault Ship	4	13
LPD	Amphibious Transport Deck	4	13
LSD	Dock Landing Ship	4	13
CVN	Nuclear-Powered Aircraft Carrier	6	16
SSBN	Ballistic Missile Submarine	19	95
Total		333	2,085

Standard Operating Procedures

For training and testing to be effective, personnel must be able to safely use their sensors and weapon systems as they are intended to be used in military missions and combat operations and to their optimum capabilities. Because standard operating procedures are essential to safety and mission success, the Navy considers them to be part of the planned Specified Activities, and has included them in the environmental analysis (see Chapter 3 (Affected Environment and Environmental Consequences) of the 2021 PMSR FSEIS/OEIS for further details). Additional details on standard operating procedures were provided in our **Federal Register** notice of proposed rulemaking (86 FR 37790; July 16, 2021); please see that notice of proposed rulemaking or the Navy's application for more information.

Comments and Responses

We published the proposed rule in the **Federal Register** on June 16, 2021 (86 FR 37790), with a 45-day comment period. With that proposed rule, we requested public input on our analyses, our preliminary findings, and the proposed regulations, and requested that interested persons submit relevant information and comments. During the 45-day comment period, we received four comment submissions: one from the Marine Mammal Commission (Commission); one from a non-governmental organization, the Natural Resources Defense Council (NRDC); and two from private citizens. The private citizens' comments, one of which expressed general disapproval of the action, and the other of which was unrelated to this action, have been reviewed, but did not include information pertinent to NMFS' decision in this final rule, and therefore, are not addressed further.

NMFS has reviewed and considered all public comments received on the proposed rule and issuance of the LOA. All substantive comments and our responses are described below. We organize our comment responses by major categories.

Density Estimates

Pinniped Density Estimates

Comment 1: The Commission commented that the following pinniped information was omitted in Navy documents for the PMSR Study Area, but has been previously included in other Navy environmental compliance documents as well as versions of the Navy Marine Species Density Database (NMSDD).

- Abundance(s), percentages of occurrence in the area and whether those percentages were dependent on age and sex, and percentages within the three stipulated geographic distances from shore for California sea lions. Only fall and winter densities were parsed by the three geographic distances, spring and summer were parsed by two distances (*e.g.,* see Figures 7–40 to 7–43 in Navy 2020 technical report, ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'') (hereinafter referred as the ''PMSR Density Technical Report'').
- Abundance(s), percentages of the population at sea, and percentages within the two depth regimes for Guadalupe fur seals.
- Abundance and whether haulout correction factors or percentages of the population at-sea were incorporated for harbor seals, as was done for other locations (*e.g.,* Navy 2019 technical report, ''U.S. Navy Marine Species Density Database Phase III for the Northwest Training and Testing Study Area'').

Response: The Navy's application indicated in Section 6.5.2.1.4 (Marine Mammal Density) that to characterize the marine species density for large areas such as the PMSR Study Area, the Navy compiled data from several sources and the PMSR densities were in most cases consistent with the densities in the Hawaii-Southern California Training and Testing (HSTT) or Northwest Training and Testing (NWTT) Study Areas. The Navy developed a protocol to select the best available data sources for each species, distribution area, and time of year (season). The resulting Geographic Information System database, the NMSDD, includes seasonal density values for every marine mammal species present within the PMSR Study Area (U.S. Department of the Navy, 2017d, 2019a). The Navy applied these densities to the PMSR Study Area and relied on detailed explanations presented previously in the technical reports, ''Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area (2017)'' (hereinafter ''HSTT Density Technical Report'') and the ''U.S. Navy Marine Species Density Database Phase III for the Northwest Training and Testing Study Area'' (hereinafter ''NWTT Density Technical Report'').

The Navy has provided additional details on the density derivations in this final rule in this *Comments and Responses* section to address the Commission's comments. It is important to note that the Navy is continuously updating species densities in the NMSDD based on new survey data, updated species distribution models, telemetry data, and, in the case of pinnipeds, new information on post breeding and molting distributions and haulout behavior. The availability of updated density estimates for use in the NMSDD may not coincide with the Navy's schedule for acoustic impacts modeling, which runs simultaneously for numerous projects, and can lead to differences in densities used based on timing of different projects.

California sea lions—The densities used for the PMSR Study Area were taken from the latest density derivations presented in the NWTT Density Technical Report. The California sea lion densities in the NWTT Study Area were based on in-water abundance estimates by Lowry and Forney (2005) off the California coast. The Navy only needs in-water densities to complete acoustic effects modeling, so these data were of particular interest and relevancy. Because the abundance estimates were for sea lions occurring in the water (as opposed to at haulouts), the Navy did not need to derive an in-water abundance for the density calculation, and the other factors, such as age- and sex- specific haulout correction factors that are typically applied, were not needed. The Navy used the in-water abundance provided by Lowry and Forney (2005) to derive an in-water density. Figures 7–40 through 7–43 in the Navy 2020 PMSR Density Technical Report depicted densities for California sea lions in the PMSR Study Area used three strata defined by distance from shore (0 to 40 km (0 to 22 nmi), 40 to 70 km (22 to 38 nmi), and 0 to 450 km (0 to 243 nmi)). The third stratum was included as an attempt to account for a wider distribution of sea lions documented during El Niño conditions. For the two figures appearing to have only 2 strata (Figures 7–40 and 7–43), the density ranges shown in the legends span two of the three uniform density estimates, making it appear as if there are only two strata. In Figure 7–40 of the Navy's 2020 PMSR Density Technical Report, the two strata, 40 to 70 km (22 to 38 nmi) and 0 to 450 km (0 to 243 nmi), had densities that fall within the range 0.0037–0.0065 sea lions/km^2 and therefore used one color. A similar overlap in densities occurs in Figure 7–43, except that in this figure the first two strata (0 to 40 km (0 to 22 nmi) and 40 to 70 km (22 to 38 nmi)) represent densities in the same density range shown in the legend and therefore are the same color on the map.

The following description of the density derivation for California sea lions is taken from the NWTT Study Area Technical Report (Navy 2020).

> Seasonal at-sea abundance is estimated from strip transect survey data collected offshore along the California coastline (Lowry and Forney, 2005). The survey area was divided into 7 strata, labeled A through G. Abundance estimates from the two northernmost strata (A and B, note this refers to a different area/set of strata than are addressed in the paragraph above) were used to estimate the abundance of California sea lions occurring in the [NWTT] Study Area. While the northernmost stratum (A) only partially overlaps with the [NWTT] Study Area, this approach conservatively assumes that all sea lions from the two strata would continue north into the Study Area . . . The abundance estimates used in this report, based on Lowry and Forney (2005), were: 2,822 sea lions in fall, 3,977 in spring, and 3,288 in winter. An estimate of 3,000 male sea lions is used for the month of August. Projected 2017 seasonal abundance estimates were derived by applying an annual growth rate of 5.4 percent (Carretta *et al.* 2017) between 1999 and 2017 to the abundance estimates from Lowry and Forney (2005). No correction for hauled-out sea lions was needed because counts were of sea lions in the water (Lowry and Forney, 2005).
>
> The strata used to calculate densities were based on distribution data from Wright *et al.* (2010) and Lowry and Forney (2005) indicating that approximately 90 percent of California sea lions occurred within 40 km (22 nmi) of shore and 100 percent of sea lions were within 70 km (38 nmi) of shore. The offshore distribution is consistent with survey data reported by Oleson *et al.* (2009) and migration patterns observed by Gearin *et al.* (2017), which showed that males remained within the 1,000 m (1,094 yd) isobath as they migrated between Puget Sound and the Channel Islands. Sea lions tagged in Puget Sound and tracked as they traveled along the U.S. West Coast were within a mean distance of 14 nmi (26 km) from shore (DeLong *et al.* 2017). A third stratum was added that extends from shore to 450 km (243 nmi) offshore to account for anomalous conditions, such as changes in sea surface temperature and upwelling associated with El Niño, during which California sea lions have been encountered farther from shore, presumable seeking prey (DeLong and Jeffries, 2017; Weise *et al.* 2010). Sample density calculations are provided below.
>
> Fall Density = (7,273 sea lions × 0.90)/11,744 km^2 = 0.5573 sea lions/km^2 (0 to 40 km Stratum)
>
> Spring Density = (10,249 sea lions × 0.10)/791 km^2 = 1.2951 sea lions/km^2 (40 to 70 km Stratum)
>
> Winter Density = (8,473 sea lions × 1.00)/143,518 km^2 = 0.0590 sea lions/km^2 (0 to 450 km Stratum)
>
> August Density = 3,000 sea lions/93,747 km^2 = 0.0288 sea lions/km^2 (0 to 40 km Stratum)

Densities in the NWTT Density Technical Report were the most recently calculated densities for California sea lion and were used instead of densities calculated for the HSTT Density Technical Report (U.S. Department of the Navy, 2017).

Guadalupe fur seals—A more detailed description of the density derivation for Guadalupe fur seal was missing from the PMSR Density Technical Report, but is provided here. Densities for Guadalupe fur seals were derived for both the HSTT Study Area and later for the NWTT Study Area. However, following completion of acoustic impact modeling for the HSTT EIS/OEIS, new data became available on the abundance and distribution of Guadalupe fur seals in southern California. These data showed that the fur seals were distributed farther offshore than presented in the HSTT Density Technical Report. Densities for Guadalupe fur seal off California were revised for use in subsequent projects, including the 2022 PMSR EIS/OEIS, as noted in a footnote in the HSTT Density Technical Report. A description of the derivation of the updated densities for Guadalupe fur seal was prepared but was not appended to the HSTT Density Technical Report and was not otherwise available to the public. The same data prompting the revised densities for the HSTT Study Area were used in deriving densities for Guadalupe fur seals in the NWTT Study Area, and a detailed explanation of how the data were used in the NWTT Study Area is described in the NWTT Density Technical Report. However, it would not be possible to derive the revised HSTT densities, later applied to the PMSR Study Area, from information in the NWTT Density Technical Report. Therefore, a description of the revised HSTT density derivation for Guadalupe fur seal is provided below. These densities were used for the PMSR Study Area acoustic analysis and are shown in the PMSR Density Technical Report.

To determine the density of Guadalupe fur seals in the Southern California area, the entire population (33,485 fur seals) was divided by the area of the NMFS Southern California Stratum seaward of the 3,000 m (3,281 yd) isobath. The Southern California portion of the HSTT Study Area extends to just north of Isla Guadalupe, so a majority of the range of the Guadalupe fur seal overlaps with the offshore

portion of the SOCAL Range Complex. Guadalupe fur seals are expected to occur year-round in the Southern California portion of the HSTT Study Area, with abundance in the region varying seasonally and by life stage (Norris, 2017). In summer (June–August), adult males are expected to be hauled-out on Guadalupe Island south of the HSTT Study Area. Adult females would also be expected to be on or in the vicinity of Guadalupe Island in summer and south of the Study Area. Satellite-tagged juveniles and weaned pups (<2 years old) have been shown to migrate north after the breeding season through the Southern California portion of the HSTT Study Area and to areas north of the Study Area and remain there from June through November (*i.e.,* summer and fall) (Norris 2017).

Seasonal densities were calculated by estimating the percentage of the population occurring at sea in HSTT the Study Area for each season. For all life stages combined, approximately 73 percent of the population is expected to be in the HSTT Study Area in winter and spring (non-breeding season) and approximately 33 percent of the population is expected to be in the HSTT Study Area in summer and fall, encompassing the breeding season (Norris 2017). Spatially, two thirds of the Guadalupe fur seal population (66.7 percent) would be expected in the Baja stratum and one third (33.3 percent) would be expected in the SOCAL stratum during the year. Furthermore, while at sea, healthy Guadalupe fur seals are not expected to haul out. Sick or stranded fur seals may be sighted along the coast or on offshore islands during the non-breeding season, however, these cases are not representative of the population at sea. Therefore, no adjustment to account for hauled-out fur seals is needed.

Densities are calculated by estimating the number of fur seals in the two strata during winter/spring and summer/fall. The spatial area for the SOCAL stratum is approximately 66,058 km^2 (19,259 nmi^2) and the spatial area for the Baja stratum is approximately 152,889 km^2 (44,575 nmi^2).

SOCAL Offshore (>3,000 m (3,281 yd) isobath)

Winter/Spring: $(33{,}485 \times 0.73) \times 0.333/66{,}058\ km^2 = 0.1232$ fur seals/km^2

Summer/Fall: $(33{,}485 \times 0.33) \times 0.333/66{,}058\ km^2 = 0.0557$ fur seals/km^2

Extrapolating these densities into the PMSR likely overestimated occurrence in the PMSR Study Area, because Guadalupe fur seals are more prevalent farther south off southern California and Baja California, Mexico where breeding colonies are located.

Harbor seals—A density estimate for PMSR Study Area was extrapolated from the NWTT Study Area. As described below, an in-water abundance was calculated using published haulout correction factors and used to estimate an annual density. The following description from the NWTT Density Technical Report is provided.

> An estimate of 30,968 harbor seals make up the California stock (Carretta *et al.* 2017). As with the Washington and Oregon Coast stock, growth is assumed to be flat (Carretta *et al.* 2017; DeLong and Jeffries, 2017). Based on surveys in 2002 and 2004, Lowry *et al.* (2008) estimated that 37.8 percent of harbor seals in the California stock are in northern California, defined as the area from Point Reyes to the California/Oregon border (*i.e.,* the coastline from 38.00 N to 42.000° N). Harbor seals in northern California are expected to be in the water 36 percent of the time (Harvey and Goley, 2011), and a single stratum extending 30 km (16 nmi) from shore between 38.00 N to 42.000° N along the California coastline was used to define the spatial area.

Density = $(30{,}968 \times 0.378) \times 0.36/15{,}496\ km^2 = 0.2719$ seals/km^2

As shown in the PMSR Density Technical Report (Navy 2020), the Navy used an annual harbor seal density of 0.2719 areas within 50 miles around all known haulout sites within the PMSR Study Area. Zero density was used beyond 50 miles from shore.

Comment 2: The Commission also comments that the area metrics necessary to derive the density estimates were omitted by the Navy's 2020 PMSR Density Technical Report. Since the densities were exactly the same for elephant seals and northern fur seals in that report as had been used previously for the HSTT Study Area in the HSTT Density Technical Report (Navy 2017), the same presumed occurrence areas had to have been used. For northern fur seals, the area used was based on the NMFS SOCAL stratum for its vessel-based surveys (*i.e.,* Barlow 2010); while for elephant seals, the area was based on the Navy SOCAL modeling area (Department of the Navy 2017c). None of the underlying abundance data that were provided in the reports above are related to either of those areas. As such, it is unclear why the Navy felt it necessary to use two different areas, when neither of them relates to the abundance data. Both areas are similar in extent, with the Navy SOCAL modeling area being approximately 13 percent larger than the NMFS SOCAL stratum.

Response: As noted in the comment, the densities for northern fur seal and northern elephant seal used for the PMSR acoustic analysis were extrapolated from the HSTT Study Area, and the derivations of those densities were described in detail in the HSTT Density Technical Report. The northern fur seal density calculation used the NMFS SOCAL Bight stratum (318,541 km^2; 92,872 nmi^2) to represent fur seal distribution and the northern elephant seal density calculation used the Navy SOCAL modeling area stratum (361,872 km^2) to represent northern elephant seal distribution. While there is not a substantial difference between the sizes of the two areas (as pointed out in the comment), and both areas were used in the pinniped density estimates for these and other species, the smaller NMFS SOCAL Bight Stratum was used for the northern fur seal calculation, because most northern fur seals were expected to move north of San Miguel Island after the breeding season and would not be distributed over as wide an area as elephant seals off California. Northern elephant seals in the California stock also migrate north of the Channel Islands after breeding and molting periods, and elephant seals from the Mexico population are known to migrate into SOCAL from the south. Elephant seals would be distributed over a larger area off California and farther offshore, so the larger of the two strata, the Navy SOCAL Modeling Stratum, was used for elephant seals.

At the time that HSTT Phase III densities were calculated, the Navy sought to estimate densities in pre-defined strata to focus where densities were needed for modeling acoustic impacts. The practice was relevant to creating models of cetacean densities, which were based on repeated surveys of the California Current Ecosystem (CCE) and other well defined areas; however, published descriptions of pinniped abundances and distributions were based mainly on seals and sea lions at haulout sites with some complimentary telemetry data, and less often on line transect surveys at sea. Beginning with the NWTT EIS/OEIS, the Navy moved away from using pre-defined strata for pinnipeds and relied more on published data describing distributions based on depth, distance from shore, and other habitat preferences as well as telemetry data to define pinniped strata.

Comment 3: The Commission comments that for the other three pinniped species (harbor seal, California sea lion, and Guadalupe fur seal), some of the densities provided in the Navy 2020 PMSR Density Technical Report differ by orders of magnitude from those provided in the Navy's technical report, HSTT Density Technical Report (Navy

2017), even though some of the same data appear to have been used and are based on some of the same geographic areas. The Commission said that the Navy stated that, although the density estimates may not be accurate given interannual variability and fluctuations in population size or may not exactly reflect spatial distributions, they represent the best available science due to the paucity of other data and are considered to be the most conservative in the technical report Navy 2020 PMSR Density Technical Report. The Commission further claims it is unclear how such a statement can be evaluated when the underlying data were not provided for public review and comment. As such, the Commission recommends that, prior to issuing any final rule, NMFS provide information regarding the data and assumptions used to inform the pinniped density estimates and allow for additional public review and comment on that information.

Response: NMFS has provided additional detail regarding how the densities for PMSR were calculated and the underlying assumptions in the response to Comment 1. The Navy maintains the Navy Marine Species Density Database (NMSDD), which uses standard protocols to support spatially explicit density estimates for all of the Navy training and testing rules. The Navy develops NMSDD reports for all major training regions (*e.g.,* HSTT and NWTT) and the reports detail the standard methods used across all areas and specify the results for the given region/Study Area. The HSTT and NWTT NMSDD reports have been provided for public review and comment through the National Environmental Policy Act (NEPA) (draft EIS) and MMPA (proposed rule) compliance documentation associated with the Navy's NWTT and HSTT actions over the last few years. The Point Mugu proposed rule included an overview of the methods used for estimating density in the PMSR, and referenced the more detailed NMSDD report for HSTT, which NMFS considered sufficient to support the necessary determinations. As further described below, while the proposed rule referenced the HSTT NMSDD report in supporting the PMSR density estimates, in some cases the more up-to-date estimates from the NWTT NMSDD report were actually used to support the NMSDD estimate for PMSR. While this inadvertently omitted reference to the NWTT report created some confusion, the density estimates presented in the proposed rule were correct, the general methodology was available for public review, and our findings remain the same. Below we include additional information to address the Commission's comment regarding the densities differing by order of magnitude.

New densities were derived for the NWTT Study Area using an improved approach, and those densities were used for PMSR Study Area instead of the older HSTT densities that the Commission is making comparisons to. As the Commission points out, the new densities were in some cases orders of magnitude greater than the older HSTT densities. The increases were due to several factors. The main factors were (1) the calculation of more refined in-water abundance estimates using species-specific and seasonal haulout factors for example, and (2) smaller and more representative areas of occurrence over which the in-water abundance estimates were distributed to calculate the densities. Generally, smaller distribution areas translate to higher densities when the abundance estimates are about the same.

For example, for harbor seals, the highest HSTT density was 0.0183. The highest density for the NWTT Study Area, which was 0.2719, was the density used for the PMSR Study Area. The HSTT density was based on an abundance of 6,813 seals in southern California, approximately 22 percent of the population. The NWTT density assumed 37.8 percent of seals occurred in northern California for an abundance of 11,706 seals. So, one factor contributing to an increase in density is an increase in abundance. For the HSTT Study Area, we used the Southern California stratum to be consistent with strata used for cetacean densities, but, in retrospect, this was an overestimation (and oversimplification) of where harbor seals would most likely occur. For the NWTT Study Area, we used a distribution area along the coastline extending from shore to 30 km (16 nmi) offshore, which is considerably smaller than the Southern California stratum and a better representation of the typical distribution of harbor seals. Since harbor seals are more common farther north, off central and northern CA where approximately 88 percent of the population occurs, it was more appropriate to use the NWTT density instead of the HSTT density for PMSR Study Area.

For California sea lions, the highest HSTT density was 0.0596 (excluding San Diego Bay and Silver Strand). The highest density in NWTT was 1.49. Similar to the approach used in HSTT for harbor seals, the in-water abundance from Lowry and Forney (2005) was distributed over the expansive SOCAL Modeling Area to ensure a density was provided in all areas where modeling was needed. In contrast, for the NWTT Study Area, the distribution area was based more on California sea lion's preferred habitat, which was divided into three strata based on distance from shore, resulting in a more realistic range that better represented where the sea lions predominantly occur. This resulted in a smaller distribution area and a larger density. The details of these calculations are provided in the NWTT Density Technical Report.

For Guadalupe fur seal, the source data on abundance and distribution changed based on new research available after the HSTT densities were finalized, as explained in Comment 1. A comparison with the older HSTT densities published in the HSTT Density Technical Report is not relevant.

Comment 4: The Commission commented that it had previously provided extensive comments regarding the manner in and the data upon which the Navy had derived its pinniped density estimates, including for the densities that were used by the Navy for the HSTT Study Area, as provided in Navy (2017c; see the Commission's 13 July 2018 letter). The Commission comments that both NMFS and the Navy failed to recognize that the original abundance estimate that they had used of 18,430 elephant seals from Lowry (2002) was based on elephant seal counts from only Santa Barbara Island (SBI), San Clemente Island (SCI), and SNI (Navy 2017c). Navy (2017c) specified that large rookeries also occur on San Miguel Island (SMI) and Santa Rosa Island (SRI), but both islands are located at least 55 km (30 nmi) north of the HSTT Study Area and thus were not included. That may be appropriate for the HSTT Study Area, but SMI and SRI are both well within the PMSR Study Area. A total of 37,294 elephant seals were sighted at SBI, SNI, SMI, and SRI in 2001 (Lowry 2002), which is greater than the 36,646 seals that NMFS estimated would occur in the PMSR Study Area presently. If the relevant abundance estimates had been forward-projected using the applicable 3.8-percent growth rate into 2021, the California population estimate would be 81,618 elephant seals. Added to the Mexico population estimate, 112,618 seals would be expected to occur in the PMSR Study Area rather than the 36,646 seals used to inform the density estimate for the proposed rule. An underestimation by a factor of more than three is not considered

insignificant. Moreover, NMFS cannot deem one growth rate best available science for incidental taking purposes and another best available science for its Stock Assessment Reports (SARs), particularly since NMFS used the same overall stock abundance for both purposes (Tables 5, 31, and 32 in the proposed rule). At a minimum and until additional data are provided for the other pinniped species and additional assumptions are provided for elephant seals, the Commission recommends that NMFS (1) re-estimate the density for elephant seals based on (a) the 2001 abundance of 37,294 elephant seals from SBI, SNI, SMI, and SRI (Lowry 2002) forward-projected to 2021 using the 3.8-percent growth rate from Lowry *et al.* (2014) for the California population, and (b) at least 31,000 seals from Lowry *et al.* (2014) as representative of the Mexico population; and (2) then re-estimate the numbers of takes accordingly in the final rule.

Response: This Commission is correct that San Miguel Island (SMI) and Santa Rosa Island (SRI) are in PMSR Study Area and inhabited by elephant seals during molting and breeding periods. However, elephant seals travel north and west of the PMSR Study Area (post breeding/molting) as far as the Gulf of Alaska and the central North Pacific (*e.g.,* Robinson *et al.* 2012), and the density estimated for the PMSR Study Area assumed a large percentage of elephant seals remained in the PMSR Study Area year round. This conservative assumption overestimates the abundance in the PMSR year round and, while not ideal, essentially offsets the lack of abundance data from SMI and SRI that were left out of the density calculations for the PMSR Study Area. Furthermore, when breeding and molting in California, elephant seals are mainly hauled out or near haulout sites, with the exception of short foraging bouts by lactating females. Therefore, time in the water, particularly from shore, while in the PMSR Study Area is less than assumed in the density estimate, further reducing the probability of exposures.

A growth rate of 1.7 percent was applied to the abundance estimate for elephant seals in southern California, as described in the HSTT Density Technical Report. The growth rate was not used to predict future, unpredictable changes in species' abundance (*i.e.,* ''forward project''), but rather to estimate changes in abundance from the most recent survey date to the present time. That is, the Navy only brought the abundance from the date of the latest survey up to the time of the analysis by applying a published annual growth rate to some species' abundances. If an abundance was based on a 10 year old survey, then the Navy used the growth rate to calculate an estimated abundance for ''the present time.'' The reasoning for this approach is abundance for some species has been impacted by UMEs or El Nino events or higher recruitment years since the most recent surveys were conducted, and in some cases it may be reasonable to assume a growth rate accounts for those factors and can be used to estimate a present day abundance. The analysis is not attempting to forecast abundances or predict future changes due to UMEs or climate change, *etc.,* rather it is attempting to update an older abundance where appropriate, to better represent species' density at the time of analysis. The MMC commented that different growth rates were used in the calculation of elephant seal abundance. The discussion in the HSTT Density Technical Report (Section 11.1.3) reviews two approaches to estimating the abundance: (1) using island-specific abundances from the three islands (SBI, SNI, and SCI) from Lowry (2002) and a 1.7 percent growth rate, and (2) using the 2010 pup count and a multiplier from Lowry *et al.* (2014) and a 1.1 percent growth rate. The 1.1 percent growth rate is the average growth rate of populations on the three islands (SBI, SNI, and SCI) (Lowry *et al.* 2014). The growth rate of 3.8 percent reported in the 2014 SAR (Carretta *et al.* 2015) is for the entire population. Given their migratory behavior, which differs by sex and lifestage, it is not realistic to assume that 112,618 elephant seals would be in the PMSR Study Area at any time. While not relevant to the PMSR density, the Navy notes that in the most recent version of the SAR (Carretta *et al.* 2021) NMFS has revised the annual growth rate for the population down to 3.1 percent, further illustrating the variability and level of imprecision in estimating abundances and densities, particularly when attempting to project changes. The MMC recommended estimating the Mexico population of elephant seals at 31,000 seals. The Navy also considers this to be an overestimation based on studies by Elorriaga-Verplancken *et al.* (2015) and Garcia-Aguilar *et al.* (2018) indicating the population is in decline. Garcia-Aguilar *et al.* (2018) cite a 2009 abundance of 22,000 seals. Applying the −3.2 percent annual growth rate from Elorriaga-Verplancken *et al.* (2015) to the 2009 population estimate reduces that population to approximately 18,000 seals in 2015 (time of analysis). Most of the seals would only transit through the HSTT Study Area, limiting their time in the HSTT Study Area and potential for exposure to acoustic stressors, as explained in the HSTT Density Technical Report. Based on these factors, an abundance estimate of 15,083 seals occurring in the HSTT Study Area is a reasonable and conservative estimate.

NMFS has reviewed the additional information provided by the Navy, and agrees that the information has been applied appropriately to develop density and population numbers.

Comment 5: The Commission states that pinniped densities must be refined for the Navy's Phase IV compliance documents. The Commission recommends that NMFS consult with the Navy and experts in academia and at its own 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 haulout sites or rookeries.

Response: For future Navy Phase IV compliance documents (*e.g.,* EISs), the Navy explained that it did and will continue to consult with authors of the papers relevant to the analyses as well as other experts in academia and at the NMFS Science Centers during the development of the Navy's analyses. During the development of the HSTT and NWTT Density Technical Reports, which supplied densities for the PMSR analysis, the Navy had ongoing communications with various subject matter experts and specifically discussed pinniped movements, the distribution of populations within the study areas to support the analyses, the pinniped haulout or at-sea correction factors, and the appropriateness of density gradients associated with proximity to haulout 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. Moving forward in Phase IV, the Navy has continued to engage with pinniped experts to improve the representation of species' occurrence and distribution by calculating monthly densities as appropriate for each species and basing distribution areas on habitat preferences and region specific haul out behavior. Revised and updated densities for the California coast will also apply to the PMSR Study Area which is being reanalyzed as part of the new Hawaii-California Study Area (HCTT) EIS/OEIS project.

Cetacean Density Estimates

Comment 6: The Commission comments that similar to the pinniped densities, the Navy did not specify the underlying data and assumptions used to estimate most of its cetacean density estimates for the PMSR NMSDD in the technical report, ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (Navy 2020). The lack of transparency does not afford either the Commission or the public an opportunity to provide informed comments. Further, many of the densities in the same geographic areas differ by an order of magnitude or more from those provided in the technical report, ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area Navy'' (Navy 2017) and/or Becker *et al.* (2020), which included updated models of some of the densities that were provided in ''U.S. Navy Marine Species Density Database Phase III for the Hawaii-Southern California Training and Testing Study Area Navy'' (Navy 2017). The Commission understands that densities provided by Becker *et al.* (2020) are considered best available science, and it is unclear why those were not used for the PMSR Study Area. Therefore, the Commission recommends that, prior to issuing any final rule, NMFS provide information regarding the data and assumptions used to inform the cetacean density estimates, allow for additional public review and comment on that information, and, if Becker *et al.* (2020) was not used to inform those estimates, explain why.

Response: At the time that the Navy's acoustic modeling and analysis was conducted Becket *et al.* 2020 was not available. The Navy did consult with E. Becker to ensure consistency with the information in the paper that was published in 2020.

For the HSTT Phase III analysis, the HSTT Density Technical Report (cited as Navy 2017c in the MMC comment above), density estimates from Becker *et al.* (2016; ''Moving Towards Dynamic Ocean Management: How Well Do Modeled Ocean Products Predict Species Distributions?'', Remote Sensing, 8, 149) were used; these estimates were based on distribution models (SDMs) developed from line-transect survey data collected within the Southwest Fisheries Science Center (SWFSC) CCE study area from 1991–2009. Subsequently, for the NWTT Phase III analysis, the NWTT Density Technical Report (Navy 2019), updated density estimates were available, and these were based on line-transect survey data collected within the CCE study area during summer and fall from 1991–2014. Since the updated models included the 2014 anomalously warm year, a greater range of habitat conditions was available to parameterize the SDMs, and they were developed using improved modeling methods. Multi-year (1991–2014) average density surfaces from these SDMs were developed for 13 cetacean species and one small beaked whale guild (the guild includes Cuvier's beaked whale and species from the genus *Mesoplodon*), and were provided to the Navy for the NWTT Phase III analysis. A subset of these models was subsequently published in 2020 (Becker *et al.* 2020, ''Performance evaluation of cetacean species distribution models developed using generalized additive models and boosted regression trees'', Ecology and Evolution, 10, 5759–5784). Density estimates from both these sources were available at the time the Navy was identifying data to use for the PMSR analysis.

The Commission references the most recent SDMs built with 1991–2018 data, as presented in Becker *et al.* (2020; ''Habitat-based density estimates for cetaceans in the California Current Ecosystem based on 1991–2018 survey data'', U.S. Department of Commerce, NOAA Technical Memorandum NMFS–SWFSC–638), hereafter ''Becker *et al.* 2020 TM'' to differentiate from the 2020 Ecology and Evolution manuscript mentioned above. The SDMs presented in the Becker *et al.* 2020 TM represent an improvement over the previous models because they included additional sighting data collected over the continental shelf and slope that were surveyed more sparsely in previous years, they better accounted for population changes in the CCE study area over the 1991–2018 survey period, and they more accurately accounted for uncertainty than prior iterations owing to methodological improvements. In addition, to ensure that the multi-year average density surfaces reflect more recent conditions and were based on those survey years that more comprehensively covered the study area, predictions for 1991, 1993, and 2009 were not included in the multi-year average. The multi-year average density surfaces derived from these models are thus based on predictions for summer/fall 1996–2018. Furthermore, for two species with documented population increases in the study area (*i.e.,* fin whale and humpback whale), the year covariate was set to 2018 to decrease the potential for biased-low density estimates derived from the multi-year average surfaces. Density estimates from the Becker *et al.* 2020 TM SDMs were not available at the time the Navy was identifying the best estimates to use for the PMSR analysis. As noted above, this manuscript was subsequently published in Ecology and Evolution in 2020, and was based on SDMs developed with the 1991–2014 SWFSC survey data.

Regarding the Commission's comment that ''many of the densities in the same geographic areas differ by an order of magnitude or more from those provided in Department of the Navy (2017c) and/or Becker *et al.* (2020)''—it is difficult to respond to this comment without more information on which species estimates the Commission is referring to. Also, since the estimates from Becker *et al.* models are spatially-explicit, it is unclear if the Commission is comparing specific pixel values, or looking at the highest density ranges on the PMSR maps and comparing them to the density plots included in the Becker *et al.* 2020 TM, in which case the difference in the highest density range can be due to just a few high pixel values and/or the density ranges selected for presentation purposes. Comparisons are also challenging since the Becker *et al.* TM presents density surfaces for the entire CCE study area while the PMSR density plots are specific to that study area, and thus appear more pixelated given the finer spatial resolution. To help address this comment, the density estimates provided in the PMSR Density Technical Report were compared to those presented in the Becker *et al.* 2020 TM. The latter presents density estimates for 14 cetacean species and the small beaked whale guild for summer/fall. The comparison was thus based on these species and seasons. For their 5–7 year environmental planning analysis, the Navy incorporates the multi-year average density plots into the Navy Marine Species Density Database (NMSDD) and uses these for their acoustic analyses. Therefore, the comparison was based on these density surfaces (vs. yearly plots), although the yearly predictions for the three large whale species were also compared to see if any substantial differences were apparent.

Below is a brief summary that compares the density values and distribution patterns presented in the PMSR Density Technical Report with those presented in the Becker *et al.* 2020 TM. Note that all density values are presented in number of animals per square km (anis/km^2), or as abundance

estimates (number of whales/dolphins occurring in a defined study area).

Blue whale. The data source is cited as ''Becker *et al.* in prep.'' so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data, while the multi-year average density surfaces presented in Becker *et al.* (2020 TM) were based on predictions from 1996–2018. The blue whale density plot presented in the PMSR Study Area has the highest density value (0.0091) as compared to the density plot included in the Becker *et al.* 2020 TM with the highest value (0.0117), and predicted distribution patterns from the two models within the PMSR Study Area are similar. Although not presented in the 2020 Ecology and Evolution paper, Table 5 compares the yearly CCE study area abundance estimates derived from the SDMs built with 1991–2014 data (left) with those presented in Becker *et al.* (2020 TM) built with 1991–2018 data on the right, and provides the 95 percent confidence intervals (presented for overlapping years). As shown below, all of the abundance estimates derived from the model used for the PMSR analysis fall within the confidence limits of the SDMs presented in Becker *et al.* (2020 TM).

TABLE 5—BLUE WHALE SDM AND BECKER *et al.* (2020) ABUNDANCE ESTIMATES

Year	Abundance (1991–2014 SDMs)	Abundance (Becker *et al.* 2020 TM)	Log-normal 95 percent Cis (Becker *et al.* 2020 TM)	
1996	1,901	1,946	945	4,009
2001	1,720	1,657	868	3,162
2005	1,201	1,042	542	2,004
2008	1,081	919	445	1,899
2014	1,574	1,077	495	2,342

As noted above, the Navy used the multi-year averages in their analyses, so the data used in the PMSR analysis reflect the 1991–2014 average, while the Becker *et al.* (2020 TM) data reflect the 1996–2018 average. For blue whale, the CCE study area point estimate for 2018 was the lowest yet (670 whales), resulting in a slightly lower point estimate for the 1996–2018 multi-year average density surface (1,219 whales) than the 1991–2014 average density surface (1,572 whales); density estimates within the PMSR are similar for both sets of predictions. NMFS concurs with this analysis and confirms it does not change our analysis or findings for blue whales.

Fin whale. A source was not provided in the PMSR document for the density data used for fin whale but based on the density figure in the PMSR Density Technical Report, it was the multi-year average density surface from the SDM built with 1991–2014 data (*i.e.,* the model presented in the Becker *et al.* 2020 Ecology and Evolution paper). The fin whale density plot for the PMSR Study Area had the highest density value (0.0310) as compared to the density plot included in the Becker *et al.* 2020 TM with the highest density value (0.0821). Predicted distribution patterns from the two models within the PMSR Study Area are similar. Although not presented in the 2020 Ecology and Evolution paper, Table 6 compares the CCE study area abundance estimates derived from the SDMs built with 1991–2014 data (left), with those presented in Becker *et al.* (2020 TM) on the right. The estimates are so similar that the 95 percent confidence intervals are not presented below, but they are presented in Becker *et al.* (2020 TM). Therefore, yearly predictions from the two models are similar for those years that overlap.

TABLE 6—FIN WHALE SDM AND BECKER *et al.* (2020) ABUNDANCE ESTIMATES

Year	Abundance (1991–2014 SDMs)	Abundance (Becker *et al.* 2020 TM)
1996	3,358	3,804
2001	5,753	5,733
2005	7,533	7,319
2008	7,668	7,606
2014	10,504	10,139

As noted above, the Navy used the multi-year averages in their analysis, so the data used in the PMSR analysis reflect the 1991–2014 average while the Becker *et al.* (2020 TM) data reflect the 1996–2018 average. For fin whale, this created a notable increase in the latter since the point estimate for 2018 was the highest yet (11,065 whales), and, given documented population increases in the study area, the year covariate was set to 2018 to decrease the potential for biased-low density estimates derived from the multi-year average surfaces. Therefore, the fin whale density surface used in the PMSR analysis is likely biased-low to some extent, but as noted above, the updated Becker *et al.* (2020 TM) estimates were not available at the time the Navy was identifying density data for the PMSR analysis. NMFS concurs with this analysis and confirms it does not change our analysis or findings for fin whales.

Humpback whale. A source was not provided in the PMSR document for the density data used for humpback whale, but, based on the density figure, it was the multi-year average density surface from the SDM built with 1991–2014 data (*i.e.,* the model presented in the Becker *et al.* 2020 Ecology and Evolution paper). The humpback whale density plot presented in Hulton *et al.* (2020) for the PMSR study area had the highest density value (0.0479) as compared to the density plot included in the Becker *et al.* 2020 TM with the highest density value (0.194), so this is a case where the highest values do differ by an order of magnitude, although highest densities mainly occur north of

Point Conception and outside the PMSR Study Area. Although not presented in the 2020 Ecology and Evolution paper, Table 7 compares the CCE study area abundance estimates derived from the SDMs built with 1991–2014 data (left) with those presented in Becker *et al.* (2020 TM) on the right. The estimates are so similar that the 95 percent confidence intervals are not presented below, but they are presented in Becker *et al.* (2020 TM).

TABLE 7—HUMPBACK WHALE SDM AND BECKER *et al.* (2020) ABUNDANCE ESTIMATES

Year	Abundance (1991–2014 SDMs)	Abundance (Becker *et al.* 2020 TM)
1996	1,267	1,181
2001	1,361	1,364
2005	1,454	1,575
2008	1,638	1,727
2014	3,162	2,178

As noted above for fin whale, exclusion of the early years (1991 and 1993) and accounting for the documented increase in humpback whale abundance in the study area over the survey period when deriving the multi-year average density surfaces resulted in higher densities for the more recent 1996–2018 multi-year average. Also, the point estimate for 2018 was the highest yet (4,784 whales). Therefore, the humpback whale density surface used in the PMSR analysis is likely biased-low to some extent, but, as noted above, the updated Becker *et al.* (2020 TM) estimates were not available at the time the Navy was identifying density data for the PMSR analysis. NMFS concurs with this analysis and confirms it does not change our analysis or findings for humpback whales.

Minke whale. Since the new minke whale SDM developed in Becker *et al.* (2020 TM) was not available at the time the Navy was identifying density data for the PMSR Study Area, the Navy used a uniform density estimate of 0.000737. (The estimate came from Barlow 2016, Table 7, and is an average of the Southern and Central CA strata estimates.)

Baird's beaked whale. The HSTT Density Technical Report (Navy 2017) was erroneously cited as the source of the Baird's beaked whale density surface in the PMSR Density Technical Report, when in fact, the plot is consistent with the multi-year average density plot developed using 1991–2014 survey data as described in Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Predicted distribution patterns from this and the Becker *et al.* (2020 TM) SDM for Baird's beaked whale are very similar, and although the highest density value on the PMSR plot is 0.0072 and on the Becker *et al.* (2020 TM) plot it is 0.0932, the top density RANGES overlap (*i.e.,* 0.0048–0.0072 vs. 0.0032–0.0932, respectively); this is a case where there were a few high pixel values in northern waters of the CCE study area and outside the PMSR Study Area, thus increasing the highest value of the density range in the Becker *et al.* 2020 TM plot. Density values within the PMSR Study Area are similar. NMFS concurs with this analysis and confirms it does not change our analysis or findings for Baird's beaked whales.

Small beaked whale guild (Cuvier's beaked whale and species in the genus Mesoplodon). The HSTT Density Technical Report (Navy 2017) was erroneously cited as the source of the density surface for the small beaked whale guild in the PMSR Density Technical Report, but the plot is consistent with the multi-year average density plot developed using 1991–2014 survey data as described in Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Higher density values are included in the 1991–2014 average density surface used for the PMSR analysis as compared to the Becker *et al.* (2020 TM) average density surface, and the distribution pattern in the former better matches the SWFSC sighting data. As noted in Becker *et al.* (2020 TM), the small beaked whale guild SDM had some of the worst model metrics among all species and predicted distribution patterns matched poorly to actual sightings during the surveys, so the density data used for the PMSR Study Area analysis are more appropriate than the more recent model for this group of species. NMFS concurs with this analysis and confirms it does not change our analysis or findings for the small beaked whale guild.

Bottlenose dolphin (offshore stock). Becker *et al.* (2016) was erroneously cited as the source of the density surface for the offshore stock of common bottlenose dolphin in the PMSR Density Technical Report, but the plot is consistent with the multi-year average density plot developed using 1991–2014 survey data as described in Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Predicted distribution patterns from this and the Becker *et al.* (2020 TM) SDM for common bottlenose dolphin are very similar, and although the highest density value on the PMSR plot is 0.2282 and on the Becker *et al.* (2020 TM) plot it is 1.55, the top density RANGES overlap (*i.e.,* 0.1295–0.2282 vs. 0.0085–1.55, respectively); similar to Baird's beaked whale, this is a case where there were a few high pixel values (in this case in the extreme SW corner of the CCE study area and outside the PMSR Study Area), which served to increase the highest value of the density range presented in the Becker *et al.* 2020 TM plot. Density values within the PMSR Study Area are similar for this species. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Dall's porpoise. Becker *et al.* (2016) was erroneously cited as the source of the density surface for the Dall's porpoise in the PMSR Density Technical Report, but the plot is consistent with the multi-year average density plot developed using 1991–2014 survey data as described in Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). While the legend in the PMSR density plot presents density values up to 0.4939, the range of the highest value plotted on the map within the PMSR Study Area is 0.0911–0.1435. In summer/fall, highest densities of Dall's porpoise occur north of the PMSR Study Area. Density values within the PMSR Study Area are similar between those presented in the PMSR Density Technical Report and Becker *et al.* (2020 TM), although a bit lower in the latter, but of the same order of magnitude. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Long-beaked common dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built

with 1991–2014 survey data (*i.e.,* the model presented in the Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Predicted distribution patterns from this and the Becker *et al.* (2020 TM) SDM for long-beaked dolphin are very similar, and density values within the PMSR Study Area are also very similar for this species, with a few higher pixels in the Becker *et al.* (2020 TM) serving to increase the highest density range, but all within the same order of magnitude as the PMSR values. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Northern right whale dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data (*i.e.,* the model presented in the Becker *et al.* 2020 (2020 Ecology and Evolution paper). Predicted distribution patterns from this and the Becker *et al.* (2020 TM) SDM for northern right whale dolphin are very similar, and although the highest density value on the PMSR plot is 0.1430 and on the Becker *et al.* (2020 TM) plot it is 3.07, the top density RANGES overlap (*i.e.,* 0.0989–0.1430 vs. 0.0837–3.07, respectively); similar to some of the other species, this is a case where there were a few high pixel values (in this case north and outside the PMSR Study Area), which served to increase the highest value of the density range presented in the Becker *et al.* 2020 TM plot. Density values within the PMSR are similar for this species. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Pacific white-sided dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data. Density values within the PMSR Study Area are similar between the two model predictions, although the distribution patterns reveal some differences; the multi-year 1991–2014 average plot used for the PMSR show higher densities just north of Point Conception as compared to the multi-year 1996–2018 average plot presented in Becker *et al.* (2020 TM). NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Risso's dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data (*i.e.,* the model presented in the Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Both the density values and distribution patterns within the PMSR Study Area are similar between the two model predictions. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Short-beaked common dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data (*i.e.,* the model presented in the Becker *et al.* 2020 (the 202 Ecology and Evolution paper). The highest density value on the PMSR plot is 3.82 and on the Becker *et al.* (2020 TM) plot it is 2.95; however, density estimates from the latter are higher throughout much of the PMSR Study Area, particularly throughout the Southern California Bight and extending to the north/northeast. Similar to both fin and humpback whales, the point estimate for 2018 was the highest yet for short-beaked common dolphin (1,056,308 dolphins). Therefore, the short-beaked common dolphin density surface used in the PMSR analysis is likely biased-low to some extent, but, as noted above, the Becker *et al.* (2020 TM) estimates were not available at the time the Navy was identifying density data for the PMSR analysis. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Sperm whale. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data. As noted in Becker *et al.* (2020 TM), the sperm whale SDM had some of the worst model metrics among all species and predicted distribution patterns matched poorly to actual sightings during the surveys, so the density data used for the PMSR analysis are more appropriate for this species. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Striped dolphin. The data source is cited as ''Becker *et al.* in prep.'', so the density estimates used for the PMSR analysis were the multi-year average predictions from the SDMs built with 1991–2014 survey data (*i.e.,* the model presented in the Becker *et al.* 2020 (the 2020 Ecology and Evolution paper). Although the Becker *et al.* (2020 TM) shows higher densities throughout much of the CCE study area, the density values within the PMSR Study Area don't vary by more than an order of magnitude between the two model predictions. NMFS concurs with this analysis and confirms it does not change our analysis or findings.

Overall summary and conclusions. The SWFSC habitat modeling team has been developing SDMs for the CCE study area for more than 20 years. Over this time period, the availability of additional survey data (which increases sample sizes and also increases the range of habitat covariate values used to parameterize the models), as well as methodological advances, have resulted in substantial improvements to the SDMs and associated model-derived density estimates. The latest models include data collected from the most recent SWFSC survey conducted in 2018, and SMDs derived from the full set of 1991–2018 survey data are presented in Becker *et al.* (2020 TM). These data were not available when the Navy was identifying density data to use for the PMSR analysis. Although the source of density data could have been more clearly identified in the PMSR Density Technical Report, the Navy consistently used density data that were available from the previous set of SDMs that were developed using 1991–2014 survey data.

For most species, the multi-year density surfaces derived from the two separate sets of models are similar, revealing generally consistent distribution patterns and abundance estimates that are in the same order of magnitude within the PMSR Study Area. In some cases, density estimates appear to differ by more than an order of magnitude based on a comparison of density plots, but this is due to a few high pixel estimates located outside the PMSR Study Area that determine the upper bound of the highest density range, and does not indicate big differences in the density overall or across the area.

Species for which density estimates differ substantially include fin whale and humpback whale, due to the methods used in Becker *et al.* (2020 TM) to ensure that the multi-year average density surfaces better accounted for documented increases in the populations of both these species between 1991 and 2018. In addition, due to the increase in the numbers of short-beaked common dolphins occurring in the PMSR Study Area in recent years, the Becker *et al.* (2020 TM) density estimates for this species are also substantially higher than previous estimates. While the most recent models were not available at the time the Navy was identifying density data to use for the PMSR analysis, we have qualitatively considered this information in this final rule, and we have found that these differences would not change any of the required findings. Also, we note that the Becker *et al.*

(2020 TM) SDMs, as well as SDMs developed recently for the Southern California Current (Becker *et al. In Press,* Frontiers in Marine Science), will be used in the Navy's upcoming Hawaii-California Testing and Training (HCTT) analysis, which includes the PMSR Study Area.

Uncertainty in Density Estimates

Comment 7: The Commission comments that for Phase III activities in the HSTT Study Area, the Navy used more refined density estimation methods for cetaceans and accounted for uncertainty in the density and group size estimates that seeded its animat modeling (Navy 2018). The PMSR Density Technical Report indicated that uncertainty in its density and group size estimates for the PMSR Study Area was incorporated but did not specify what type of uncertainty or what, if any, distribution was used. The PMSR Density Technical Report also did not specify whether uncertainty was used for its density estimates for pinnipeds. NMFS similarly did not include in the preamble to the proposed rule any details regarding whether and how uncertainty was incorporated into either the density or group size estimates. The Commission recommends that NMFS (1) clarify whether and how uncertainty was incorporated in the density and group size estimates, including densities for pinnipeds, and specify the distribution(s) used and, (2) if uncertainty was not incorporated, re-estimate the numbers of takes based on the uncertainty inherent in the density estimates (*e.g.,* Becker *et al.* 2020) or the underlying references (*e.g.,* Lowry 2002, Lowry *et al.* 2014, NMFS SARs, *etc.*). If NMFS chooses not to incorporate uncertainty in its density estimates, including for pinnipeds, the Commission recommends that NMFS specify why it did not do so in the preamble to the final rule.

Response: As noted in the PMSR Density Technical Report 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 coefficient of variation (CV), standard deviation (SD), or standard error (SE)) provided in NMFS Pacific Stock Assessment Report (SAR) Appendix 3 (Carretta *et al.* 2019) as well as the 2021 draft Pacific SAR, 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 HSTT Density Technical Report Section 11. 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 concurs that they are appropriate and reflect the best available science.

Criteria Thresholds

General Threshold Comments

Comment 8: The Commission has supported the weighting functions and associated thresholds used for Navy Phase III activities (Navy 2017b). However, numerous more recent studies provide additional information on behavioral audiograms (*e.g.,* Cunningham and Reichmuth 2015, Branstetter *et al.* 2017, Kastelein *et al.* 2017b and 2019a, Sills *et al.* 2020a, Kastelein 2021a and b, Ruscher *et al.* 2021, and Sills *et al.* 2021) and temporary threshold shift (TTS) (*e.g.,* Kastelein *et al.* 2017a and c, Popov *et al.* 2017, Kastelein *et al.* 2018a and b, 2019b–d, and 2020a–f, Sills *et al.* 2020b, Kastelein *et al.* 2021a and b). The Navy discussed only a few of these references in its Draft Supplemental Environmental Impact Statement (DSEIS) and LOA application. It also noted that the otariid and phocid composite audiograms are consistent with recently published behavioral audiograms of pinnipeds but did not provide any references, including those denoted herein, in its LOA application. NMFS similarly did not discuss any of the aforementioned references in its preamble to the proposed rule, whether the composite audiograms were consistent with the recently-reported behavioral audiograms or whether the criteria, presumably the TTS (and thus permanent threshold shift (PTS)) thresholds, were still considered conservative as compared to the recently-reported TTS data for harbor porpoises, harbor seals, and California sea lions. As such, the Commission recommends that NMFS specify in the preamble to the final rule whether the aforementioned references support the continued use of the current weighting functions and PTS and TTS thresholds for the various functional hearing groups and, if the newer data indicate that either the current weighting functions or PTS and TTS thresholds would significantly underestimate impacts, specify whether and how it plans to revise them.

Response: NMFS is aware of these recent papers (Kastelein *et al.* 2021a and b) and is currently working with the Navy to update NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing Version 2.0 (Acoustic Technical Guidance) (NMFS 2018) to reflect relevant papers that have been published since the 2018 update on our 3–5 year update schedule in the Acoustic Technical Guidance. First, we note that the recent peer-reviewed updated marine mammal noise exposure criteria by Southall *et al.* (2019a) provide identical PTS and TTS thresholds and weighting functions to those provided in NMFS' Acoustic Technical Guidance.

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. However, any such revisions must undergo peer and public review before being adopted, as described in the Acoustic Guidance methodology. In the meanwhile, NMFS has also carefully considered the other references that the commenter cites, and while some of the relevant data may potentially suggest changes to TTS/PTS thresholds for some species, any such changes would not be expected to change the predicted take estimates in a manner that would change the necessary determinations supporting the issuance of these regulations, and the data and values used in this rule reflect the best available science.

In-Water Behavior Thresholds for Explosives

Comment 9: The Commission comments that the Navy routinely requests and NMFS routinely authorizes behavior takes of marine mammals associated with exposure to single in-air explosive events (*e.g.,* missile launch noise and sonic booms), including those that occur in the PMSR Study Area (section 6.6 in the Navy's LOA application). The Commission states that NMFS has based its take estimates on the numbers of animals that have responded behaviorally to single launch events, including for the PMSR proposed rule (see section 6.6 in the Navy's LOA application and 84 FR 28470 (June 19, 2019), as one example for previous authorizations issued for launch activities at SNI). The

Commission states that ''[c]ontinuing to dismiss the fact that a single explosive event, including that of a 500-lb bomb, has the potential to cause behavior takes to marine mammals underwater is illogical . . . given that an animal exposed to such an event is expected to exhibit the factors the Navy differentiated as a behavioral response in Department of the Navy (2017b) and NMFS routinely authorizes behavior takes for such events when exposed in air, including for the Navy's own proposed launch activities under the PMSR proposed rule.'' The Commission also states that the Navy, and in turn NMFS, has not provided adequate justification for dismissing the possibility that single underwater detonations can cause a behavioral response and therefore again recommends that NMFS estimate and ultimately authorize behavior takes of marine mammals during all in-water explosive activities, including those that involve single detonations consistent with in-air explosive activities in the final rule. If NMFS does not authorize behavior takes of marine mammals for all in-water explosive activities, the Commission recommends that NMFS justify in the preamble to the final rule why it believes that marine mammals, including pinnipeds, would only be taken by single in-air explosive detonations and not single in-water explosive detonations. The Commission further recommends that NMFS and the Navy revise the behavior thresholds for in-water explosive sources for Phase IV activities and ensure that any such threshold is based on data that involve impulsive sources, rather than the currently-used threshold that was based on non-impulsive tones.

Response: NMFS does not ignore the possibility that single underwater detonations can cause a behavioral response. The current take estimate framework allows for the consideration of animals exhibiting behavioral disturbance during single explosions as they are counted as ''taken by Level B harassment'' if they are exposed above the TTS threshold, which is 5 decibels (dB) higher than the behavioral harassment threshold. We acknowledge in our analysis that individuals exposed above the TTS threshold may also be harassed by behavioral disruption and those potential impacts are considered in the negligible impact determination. Neither NMFS nor the Navy are aware of evidence to support the assertion that animals will have significant behavioral responses (*i.e.,* those that would rise to the level of a take) to temporally and spatially isolated explosions at received levels below the TTS threshold. However, if any such responses were to occur, they would be expected to be few and to result from exposure to the somewhat higher received levels bounded by the TTS thresholds and would thereby be accounted for in the take estimates. 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)''.

Regarding the assertion that the approaches for assessing the impacts from a single underwater detonation and a single in-air detonation are inconsistent, we disagree. Both approaches/thresholds are based on the best available data. As noted above, we are unaware of data suggesting that marine mammals will respond to single underwater explosive detonations below the TTS threshold in a manner that would qualify as a take. Conversely, for single in-air detonations such as missile launch noise and sonic booms, there are extensive data supporting the application of the lower behavioral thresholds, *i.e.,* pinnipeds moving significant distances or flushing in response to these in-air levels of sounds.

Regarding the recommendation that explosive thresholds used for assessing impacts in Phase IV be based on impulsive sources, NMFS will continue to work with the Navy to ensure that the best available science is used in the development and revision of the thresholds to be used to assess acoustic impacts in Phase IV of the Navy actions.

In-Water Takes for Explosives

Comment 10: The Commission comments that the number of takes that NMFS proposed to authorize does not accurately reflect the group sizes of various species. The Navy's 2017 report, ''Dive Distribution and Group Size Parameters for Marine Species Occurring in the U.S. Navy's Atlantic and Hawaii-Southern California Training and Testing areas'', specified that the mean group size of long-beaked common dolphins was 255, 16 for the offshore stock of common bottlenose dolphins, and 56 for striped dolphins. However, NMFS proposed to authorize a total of 119 takes of long-beaked common dolphins, 11 takes of offshore bottlenose dolphin, and 2 takes of striped dolphins per year (see Table 18 of the proposed rule)—all of which are less than the mean group sizes reported by the Navy. The numbers of takes of northern right whale dolphins, Pacific white-sided dolphins, Risso's dolphins, short-beaked common dolphins, and sperm whales also are less than the mean group sizes specified in Table 48 of the above report. For other species that routinely occur in the PMSR Study Area but for which model-estimated takes were zero (*e.g.,* Cuvier's beaked whales, Baird's beaked whales, Kogia spp., *etc.*), NMFS did not propose to authorize any takes (see Table 18 of the proposed rule). The Commission recommends that NMFS, at minimum, authorize Level B harassment (behavior) takes that are at least the mean group size reported in Table 48 of the Navy 2017 report for all species in which model-estimated takes are either less than mean group size (long- and short-beaked common dolphins, offshore bottlenose dolphins, striped dolphins, northern right whale dolphins, Pacific white-sided dolphins, Risso's dolphins, and sperm whales) or zero for those species that routinely occur in the PMSR Study Area (*e.g.,* Cuvier's beaked whales, Baird's beaked whales, Kogia spp., *etc.*) in the final rule.

Response: NMFS indicates in the *Description of Marine Mammals and Their Habitat in the Area of the Specified Activities* section of this final rule that the following species/stocks had zero calculated estimated takes: Bryde's whale (Eastern Tropical Pacific), Gray whale (Western North Pacific), Sei whale (Eastern North Pacific), Baird's beaked whale (California, Oregon, and Washington), Bottlenose dolphin (California Coastal), Cuvier's beaked whale (California, Oregon, and Washington), Harbor Porpoise (Morro Bay), Killer whale (Eastern North Pacific Offshore, Eastern North Pacific Transient or West Coast Transient), Mesoplodont spp. (California, Oregon, and Washington), Short-finned pilot whale (California, Oregon, and Washington), and Northern fur seal (California). NMFS continues to agree with the Navy's analysis; therefore, no takes were authorized for those species where takes were modeled to be zero.

However, to precautionarily ensure adequate incidental take coverage should the Navy encounter and expose a larger group than was originally estimated and proposed, the authorized annual take by Level B harassment was increased to group size for 7 dolphin species where the annual takes proposed were fewer than the species group size, specifically for Long- and Short-beaked common dolphins, Offshore Bottlenose dolphins, Striped dolphins, Northern right whale dolphins, Pacific white-sided dolphins, and Risso's dolphins. These changes are reflected in Table 21 and explained in detail in the *Changes from the Proposed Rule to the Final Rule* section of this final rule. For sperm whales, however,

given they prefer deeper waters and Navy activities are at the surface or near-surface, their secondary range includes areas of higher latitudes in the PMSR Study Area, NMFS concurs with the Navy's initial proposed take and does not find that an increase in the take estimates is warranted.

In-Air Thresholds for Explosives

Comment 11: The Commission comments that the in-air PTS, TTS, and behavior thresholds were absent from both the Navy's LOA application and NMFS' preamble to the proposed rule, and that it is unclear what, if any, thresholds were used to inform either the Navy's or NMFS' impact analyses. The Commission recommends that NMFS provide any Phase IV in-air and in-water PTS and TTS thresholds and associated weighting functions to the public for review and comment, consistent with the Phase III in-water auditory thresholds. The Commission also stated that, in its May 2019 letter regarding a proposed incidental harassment authorization for launch activities at SNI, the unweighted behavior threshold of 100 dB re 20 µPa2-sec to be applied to all pinnipeds from Department of the Navy (2017b) was inconsistent with other recent proposed and final rules for the U.S. Air Force (Air Force; 84 FR 335; January 24, 2019 and 84 FR 14321; April 10, 2019) and other recent proposed rules or authorizations involving other launch activities (83 FR 57434; November 15, 2018, 82 FR 49334; October 25, 2017, 82 FR 6463; January 19, 2017, 81 FR 18584; March 31, 2016, *etc.*). Further, the Commission reiterates its 2019 recommendation that NMFS compile all in-air response data and determine whether the in-air behavior thresholds can be revised or whether additional paired visual and acoustic monitoring data are necessary to refine the in-air thresholds before issuing the PMSR final rule. If the thresholds cannot be revised with data currently available, the Commission recommends that NMFS (1) ensure that the Navy, the Air Force, and any other relevant entities collect the necessary data to inform in-air behavior thresholds, and (2) revise, allow for public comment on, and finalize those thresholds in the next 3 years.

Response: The Commission is correct that the in-air behavioral thresholds were missing, but these have now been added to Table 12 (Behavioral Thresholds). However, the Navy's testing and training activities (outside of target and missile launches) are modeled at or near-surface (essentially underwater) and the in-air behavioral thresholds would not apply to those other testing and training activities, as they were modeled underwater. The in-air thresholds would apply to the target and missile launches on SNI.

Regarding the Commission's comment that the unweighted behavior threshold of 100 dB re 20 µPa2-sec applied to all pinnipeds from Department of the Navy (2017b) was inconsistent with other recent proposed and final rules for the U.S. Air Force (Air Force; 84 FR 335; January 24, 2019 and 84 FR 14321; April 10, 2019), it is true that the Navy is using in-air behavior thresholds different from what is used by the U.S. Air Force. The Navy's thresholds in the Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III) Technical Report (U.S. Department of the Navy, 2017) for TTS/PTS are correct, while for behavior, the Navy uses a value of 100 dB sound exposure level (SEL) for all pinnipeds rather than 90 dB sound pressure level (SPL) for harbor seals/100 dB SPL for all other pinnipeds. In this case, the issues the Commission points out regarding in-air behavioral thresholds are not applicable, as the estimated takes are based on the last 3 years of pinniped observation from Navy's monitoring reports and are not directly based on specific in-air thresholds.

The Navy selects beaches to survey based largely on where sound received is expected to reach 100 dB SEL or greater and where animals are reacting to launch noises. In the case of harbor seals, the Navy is already monitoring beaches where sound levels are less than 100 dB SEL and often under 90 dB SPL (site O—Phoca Reef and Pirates Cove). The Navy is monitoring at site O because oftentimes the harbor seals are not hauled out on the western end of SNI on the typically monitored beaches during launch events. The Navy is cognizant of the fact that some harbor seals are reacting to sound levels lower than 90 dB SPL. Accordingly, the Navy is monitoring those pinnipeds and requesting additional take by Level B harassment to account for this potential.

NMFS indicated in the *Acoustic Thresholds* sections of both the proposed rule and this final rule that 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 directly experience a disruption in behavior patterns to a point where they are abandoned or significantly altered, to incur TTS (equated to Level B harassment), or to incur 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. Refer to the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'' report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. The criteria and thresholds in this document have been available for the public at *https://www.hstteis.com/Documents/2018-Hawaii-Southern-California-Training-and-Testing-Final-EIS-OEIS/2018-Final-EIS-OEIS-Supporting-Technical-Documents.* That said, regarding the recommendation that NMFS compile all in-air response data and determine whether the in-air behavior thresholds can be revised or whether additional paired visual and acoustic monitoring data are necessary to refine the in-air thresholds before issuing the PMSR final rule. NMFS will not be refining the in-air thresholds for this final rule. The Navy's proposed Phase IV criteria are still in development and NMFS will work with the Navy and others within NOAA on any proposed changes and review the in-air thresholds for pinnipeds and, if appropriate, update NMFS' Acoustic Technical Guidance, which will include peer review and public comment. 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. In the meanwhile, the data and values used in this rule reflect the best available science.

In-Air Behavior Takes for Launch Activities

Comment 12: The Commission comments that, similar to the various in-air thresholds, the take estimation method for launch activities was omitted from the preamble to the proposed rule. NMFS indicated in the preamble to the proposed rule that it had reviewed the Navy's data, methodology, and analysis and determined that it was complete and accurate (86 FR 37822; July 16, 2021). If that was the case, it is unclear why the details were omitted from the proposed rule for the very activities that were estimated to result in the greatest numbers of takes for California sea lions, harbor seals, and elephant seals (see Tables 18 and 19 in the proposed rule). The Commission claims that the Navy's 2019 proposed authorization

also indicated that a total of 4,940 Level B harassment takes of California sea lions occurred during 18 launches in the 2015–2017 monitoring seasons (84 FR 18822; May 2, 2019), which equates to an average of 275 takes per launch. The Commission claims there were only 15 launches and the average number of takes per launch in the 2019 IHA should have been 329 rather than 275. The Commission comments that NMFS must specify the underlying references, assumptions, and methods used to estimate the numbers of takes for all activities for which taking would be authorized for each **Federal Register** notice.

Response: NMFS indicated in the preamble to the proposed rule that it had reviewed the Navy's data, methodology, and analysis presented in section 5.2 (Incidental Take of Marine Mammals from Launch Activities at San Nicolas Island) of the Navy's rulemaking/LOA application, which were based on monitoring results from past launches, and determined that it was complete and accurate. Specifically, the estimation of the amount of take by Level B harassment that would be expected to occur as a result of launch events was based on the total take by species observed for three previous monitoring seasons divided by the number of launch events over that time period. NMFS has added additional details in the preamble in the *Estimated Take of Marine Mammals* section of this final rule to clarify how the takes estimated were derived for target and missile launches on SNI. This is also described in the paragraphs below.

For California sea lions, take estimates were derived from three monitoring seasons where an average of 274.44 instances of take of sea lions by Level B harassment occurred per launch event. Therefore, 275 sea lions was then multiplied by 40 launch events, for a conservative take estimate of 11,000 instances of take for California sea lions by Level B harassment. This estimate is conservative because the Navy has not conducted more than 25 launch events (although authorized for more) in a given year since 2001.

For harbor seals a total of 12 takes were derived from previous monitoring seasons and multiplied by 40 launch events for a total of 480 instances of take by Level B harassment.

For northern elephant seals, take estimates were derived from previous monitoring seasons where an average of 0.61 instances of take of northern elephant seals by Level B harassment occurred per launch event. Therefore, one northern elephant seal was then multiplied by 40 launch events for a conservative take estimate of 40 instances of take of northern elephant seals by Level B harassment. Generally, northern elephant seals do not react to launch events other than by exhibiting simple alerting responses, such as raising their heads or temporarily going from sleeping to being awake; however, to account for the rare instances where they have reacted, the Navy considered that some northern elephant seals could be taken during launch events.

The Commission is incorrect about the number of launches that took place during the monitoring periods from 2015–2017; it was, in fact, 18 launches that took place. The launch activities are described in the Navy's 2014–2019 monitoring report, which NMFS provided to the Commission. Monitoring reports can also be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-target-and-missile-launch-activities-san-nicolas.* The average number of takes per launch in the 2019 IHA was correct (275 animals) as is the underlying data used to determine the estimated take for the 2019 IHA, the 2020 renewal IHA, and this final rule.

Comment 13: The Commission comments that the method NMFS used to determine in-air takes is flawed for several reasons. The Commission states the Navy is only able to monitor at most three haulout sites during each launch event. However, California sea lions and harbor seals are present at several additional haulout sites on the west side of SNI. The Navy also estimates the number of pinnipeds hauled out at least 2 hours before the launch occurs. For safety reasons, the observers are not allowed to be at the haulout sites for at least 2 hours before and during a launch. The video cameras that document the responses of the hauled-out animals are able to view only a portion of the animals. Thus, the Commission says it is unclear whether new animals haul out or enter the water in the more than 2 hours after the animals were last counted. When equipment failures occur or launches occur at night, responses are not observed.

Response: The Navy is committed to several types of monitoring in order to document the responses of hauled-out animals. NMFS has approved the Navy's monitoring methods in previous authorizations and does not believe the methods are flawed. It is correct that the Navy monitors at most 3 haulout sites during each launch and the Navy attempts to vary the sites they are monitoring during each launch, so the Navy is not always monitoring the same 3 sites. This is precisely for the reason the Commission pointed out, as there are several haulout sites on the west side of SNI. During visual surveys, the Navy also estimates the number of pinnipeds hauled out at least 2 hours before the launch occurs. For safety reasons, the observers are not allowed to be at the haulout sites for at least 2 hours before and during a launch. However, the Navy conducts more than just visual surveys in order to obtain the most accurate information on the number of hauled out animals. Video and acoustic monitoring of up to three pinniped haulout areas and rookeries will be conducted during launch events that include missiles or targets that have not been previously monitored using video and acoustic recorders for at least three launch events. Video monitoring cameras would be either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events. The Navy is also experimenting with time-lapse photography to fill in any data gaps that may occur from the other methods of monitoring. Marine mammal monitoring includes multiple surveys during the year that record the species, number of animals, general behavior, presence of pups, age class, gender and reactions to launch noise or other natural or human caused disturbances, in addition to environmental conditions that may include tide, wind speed, air temperature, and swell. Between the different methods of monitoring, NMFS is confident that the Navy will be able to continue to complete their monitoring requirements and record accurate data if equipment issues arise or launches occur during the day or night.

Comment 14: The Commission comments that the criteria that the Navy used to enumerate takes under a previous authorization and in previous monitoring reports were based on animals moving at least 10 m (11 yd; 84 FR 37845; August 2, 2019). NMFS' more recent criteria, including those that it used for the U.S. Air Force's 2019 final rule (see Table 9; 84 FR 337; January 24, 2019), are based on animals moving at least two body lengths (Level 2 response). The 10-m (11-yd) metric is much greater than the estimated 4 or 5 m (4 or 5 yd) that adult female and male sea lions move in two body lengths. The Commission is concerned that NMFS is allowing Department of Defense agencies to use two different sets of criteria for the same activities (*i.e.,* launch activities) as related to the same definition of Level B harassment under section 3(18)(B)(ii) of the MMPA. The

Commission recommends that NMFS specify in the PMSR final rule that the Level B harassment criteria are based on the definitions of Level 2 and 3 responses provided in § 217.65(b)(3)(ii) of the Air Force's final rule.

Response: In contrast to the activities considered for this final rule, which are considered military readiness activities, the activities that were the subject of NMFS' 2019 rule for the Air Force were not evaluated as military readiness activities; therefore a different definition of Level B harassment applied. For the U.S. Air Force rule, the standard non-military-readiness pinniped thresholds were used. For military readiness activities, the MMPA defines Level B harassment as: ''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.'' The Navy proposed a slightly different version of the criteria for determining when behavioral response of a hauled pinniped rises to the level of harassment, as is appropriate for use with the definition of Level B harassment associated with military readiness activities. NMFS concurred that this version, which has been used in prior incidental take authorizations associated with launch activities on SNI, is appropriate for evaluating Level B harassment in association with this specified activity. NMFS may re-evaluate these criteria with the Navy for any subsequent applications we receive for these activities.

Comment 15: The Commission comments that NMFS underestimates harbor seal takes as well on SNI. NMFS previously had noted, and the Navy's monitoring reports have confirmed, that harbor seals were not always present when the Navy conducted its monitoring during launch events, and there have not been many places to observe harbor seals during the launches (84 FR 18821; May 2 2019). NMFS indicated that most of the beaches where harbor seals have been hauled out, and which the Navy has been able to monitor, occur in area O, which is not in the trajectory of most of the launches. That may be the case, but the animals still have responded to sound levels that range from 79–99 dB 20 re μPa at those beaches. NMFS also indicated that harbor seal presence at the haulout sites is dependent on tides. Since the Navy cannot predict whether it will conduct launches during high or low tide, the Commission states NMFS must assume that harbor seals have the potential to be present during each launch irrespective of the tidal cycle. Furthermore, the Navy focuses much of its monitoring on sea lion haulout sites, where harbor seals generally do not haul out. NMFS noted that harbor seals do not prefer beaches with California sea lions present (84 FR 18821; May 2, 2019). Moreover, and as routinely is the case for harbor seals, Navy monitoring reports from 2014–2017 indicated that for all but one launch 100 percent of the hauled-out harbor seals within the view of the camera responded to the launch. Thus, the Commission says that 12 harbor seals taken per launch on all of SNI is illogical and a vast underestimate.

Response: NMFS disagrees with the Commission's assertion that harbor seal takes are too low. Approximately 42 harbor seals were estimated to have been affected during the June 2019 through March 2020 monitoring period. These figures are approximate and included extrapolations for pinnipeds on portions of the beach that were not within the field of view of the camera. These estimates correspond to an average rate of 4.08 harbor seals affected per launch and are certainly within the estimated 12 harbor seals taken per launch. Only 12 missile launch events occurred during that period, while the Navy was authorized for 40 events. It is incorrect to state that the Navy only focuses on California sea lion beaches. During the 2019–2020 monitoring period, the Navy had cameras set up on Phoca Reef, which corresponds to site O (referred to by the commenter) where harbor seals tend to haul out. The Navy was able to monitor Phoca Reef during approximately half of the launches. The Navy is required to monitor 3 sites during launches, and these sites can consist of any combination of Dos Coves South, Vizcaino Point South, Red Eye West, Red Eye East, Bachelor Beach, and Phoca Reef. It is not possible to monitor all of these sites for every launch, and the Navy makes a decision about where to monitor based on several factors, including local weather conditions, the type of launch activity planned, the types and location of pinnipeds hauled out, as well as tidal factors.

Comment 16: The Commission commented that Navy's take estimation method is not consistent with either the method recently used by the U.S. Air Force for its proposed and final rule (84 FR 321; January 24, 2019 and 84 FR 14314; April 10, 2019, respectively) or the intent of the MMPA to estimate the numbers of marine mammals that are likely to be disturbed. The U.S. Air Force based its take estimates on abundance estimates at the various haulout sites based on Lowry *et al.* (2017), previous response rates of the various pinniped species, and the number of launches per year. Specifically for harbor seals, the Commission says NMFS should have estimated the number of takes based on a 100-percent response rate and the number of animals that were documented in areas J through N on SNI in 2015 and area O in 2014, as stipulated in Lowry *et al.* (2017) and as was considered best available science for the U.S. Air Force's proposed and final rule. Using that approach, 110 harbor seals could be taken during each of the 40 proposed launch events, for a total of 4,400 harbor seal takes. For California sea lions, the response rate should be based on the number of sea lions that moved a 'short distance' according to the 2014–2017 monitoring reports multiplied by the number of sea lions in the same areas in 2015 from Lowry *et al.* (2017) and the number of launches. The Commission states that a similar approach should be taken for elephant seals. Accordingly, the Commission recommends that NMFS (1) authorize 4,400 Level B harassment takes of harbor seals, and (2) estimate Level B harassment takes of California sea lions and elephant seals based on the numbers of both species in areas J through N in 2015 as stipulated in Lowry *et al.* (2017), response rates based on each species moving a short distance according to the 2014–2017 monitoring reports, and 40 proposed launch events in the final rule.

Response: The difference in methods of take estimation between the Navy and the U.S. Air Force are based on what is appropriate for each agency based on the activities that are being conducted. It does not mean that one method is not appropriate for estimating take.

For harbor seals, NMFS believes the amount of Level B harassment take suggested as appropriate by the Commission would be an overestimate based on previous observations during Navy's launch events. Before the launch events, the Navy monitors several sites around the western end of SNI to determine where pinnipeds are hauled out and what species are on the beaches. During this pre-launch monitoring, harbor seals are frequently not present. For harbor seals on SNI, the estimated takes are based on pinniped observation from Navy's monitoring reports and not directly based on specific in-air thresholds. The beaches that the Navy surveys are largely based on where sound received is expected to reach 100 dB SEL or greater and where animals are reacting to launch noises. In the case of

harbor seals, the Navy is already monitoring beaches where sound levels are less than 100 dB SEL and often under 90 dB SPL (site O—Phoca Reef and Pirates Cove). The Navy is monitoring at site O because oftentimes the harbor seals are not hauled out on the western end of SNI on the typically monitored beaches during launch events. In addition, the Navy has previously surveyed other parts of SNI to determine if pinnipeds are reacting in response to launch events. The Navy conducted surveys of the eastern end of SNI and did not find pinnipeds reacting to launch events. The estimated take for harbor seals was based on the total number of takes (12) over a 3-yr monitoring period multiplied by 40 launch events for a total of 480 instances of take by Level B harassment. Using the total number of takes (12) was a change from the proposed IHA in 2019 (84 FR 18809; May 2, 2019) in which we used an average number of takes multiplied by the number of launches. The estimated take would be lower (120 harbor seals) if the average was used, as was the case for California sea lions and Northern elephant seals. The take estimate was revised from 120 to 480 harbor seal instances of take by Level B harassment to possibly account for any additional harbor seals that hauled out and reacted to launch events.

NMFS concludes that the number of authorized take is adequate and sufficient for California sea lions and Northern Elephant seals. For California sea lions, take estimates were derived from Navy monitoring reports in which an average of 274.44 instances of take of sea lions by Level B harassment occurred per launch event. Therefore, 275 sea lions was multiplied by 40 launch events, for a conservative take estimate of 11,000 instances of take for California sea lions by Level B harassment. Generally, northern elephant seals do not react to launch events other than by exhibiting simple alerting responses, such as raising their heads or temporarily going from sleeping to being awake; however, to account for the rare instances where they have reacted, the Navy considered that some northern elephant seals could be taken during launch events. For Northern elephant seals an average of 0.61 instances of take of northern elephant seals by Level B harassment occurred per launch event from the Navy's monitoring reports. Therefore, one northern elephant seal was then multiplied by 40 launch events for a conservative take estimate of 40 instances of take of northern elephant seals by Level B harassment.

As reported in the Navy 2014–2019 comprehensive monitoring report from the previous rule, approximately 3,876 California sea lions, 99 Harbor seals, and 11 Northern elephant seals (average 144 California sea lions, 3.5 harbor seals, and 0.4 Northern elephant seals) were estimated to have been affected by launches conducted during that monitoring period. The estimates also included extrapolations for pinnipeds on portions of the beach that were not within the field of view of the camera. During the 2014–2019 monitoring period 27 launch events occurred at SNI even though 40 launch events annually were authorized. If NMFS had used these averages the estimated take would have been even lower than what NMFS is authorizing in this final rule.

In summary, NMFS believe the Level B harassment take estimates for pinnipeds on SNI are sufficient based on actual field monitoring conducted by the Navy of the pinniped haulout areas that could potentially be affected by noise from launch events.

In-Water Mortality and Injury Thresholds for Explosives

Comment 17: The Commission notes that the constants and exponents associated with the impulse metrics for both onset mortality and onset slight lung injury have been amended from those used in Tactical Training Theater Assessment and Planning (TAP) I and Phase II activities, and that the Navy did not explain why the constants and exponents have changed when the underlying data have not. The modifications yield both smaller and larger zones. The Commission states the results are counterintuitive since the Navy presumably amended the impulse metrics to account for lung compression with depth, thus the zones would be expected to be smaller rather than larger the deeper the animal dives. The Commission states that the Navy should provide a sufficient explanation regarding the constants and exponents or specify the assumptions made. NMFS, however, did provide a response in the preamble to the NWTT final rule. It stated that the numerical coefficients are slightly larger in Phase III than in Phase II, resulting in a slightly greater threshold near the surface. It also stated that the rate of increase for the Phase II thresholds with depth is greater than the rate of increase for Phase III thresholds with depth because the Phase III equations take into account the corresponding reduction in lung size with depth (making an animal more vulnerable to injury per the Goertner model; 85 FR 72327; November 12, 2020). The Commission says that NMFS' response in the NWTT final rule does not explain why lower absolute thresholds prevail below 8 m (9 yd) in depth, and why, if lung compression is accounted for in Phase III, the rate of increase of the Phase II thresholds with depth would be greater when lung compression was not accounted for. The Commission again recommends that NMFS explain in the preamble to the final rule why the constants and exponents for onset mortality and onset slight lung injury thresholds for Phase III that consider lung compression with depth result in lower rather than higher absolute thresholds when animals occur at depths greater than 8 m.

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)''. Specifically, the equations were modified for the current rulemaking period (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.

The impulse mortality/injury equations are depth dependent, with thresholds increasing with depth due to increasing hydrostatic pressure in the model for both the previous 2015–2020 phase of rulemaking (Phase II) and Phase III. The Commission correctly observes that above 8 m, the Phase II threshold is lower than the Phase III threshold, and below 8 m, the Phase II threshold is greater than the Phase III threshold. The differences in injury and mortality thresholds are due to taking into account the complete Goertner (1994) model in the Phase III criteria, as the Navy has shown in the technical report ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)''. The underlying experimental data used in Phase II and Phase III remain the same, and two aspects of the Phase III revisions explain the relationships the Commission notes:

(1) The numeric coefficients in the equations are computed by inserting the Richmond *et al.* (1973) experimental data into the model equations. Because the Phase III model equation accounts for lung compression, the plugging of experimental exposure values into a different model results in different coefficients. The numeric coefficients are slightly larger in Phase III versus Phase II, resulting in a slightly greater threshold near the surface.

(2) The rate of increase for the Phase II thresholds with depth is greater than the rate of increase for Phase III

thresholds with depth because the Phase III equations take into account the corresponding reduction in lung size with depth (making an animal more vulnerable to injury per the Goertner model), as the commenter notes.

Comment 18: The Commission comments that, consistent with other Phase III documents, the Navy used the onset mortality and onset slight lung injury criteria to determine only 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. That approach is inconsistent with the manner in which the Navy estimated the numbers of takes for PTS, TTS, and behavior for explosive activities. All of those takes have been and continue to be based on onset, not 50-percent values. The Commission comments that NMFS' responses in the corresponding preambles to the final rules, that over predicting impacts by using onset values would not afford extra protection to any animal, is irrelevant from an impact analysis standpoint. NMFS' additional response in the preamble to the NWTT final rule, that estimating takes based on the onset values would over predict effects because many of those exposures would not happen because of effective mitigation (85 FR 72328; November 12, 2020), is unsubstantiated. The Navy has not determined the effectiveness of any of its mitigation measures, and explosive activities for which mitigation measures were implemented still resulted in the deaths of multiple common dolphins in 2011. It would be more prudent for the Navy and NMFS to estimate injuries and mortalities based on onset rather than a 50-percent incidence of occurrence. The Commission recommends that NMFS use onset mortality, onset slight lung injury, and onset gastrointestinal (GI) tract injury thresholds rather than the 50-percent thresholds to estimate both the numbers of marine mammal takes and the respective ranges to effect in the final rule. If NMFS does not implement the Commission's recommendation, the Commission further recommends that in the preamble to the final rule NMFS (1) specify why it is inconsistently basing its explosive thresholds for Level A harassment on onset PTS and for Level B harassment on onset TTS and onset behavioral response, while the explosive thresholds for mortality and non-auditory Level A harassment are based on the 50-percent criteria for mortality, slight lung injury, and GI tract injury, (2) provide scientific justification supporting the assumption that slight lung and GI tract injuries are less severe than PTS and thus the 50-percent rather than onset criteria are more appropriate for estimating Level A harassment for those types of injuries, and (3) justify why the number of estimated mortalities should be predicated on at least 50 percent rather than 1 percent of the animals dying.

Response: For explosives, the type of data available are different than those available for hearing impairment, and this difference supports the use of different prediction methods. Nonetheless, as appropriate, and similar to take estimation methods for PTS, NMFS and the Navy have used a combination of exposure thresholds and consideration of mitigation to inform the take estimates. The Navy used the range to 1 percent risk of onset mortality and onset injury (also referred to as ''onset'' in the 2022 PSMR FSEIS/OEIS and the Navy's 2017 technical report titled ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'') to inform the development of mitigation zones for explosives. Ranges to effect based on 1 percent risk criteria to onset injury and onset mortality were examined to ensure that explosive mitigation zones would encompass the range to any potential mortality or non-auditory injury, affording actual protection against these effects. In all cases, the mitigation zones for explosives extend beyond the range to 1 percent risk of onset non-auditory injury, even for a small animal (representative mass = 5 kg). Given the implementation and expected effectiveness of this mitigation (based on the smaller size of the zone and available monitoring data), the application of the indicated 50-percent threshold is appropriate for the purposes of estimating take. Using the 1 percent onset non-auditory injury risk criteria to estimate take would result in an over-estimate of take, and would not afford extra protection to any animal. Specifically, calculating take based on marine mammal density within the area that an animal might be exposed above the 1 percent risk to onset injury and onset mortality criteria would over-predict effects because many of those exposures will not happen because of the effective mitigation. The Navy and NMFS consider the 50-percent incidence of onset injury and onset mortality occurrence a reasonable representation of a potential effect, and thereby appropriate for take estimation, given the mitigation requirements at the 1-percent onset injury and onset mortality threshold, and the area ensonified above this threshold would capture the appropriate reduced number of likely injuries.

While the approaches for evaluating non-auditory injury and mortality are based on different types of data and analyses than the evaluation of PTS and behavioral disturbance, and are not identical, NMFS disagrees with the commenter's assertion that the approaches are inconsistent, as both approaches consider a combination of thresholds and mitigation (where applicable) to inform take estimates. For the same reasons, it is not necessary for NMFS to ''provide scientific justification supporting the assumption that slight lung and GI tract injuries are less severe than PTS,'' as that assumption is not part of NMFS' rationale for the methods used. NMFS has explained in detail its justification for the number of estimated mortalities, which is based on both the 50 percent threshold and the mitigation applied at the one percent threshold. Further, we note that many years of Navy monitoring following explosive exercises has not detected evidence that any injury or mortality has resulted from Navy explosive exercises with the exception of one incident with dolphins in California, after which mitigation was adjusted to better account for explosives with delayed detonations (*i.e.,* zones for events with time-delayed firing were enlarged).

Furthermore, for these reasons, the methods used for estimating mortality and non-auditory injury are appropriate for estimating take, including determining the ''significant potential'' for non-auditory injury consistent with the statutory definition of Level A harassment for military readiness activities, within the limits of the best available science. Using the one percent threshold would be inappropriate and would result in an overestimation of effects, whereas, given the mitigation applied within this larger area, the 50 percent threshold results in an appropriate mechanism for estimating the significant potential for non-auditory injury.

Mitigation Measures

Extents of Zones and Passive Acoustic Monitoring

Comment 19: The Commission commented that the proposed mitigation zones would not protect high-frequency (HF) cetaceans from PTS. For example, the mitigation zone for a missile is 1,829 m (2,000 yd; Table 23 in the proposed rule), but the mean PTS zones range from 2,177–3,791 m (2,381–4,146 yd) for HF Cetaceans (Table 6–8 in the LOA application).

Similarly, the mitigation zone for an explosive bomb is 2,286 m (2,500 yd; Table 24 in the proposed rule), but the mean PTS zones similarly range from 2,177–3,791 m (2,381–4,146 yd) for HF cetaceans. The appropriateness of such zones is further complicated by aircraft deploying bombs at surface targets directly beneath the aircraft, minimizing the ability to observe the entire extent of the zone(s). In addition, missiles and rockets can be fired from vessels at targets 139 km (75 nmi) away from the firing platform (Table 23 in the proposed rule). In either case, marine mammals could be present in the target area at the time of the launch unbeknownst to the Navy.

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. The mitigation zones extend beyond the respective average ranges to PTS for all marine mammal hearing groups except HF cetaceans (the mitigation zones extend into a portion of the respective average ranges to PTS for this hearing group). The mitigation zones also extend into a portion of the average ranges to TTS for marine mammals. Therefore, depending on the species, mitigation will help avoid or reduce all or a portion of the potential for exposure to mortality, non-auditory injury, PTS, and higher levels of TTS for the largest explosives in bins E10 and bin E6. Explosives in smaller source bins (*e.g.,* missiles in bin E9, rockets in bin E3) have shorter predicted impact ranges; therefore, the mitigation zones will cover a greater portion of the impact ranges for these explosives.

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 (Standard Operating Procedures and Mitigation) of the 2022 PMSR 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 requirements under Title 10 of the U.S. Code (Title 10 requirements) to successfully accomplish military readiness objectives, and the Navy's ability to conduct testing and training associated with required acquisition milestones or as required to meet operational requirements.

Increasing the mitigation zone sizes would result in larger areas over which firing would need to be ceased in response to a sighting, and therefore would likely increase the number of times detonations would be ceased, which could extend the length of the activity. These impacts could significantly diminish event realism in a way that would prevent the activity from meeting its intended objectives. Explosive missile and rocket events require focused situational awareness of the activity area and continuous coordination between the participating platforms as required during military missions and combat operations. Additionally, Navy determined that the mitigation detailed in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS and mirrored in this final rule, 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 (*i.e.,* for HF cetaceans, as noted by the commenter); the Navy is authorized for these takes by Level A harassment.

Comment 20: The Commission notes that NMFS included only the SELcum-based ranges to effect in the preamble to the proposed rule (Tables 11–15) and specified that sound from multiple successive explosions can be expected to increase the range to the onset of an impact based on the SELcum thresholds (86 FR 37817; July 16, 2021). Although that may be true relative to the SELcum of a single detonation, the SPLpeak thresholds result in larger ranges to effect for the majority of the explosive bins for HF, low-frequency (LF), and mid-frequency (MF) cetaceans and phocids for PTS and LF cetaceans and otariids for TTS (see Tables 6–7 to 6–16 in the Navy's LOA application). For otariids and phocids, the range to onset PTS is larger for the SPLpeak rather than the SELcum threshold for clusters of 10, 12, and/or 25 munitions. As such, NMFS should have included the relevant zones in the preamble to the proposed rule for transparency purposes.

Response: The peak pressure range-to-effect tables are in Navy's LOA application submittal, next to the SEL range-to-effect tables and the relevant zones as noted by the Commission; thus, there is no issue of NMFS not being transparent. NMFS references (and often provides links to access) additional documents such as the application or previous monitoring reports that are relevant to the incidental take authorization process when a proposed authorization is published.

Comment 21: The Commission commented that the Navy indicated in the PMSR 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) and animal behavior (*e.g.,* the amount of time an animal spends at the surface of the water and group size). The Commission agrees and has made recommendations regarding the effectiveness of the Navy's visual monitoring.

Since 2010, the Navy has been collaborating with researchers at the University of St. Andrews to study Navy lookout effectiveness, but they have not been conducted on a scale and in a manner sufficient to provide useful results. Accordingly, the Commission asserts that a precautionary approach should be taken until such time that sufficient data are available, and that the Navy should supplement its visual monitoring measures with other monitoring measures rather than simply reducing the size of the zones it plans to monitor and instead use passive acoustic monitoring. The Navy did not propose to supplement visual monitoring with passive acoustic monitoring during any of its explosive activities, nor did it mention passive acoustic monitoring in relation to mitigation in either its LOA application or its DEIS/OEIS for the PMSR Study Area. Further, NMFS did not propose to require the Navy to use passive acoustic monitoring and did not mention passive acoustic monitoring in regard to mitigation in the preamble to the proposed rule.

The Commission comments that sonobuoys, which are deployed and used during many of the Navy's activities, could be deployed and used without having to construct or maintain additional systems. For example, multiple sonobuoys could be deployed with the target prior to an activity to better determine whether the target area is clear and remains clear until the munition is launched. The Navy previously specified that passive acoustic detections would not provide range or bearing to detected animals and therefore cannot be used to determine an animal's location or confirm its presence in a mitigation zone. The Commission does not agree, as Directional Frequency Analysis and

Recording (DIFAR) sonobuoys perform both functions and are routinely used by the Navy. The Commission contends that, at a minimum for PMSR, passive acoustic monitoring should be used to supplement visual monitoring, especially since the activities that the Navy proposed to conduct could injure or kill marine mammals.

Contrary to NMFS' assertion in the preamble to the NWTT final rule that sonobuoys have a narrow band that does not overlap with the vocalizations of all marine mammals (85 FR 72349; November 12, 2020), the Navy has highlighted numerous instances of sonobuoys being used to detect and locate baleen whales, delphinids, and beaked whales. All instances represent detection of a broadband, rather than narrow band, repertoire of frequencies. NMFS also indicated that bearing or distance of detections cannot be provided based on the number and type of devices typically used (85 FR 72349; November 12, 2020), and the Commission asserts this is incorrect.

The Commission further notes that personnel who monitor hydrophones and sonobuoys used by the Navy on the operational side also have the ability to monitor for marine mammals. The Commission stated that ability exists—four independent sightings were made not by the Navy lookouts but by the passive acoustic technicians (Department of the Navy (2013)), among other examples. The Commission asserts that although aircraft may not have passive or active acoustic capabilities, aircraft carriers or other vessels from which the aircraft originated very likely do have such capabilities. Given that the effectiveness of Navy lookouts conducting visual monitoring has yet to be determined, the Commission contends that, at a minimum for the PMSR Study Area, passive acoustic monitoring should be used to supplement visual monitoring. Therefore, the Commission again recommends that NMFS require the Navy to use passive acoustic monitoring (*i.e.,* DIFAR and other types of sonobuoys), whenever practicable, to supplement visual monitoring during implementation of its mitigation measures for all explosive activities in the final rule.

Response: The Lookout effectiveness study referenced by the Commission is now complete. Previously, this type of study has never been conducted; itis extremely complex to ensure data validity, and required a substantial amount of data to conduct meaningful statistical analysis. As noted by the Commission, previously there has not been enough data collected to conduct a sufficient analysis; therefore, drawing conclusions on an incomplete data set is not scientifically valid. The draft report was submitted to NMFS in April 2022 and is currently being reviewed as of the drafting of this final rule. The report provides a statistical assessment of the data available to date characterizing the effectiveness of Navy Lookouts relative to trained marine mammal observers for the purposes of implementing the mitigation measures.

There are no applicable passive acoustic monitoring arrays within the PMSR Study Area that could both detect marine mammals and alert vessels in the area to their presence. However, the Navy queries ''real-time'' whale/dolphin sighting record sources in the days leading up to an event. These include Whale Safe (*www.whalesafe.com*) and Island Packers marine mammal sightings updated on their website daily (*www.islandpackers.com/marine-mammal-sightings*), and any recent reports of cetacean strandings in the local area. Whale Safe focuses on three large cetacean species (blue, humpback, and fin whales) and is a tool that displays both visual and acoustic whale detections in the Santa Barbara Channel. It also includes a blue whale habitat model that predicts the likelihood of blue whale presence, whereas Island Packers reports on a broad range of cetacean species they observe in the Channel Islands National Park and the Channel Islands National Marine Sanctuary.

As discussed with the Navy 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. As discussed in the comment, the Navy does employ passive acoustic monitoring when practicable to do so in other Study Areas (*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) for mitigation is not practicable. The Navy does not have sufficient resources to construct and maintain additional passive acoustic monitoring systems or platforms for each training and testing activity. 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 Navy uses recent marine mammal sighting data to determine general presence of marine mammal species in the Southern California area and issue alerts to event managers. These data are not used to alter schedules or siting of events because of geographic bias in marine mammal reporting, lag times in data reporting, and the highly dynamic nature of cetacean movements. The Navy instead focuses efforts on event participant awareness and marine mammal surveys in a hazard area within hours or minutes of an event.

The time spent surveying for marine mammals varies with the size of the area being searched. A typical flight would include approximately 1–1.5 hours of search time for an area within 5 miles of the target location. Smaller search areas would require less time. In all cases, multiple passes are made over the target location. Effort does not change when there have been recent sightings in the general vicinity. In this way, the Navy's survey and notification efforts parallel efforts to notify ships to be more vigilant as they traverse designated shipping lanes. We note that whales that do not vocalize can never be detected using passive acoustic monitoring. We note that sonobuoys have a narrow band that does not overlap with the vocalizations of all marine mammals, and there is no bearing or distance on detections based on the number and type of devices typically used; therefore it is not possible to use these to implement mitigation shutdown procedures. 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 is not effective or practicable for the Navy to monitor instrumented ranges for the purpose of real-time mitigation.

Mitigation Areas and Least Practicable Adverse Impact Standard

Comment 22: The NRDC comments that despite the increase in activities, the proposed rule contemplates no additional mitigation measures to minimize harm to the environment and ''rejects outright any mitigation measures such as time-area restrictions to protect the high value habitats for marine mammals that are present in the PMSR [Study Area]''. Of particular concern to NRDC is habitat for endangered blue whale, fin whale, and

humpback whale, as well as the gray whale, which is currently undergoing an Unusual Mortality Event (UME). The comment asserts that NMFS fails to require mitigation that would protect these populations and high-value habitats from increased Navy activities that contribute to acoustic harm and ship-strike risk.

Response: NMFS has addressed this comment regarding high-value habitats for blue, fin, gray, and humpback whales as it relates to biologically important areas in responses to Comments 24 through 26, below. NMFS has also addressed any risk from vessel strike in response to Comment 27, below. The proposed and final rules do include time/area restriction on SNI, where target and missile launches would be scheduled to avoid peak pinniped pupping periods between January and July, to the maximum extent practicable.

Comment 23: The NRDC commented that NMFS must conduct its own analysis and clearly articulate it, and asserted that NMFS parrots the Navy's position on mitigation, accepting, without any meaningful evaluation of its own, the Navy's assertions of impracticability. The NRDC cites the outcome of *Conservation Council* v. *NMFS,* 97 F. Supp. 3d 1210 (D. Haw. 2015), in which the parties were able to reach a settlement agreement establishing time-area management measures on the Navy's HSTT Study Area notwithstanding NMFS' finding, following the Navy, that all such management measures would substantially affect military readiness and were not practicable. NRDC states that NMFS is simply accepting what the Navy says without conducting its own analysis. NRDC cites *Conservation Council* in stating that ''if time/area restrictions are practicable and NMFS chooses not to impose them'' then the agency must consider ''measures of equivalent effect'' to minimize injury to marine mammals. 97 F.Supp.3d at 1231.

Response: First, the commenter's reference to mitigation measures implemented pursuant to a prior settlement agreement is entirely inapplicable to a discussion of NMFS' responsibility to ensure the least practicable adverse impact under the MMPA. Specifically, for those areas that were previously covered under the 2015 settlement agreement for the HSTT Study Area, it is essential to understand that: (1) the measures were developed during negotiations with the plaintiffs and were not evaluated during those negotiations under NMFS' least practicable adverse impact 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.

Regarding the remainder of the comments, 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 and habitat, in the proposed and final rule where we refer the reader to the NWTT Study Area rule (85 FR 72312; November 12, 2020) for further explanation of our interpretation of least practicable adverse impact, and what distinguishes it from the negligible impact standard.

Furthermore, 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.

NMFS agrees that we must conduct our own analysis, which we have done here, and not just accept what is provided by the Navy. That does not mean, however, that NMFS should not review the Navy's analysis of effectiveness and practicability of its proposed mitigation measures, which by regulation the Navy was required to submit with its application, and concur with those aspects of the Navy's analysis with which NMFS agrees. NMFS has described our process for identifying the measures needed to meet the least practicable adverse impact standard in the *Mitigation Measures* section in this final rule, and we have followed the approach described there when analyzing potential mitigation for the Navy's activities in the PMSR Study Area. Responses to specific recommendations for mitigation measures provided by the commenters are discussed separately.

Comment 24: NRDC comments that NMFS has identified seven Biologically Important Areas (BIAs) located within the PMSR Study Area that provide important habitats for endangered and vulnerable marine mammal species. NMFS and its experts identified their BIAs for the west coast in areas with consistently high sighting concentrations, using data from years of coastal small-boat surveys that were designed to maximize encounters with target species, as well as from other sources. The nine BIAs for blue whales represent only 2 percent of U.S. waters in the West Coast region but encompass 87 percent of documented sightings; similarly, the seven BIAs for humpback whales represent 3 percent of U.S. waters in the West Coast region, but encompass 89 percent of documented sightings. NRDC asserts that the proposed rule concurs with the Navy's assessment that any geographic mitigation measures, including within the BIAs that occur in the PMSR Study Area, would have ''significant direct negative effects on mission effectiveness'' and are thus considered impractical (86 FR 37823; July 16, 2021). NRDC states that by the Navy's own admission, testing and training activities have historically not taken place in five out of seven of the BIAs in the PMSR Study Area, and the Navy has no current plans to use these areas for activities involving explosives or ordnance. NRDC disagrees with NMFS' determination that time-area closures in at least the five BIAs where the Navy has no current plans for testing and training are impracticable. NRDC states the proposed rule fails to discuss why such mitigation is impracticable, beyond a simple adoption of the Navy's assessment, or consider measures ''of equivalent effect,'' in violation of the least practicable adverse impact standard per *Conservation Council,* 97 F.Supp.3d at 1231.

Response: NMFS evaluated the potential effectiveness and practicability of geographic mitigation. Specifically, we reviewed the Navy's analysis in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS (including section 5.3.6.2 on Geographic Mitigation), which considers and discusses the same factors that NMFS considers to satisfy the least practicable adverse impact standard (including practicability), and we concur with the analysis and conclusions. Chapter 5 (Standard Operating Procedures and Mitigation) Section 5.3.6.2 (Geographic Mitigation) of the 2022 PMSR FEIS/OEIS includes a detailed discussion of time-area management considerations for blue whale, humpback whale, and gray whale. Chapter 5 of the 2022 PMSR FEIS/OEIS discusses and reflects the integration of standard operating procedures and mitigation measures along with consideration of in the Measures Considered but Eliminated section, includes an analysis of an array of different types of mitigation that have been recommended over the years by non-governmental organizations or the public, through scoping or public comment on environmental compliance documents. Also described in Chapter 5 (Standing Operating Procedures and

Mitigation) of the 2022 PMSR FEIS/OEIS, it has been recommended that the Navy reinclude area restrictions. Some of these mitigation measures could potentially reduce the number of marine mammals taken, via direct reduction of the activities or amounts. However, as described in Chapter 5 of the 2022 PMSR FEIS/OEIS, the Navy needs to train and test in the conditions in which it conducts warfare, and these types of modifications fundamentally change the activity in a manner that would not support the purpose and need for the training and testing (*i.e.,* are entirely impracticable) and therefore are not considered further. The mitigation required from the Navy as described in this final rule and the 2022 PMSR FSEIS/OEIS represents the least practicable adverse impact, as described further below. Any further mitigation, including entirely prohibiting training or testing activities or time/area restriction within the BIAs as discussed above, is impracticable due to implications for safety, sustainability, and mission requirements for the reasons described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FSEIS/OEIS.

In this rule, we have required time-area mitigation on SNI for hauled out pinnipeds during the pupping season based on a combination of factors that include higher densities and observations of specific important behaviors of marine mammals themselves, and in areas that clearly reflect preferred habitat. In addition to being delineated based on physical features that drive habitat function, the high densities and concentration of certain important behaviors (*e.g.,* breeding, resting) in these particular areas clearly indicate the presence of preferred habitat.

As described in our description of how we implement the least practicable adverse impact standard, we consider the degree to which the successful implementation of a potential measure is expected to reduce adverse impacts to marine mammal species or stocks and their habitat (to include consideration of the nature and scope of the anticipated impacts in the absence of the mitigation) and the practicability of applicant implementation. To begin, as described in the *Estimated Take of Marine Mammals* section of this final rule, predicted impacts to, and total authorized take of, humpback, blue, and gray whales is at a minimal level (no more than 11, 11, and 14 takes by level B harassment annually, respectively). Given this very limited number of instances of take within a year, and the fact that these species do not have notable site fidelity in the area beyond potentially staying in one area to feed for several days, there is no reason to think that any individual whale would be taken on more than a couple days within a year. As described in the Negligible Impact Analysis section, this low severity and magnitude of impacts is not expected to impact the reproduction or survival of any individuals, much less the species or stock. We recognize that repeated disturbances over longer durations have a greater chance of impacting the reproduction or survival of any individual marine mammals, and time/area restrictions in biologically important areas are one of the best means of reducing the severity and magnitude of impacts. However, in situations with minimal impacts to begin with, such as one or two exposures/year of a handful of individuals, there is a much smaller margin of potential added protection/reduction of impacts. Such is the case here. Moreover, time-area restrictions would be less effective to reduce potential impacts from testing and training activities within the PMSR Study Area for the relatively small areas identified as BIAs, given the variability in the presence of marine mammals. While blue whales and humpback whales generally return annually to the same large-scale regional foraging grounds that these BIAs are within, satellite tagging data shows these foraging grounds are large, with the locus of highest use shifting year to year within those regional areas (Mate *et al.* 1999; Mate *et al.* 2016; Mate *et al.* 2018a, 2018b). This is confirmed by surveys and studies, some of which have occurred since the 2015 BIAs were identified, comparing inter-annual variability in modeled abundance and distribution (Becker *et al.* 2016; Becker *et al.* 2018) and explained by studies documenting both shifts in the distribution of prey (Santora *et al.* 2020; Santora *et al.* 2017; Santora *et al.* 2011), and shifts in their foraging in response to ecosystem changes (Fleming *et al.* 2016).

When these factors are considered in combination with the fact that the Navy has adequately described why these measures would not be practicable, NMFS concurs that the additional geographic mitigations are not warranted. In some cases, the Navy has noted that they have no current plans to conduct certain activities in certain areas. While these statements suggest a lower likelihood that impacts will occur in such an area, they do not preclude the potential for activities to occur in the area should the need arise in the future, nor do they eliminate the impracticability of associated geographic limitations.

Comment 25: NRDC comments that NMFS should require time-area restrictions in at least the Point Conception/Arguello blue whale feeding area and the Santa Barbara Channel-San Miguel blue whale feeding area during the June to October season when blue whales are most likely to occur in concentrations in the PMSR Study Area.

Response: First, as described in the *Estimated Take of Marine Mammals* section and the response to Comment 24, predicted impacts on and total take of blue whales throughout the Study Area and in any given year is already at a minimal level (no more than 11 takes by Level B harassment). Only a subset of those impacts/takes might reasonably be expected to fall within these blue whale BIAs randomly in space and in time (only a portion of the training area, and active 5 of 12 months) and, further, when the fact that these BIAs are in an area of low Navy use (because of oil platforms, vessel routes to large ports, and other reasons) is considered, it is questionable whether any impacts will occur in the areas at all. Given this, and the specific nature of blue whale feeding in the region discussed above, time/area restrictions in these areas would likely afford little, if any, additional reduction of numbers or severity of take. When combined with the impracticability of implementation, NMFS concurs that these additional measures are not warranted. NMFS has explained that geographic mitigation in large whale feeding areas is impracticable due to implications for safety, sustainability, and mission requirements for the reasons described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FSEIS/OEIS, for which NMFS is a cooperating agency.

Of additional note, the Santa Barbara to San Miguel Blue Whale Feeding Area BIA that is within the PMSR Study Area largely overlaps the Channel Islands National Marine Sanctuary (CINMS) and the Channel Islands National Park (CINP) boundaries, which are areas where the Navy is not planning to conduct training and testing activities involving explosives, as stated in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS. Furthermore, no missiles, munitions, explosives, or other live testing or training would be conducted within the CINMS boundaries, as stated in Chapter 6 (Other Regulatory Considerations) of the

2022 PMSR FEIS/OEIS. In addition, the Navy is not proposing the use of remotely operated vehicles, unmanned underwater vehicles, or bottom crawlers as part of this 2022 PMSR FEIS/OEIS's action. Surface targets may be towed or operated under their own power as they transit through the CINMS to the PMSR Study Area. The Navy's standard operating procedures for vessel transits would minimize impacts to sanctuary resources, including large whales. Specifically, the Navy will implement Large Whale Awareness Notification Messages through which the Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales (June 1 through October 31), gray whales (November 1 through March 31) and fin whales (November 1 through May 31). Any Navy activity that would occur within these boundaries would typically include vessels and targets transiting through the area to the PMSR Study Area. No explosives or gunnery events would occur within the Santa Barbara to San Miguel BIA or within the boundaries of the CINMS or Channel Islands National Park.

Comment 26: NRDC comments that NMFS should prohibit the use of explosives and gunnery activities and require vessel speed restrictions in the Morro Bay to Point Sal feeding area and the Santa Barbara Channel-San Miguel feeding area in order to protect humpback whales and humpback whale critical habitat units of high conservation value.

Response: First, as described in the *Estimated Take of Marine Mammals* section and the response to Comment 24, predicted impacts to, and total authorized take of, humpback whales throughout the Study Area and any given year is already at a minimal level (no more than 11 takes by Level B harassment). Only a subset of those impacts/takes might reasonably be expected to fall within the humpback whale BIAs randomly in space and in time (only a portion of the training area, and active a subset of 12 months). Given this, time/area restrictions in these areas would likely afford little, if any, additional reduction of number or severity of take. When combined with the impracticability of limiting explosive use in certain geographic areas, as described in sections 5.3.6.1 and 5.3.6.2 of the point Mugu Sea Range Final EIS, which NMFS concurs with, NMFS has determined that these additional measures are not warranted.

Regarding impacts to humpback whale critical habitat, while Navy activities in the PMSR could potentially kill or injure a small amount of krill, other crustaceans, or forage fish (*e.g.,* sardine, anchovy), other prey items would likely be available to humpback whales in the immediate area surrounding the activity, or would return to the area after the activity is complete, and the impacts would not be at the level that it would adversely affect the availability of prey in a manner that might impact growth, reproduction, or survival of any individual humpback whales. The 2021 biological opinion concluded that given the frequency of the events that are part of the proposed action, the short duration of these events, the various mitigation measures (including halting of activities until marine mammals are out of the area and are not observed feeding), the fact that detonations are not proposed to occur in the water column but rather at or near (within 10 m (11 yd) above) the surface, and the relatively large number of prey items available throughout the critical habitat, any impacts of explosives resulting from PMSR activities on prey availability for the humpback whales would be insignificant.

The Navy has discussed the threat from vessel strikes (''ship strikes'') (see the ''General Threats'' Section 3.7.4.1.6.2, Commercial Industries/ Vessel Strike; and Section 3.7.5.2.3, Vessels as a Strike Stressor of the 2022 PMSR FEIS/OEIS), and NMFS continues to concur with the Navy that a vessel strike is highly unlikely in the PMSR Study Area. There has not been any documented vessel strike in the PMSR Study Area. NMFS acknowledges that there have been four naval vessel strikes of large whales recently in the SOCAL Range Complex of the HSTT Study Area (two by the U.S. Navy and two by the Australian Navy) as discussed in the *Vessel Strike* section of this final rule. Overall, activities involving Navy vessel movement in the PMSR Study Area are variable in duration (*i.e.,* hours to days), would be widely dispersed throughout the action area, and occur intermittently. Average military vessel speed for the PMSR Study Area is approximately 10.6 knots (19.6 km/ hour) for the types of vessels typically involved in PMSR activities (Mintz, 2016). In comparison to the SOCAL Range Complex, the estimated number of annual at-sea days in the PMSR Study Area is less than 3 percent of what occurs in the SOCAL Range Complex annually. Accordingly, given the description of the specified activities, the requirements of Navy vessels to travel at safe speeds, and the vessel movement mitigation already in place to reduce the likelihood of strikes, NMFS has determined vessel speed restrictions would not appreciably reduce the likely severity/magnitude of expected impacts; and it is not practicable to impose vessel speed restrictions because of the Navy's testing and training needs, as described in the Navy's Point Mugu Sea Range EIS, which NMFS reviewed and concurs with. Also, see the response to Comment 27 below.

Comment 27: The commenter states that NMFS should require time-area and vessel speed restrictions in waters between the 200 m (219 yd) and 1,000 m (1,093 yd) isobaths to reduce ship-strike risks for fin whales during the months of November through February, when the whales aggregate in the area. Over the last decade, the Navy has reported two ship-strikes of fin whales in waters adjacent to the PMSR Study Area; and in May 2021, an Australian destroyer struck and killed two fin whales; these strikes were discovered only when the ship berthed in Naval Base San Diego. The comment states that this demonstrates that—just as with large commercial ships and other vessel classes—military vessels do pose ship-strike risks to whales beyond what reporting may indicate. The comment states that, although Navy reports of ship strikes are rare, if the whales weren't stuck to the bow (which seldom happens), these latest strikes wouldn't have been detected or reported.

Response: NMFS does not anticipate and has not authorized vessel strikes of any species, based on our analysis of the specified activity (volume of vessel use in the area, maneuverability of Navy ships at higher speeds), the history of strikes in the from these activities (none), and the Navy's standard operational measures (watchstanders), as well as those specifically targeted at reducing the likelihood of a strike (avoidance zones). Therefore, speed restrictions would afford limited additional reduction in risk, if any. In addition, it is impracticable.

The main reason for ship speed reduction is to reduce 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 worldwide and in Southern California, and no history of strikes in the PMSR Study Area. 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). 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).

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 and PMSR Study Areas is typically already low, with median speeds between 5 and 12 knots. Furthermore, the presence and transits of commercial and recreational vessels, annually numbering in the thousands, pose a more significant risk to large whales than does the presence of Navy vessels. The Vessel Strike subsection of the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section of this final rule and the 2022 PMSR FEIS/OEIS Chapter 3 (Affected Environment and Environmental Consequences) Section 3.0.5.8.1 (Vessels), Chapter 5 (Standard Operating Procedures and Mitigation) Section 5.1.1.2 (Vessel Safety), and Appendix D (Military Expended Material and Direct Strike Impact Analyses) Section D.3 (Direct Vessel Strike With Marine Mammals) 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 PMSR Study Area. The Navy determined that, based on how the training and testing activities will be conducted within the PMSR Study Area, vessel speed restrictions would be incompatible with practicability criteria for safety, sustainability, and training and testing missions, as described in Chapter 3 (Affected Environment and Environmental Consequences) Section 3.0.5.8.1 (Vessels), Chapter 5 (Standard Operating Procedures and Mitigation) Section 5.1.1.2 (Vessel Safety) of the 2022 PMSR FEIS/OEIS. NMFS fully reviewed this analysis and concurs with the Navy's conclusions. 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 practical speed 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 they are not practicable.

The Navy has discussed the threat from vessel strikes (''ship strikes'') (see the ''General Threats'' Section 3.7.4.1.6.2, Commercial Industries/Vessel Strike; and Section 3.7.5.2.3, Vessels as a Strike Stressor, and Appendix D (Military Expended Material and Direct Strike Impact Analyses) Section D.3 (Direct Vessel Strike With Marine Mammals) of the 2022 PMSR FEIS/OEIS), and NMFS continues to concur that there is a very low likelihood of vessel strike in the PMSR Study Area. There has not been any documented vessel strike in the PMSR Study Area. NMFS acknowledges that there have been four vessel strikes of large whales recently in the SOCAL Range Complex of the HSTT Study Area, as discussed in the *Vessel Strike* section of this final rule. Overall, activities involving Navy vessel movement in the PMSR Study Area are variable in duration (*i.e.,* hours to days), would be widely dispersed throughout the action area, and occur intermittently and in much lower volume than in the HSTT Study Area. Average military vessel speed for the PMSR Study Area is approximately 10.6 knots (19.6 km/hour) for the types of vessels typically involved in PMSR activities (Mintz, 2016). In comparison to the SOCAL Range Complex, the estimated number of annual at-sea days in the PMSR Study Area is less than 3 percent of what occurs in the SOCAL Range Complex annually.

Comment 28: NRDC comments that the California gray whale is presently experiencing a major UME and as of August 5, 2021, the total number of strandings across the whales' range was 487 animals. NRDC states that it is well established that animals already exposed to one stressor may be less capable of responding successfully to another; that stressors can combine to produce adverse synergistic effects; and that NMFS should require time-area restrictions within the active migration areas that bisect the PMSR Study Area to avoid unnecessary harm to this population.

Response: As of April 1, 2022, the gray whale UME was 531 whales total from the United States, Canada, and Mexico. (The UME total for California (2019–2021) is 72 whales.) Full or partial necropsy examinations were conducted on a subset of the whales. Preliminary findings in several of the whales have shown evidence of emaciation. While it is true that animals already exposed to one stressor may, in some cases, be less capable of responding successfully to another, as described in the Estimated Take section, very few gray whales are predicted to be exposed to Navy stressors. Take of gray whales is already at a minimal number and level (no more than 14 takes by Level B harassment annually). In the PMSR Study Area or nearby vicinity, there are no known or otherwise identified gray whale feeding areas. The nearest gray whale feeding BIA is located well to the north off Point St. George in Northern California (Calambokidis *et al.* 2015). There are four gray whale migration BIAs that overlap with the PMSR Study Area. The Navy has considered the potential disruption of gray whale migration as presented in the Behavioral Reactions to Impulse Noise section in the 2022 PMSR FEIS/OEIS; behavioral reactions from mysticetes, if they occur at all, are likely to be short term and of little to no consequence. Based on the best available science and the prior findings from NMFS, Navy activities should have little if any on gray whale migration behavior, with no anticipated effect on reproduction or survival from Level B harassment (see 85 FR 41780; July 10, 2020, 83 FR 66846; December 27, 2018, 80 FR 73556; November 24, 2015, and NMFS (2018b)). In short, the activities in the PMSR Study Area are not anticipated to have an effect on the reproduction or survival of any gray whales. For these reasons, and in consideration of the impracticability of requiring additional time/area restrictions as described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, NMFS has not adopted the commenter's recommendation.

Comment 29: The Commission states that the Navy did not identify and NMFS did not propose any geographic mitigation areas where certain activities would be restricted during specific timeframes. The Navy and NMFS included basic information regarding certain BIAs in the LOA application and preamble to the proposed rule, and the Navy mentioned the SNI mitigation area that was included in the HSTT final rule (83 FR 66956; December 27, 2018) in the

LOA application. The Commission states that the analysis is insufficient. The Commission understands that the training and testing activities that would occur in the PMSR Study Area involve only explosives and at a much-reduced tempo than those in the HSTT Study Area.

The Commission states that NMFS restricted the Navy from using explosives (including various types of gunnery rounds, bombs, rockets, and missiles) at any time of the year in the Santa Barbara Island Mitigation Area to protect blue and gray whales and other species under the HSTT final rule (50 CFR 218.74), but that mitigation area was not mentioned by NMFS in the preamble to the proposed rule, nor was justification for its exclusion provided. For humpback whales, NMFS mentioned the Morro Bay to Point Sal and the Santa Barbara Channel–San Miguel Feeding Areas in regard to its negligible impact determination but not in regard to whether inclusion of the areas as mitigation areas was practicable or warranted under the least practicable adverse impact requirement of the MMPA (86 FR 37839; July 16, 2021). Instead, NMFS indicated that the Navy's explosive training and testing activities could occur year round within the PMSR Study Area, although they generally would not occur in those relatively nearshore feeding areas, because both areas are close to the northern Channel Islands National Marine Sanctuary, oil production platforms, and major vessel routes leading to and from the ports of Los Angeles and Long Beach (86 FR 37839; July 16, 2021). NMFS further stated that, even if some small number of humpback whale takes occurred in these BIAs and feeding behavior was disrupted, the short-term nature of the anticipated takes from these activities, combined with the likelihood that they would not occur on more than one day for any individual within a year, means that they are not expected to impact the reproduction or survival of any individuals (86 FR 37839; July 16, 2021). None of that justification is related to the practicability of implementing mitigation measures. Furthermore, NMFS has no basis for stating that takes to individuals would not occur on more than one day, particularly in known feeding areas.

Response: Please see responses to comments 23 through 26 and 30 for our responses regarding geographic mitigation areas.

Comment 30: The Commission also comments that NMFS is co-mingling its negligible impact determination and the least practicable adverse impact standard required under section 101(a)(5)(A)(i)(II)(aa) of the MMPA. Rather than including the necessary information in the preamble to the PMSR proposed rule, NMFS referred the reader to the NWTT final rule for its explanation of its interpretation of least practicable adverse impact and what distinguishes it from the negligible impact determination (86 FR 37822–37823; July 16, 2021). The Commission also states that NMFS' least practicable adverse impact analysis for the PMSR proposed rule is cursory at best and much less detailed than even the one previously provided in the preamble to the NWTT proposed rule (85 FR 33987–33991; June 2, 2020), on which the Commission had extensive comments. As such, the Commission recommends that NMFS clearly separate its application of the least practicable adverse impact requirement from its negligible impact determination—both analyses must be included in all preambles to a proposed and final rule for the subject activities, not for previously authorized and unrelated activities. The Commission also recommends that NMFS follow an analysis framework consisting of three elements to (1) determine whether the impacts of the proposed activities are negligible at the species or stock level, (2) if so, determine whether some of those impacts nevertheless are adverse either to marine mammal species or stocks or to key marine mammal habitat, and (3) if so, determine whether it is practicable for the applicant to reduce or eliminate those impacts through modifying those activities or by other means (*e.g.,* requiring additional mitigation measures to be implemented). If NMFS is using some other legal standard to implement the least practicable adverse impact requirement, then the Commission further recommends that NMFS provide a clear and concise description of that standard and explain why it believes it to be sufficient to meet the statutory legal requirements.

Response: NMFS is not co-mingling its negligible impact determination and the least practicable adverse impact standard required under section 101(a)(5)(A)(i)(II)(aa) of the MMPA. The relevant standards and analyses are articulated separately in separate sections of both the proposed and final rules and in our responses to public comments. In the proposed rule, we referred the reader to the Navy's Northwest Training and Testing (NWTT) rule (85 FR 72312; November 12, 2020) for a more detailed explanation of our interpretation of least practicable adverse impact and what distinguishes it from the negligible impact standard. We have included the full interpretation of the least practicable adverse impact in the *Mitigation Measures* section of this final rule.

Comment 31: The Commission comments that in regards to mitigation areas, NMFS did not justify why the humpback, blue and gray whale BIAs were impracticable to implement and that NMFS' discussion of those areas leads one to believe that the Navy generally does not conduct its activities in those areas, or in the Santa Barbara Island Mitigation Area from the HSTT final rule. The Commission states that as such, limiting explosive activities to avoid unintentionally injuring or killing a large whale and restricting activities in an area where the Navy generally does not train would meet both tenets of the least practicable adverse impact requirement. That is, implementation of the measure would reduce the adverse impact of either killing or injuring an animal and implementing such a measure is practicable. The Commission recommends that, at a minimum, NMFS restrict the Navy from conducting explosive activities in (1) the Morro Bay to Point Sal Humpback Whale Feeding Area from April to November and the Santa Barbara Channel–San Miguel Humpback Whale Feeding Area from March to September, (2) the Point Conception/Arguello to Point Sal Blue Whale Feeding Area and the Santa Barbara Channel and San Miguel Feeding Areas from June to October, and (3) the SBI Mitigation Area in the PMSR final rule. The Commission further recommends that NMFS include in the preamble to the final rule justification regarding why the various Gray Whale Migration Areas were not included as mitigation areas in the final rule.

Response: Please see our responses to comments 23 through 26 for relevant responses regarding geographic mitigation areas related to BIAs for large whales, as well as the specific points raised related to areas of low use.

Comment 32: The Commission comments that NMFS' analyses regarding the marine mammal habitat component of the least practicable adverse impact requirement were incorrect. For the proposed rule for the PMSR Study Area, NMFS indicated that the Navy agreed to implement procedural mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to explosives and launch activities, vessel strike, and impacts on marine mammal habitat (86 FR 37823; July 16, 2021). Specifically,

the Navy would use a combination of delayed starts and cease firing to avoid mortality or serious injury, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disruption caused by explosives and launch activities (86 FR 37823; July 16, 2021). The Commission states that all of those procedural mitigation measures are intended to protect the animal, not its habitat, whereas mitigation areas are intended to protect the habitat as well as the animal. Similarly, all the aforementioned impacts are related to the species or stock, not the habitat. The Commission again recommends that NMFS (1) adopt a clear decision-making framework that distinguishes between the species and stock component and the marine mammal habitat components of the least practicable adverse impact requirement and (2) always consider whether there are potentially adverse impacts on marine mammal habitat and whether it is practicable to minimize them.

Response: NMFS' decision-making framework for applying the least practicable adverse impact standard clearly recognizes the habitat component of the provision (see the *Mitigation Measures* section of this final rule). NMFS does consider whether there are adverse impacts on habitat and how they can be mitigated. 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 mitigation measures for pinnipeds (*e.g.,* target and missile launches shall be scheduled to avoid peak pinniped pupping periods between January and July, to the maximum extent practicable on SNI). These are based on protecting specific important behaviors of marine mammal species themselves, but also reflect preferred habitat (*e.g.,* pinniped rookeries and haulout habitat on SNI). In addition to being delineated based on physical features that drive habitat function, important behaviors (*e.g.,* reproduction, feeding, resting) in these particular areas clearly indicate the presence of preferred habitat. The MMPA does not specify that effects to habitat must be mitigated in separate measures, and NMFS has clearly included measures that provide reduction of impacts to both marine mammal species or stocks and their habitat, as required by the statute.

Comment 33: The Commission comments that NMFS specified that, to determine whether a mitigation measure meets the least practicable adverse impact standard, the effectiveness of such a measure is considered (proposed rule for PMSR Study Area, 86 FR 37790; July 16, 2021). However, the Commission states, NMFS did not mention mitigation effectiveness in the preamble to the proposed rule for the PMSR Study Area; rather NMFS repeatedly mentioned mission effectiveness, which also is a consideration regarding the practicability of mitigation measure implementation. The Commission recommends that NMFS evaluate whether in fact the mitigation measures would be effective if implemented appropriately and ensure that its evaluation criteria for applying the least practicable adverse impact standard separates 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.

Response: NMFS' application of the least practicable adverse impact standard is described in the *Mitigation Measures* section of this final rule (and also in the *Proposed Mitigation Measures* section of the proposed rule). This final rule requires the Navy to implement extensive mitigation measures to achieve the least practicable adverse impacts on the species and stocks of marine mammals and their habitat, including measures that are specific to certain times and areas. Mitigation measures include procedural mitigation measures, such as required shutdowns and delays of activities if marine mammals are sighted within certain distances, and limitations on activities on SNI such as avoiding peak pinniped pupping periods between January and July, to the maximum extent practicable. These mitigation measures were designed to lessen the frequency and severity of impacts from the Navy's activities on marine mammals and their habitat, and to ensure that the Navy's activities have the least practicable adverse impact on species and stocks. See the *Mitigation Measures* section of this final rule for additional detail on specific mitigation measures.

In the *Mitigation Measures* section, NMFS has explained in detail our interpretation and application of the least practicable adverse impact standard, which includes consideration of the degree to which the successful implementation of the measure is expected to reduce adverse impacts on marine mammal species stock and their habitat, consideration of the nature and scale of the impacts in the absence of the proposed mitigation, the likely effectiveness of the mitigation measures, and the practicability of mitigation. The Commission asserts that NMFS erroneously neglected to discuss the effectiveness of the mitigation. NMFS includes a discussion of the expected benefits of the required mitigation in the Mitigation section. However, if a measure is practicable and is expected to reduce impacts to marine mammals, and included as a required measure, there is no need in the context of the least practicable adverse impact determination to discuss its precise anticipated effectiveness. Similarly, in the context of a potential additional recommended mitigation, the consideration of the likely reduction of impacts that will be accomplished assuming the mitigation is 100 percent effective and the practicability of the measures results in a determination that the mitigation is not warranted, then there is no reason to evaluate the likely effectiveness of the measure, as any reduction below 100 percent would make the measure further unwarranted. The likely effectiveness of a mitigation measure is considered when it is necessary to inform the least practicable adverse impacts analysis.

Monitoring and Reporting Measures (Launch Activities)

Comment 34: The Commission comments that in previous incidental harassment authorizations for launch activities at SNI, the Navy was required to use forward-looking infrared (FLIR) video cameras to maximize viewing ability in low-light conditions. That information was not specified in the preamble to the proposed rule or the proposed rule itself. The Commission recommends that, at a minimum, NMFS specify in any issued LOA that the Navy must use FLIR video cameras in low-light conditions.

Response: The Navy is using multiple methods to survey pinnipeds during target and missile launch events. Multiple surveys will occur during the year that record the species, number of animals, general behavior, presence of pups, age class, gender and reactions to launch noise or other natural or human caused disturbances, in addition to environmental conditions that may include tide, wind speed, air temperature, and swell. In addition, video and acoustic monitoring (and time-lapse photography) of up to three pinniped haulout areas and rookeries will be conducted during launch events that include missiles or targets that have not been previously monitored using video and acoustic recorders for at least three launch events. NMFS added that video monitoring cameras would be either high-definition video cameras or

Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events to the *Required Monitoring on SNI* section of the preamble and the regulatory text of this final rule and to the LOA, as this was accidentally omitted from the proposed rule.

Comment 35: The Commission comments that the Navy's draft notification and reporting plan for injured and stranded marine mammals included provisions for reporting dead-stranded and live-stranded animals and vessel strikes to NMFS. The plan is nearly identical to other plans issued under the Phase III rulemakings, which only included taking associated with in-water sources. Thus, the possibility that SNI launch activities could cause a stampede, thereby injuring or killing a pinniped, was inadvertently omitted. The Commission recommends that NMFS ensure that the final notification and reporting plan accounts for the possibility of pinnipeds being injured or killed due to launch activities at SNI and include specific details regarding those activities in section 2 of the plan.

Response: What the Commission asserts is incorrect. The Navy's Notification and Reporting Plan for injured and stranded marine mammals takes into account live or dead stranded marine mammals within the study areas themselves or on Navy property. San Nicolas Island (SNI) is an extremely active breeding and haulout area for California sea lions and Northern elephant seals. Thousands of seals and sea lions occur on SNI every day. Seeing injured and dead animals on the beaches at SNI is not uncommon and comparable to what is observed on San Miguel Island, the other significant breeding and haulout island. On any given day there could be injured and dead pinnipeds on the beach unrelated to Navy activities. First year pup mortality, fishing gear entanglements, mating injuries and indications of disease are observed on SNI given the large number of animals present. Reporting all pinniped injuries and mortalities on SNI would be time consuming out of context with the Navy's permitted activities. However, any pinniped injury or mortality directly associated with Navy activities (such as from target and missile launches) is required to be reported. The Navy conducts visual surveys before and after the launches, and the other types of surveying (*e.g.,* video) is used to help document what is occurring during the launches and to help document if any injuries occurred. Regarding stranding and mortalities unrelated to Navy activities, NMFS added to the Notification and Reporting Plan that the Navy is exempted from reporting stranded pinnipeds on rookeries (*i.e.,* pinnipeds on SNI). Pinnipeds found injured or dead in the water or on the mainland would be handled through the existing marine mammal stranding network procedures. This is consistent with the HSTT Notification and Reporting Plan.

Changes From the Proposed Rule to the Final Rule

Estimated annual take by Level B harassment was modified for 7 dolphin species where the annual takes proposed were fewer than the species group size. In these cases, annual take by Level B harassment was increased to account for group size. These changes are also reflected in Table 21.

TABLE 8—ANNUAL TAKE CHANGES BETWEEN PROPOSED AND FINAL RULE

Species	Group size	Proposed rule (annual estimated take)	Final rule (annual estimated take)
Long-beaked common dolphins	255	119	255 (change of + 136).
Offshore stock of common bottlenose dolphins	16	11	16 (change of +5).
Striped dolphins	56	2	56 (change of +54).
Northern right whale dolphins	13.41 (14)	6	14 (change of +8).
Pacific white-sided dolphins	25.85 (26)	21	26 (change of +5).
Risso's dolphins	18.40 (19)	10	19 (change of +9).
Short-beaked common dolphins	161.62 (162)	170	170 (no change).
Total Additional Take by Level B Harassment	.....	.....	215.

Additionally, NMFS added that video monitoring cameras would be either high-definition video cameras or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events to the *Required Monitoring on SNI* section of the preamble and the regulatory text of this final rule and to the LOA. This was accidentally omitted from the proposed rule.

Description of Marine Mammals and Their Habitat in the Area of the Specified Activities

Marine mammal species and their associated stocks that have the potential to occur in the PMSR Study Area are presented in Table 9 along with an abundance estimate, an associated coefficient of variation value, and best and minimum abundance estimates. The Navy anticipates the take of individuals of marine mammal species by Level A harassment and Level B harassment incidental to training and testing activities from detonations of explosives occurring at or near the surface and launch activities on SNI (Table 9).

The preamble of the PMSR proposed rule included additional information about the species in this rule, all of which remains valid and applicable and is adopted by reference here and is not reprinted in the preamble of this final rule, including a subsection entitled *Marine Mammal Hearing* that described the importance of sound to marine mammals and characterized the different groups of marine mammals based on their hearing sensitivity. Therefore, we refer the reader to our proposed rule (86 FR 37790; July 16, 2021) for more information.

Information on the status, distribution, abundance, population trends, habitat, and ecology of marine mammals in the PSMR Study Area also may be found in Section 4 of the Navy's rulemaking/LOA application. NMFS reviewed this information and found it to be accurate and complete. Additional information on the general biology and ecology of marine mammals is included in the 2022 PMSR FEIS/OEIS. Table 9 incorporates data from the U.S. Pacific and the Alaska Marine Mammal Stock Assessment Reports (SARs; Carretta *et al.* 2020; Muto *et al.* 2020) and the most recent revised data in the draft SARs (see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/*

draft-marine-mammal-stock-assessment-reports). Table 9 also incorporates the best available science, including monitoring data from the Navy's marine mammal research efforts. NMFS has also reviewed new scientific literature since publication of the proposed rule, and determined that none of these nor any other new information changes our determination of which species have the potential to be affected by the Navy's activities or the information pertinent to status, distribution, abundance, population trends, habitat, or ecology of the species in this final rulemaking.

Species Not Included in the Analysis

The species carried forward for analysis (and described in Table 9) are those likely to be found in the PMSR Study Area based on the most recent data available, and do not include species that may have once inhabited or transited the area but have not been sighted in recent years (*e.g.,* species which were extirpated from factors such as 19th and 20th century commercial exploitation). Several species that may be present in the northwest Pacific Ocean have a low probability of presence in the PMSR Study Area. These species are considered extralimital (not anticipated to occur in the PMSR Study Area) or rare (occur in the PMSR Study Area sporadically, but sightings are rare). Species unlikely to be present in the PMSR Study Area or that are rare include the North Pacific right whale (*Eubalaena japonica*), rough-toothed dolphin (*Steno bredanensis*), and Steller sea lion (*Eumetopias jubatus*), and these species have all been excluded from subsequent analysis for the reasons described below. There have been only four sightings, each of a single Northern Pacific right whale, in Southern California waters over approximately the last 30 years (in 1988, 1990, 1992, and 2017) (Brownell *et al.* 2001; Carretta *et al.* 1994; National Marine Fisheries Service, 2017b; WorldNow, 2017). Sightings off California are rare, and historically, even during the period of U.S. West Coast whaling through the 1800s, right whales were considered uncommon to rare off California (Reeves and Smith, 2010; Scammon, 1874). The range of the rough-toothed dolphin is known to occasionally include the Southern California coast during periods of warmer ocean temperatures, but there is no recognized stock for the U.S. West Coast (Carretta *et al.* 2019c). Several strandings were documented for this species in central and Southern California between 1977 and 2002 (Zagzebski *et al.* 2006), but this species has not been observed during seven systematic ship surveys from 1991 to 2014 off the U.S. West Coast (Barlow, 2016). During 16 quarterly ship surveys off Southern California from 2004 to 2008, there was one encounter with a group of nine rough-toothed dolphins, which was considered an extralimital occurrence (Douglas *et al.* 2014). Steller sea lions range along the north Pacific from northern Japan to California (Perrin *et al.* 2009b), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands (Muto *et al.* 2019). San Miguel Island and Santa Rosa Island were, in the past, the southernmost rookeries and haulouts for the Steller sea lions, but their range contracted northward in the 20th century, and now Año Nuevo Island off central California is currently the southernmost rookery (Muto *et al.* 2019; NMFS, 2008; Pitcher *et al.* 2007). Steller sea lions pups were known to be born at San Miguel Island up until 1981 (NMFS, 2008; Pitcher *et al.* 2007), and so, as the population continues to increase, it is anticipated that the Steller sea lions may re-establish a breeding colony on San Miguel Island in the future. In the Channel Islands and vicinity, despite the species' general absence from the area, a consistent but small number of Steller sea lions (one to two individuals at a time) have been sighted in recent years. Aerial surveys for pinnipeds in the Channel Islands from 2011 to 2015 encountered a single Steller sea lion at SNI in 2013 (Lowry *et al.* 2017). NMFS agrees with the Navy's assessment that these species are unlikely to occur in the PMSR Study Area and they are not discussed further.

Southern sea otter (*Enhydra lutris neris*) occurs nearshore off the coast of central California, ranging from Half Moon Bay in the north to Point Conception and at SNI (Tinker *et al.* 2006; Tinker and Hatfield, 2016; U.S. Geological Survey, 2014). Southern sea otters are managed by the U.S. Fish and Wildlife Service and therefore are not discussed further.

TABLE 9—MARINE MAMMAL OCCURRENCE WITHIN THE PMSR STUDY AREA

Common name	Scientific name [1]	Stock	Status		Stock abundance (CV)/N min; most recent abundance survey [2]	PBR [3]	Annual mortalities or serious injuries (M/SI) [4]
			MMPA	Endangered Species Act (ESA)			
Blue whale	*Balaenoptera musculus*	Eastern North Pacific	Depleted	Endangered	1,898 (0.085)/1,767; 2018.	4.1	≥19.4
Bryde's whale	*Balaenoptera brydei/edeni.*	Eastern Tropical Pacific			unk; na	unk	unk
Fin whale	*Balaenoptera physalus*	California, Oregon, and Washington.	Depleted	Endangered	11,065 (0.405)/7,9700; 2018.	80	≥43.7
Gray whale	*Eschrichtius robustus*	Eastern North Pacific			26,960 (0.05)/25,849; 2016.	801	139
		Western North Pacific	Depleted	Endangered	290 (na)/271; 2016	0.12	unk
Humpback whale	*Megaptera novaeangliae.*	California, Oregon, Washington.	Depleted	Threatened/Endangered [1].	4,973 (0.048)/4,776; 2018.	28.7	≥48.6
Minke whale	*Balaenoptera acutorostrata.*	California, Oregon, and Washington.			915 (0.792)/509; 2018.	4.1	≥0.59
Sei whale	*Balaenoptera borealis*	Eastern North Pacific	Depleted	Endangered	519 (0.4)/374; 2014.	0.75	≥0.2
Baird's beaked whale	*Berardius bairdii*	California, Oregon, and Washington.			1,363 (0.533)/894; 2018.	8.9	>0.8
Common Bottlenose dolphin.	*Tursiops truncatus*	California Coastal			453 (0.06)/346; 2011.	2.7	≥2.0
		California, Oregon, and Washington Offshore.			3,477 (0.696)/2,048; 2018.	19.7	0.82
Cuvier's beaked whale	*Ziphius cavirostris*	California, Oregon, and Washington.			3,274 (0.67)/2,059; 2014.	21	<0.1
Dall's porpoise	*Phocoenoides dalli*	California, Oregon, and Washington.			16,498 (0.608)/10,286; 2018.	99	0.66

TABLE 9—MARINE MAMMAL OCCURRENCE WITHIN THE PMSR STUDY AREA—Continued

Common name	Scientific name [1]	Stock	Status		Stock abundance (CV)/N min; most recent abundance survey [2]	PBR [3]	Annual mortalities or serious injuries (M/SI) [4]
			MMPA	Endangered Species Act (ESA)			
Dwarf sperm whale	*Kogia sima*	California, Oregon, and Washington.			unk; 2014	und	0
Harbor Porpoise	*Phocoena phocoena*	Morro Bay			4,191 (0.56)/2,698; 2012.	65	0
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.			300 (0.10)/276; 2012.	2.8	0
		Eastern North Pacific Transient/West Coast Transient [5].			349 na/349; 2018	3.5	0.4
Long-beaked common dolphin.	*Delphinus capensis*	California			83,379 (0.216)/69,636; 2018.	668	≥29.7
Mesoplodont beaked whales [6].	*Mesoplodon spp*	California, Oregon, and Washington.			3,044 (0.54)/1,967; 2014.	20	0.1
Northern right whale dolphin.	*Lissodelphis borealis*	California, Oregon, and Washington.			29,285 (0.717)/17,024; 2018.	163	≥6.6
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	California, Oregon, and Washington.			34,999 (0.222)/29,090; 2018.	279	7
Pygmy sperm whale	*Kogia breviceps*	California, Oregon, and Washington.			4,111 (1.12)/1,924; 2014.	19	0
Risso's dolphins	*Grampus griseus*	California, Oregon, and Washington.			6,336 (0.32)/4,817; 2014.	46	≥3.7
Short-beaked common dolphin.	*Delphinus delphis*	California, Oregon, and Washington.			1,056,308 (0.207)/888,971; 2018.	8,889	≥30.5
Short-finned pilot whale	*Globicephala macrorhynchus.*	California, Oregon, and Washington.			836 (0.79)/466; 2014.	4.5	1.2
Sperm whale	*Physeter macrocephalus.*	California, Oregon, and Washington.	Depleted	Endangered	1,997 (0.57)/1,270; 2014.	2.5	0.6
Striped dolphin	*Stenella coeruleoalba*	California, Oregon, and Washington.			29,988 (0.299)/23,448; 2018.	225	≥4.0
Harbor seal	*Phoca vitulina*	California			30,968 na/27,348; 2012.	1,641	43
Northern elephant seal	*Mirounga angustirostris*	California			187,386 na/85,369; 2013.	5,122	13.7
California sea lion	*Zalophus californianus*	U.S. Stock			257,606 na/233,515; 2014.	14,011	≥321
Northern fur seal	*Callorhinus ursinus*	California			14,050 na/7,524; 2013.	451	1.8
Guadalupe fur seal	*Arctocephalus townsendi.*	Mexico to California	Depleted	Threatened	34,187 unk/31,109; 2013.	1,602	≥3.8

[1] Taxonomy follows Committee on Taxonomy (2018).
[2] CV is coefficient of variation; N min is the minimum estimate of stock abundance. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.
[3] PBR is the Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).
[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a range.
[5] This stock is mentioned briefly in the Pacific SAR and referred to as the ''Eastern North Pacific Transient'' stock, however, the Alaska Stock Assessment Report contains assessments of all transient killer whale stocks in the Pacific, and the Alaska Stock Assessment Report refers to this same stock as the ''West Coast Transient'' stock (Muto *et al.* 2019).
[6] The six Mesoplodont beaked whale species off California are M. densirostris, M. carlhubbsi, M. ginkgodens, M. perrini, M. peruvianus, M. stejnegeri.
Notes: na = not available; unk = unknown; und = undetermined or not provided in the draft 2021 SAR and 2020 SAR for the Pacific (Carretta *et al.* 2021) (Carretta *et al.* 2020).

Further, after Navy completed their modeling analysis, the following species/stocks had zero calculated estimated takes: Bryde's whale (Eastern Tropical Pacific), Gray whale (Western North Pacific), Sei whale (Eastern North Pacific), Baird's beaked whale (California, Oregon, and Washington), Bottlenose dolphin (California Coastal), Cuvier's beaked whale (California, Oregon, and Washington), Harbor Porpoise (Morro Bay), Killer whale (Eastern North Pacific Offshore, Eastern North Pacific Transient or West Coast Transient), Mesoplodont spp. (California, Oregon, and Washington), Short-finned pilot whale (California, Oregon, and Washington), and Northern fur seal (California). NMFS agrees with the Navy's analysis; therefore, these species are excluded from further analysis.

Below, we include additional information about the marine mammals in the area of the specified activities that informs our analysis, such as identifying known areas of important habitat or behaviors, or where Unusual Mortality Events (UME) have been designated.

Critical Habitat

The statutory definition of occupied critical habitat refers to ''physical or biological features essential to the conservation of the species,'' but the ESA does not specifically define or further describe these features. ESA-implementing regulations at 50 CFR 424.02 (as amended, 84 FR 45020; August 27, 2019), however, define such features as follows: The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch

size, distribution distances, and connectivity.

On April 21, 2021, NMFS issued a final rule to designate critical habitat in nearshore waters of the North Pacific Ocean for the endangered Central America Distinct Population Segment (DPS) and the threatened Mexico DPS of humpback whales (86 FR 21082; April 21, 2021). Critical habitat for the Central America DPS and Mexico DPS was established within the California Current Ecosystem (CCE) off the coasts of California, Oregon, and Washington, representing areas of key foraging habitat. Prey of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth is identified as an essential feature to the conservation of these whales. Because humpback whales only rarely feed on breeding grounds and during migrations, humpback whales must have access to adequate prey resources within their feeding areas to build up their fat stores and meet the nutritional and energy demands associated with individual survival, growth, reproduction, lactation, seasonal migrations, and other normal life functions. Given that each of three humpback whale DPSs very clearly rely on the feeding areas while within U.S. waters, prey has been identified as a biological feature that is essential to the conservation of the whales. The prey essential feature was specifically defined as follows: Prey species, primarily euphausiids and small pelagic schooling fishes of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth.

NMFS considered 19 units of habitat as critical habitat for the listed humpback whale DPSs. There is overlap between the PMSR Study Area and portions of the habitat designated Units 17 and 18 (see Figure 3.7–5 of the 2022 PMSR FEIS/OEIS) in the final critical habitat rule (86 FR 21082; April 21, 2021), which are described below.

Unit 17, referred to as the ''Central California Coast Area,'' extends from 36°00′ N to a southern boundary at 34°30′ N. The nearshore boundary is defined by the 30-m isobath, and the seaward boundary is drawn along the 3,700-m isobath. This unit includes waters off of southern Monterey County, and San Luis Obispo and Santa Barbara Counties. Unit 17 covers 6,697 nmi^2 (22,970 km^2) of marine habitat. This unit encompasses Morro Bay to Point Sal Biologically Important Area (BIA; see next section) and typically supports high density feeding aggregations of humpback whales from April to November (Calambokidis *et al.* 2015). Based on acoustic survey data collected during 2004–2009, large krill hotspots, ranging from 700 km^2 to 2,100 km^2 (204 nmi^2 to 612 nmi^2), occur off Big Sur, San Luis Obispo, and Point Sal (Santora *et al.* 2011). Hotspots with persistent, heightened abundance of krill were also reported in this unit in association with bathymetric submarine canyons (Santora *et al.* 2018). This is the northernmost portion of humpback whale critical habitat that overlaps with the PMSR Study Area.

Unit 18, referred to as the ''Channel Islands Area,'' extends from a northern boundary at 34°30′ N to a boundary line that extends from Oxnard, CA, seaward to the 3,700-m isobath, along which the offshore boundary is drawn. The 50-m isobath forms the shoreward boundary. This unit includes waters off of Santa Barbara and Ventura counties. This unit covers 9,799 nmi^2 (33,610 km^2) of marine habitat. This unit encompasses the Santa Barbara Channel-San Miguel BIA, which supports high density feeding aggregations of humpback whales during March through September (Calambokidis *et al.* 2015). Based on acoustic survey data collected during 2004–2009, a krill hotspot of about 780 km^2 (227 nmi^2) has been documented off Point Conception (Santora *et al.* 2011). Some additional krill hotspots have also been observed in this unit in association with bathymetric submarine canyons (Santora *et al.* 2018). Coastal waters managed by the Navy, as addressed within the Point Mugu Integrated Natural Resources Management Plan (INRMP) and SNI INRMP, were not included in the designation as these areas were determined by NMFS to be ineligible for designation as critical habitat under section 4(a)(3)(B)(i) of the ESA (84 FR 54354; October 9, 2019).The Navy does not anticipate national security impacts resulting from critical habitat designation in the portion of Region/Unit 18 that overlaps with the PMSR Study Area.

Biologically Important Areas

Biologically Important Areas (BIAs) include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur (Van Parijs, 2015). Unlike ESA critical habitat, these areas are not formally designated pursuant to any statute or law, but are a compilation of the best available science intended to inform impact and mitigation analyses. An interactive map of the BIAs may be found here: *https://cetsound.noaa.gov/biologically-important-area-map*.

BIAs off the West Coast of the continental United States with the potential to overlap portions of the PMSR Study Area include the following feeding and migration areas for blue whales, gray whales, and humpback whales and are described in further detail below (Calambokidis *et al.* 2015).

Blue Whale Feeding BIAs Three blue whale feeding BIAs overlap with the PMSR Study Area (see Figure 3.7–2 of the 2022 PMSR FEIS/OEIS). The Point Conception/Arguello to Point Sal Feeding Area and Santa Barbara Channel and San Miguel Feeding Area have large portions within the PMSR Study Area, 87 and 61 percent respectively. The San Nicolas Island Feeding Area is entirely within the PMSR Study Area (Calambokidis *et al.* 2015a). Feeding by blue whales occurs from June through October in these BIAs (Calambokidis *et al.* 2015a).

Gray Whale Migration BIAs

Four gray whale migration BIAs overlap with the PMSR Study Area (see Figure 3.7–3 of the 2022 PMSR FEIS/OEIS). The northward migration of the Eastern North Pacific stock of gray whales to the feeding grounds in Arctic waters, Alaska, the Pacific Northwest, and Northern California occurs in two phases: Northbound Phase A and Northbound Phase B (Calambokidis *et al.* 2015). Northbound Phase A migration BIA consists mainly of adults and juveniles that lead the beginning of the north-bound migration from late January through July, peaking in April through July. Newly pregnant females go first to maximize feeding time, followed by adult females and males, and then juveniles (Jones and Swartz, 2009). The Northbound Phase B migration BIA consists primarily of cow-calf pairs that begin their northward migration later (March through July), as they remain on the reproductive grounds longer to allow calves to strengthen and rapidly increase in size before the northward migration (Jones and Swartz, 2009; Urban-Ramirez *et al.* 2003). The Potential presence migration BIA (January through July; October through December) and the Southbound—All migration BIA (October through March) routes pass through the waters of the PMSR Study Area.

Humpback Whale Feeding BIAs

Two humpback whale feeding areas overlap with the PMSR Study Area (Calambokidis *et al.* 2015) (see Figure 3.7–4 of the 2022 PMSR FEIS/OEIS). These BIAs include the Morro Bay to Point Sal feeding area (April through November) and the Santa Barbara

Channel–San Miguel feeding area (March through September) (Calambokidis *et al.* 2015). The majority of these BIAs overlap with the PMSR Study Area (approximately 75 percent).

National Marine Sanctuaries

Under the National Marine Sanctuaries Act (NMSA)), NOAA can establish as national marine sanctuaries (NMS), areas of the marine environment with special conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational, or aesthetic qualities. Sanctuary regulations prohibit or regulate activities that could destroy, cause the loss of, or injure sanctuary resources pursuant to the regulations for that sanctuary and other applicable law (15 CFR part 922). NMSs are managed on a site-specific basis, and each sanctuary has site-specific regulations. Most, but not all, sanctuaries have site-specific regulatory exemptions from the prohibitions for certain military activities. Separately, section 304(d) of the NMSA requires Federal agencies to consult with the Office of National Marine Sanctuaries whenever their activities are likely to destroy, cause the loss of, or injure a sanctuary resource.

There are two NMSs managed by the Office of National Marine Sanctuaries within the PMSR Study Area: the Channel Islands NMS and a small portion of the Monterey Bay NMS. The Channel Islands NMS is an ecosystem-based managed sanctuary consisting of an area of 1,109 nmi^2 (3,804 km^2) around Anacapa Island, Santa Cruz Island, Santa Rosa Island, San Miguel Island, and Santa Barbara Island to the south. It encompasses sensitive habitats (*e.g.,* kelp forest habitat, deep benthic habitat) and includes various shipwrecks and maritime heritage artifacts. The Channel Islands NMS waters and its remote, isolated position at the confluence of two major ocean currents support significant biodiversity of marine mammals, fish, and invertebrates. At least 33 species of cetaceans have been reported in the Channel Islands NMFS region with common species, including: long-beaked common dolphin, short-beaked common dolphin, Bottlenose dolphin, Pacific white-sided dolphin, Northern right whale dolphin, Risso's dolphin, California gray whale, Blue whale, and Humpback whale. The three species of pinnipeds that are commonly found throughout or in part of the Channel Islands NMS include: California sea lion, Northern elephant seal, and Pacific harbor seal. About 877 nmi^2 (3,008 km^2) or 79 percent of the Channel Island NMS, occurs within the PMSR Study Area (see Chapter 6 of the 2022 PMSR FEIS/OEIS and Figure 6.1–1). The Monterey Bay NMS is an ecosystem-based managed sanctuary consisting of an area of 4,601 nmi^2 (15,781 km^2) stretching from Marin to Cambria and extending an average of 30 miles from shore. The Monterey Bay NMS contains extensive kelp forests and one of North America's largest underwater canyons and closest-to-shore deep ocean environments. Its diverse marine ecosystem also includes rugged rocky shores, wave-swept sandy beaches and tranquil estuaries. These habitats support a variety of marine life, including 36 species of marine mammals, more than 180 species of seabirds and shorebirds, at least 525 species of fishes, and an abundance of invertebrates and algae. Of the 36 species of marine mammals, six are pinnipeds with California sea lions being the most common, and the remainder are twenty-six species of cetaceans. Only 19 nmi^2 (65 km^2) or less than 1 percent of the Monterey Bay NMS, occurs within the PMSR Study Area (see Chapter 6 of the 2022 PMSR FEIS/OEIS and Figure 6.1–1).

Unusual Mortality Events (UMEs)

An UME is defined under Section 410(6) of the MMPA as a stranding that is unexpected; it involves a significant die-off of any marine mammal population, and demands immediate response. From 1991 to the present, there have been 14 formally recognized UMEs affecting marine mammals in California and involving species under NMFS' jurisdiction. Three UMEs with ongoing or recently closed investigations in the PMSR Study Area that inform our analysis are discussed below. The California sea lion and the Guadalupe fur seal UMEs are now closed. 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 2 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 event known as 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/2013-2016-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 2021. Numbers by year are as follows: 2015 (98), 2016 (76), 2017 (63), 2018 (45), 2019 (207), 2020 (139) and 2021 (92). The total number of Guadalupe fur seals stranding in California from January 1, 2015, through September 2, 2021, in the UME is 721. Strandings of Guadalupe fur seals became elevated in the spring of 2019 in Washington and Oregon, and strandings for seals in these two states subsequently (starting from January 1, 2019) have been added to the UME. The total number of strandings in Washington and Oregon is 181 seals, including 42 in 2020 and 45 in 2021. Strandings are seasonal and generally peak in April through June of each year. The Guadalupe fur seal strandings

involved the stranding of mostly weaned pups and juveniles (1–2 years old), with both live and dead strandings occurring. Current studies of this UME find that the majority of stranded animals experienced primary malnutrition with secondary bacterial and parasitic infections. The California portion of this UME was occurring in the same area where the 2013–2016 California sea lion UME occurred. This investigation is now closed. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2015-2021-guadalupe-fur-seal-and-2015-northern-fur-seal-unusual* for more information on this UME.

Gray Whale UME

Since January 1, 2019, elevated levels of gray whale strandings have occurred along the west coast of North America, from Mexico to Canada. As of April 1, 2022, there have been a total of 531 strandings along the coasts of the United States, Canada, and Mexico, with 259 of those strandings occurring along the U.S. coast. Of the strandings on the U.S. coast, 116 have occurred in Alaska, 59 in Washington, 12 in Oregon, and 72 in California. Partial necropsy examinations conducted on a subset of stranded whales have shown evidence of emaciation, killer whale predation, and human interactions. As part of the UME investigation process, NOAA has assembled an independent team of scientists to coordinate with the Working Group on Marine Mammal UMEs to review the data collected, sample stranded whales, consider possible causal linkages between the mortality event and recent ocean and ecosystem perturbations, and determine the next steps for the investigation. Please refer to: *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-2022-gray-whale-unusual-mortality-event-along-west-coast-and*.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

We provided a detailed discussion of the potential effects of the specified activities on marine mammals and their habitat in the preamble of the PMSR proposed rule. In the *Potential Effects of Specified Activities on Marine Mammals and Their Habitat* section of that proposed rule, NMFS provided a description of the ways marine mammals may be affected by these activities in the form of, among other things, sensory impairment (permanent and temporary threshold shift and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects. All of this information remains valid and applicable and is adopted here by reference. Therefore, we have not reprinted the information in the preamble of this final rule, but refer the reader to our proposed rule (86 FR 37790; July 16, 2021).

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 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 (16 and 28 km/hour), 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), under certain circumstances (vessel speed and location of the whale relative to the ship's centerline), 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 will 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 Navy 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 testing and training events; and

- 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.

While there have been vessel strikes documented with commercial vessels, NMFS has no documented vessel strikes of marine mammals by the Navy in the PMSR Study Area since the Navy started keeping records of ship strike in 1995 and through October 2021. Predominantly aircraft are used in the PMSR Study Area rather than vessels. The only large Navy vessels homebased in the PMSR local area (Port Hueneme) are the Self Defense Test Ship and the Mobile Ship Target, which are both greater than 200 ft in length. There are smaller vessels used either as targets or for target recovery as well. The majority of Navy vessels (*e.g.,* LCS, destroyers) used during testing and training on the PMSR Study Area transit from San Diego Navy bases and typically transit further offshore and enter/exit the PMSR Study Area from the southwestern boundaries to avoid commercial vessel traffic in and out of the Ports or Los Angeles/Long Beach via the Santa Barbara Channel.

However, recently there have been four documented whale strikes in southern California, in the Navy's Hawaii-Southern California Testing and Training (HSTT) Study Area (outside of the PMSR Study Area) over three separate events in 2021. Two fin whales were killed by a foreign vessel, a 147.5 m (483.9 ft) Royal Australian Navy destroyer, the HMAS Sydney, operating in the HSTT Study Area on or about May 7, 2021. Separately, on or about June 29 and July 11, 2021, the Navy reported two unknown whale strikes (potential mortalities) in the SOCAL Range Complex from 567-ft U.S. Navy cruisers. Vessel speed was unknown at the time of the fin whale strikes by the Royal Australian Navy, but the other two unknown whale strikes by the Navy occurred at vessel speeds of 16 and 25 knots (30 and 46 km/hour).

While these four whale strikes are concerning, they did not occur in the PMSR Study Area and the activities that occur in the PMSR are far fewer than what occurs in the HSTT Study Area. Activities involving Navy vessel movement are variable in duration (*i.e.,* hours to days), will be widely dispersed throughout the action area, and occur intermittently. Average military vessel speed for the PMSR Study Area is approximately 10.6 knots (19.6 km/hour) for the types of vessels typically involved in PMSR activities (Mintz, 2016). In comparison to the SOCAL Range Complex, the estimated number of annual at-sea days in the PMSR Study Area is less than 3 percent of what occurs in the SOCAL Range Complex annually (previously discussed in the *Vessel Movement* section of this rule, Table 4). These factors that make it unlikely that vessel strike would occur in the PMSR Study Area are discussed in greater detail below.

Regarding foreign vessels, such as the HSMAS Sydney of the Royal Australian Navy, according to Mintz (2016) and Starcovic and Mintz (2021), they comprised less than 1 percent of all vessel traffic in Southern California. Foreign military sails (FMS) are approximately 5 percent of the PMSR activities, with the majority of those activities having no vessel involvement other than range support vessels (*e.g.,* Diane G and SL–120) used to recover air or surface targets and parachutes. The PMSR Study Area averages one foreign military activity annually that involves vessels. These events can last up to 10 days and typically involve only one naval vessel as the firing platform at aerial or surface targets. Foreign military activities are required to follow the same mitigations, at a minimum, as are all customers on the PMSR Study Area. When a customer does not have the capability to implement a required protective measure, the Navy will implement the required measures (*e.g.,* marine mammal surveys aboard vessels and aircraft).

The Navy transits at safer speeds and has other protective measures in place during transits, such as using Lookouts and maintaining safe distances from marine mammals (*e.g.,* 500 yd (457.2 m) for whales and 200 yd (182.88 m) around other marine mammals except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels). A DoD funded study (Mintz, 2016) on commercial and military vessel traffic in Southern California found that median vessel speed for Navy vessels in the Santa Barbara Channel and nearshore areas of the PMSR Study Area and SOCAL (part of the HSTT Study Area) was between 3 to 8 knots (6 to 15 km/hour). Speed increased as vessels transited further offshore, between 10–16 knots, with the higher value on the furthest offshore areas of the PMSR Study Area.

Commercial tankers and cargo median vessel speeds were between 8–14 knots (15 to 26 km/hour) for the same nearshore areas. Mintz (2016) indicated that Navy vessels make up only 4 percent of the overall vessel traffic off Southern California (PMSR/SOCAL). The data collected for Mintz (2016) was collected via AIS for commercial vessel data and SeaLink for military vessels (a classified Navy/Coast Guard database maintained by the Office of Naval Intelligence). The median surface speed of two of the classes of vessels used on the PMSR Study Area from 2011 through 2015 was below 12 knots (22 km/hour). This median speed includes those training and testing operations that require elevated speeds, and being slightly above 10 knots (19 km/hour), indicates that Naval vessels typically operate at speeds that would be expected to reduce the potential of vessel strike of a marine mammal.

The Navy has several standard operating procedures for vessel safety that could result in a secondary benefit to marine mammals through a reduction in the potential for vessel strike. For example, ships operated by or for the Navy have personnel assigned to stand watch at all times, day and night, when moving through the water (*i.e.,* when the vessel is underway). Watch personnel undertake extensive training in accordance with the U.S. Navy Lookout Training Handbook or civilian equivalent. A primary duty of watch personnel is to ensure safety of the ship, which includes the requirement 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, a periscope, surfaced submarine, 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. Navy vessels are required to operate in accordance with applicable navigation rules. These rules require that vessels proceed at a safer speed so proper and effective action can be taken to avoid collision and so vessels can be stopped within a distance appropriate to the prevailing circumstances and conditions. In addition to complying with navigation requirements, Navy ships transit at speeds that are optimal for fuel conservation, to maintain ship schedules, and to meet mission requirements. Vessel captains use the

totality of the circumstances to ensure the vessel is traveling at appropriate speeds in accordance with navigation. This Navy message is also consistent with a message issued by the U.S. Coast Guard for vessels operating in the 11th district (covering the waters in and around the PMSR) as a Notice to Mariners that also informs operators about the presence of populations of blue, humpback, and fin whales in the area (see U.S. Coast Guard (2019) for further details).

For more information, please see section 3.7.1.1.1 (Vessels as a Strike Stressor) in the 2022 PMSR FEIS/OEIS. Additionally, the Navy has fewer vessel transits than commercial entities in the PMSR Study Area. To put the PMSR Navy vessel operations level in perspective, Table 10 includes an estimate of annual commercial shipping activity compared with vessel use in the PMSR Study Area. These annual estimates are representative of any given year for this rule. Navy vessels account for only about nine percent of the vessel traffic within the PMSR Study Area.

TABLE 10—NAVY AND COMMERCIAL VESSEL EVENTS ON THE PMSR STUDY AREA

Vessel type	Number of events [1]
Project Ships	300.
Support Boats	198.
Small Support Boats	Up to 387 [2].
Total PMSR Navy	836.
Commercial Shipping Estimate	>7,000 [3].

[1] "Event" is defined as one trip into the Sea Range for an assigned mission.

[2] Total number of High-Speed Maneuvering Surface Targets (HSMSTs) and QST35s used as support boats.

[3] Data collected is for fiscal year (FY) 2015.

In addition, large Navy vessels (greater than 18 m (20 yd) in length) within the offshore areas of range complexes and testing ranges operate differently from commercial vessels in ways that may reduce potential for whale collisions. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times, when a ship or surfaced submarine is moving through the water (underway).

Between 2007 and 2009, the Navy developed and distributed additional training, mitigation, and reporting tools to Navy operators to improve marine mammal protection and to ensure compliance with LOA requirements. In 2009, the Navy implemented Marine Species Awareness Training designed to improve effectiveness of visual observation for marine resources, including marine mammals. For over a decade, the Navy has implemented the Protective Measures Assessment Protocol software tool, which provides operators with notification of the required mitigation and a visual display of the planned training or testing activity location overlaid with relevant environmental data.

The Navy does not anticipate vessel strikes and has not requested authorization to take marine mammals by serious injury or mortality within the PMSR Study Area during training and testing activities. NMFS agrees with the Navy's conclusions based on this qualitative analysis, and further NMFS considered additional information based on the four recent whale strikes in the SOCAL Range Complex. Therefore, NMFS has determined that the Navy's decision not to request take authorization for vessel strike of large whales is supported by multiple factors, including no previous instances of strikes by Navy vessels in the PMSR Study Area, relatively low at-sea days compared to other Navy training and testing study areas, fewer vessels used compared to other Navy training and testing study areas, ways in which the larger vessels operate in the PMSR Study Area, and the mitigation measures that will be in place to further minimize potential vessel strike.

In addition to the reasons listed above that make it unlikely that the Navy would hit a large whale (more maneuverable ships, larger crew, *etc.*), the following are additional reasons that vessel strike of dolphins, small whales, and pinnipeds is very unlikely. Dating back more than 20 years and for as long as it has kept records, the Navy has no records of any small whales or pinnipeds being struck by a vessel as a result of Navy activities. Over the same time period, NMFS and the Navy have only one record of a dolphin being struck by a vessel as a result of Navy activities. The dolphin was accidentally struck by a Navy small boat in fall 2021 in Saint Andrew's Pass, Florida. The smaller size and maneuverability of dolphins, small whales, and pinnipeds generally make such strikes very unlikely. Other than this one reported strike of a dolphin in 2021, NMFS has never received any reports from other LOA or Incidental Harassment Authorization holders indicating that these species have been struck by vessels. In addition, worldwide ship strike records show little evidence of strikes of these groups from the shipping sector and larger vessels, and the majority of the Navy's activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid densities are lower. Based on this information, NMFS concurs with the Navy's assessment that vessel strike is not likely to occur for either large whales or smaller marine mammals.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is authorizing, which is based on the amount of take that NMFS anticipates could occur or the maximum amount that is reasonably likely to occur, depending on the type of take and the methods used to estimate it, as described in detail below. NMFS coordinated closely with the Navy in the development of their incidental take application, and agrees that the methods the Navy has put forth described herein to estimate take (including the model, thresholds, and density estimates), and the resulting numbers estimated for authorization, are appropriate and based on the best available science and appropriate for authorization.

All takes are by harassment. For a military readiness activity, 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). No serious injury or mortality of marine mammals is expected to occur.

Authorized takes will primarily be in the form of Level B harassment. The use of explosive sources and missile launches may result, either directly or as result of TTS, in the disruption of natural behavioral patterns to a point where they are abandoned or significantly altered (as defined specifically at the beginning of this section, but referred to generally as behavioral disruption). There is also the potential for Level A harassment, in the form of auditory injury, to result from exposure to the sound sources utilized in training and testing activities.

Generally speaking, for acoustic impacts, NMFS estimates the amount and type of harassment by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be taken by Level B harassment or incur some degree of temporary or permanent

hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events. Below, we describe these components in more detail and present the take estimates.

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 directly experience a disruption in behavior patterns to a point where they are abandoned or significantly altered, to incur TTS (equated to Level B harassment), or to incur 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. Refer to the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'' report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived.

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 thresholds that identify Level B harassment by behavioral disturbance (referred to as ''behavioral harassment thresholds'') have been refined here to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still 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 that 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 behavioral harassment threshold as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered. In summary, we believe these behavioral harassment thresholds are the most appropriate method for predicting Level B harassment by behavioral disturbance given the best available science and the associated uncertainty.

Hearing Impairment (TTS/PTS), Tissues Damage, and Mortality

NMFS' Acoustic Technical Guidance (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Acoustic Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The Navy's planned activity only includes the use of impulsive (explosives) sources. These thresholds (Table 11) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers. The references, analysis, and methodology used in the development of the thresholds are described in Acoustic Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance*.

Based on the best available science, the Navy (in coordination with NMFS) used the acoustic and pressure thresholds indicated in Table 11 to predict the onset of TTS, PTS, tissue damage, and mortality for explosives (impulsive) and other impulsive sound sources.

TABLE 11—ONSET OF TTS, PTS, TISSUE DAMAGE, AND MORTALITY THRESHOLDS FOR MARINE MAMMALS FOR EXPLOSIVES AND OTHER IMPULSIVE SOURCES

Functional hearing group	Species	Onset TTS	Onset PTS	Mean onset slight GI tract injury	Mean onset slight lung injury	Mean onset mortality
Low-frequency cetaceans.	All mysticetes	168 dB SEL (weighted) or 213 dB Peak SPL.	183 dB SEL (weighted) or 219 dB Peak SPL.	237 dB Peak SPL	Equation 1	Equation 2.
Mid-frequency cetaceans.	Most delphinids, medium and large toothed whales.	170 dB SEL (weighted) or 224 dB Peak SPL.	185 dB SEL (weighted) or 230 dB Peak SPL.	237 dB Peak SPL.		
High-frequency cetaceans.	Porpoises and Kogia spp..	140 dB SEL (weighted) or 196 dB Peak SPL.	155 dB SEL (weighted) or 202 dB Peak SPL.	237 dB Peak SPL.		

Notes:
Equation 1: $47.5M^{1/3}\ (1+[D_{Rm}/10.1])^{1/6}$ Pa-sec.
Equation 2: $103M^{1/3}\ (1+[D_{Rm}/10.1])^{1/6}$ Pa-sec.
M = mass of the animals in kg.
D_{Rm} = depth of the receiver (animal) in meters.
SPL = sound pressure level.

Refer to the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'' report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. Non-auditory injury (*i.e.,* other than PTS) and mortality are so unlikely as to be discountable under normal conditions and are therefore not considered further in this analysis.

The mitigation measures associated with explosives are expected to be effective in preventing non-auditory tissue damage to any potentially affected species, and when considered in combination with the modeled exposure results, no species are anticipated to incur non-auditory tissue damage during the period of this rule. Table 19 indicates the range of effects for tissue damage for different explosive types. The Navy will implement mitigation measures (described in the *Mitigation Measures* section) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Nearly all explosive events will occur during daylight hours to improve the sightability of marine mammals and thereby improve mitigation effectiveness. Observing for marine mammals during the explosive activities will include visual methods before the activity begins, in order to cover the mitigation zone (*e.g.,* 2,500 yd (2,286 m) for explosive bombs).

Behavioral Disturbance

Though significantly driven by received level, the onset of Level B harassment by direct behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle, distance), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Ellison *et al.* 2011; Southall *et al.* 2007). Based on what the available science indicates and the practical need to use thresholds based on a factor, or factors, that are both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based primarily on received level (and distance in some cases) to estimate the onset of Level B harassment by behavioral disturbance.

Explosives—Explosive thresholds for Level B harassment by behavioral disturbance for marine mammals are the hearing groups' TTS thresholds minus 5 dB (see Table 12 below and Table 11 for the TTS thresholds for explosives) for events that contain multiple impulses from explosives underwater. This was the same approach as taken in Phase II and Phase III for explosive analysis in other Navy training and testing study areas. See the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'' report (U.S. Department of the Navy, 2017c) for detailed information on how the criteria and thresholds were derived. NMFS continues to concur that this approach represents the best available science for determining behavioral disturbance of marine mammals from multiple explosives. While marine mammals may also respond to single explosive detonations, those responses are expected to more typically be in the form of startle reaction, rather than a disruption in natural behavioral patterns to the point where they are abandoned or significantly altered. On the rare occasion that a single detonation might result in a more severe behavioral response that qualifies as Level B harassment, it would be expected to be in response to a comparatively higher received level. Accordingly, NMFS considers the potential for these responses to be quantitatively accounted for through the application of the TTS threshold, which as noted above is 5dB higher than the behavioral harassment threshold for multiple explosives.

TABLE 12—THRESHOLDS FOR LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR EXPLOSIVES FOR MARINE MAMMALS

Medium	Functional hearing group	SEL (weighted)
Underwater	LF	163
Underwater	MF	165
Underwater	HF	135
Underwater	Otariids	183
Underwater	Phocids	165
In-Air	Otariids	100
In-Air	Phocids	100

Note: Weighted SEL thresholds in dB re 1 μPa^{2}s underwater. LF = low-frequency, MF = mid-frequency, HF = high-frequency.

TABLE 13—TTS/PTS THRESHOLDS FOR PINNIPEDS

[In-air]

Group	Non-impulsive		Impulsive			
	TTS threshold SEL [a] (weighted)	PTS threshold SEL [a] (weighted)	TTS threshold SEL [a] (weighted)	TTS threshold peak SPL [b] (unweighted)	PTS threshold SEL [b] (weighted)	PTS threshold peak SPL [b] (unweighted)
OA [c]	157	177	146	170	161	176
PA [d]	134	154	123	155	138	161

[a] SEL thresholds are in dB re(20μPa)^2.s.
[b] SPL thresholds in dB 20μPa in air.
[c] OA-Otariid in air (California sea lion).
[d] PA-Phocid in air (harbor seal, northern elephant seal).

Navy's Acoustic Effects Model

The Navy's Acoustic Effects Model calculates sound energy propagation from sonar and other transducers and explosives during naval activities and the sound received by animat dosimeters. Animat dosimeters are virtual representations of marine mammals distributed in the area around the modeled naval activity and each dosimeter records its individual sound ''dose.'' The model bases the distribution of animats over the PMSR Study Area on the density values in the Navy Marine Species Density Database

and distributes animats in the water column proportional to the known time that species spend at varying depths.

The model accounts for environmental variability of sound propagation in both distance and depth when computing the received sound level received by the animats. The model conducts a statistical analysis based on multiple model runs to compute the estimated effects on animals. The number of animats that exceed the thresholds for effects is tallied to provide an estimate of the number of marine mammals that could be affected.

Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered and without any avoidance of the activity by the animal. The final step of the quantitative analysis of acoustic effects is to consider the implementation of mitigation and the possibility that marine mammals would avoid continued or repeated sound exposures. For more information on this process, see the discussion in the *Take Estimation* subsection below. Many explosions from ordnance such as bombs and missiles actually occur upon impact with above-water targets. However, for this analysis, sources such as these were modeled as exploding underwater, which overestimates the amount of explosive and acoustic energy entering the water.

The model estimates the impacts caused by individual training and testing activities. During any individual modeled event, impacts to individual animats are considered over 24-hour periods. The animats do not represent actual animals, but rather a distribution of animals based on density and abundance data, which allows for a statistical analysis of the number of instances that marine mammals may be exposed to sound levels resulting in an effect. Therefore, the model estimates the number of instances in which an effect threshold was exceeded over the course of a year, but does not estimate the number of individual marine mammals that may be impacted over a year (*i.e.,* some marine mammals could be impacted several times, while others would not experience any impact). A detailed explanation of the Navy's Acoustic Effects Model is provided in the technical report ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (U.S. Department of the Navy, 2020).

Range to Effects

The following section provides range (distance) to effects for explosives, to specific acoustic thresholds determined using the Navy Acoustic Effects Model. Marine mammals exposed within these ranges for the shown duration are predicted to experience the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects to marine mammals.

Explosives

The following section provides the range (distance) over which specific physiological or behavioral effects are expected to occur based on the explosive criteria (see Section 6, Section 6.5.2.1.1 of the Navy's rulemaking/LOA application and the ''Criteria and Thresholds for U.S. Navy Acoustic and Explosive Effects Analysis (Phase III)'' report (U.S. Department of the Navy, 2017c)) and the explosive propagation calculations from the Navy Acoustic Effects Model (see Section 6, Section 6.5.2.1.3, Navy Acoustic Effects Model of the Navy's rulemaking/LOA application). The range to effects is shown for a range of explosive bins, from E1 (up to 0.25 lb net explosive weight) to E10 (up to 500 lb net explosive weight) (Table 14 through Table 20). Explosive bins not shown in these tables include E2, E4, E7, E11, and E12, as they are not used in the PMSR Study Area. Ranges are determined by modeling the distance that noise from an explosion would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response (to the degree of Level B harassment), TTS, PTS, and non-auditory injury. Ranges are provided for a representative source depth and cluster size for each bin. For events with multiple explosions, sound from successive explosions can be expected to accumulate and increase the range to the onset of an impact based on SEL thresholds. Ranges to non-auditory injury and mortality are shown in Table 19 and Table 20, respectively. NMFS has reviewed the range distance to effect data provided by the Navy and concurs with the analysis. For additional information on how ranges to impacts from explosions were estimated, see the technical report ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (U.S. Department of the Navy, 2020).

Table 14 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects that likely rise to the level of Level B harassment for high-frequency cetaceans based on the developed thresholds.

TABLE 14—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR HIGH-FREQUENCY CETACEANS

Bin	Cluster size	PTS	TTS	Behavioral
E1	1	353 (130–825)	1,234 (290–3,025)	2,141 (340–4,775)
	25	1,188 (280–3,025)	3,752 (490–8,525)	5,196 (675–12,275)
E3	1	654 (220–1,525)	2,294 (350–4,775)	3,483 (490–7,775)
	12	1,581 (300–3,525)	4,573 (650–10,275)	6,188 (725–14,775)
E5	25	2,892 (440–6,275)	6,633 (725–16,025)	8,925 (800–22,775)
E6	1	1,017 (280–2,525)	3,550 (490–7,775)	4,908 (675–12,275)
E8	1	1,646 (775–2,525)	4,322 (1,525–9,775)	5,710 (1,525–14,275)
E9	1	2,105 (850–4,025)	4,901 (1,525–12,525)	6,700 (1,525–16,775)
E10	1	2,629 (875–5,275)	5,905 (1,525–13,775)	7,996 (1,525–20,025)

[1] Average distance in meters is depicted above the minimum and maximum distances, which are in parentheses.
Notes: SEL = Sound Exposure Level, PTS = permanent threshold shift, TTS = temporary threshold shift.

Table 15 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects that likely rise to the level of Level B harassment for mid-frequency cetaceans based on the developed thresholds.

TABLE 15—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR MID-FREQUENCY CETACEANS

Bin	Cluster size	PTS	TTS	Behavioral
E1	1	25 (25–25)	118 (80–210)	178 (100–320)
	25	107 (75–170)	476 (150–1,275)	676 (240–1,525)
E3	1	50 (45–65)	233 (110–430)	345 (130–600)
	12	153 (90–250)	642 (220–1,525)	897 (270–2,025)
E5	25	318 (130–625)	1,138 (280–3,025)	1,556 (310–3,775)
E6	1	98 (70–170)	428 (150–800)	615 (210–1,525)
E8	1	160 (150–170)	676 (500–725)	942 (600–1,025)
E9	1	215 (200–220)	861 (575–950)	1,147 (650–1,525)
E10	1	275 (250–480)	1,015 (525–2,275)	1,424 (675–3,275)

[1] Average distance in meters to mortality is depicted above the minimum and maximum distances, which are in parentheses.
Notes: SEL = Sound Exposure Level, PTS = permanent threshold shift, TTS = temporary threshold shift.

Table 16 shows the minimum, average, and maximum ranges to onset of auditory and behavioral effects that likely rise to the level of Level B harassment for low-frequency cetaceans based on the developed thresholds.

TABLE 16—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR LOW-FREQUENCY CETACEANS

Bin	Cluster size	PTS	TTS	Behavioral
E1	1	51 (40–70)	227 (100–320)	124 (70–160)
	25	205 (95–270)	772 (270–1,275)	476 (190–725)
E3	1	109 (65–150)	503 (190–1,000)	284 (120–430)
	12	338 (130–525)	1,122 (320–7,775)	761 (240–6,025)
E5	25	740 (220–6,025)	2,731 (460–22,275)	1,414 (350–14,275)
E6	1	250 (100–420)	963 (260–7,275)	617 (200–1,275)
E8	1	460 (170–950)	1,146 (380–7,025)	873 (280–3,025)
E9	1	616 (200–1,275)	1,560 (450–12,025)	1,014 (330–5,025)
E10	1	787 (210–2,525)	2,608 (440–18,275)	1,330 (330–9,025)

[1] Average distance in meters to mortality is depicted above the minimum and maximum distances, which are in parentheses.
Notes: SEL = Sound Exposure Level, PTS = permanent threshold shift, TTS = temporary threshold shift.

TABLE 17—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR OTARIIDS

Bin	Cluster size	PTS	TTS	Behavioral
E1	1	7 (7–7)	34 (30–40)	56 (45–70)
	25	30 (25–35)	136 (80–180)	225 (100–320)
	10	25 (25–30)	115 (70–150)	189 (95–250)
E3	1	16 (15–19)	70 (50–95)	115 (70–150)
	12	45 (35–65)	206 (100–290)	333 (130–450)
	12	55 (50–60)	333 (280–750)	544 (440–1,025)
E5	25	98 (60–120)	418 (160–575)	626 (240–1,000)
E6	1	30 (25–35)	134 (75–180)	220 (100–320)
E8	1	50 (50–50)	235 (220–250)	385 (330–450)
E9	1	68 (65–70)	316 (280–360)	494 (390–625)
E10	1	86 (80–95)	385 (240–460)	582 (390–800)

[1] Average distance in meters to mortality is depicted above the minimum and maximum distances, which are in parentheses.
Notes: SEL = Sound Exposure Level, PTS = permanent threshold shift, TTS = temporary threshold shift.

TABLE 18—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR PHOCIDS

Bin	Cluster size	PTS	TTS	Behavioral
E1	1	45 (40–65)	210 (100–290)	312 (130–430)
	25	190 (95–260)	798 (280–1,275)	1,050 (360–2,275)
E2	1	58 (45–75)	258 (110–360)	383 (150–550)
	10	157 (85–240)	672 (240–1,275)	934 (310–1,525)
E3	1	96 (60–120)	419 (160–625)	607 (220–900)
	12	277 (120–390)	1,040 (370–2,025)	1,509 (525–6,275)
E5	25	569 (200–850)	2,104 (725–9,275)	2,895 (825–11,025)
E6	1	182 (90–250)	767 (270–1,275)	1,011 (370–1,775)
E8	1	311 (290–330)	1,154 (625–1,275)	1,548 (725–2,275)
E9	1	416 (350–470)	1,443 (675–2,025)	1,911 (800–3,525)

TABLE 18—SEL-BASED RANGES (METERS) TO ONSET PTS, ONSET TTS, AND LEVEL B HARASSMENT BY BEHAVIORAL DISTURBANCE FOR PHOCIDS—Continued

Bin	Cluster size	PTS	TTS	Behavioral
E10	1	507 (340–675)	1,734 (725–3,525)	2,412 (800–5,025)

[1] Average distance (in meters) to PTS, TTS, and behavioral thresholds are depicted above the minimum and maximum distances, which are in parentheses. Values depict the range produced by SEL hearing threshold criteria levels.

Notes: SEL = Sound Exposure Level, PTS = permanent threshold shift, TTS = temporary threshold shift.

Table 19 shows the minimum, average, and maximum ranges due to varying propagation conditions to non-auditory injury as a function of animal mass and explosive bin (*i.e.,* net explosive weight). Ranges to gastrointestinal tract injury typically exceed ranges to slight lung injury; therefore, the maximum range to effect is not mass-dependent. Animals within these water volumes would be expected to receive minor injuries at the outer ranges, increasing to more substantial injuries, and finally mortality as an animal approaches the detonation point.

TABLE 19—RANGES TO 50 PERCENT NON-AUDITORY INJURY RISK FOR ALL MARINE MAMMAL HEARING GROUPS

Bin	Range (m) (min-max)
E1	12 (11–13)
E3	25 (25–30)
E5	40 (35–140)
E6	52 (40–120)
E8	117 (75–400)
E9	120 (90–290)
E10	174 (100–480)

Note: All ranges to non-auditory injury within this table are driven by the gastrointestinal (GI) tract injury threshold regardless of animal mass.

Ranges to mortality, based on animal mass, are shown in Table 20 below.

TABLE 20—RANGES [1] TO 50 PERCENT MORTALITY RISK FOR ALL MARINE MAMMAL HEARING GROUPS AS A FUNCTION OF ANIMAL MASS

Bin	Animal mass intervals (kg) [1]					
	10	250	1,000	5,000	25,000	72,000
E1	3 (2–3)	0 (0–3)	0 (0–0)	0 (0–0)	0 (0–0)	0 (0–0)
E3	8 (6–10)	4 (2–8)	1 (0–2)	0 (0—0)	0 (0—0)	0 (0–0)
E5	13 (11–45)	7 (4–35)	3 (3–12)	2 (0–8)	0 (0–2)	0 (0–2)
E6	18 (14–55)	10 (5–45)	5 (3–15)	3 (2–10)	0 (0–3)	0 (0–2)
E8	50 (24–110)	27 (9–55)	13 (0–20)	9 (4–13)	4 (0–6)	3 (0–5)
E9	32 (30–35)	20 (13–30)	10 (8–12)	7 (6–9)	4 (3–4)	3 (2–3)
E10	56 (40–190)	25 (16–130)	13 (11–16)	9 (7–11)	5 (4–5)	4 (3–4)

[1] Average distance (m) to mortality is depicted above the minimum and maximum distances, which are in parentheses.

Marine Mammal Density

A quantitative analysis of impacts on a species or stock requires data on their abundance and distribution that may be affected by anthropogenic activities in the potentially impacted area. The most appropriate metric for this type of analysis is density, which is the number of animals present per unit area. Marine species density estimation requires a significant amount of effort to both collect and analyze data to produce a reasonable estimate. Unlike surveys for terrestrial wildlife, many marine species spend much of their time submerged, and are not easily observed. In order to collect enough sighting data to make reasonable density estimates, multiple observations are required, often in areas that are not easily accessible (*e.g.,* far offshore). Ideally, marine mammal species sighting data would be collected for the specific area and time period *(e.g.,* season) of interest and density estimates derived accordingly. However, in many places, poor weather conditions and high sea states prohibit the completion of comprehensive visual surveys.

For most cetacean species, abundance is estimated using line-transect surveys or mark-recapture studies (*e.g.,* Barlow, 2016, 2010; Barlow and Forney, 2007; Calambokidis *et al.* 2008; Calambokidis and Barlow, 2020; Cooke, 2019; Forney *et al.* 2014; Trickey *et al.* 2020). The result provides one single density estimate value for each species across broad geographic areas. This is the general approach applied in estimating cetacean abundance in NMFS' SARs. Although the single value provides a good average estimate of abundance (total number of individuals) for a specified area, it does not provide information on the species distribution or concentrations within that area, and it does not estimate density for other timeframes or seasons that were not surveyed. More recently, spatial habitat modeling developed by NMFS' Southwest Fisheries Science Center has been used to estimate cetacean densities (Barlow *et al.* 2009, 2020; Becker *et al.* 2010, 2012a, b, c, 2014, 2016; Ferguson *et al.* 2006a; Forney *et al.* 2012, 2015; Redfern *et al.* 2006; Rockwood *et al.* 2020). These models estimate cetacean density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth, *etc.*) and thus allow predictions of cetacean densities on finer spatial scales than traditional line-transect or mark recapture analyses and for areas that have not been surveyed. Within the geographic area that was modeled, densities can be predicted wherever these habitat variables can be measured or estimated.

Ideally, density data would be available for all species throughout the study area year-round, in order to best estimate the impacts of Navy activities on marine species. However, in many places, ship availability, lack of funding, inclement weather conditions, and high

sea states prevent the completion of comprehensive year-round surveys. Even with surveys that are completed, poor conditions may result in lower sighting rates for species that would typically be sighted with greater frequency under favorable conditions. Lower sighting rates preclude having an acceptably low uncertainty in the density estimates. A high level of uncertainty, indicating a low level of confidence in the density estimate, is typical for species that are rare or difficult to sight. In areas where survey data are limited or non-existent, known or inferred associations between marine habitat features and the likely presence of specific species are sometimes used to predict densities in the absence of actual animal sightings. Consequently, there is no single source of density data for every area, species, and season because of the fiscal costs, resources, and effort involved in providing enough survey coverage to sufficiently estimate density.

To characterize marine species density for large oceanic regions, the Navy reviews, critically assesses, and prioritizes existing density estimates from multiple sources, requiring the development of a systematic method for selecting the most appropriate density estimate for each combination of species, area, and season. The selection and compilation of the best available marine species density data resulted in the Navy Marine Species Density Database (NMSDD) (U.S. Department of the Navy, 2017). The finest temporal resolution (seasonal) for the NMSDD data for the HSTT Study Area was also used for the PMSR Study Area. The Navy vetted all cetacean densities with NMFS prior to use in the Navy's acoustic analysis for this rulemaking process.

A variety of density data and density models are needed in order to develop a density database that encompasses the entirety of the PMSR Study Area. Because these data are collected using different methods with varying amounts of accuracy and uncertainty, the Navy has developed a hierarchy to ensure the most accurate data is used when available. The technical report titled ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (U.S. Department of the Navy, 2020), hereafter referred to as the Density Technical Report, describes these models in detail and provides detailed explanations of the models applied to each species density estimate. The list below describes models in order of preference.

1. Spatial density models are preferred and used when available because they provide an estimate with the least amount of uncertainty by deriving estimates for divided segments of the sampling area. These models (see Becker *et al.* 2016; Forney *et al.* 2015) predict spatial variability of animal presence as a function of habitat variables (*e.g.,* sea surface temperature, seafloor depth, *etc.*). This model is developed for areas, species, and, when available, specific timeframes (months or seasons) with sufficient survey data; therefore, this model cannot be used for species with low numbers of sightings.

2. Stratified design-based density estimates use line-transect survey data with the sampling area divided (stratified) into sub-regions, and a density is predicted for each sub-region (see Barlow, 2016; Becker *et al.* 2016; Bradford *et al.* 2017; Campbell *et al.* 2014; Jefferson *et al.* 2014). While geographically stratified density estimates provide a better indication of a species' distribution within the study area, the uncertainty is typically high because each sub-region estimate is based on a smaller stratified segment of the overall survey effort.

3. Design-based density estimations use line-transect survey data from land and aerial surveys designed to cover a specific geographic area (see Carretta *et al.* 2015). These estimates use the same survey data as stratified design-based estimates, but are not segmented into sub-regions and instead provide one estimate for a large surveyed area. Although relative environmental suitability (RES) models provide estimates for areas of the oceans that have not been surveyed using information on species occurrence and inferred habitat associations and have been used in past density databases, these models were not used in the current quantitative analysis.

Below we describe how densities were determined for the species in the PMSR Study Area.

The Navy developed a protocol and database to select the best available data sources based on species, area, and time (season). The resulting Geographic Information System database, used in the NMSDD, includes seasonal density values for every marine mammal species present within the PMSR Study Area. This database is described in the ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (U.S. Department of the Navy, 2020) (also referred to as the Density Technical Report in this rule).

The Navy describes some of the challenges of interpreting the results of the quantitative analysis summarized above and described in the Density Technical Report:

> It is important to consider that even the best estimate of marine species density is really a model representation of the values of concentration where these animals might occur. Each model is limited to the variables and assumptions considered by the original data source provider. No mathematical model representation of any biological population is perfect, and with regards to marine mammal density, any single model method will not completely explain the actual distribution and abundance of marine mammal species. It is expected that there would be anomalies in the results that need to be evaluated, with independent information for each case, to support if we might accept or reject a model or portions of the model (U.S. Department of the Navy, 2017a).

There was only one species, the harbor porpoise, where there was no density estimate available within the PMSR Study Area so a new density layer was developed for harbor porpoise. Forney *et al.* (2014) provided uniform density for harbor porpoise for the species as a whole in California (Figure 7–25 in the Density Technical Report). Although these density estimates may not fully describe PMSR interannual variability, fluctuations in population size, or spatial distributions, they represent the best available science due to the paucity of other data.

NMFS coordinated with the Navy in the development of its take estimates and concurs that the Navy's approach for density appropriately utilizes the best available science. Later, in the *Analysis and Negligible Impact Determination* section, we assess how the estimated take numbers compare to abundance in order to better understand the potential number of individuals impacted.

Take Estimation

The 2022 PMSR FEIS/OEIS considered all training and testing activities planned to occur in the PMSR Study Area that have the potential to result in the MMPA-defined take of marine mammals. The Navy determined that the three stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Navy's data and analysis and determined that it is complete and accurate and agrees that the following stressors from the Navy's planned activities have the potential to result in takes by harassment.

- Acoustics (weapons firing noise; Explosions at or near the water surface can introduce loud, impulsive, broadband sounds into the marine environment);

- Explosives (explosive shock wave and sound at or near the water surface (<10 m)); and
- Land-based launch noise on SNI from missiles and rocket launches.

To predict marine mammal exposures to explosives, and because there is currently no means to model impacts on marine mammals from in-air detonations, the Navy's analysis conservatively models all detonations occurring within 10 m (11 yd) above the water's surface, as a point source located 10 centimeters underwater (U.S. Department of the Navy, 2019a). The model also assumes that all acoustic energy from the detonation remains underwater with no sound transmitted into the air. Important considerations must be factored into the analysis of results with these modeling assumptions, given that the peak pressure and sound from a detonation in air significantly decreases as it is partially reflected by the water's surface and partially transmitted underwater, as detailed in the following paragraphs. The Navy performed a quantitative analysis to estimate the probability that marine mammals could be exposed to the sound and energy from explosions during Navy testing and training activities and the effects of those exposures. The effects of underwater explosions on marine mammals depend on a variety of factors including animal size and depth; charge size and depth; depth of the water column; and distance between the animal and the charge. In general, an animal near the water surface would be less susceptible to injury because the pressure wave reflected from the water surface would interfere with the direct path pressure wave, reducing positive pressure exposure.

The quantitative analysis process (used for the 2022 PMSR FEIS/OEIS and the Navy's take request in the rulemaking/LOA application) to estimate potential exposures to marine mammals resulting from acoustic and explosive stressors is detailed in the technical report titled ''Quantifying Acoustic Impacts on Marine Species: Methods and Analytical Approach for Activities at the Point Mugu Sea Range'' (U.S. Department of the Navy, 2020). The Navy Acoustic Effects Model (NAEMO) brings together scenario simulations of the Navy's activities, sound propagation modeling, and marine mammal distribution (based on density and group size) by species to model and quantify the exposure of marine mammals above identified thresholds for behavioral harassment, TTS, PTS, non-auditory injury (lung and GI), and serious injury and mortality.

NAEMO estimates acoustic and explosive effects without taking mitigation or avoidance into account; therefore, the model overestimates predicted impacts on marine mammals within mitigation zones. The NAEMO (animal movement) model overestimates the number of marine mammals that will be exposed to sound sources that could cause PTS because the model does not consider horizontal movement of animats, including avoidance of high intensity sound exposures. As a general matter, NMFS does not prescribe the methods for estimating take for any applicant, but we review and ensure that applicants use the best available science, and methodologies that are logical and technically sound. Applicants may use different methods of calculating take (especially when using models) and still get to a result that is representative of the best available science and that allows for a rigorous and accurate evaluation of the effects on the affected populations. There are multiple aspects of the Navy's take estimation methods—propagation models, animat movement models, and behavioral thresholds, for example. NMFS evaluates the acceptability of these aspects as they evolve and are used in different rules and impact analyses. Some of the aspects of the Navy's take estimation process have been used in Navy incidental take rules since 2009 and have undergone multiple public comment processes; all of them have undergone extensive internal Navy review, and all of them have undergone comprehensive review by NMFS, which has sometimes resulted in modifications to methods or models.

The Navy uses rigorous review processes (verification, validation, and accreditation processes, peer and public review) to ensure the data and methodology it uses represent the best available science. For instance, the NAEMO model is the result of a NMFS-led Center for Independent Experts (CIE) review of the components used in earlier models. The acoustic propagation component of the NAEMO model (CASS/GRAB) is accredited by the Oceanographic and Atmospheric Master Library (OAML), and many of the environmental variables used in the NAEMO model come from approved OAML databases and are based on in-situ data collection. The animal density components of the NAEMO model are base products of the NMSDD, which includes animal density components that have been validated and reviewed by a variety of scientists from NMFS Science Centers and academic institutions. Finally, the NAEMO model simulation components underwent quality assurance/quality control (QA/QC) review and validation for model parts such as the scenario builder, acoustic builder, scenario simulator, *etc.,* conducted by qualified statisticians and modelers to ensure accuracy. Other models and methodologies have gone through similar review processes.

Based on current and other recent incidental take authorizations for target and missile launch activities on SNI (see 84 FR 18809; May 2, 2019) and in light of the monitoring results from past launches (Burke, 2017; Ugoretz, 2016), the estimation of the number of harassments that will occur as a result of launch events has been based on the total take by species observed for three previous monitoring seasons (2015–2017) divided by the number of launch events over that time period. The Navy has determined that the numbers presented in Table 5–3 of the Navy's rulemaking/LOA application represent the number of pinnipeds expected to be hauled out at SNI based on surveys in the 5-year period between 2011 and 2015 (Lowry *et al.* 2017) and the average number of takes observed per launch event (Burke, 2017; Naval Air Warfare Center Weapons Division, 2018; Ugoretz, 2016).

For California sea lions, take estimates were derived from three monitoring seasons (2015 to 2017) where an average of 274.44 instances of take of sea lions by Level B harassment occurred per launch event. Therefore, 275 sea lions was then multiplied by 40 launch events, for a conservative take estimate of 11,000 instances of take by Level B harassment of California sea lions (Table 22). This estimate is conservative because the Navy has not conducted more than 25 launch events (although authorized for more) in a given year since 2001.

For harbor seals, the take estimate is a change from the proposed IHA (84 FR 18809; May 2, 2019). The take estimate was revised from 120 to 480 instances of take by Level B harassment of harbor seal. A total of 12 takes were derived from the 2016 and 2017 monitoring seasons and multiplied by 40 launch events for a total of 480 instances of take by Level B harassment (Table 22).

For northern elephant seals, take estimates were derived from three monitoring seasons (2015 to 2017) where an average of 0.61 instances of take of northern elephant seals by Level B harassment occurred per launch event. Therefore, one northern elephant seal was then multiplied by 40 launch events for a conservative take estimate of 40 instances of take by Level B

harassment of northern elephant seals (Table 22). Generally, northern elephant seals do not react to launch events other than simple alerting responses such as raising their heads or temporarily going from sleeping to being awake; however, to account for the rare instances where they have reacted, the Navy considered that some northern elephant seals could be taken during launch events.

In summary, we believe the Navy's methods, including the underlying NAEMO modeling, are the most appropriate methods for predicting non-auditory injury, PTS, TTS, and behavioral disturbance. We would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to be taken through PTS, TTS, or behavioral disturbance.

Summary of Estimated Take Request From Training and Testing Activities

Based on the methods discussed in the previous sections and the Navy's model, the Navy provided its take estimate and request for authorization of takes incidental to the use of explosive sources and target/missile launches for training and testing activities both annually (based on the maximum number of activities that could occur per year) and over the 7-year period covered by the Navy's rulemaking/LOA application. NMFS has reviewed the Navy's data, methodology, and analysis and determined that it is complete and accurate. NMFS agrees that the estimates for incidental takes by harassment from all sources requested for authorization are the maximum number of instances in which marine mammals are reasonably expected to be taken.

Estimated Harassment Take From Training and Testing Activities

Table 21 and Table 22 summarize the Navy's take estimate, which NMFS concurs with, and includes the maximum amount of Level A harassment and Level B harassment reasonably expected to occur by species and stock for explosives and missile launch activities on SNI expected annually and for the 7-year period.

TABLE 21—ANNUAL AND 7-YEAR TOTAL SPECIES-SPECIFIC TAKE ESTIMATES FROM EXPLOSIVES FOR ALL TRAINING AND TESTING ACTIVITIES IN THE PMSR STUDY AREA (Not Inclusive of Launch Events on SNI)

Common name	Stock/DPS	Annual take by Level A harassment and Level B harassment			7-Year total take by Level A harassment and Level B harassment**		
		Behavioral response	TTS	PTS	Behavioral response	TTS	PTS
Blue whale*	Eastern North Pacific	7	4	0	52	27	0
Bryde's whale	Eastern Tropical Pacific	0	0	0	0	0	0
Fin whale*	California, Oregon, and Washington.	14	7	1	101	46	7
Gray whale	Eastern North Pacific	9	5	0	65	37	0
	Western North Pacific†	0	0	0	0	0	0
Humpback whale*	California, Oregon, and Washington/Mexico DPS.	7	4	0	52	29	0
	California, Oregon, and Washington/Central America DPS.	1	0	0	6	0	0
Minke whale	California, Oregon, and Washington.	2	1	0	15	6	0
Sei whale*	Eastern North Pacific	0	0	0	0	0	0
Baird's beaked whale	California, Oregon, and Washington.	0	0	0	0	0	0
Bottlenose dolphin	California Coastal	0	0	0	0	0	0
	California, Oregon, and Washington Offshore.	5	5	1	37	36	4
Cuvier's beaked whale	California, Oregon, and Washington.	0	0	0	0	0	0
Dall's porpoise	California, Oregon, and Washington.	261	406	49	1,824	2,845	341
Dwarf sperm whale	California, Oregon, and Washington.	20	31	6	142	217	43
Harbor Porpoise	Morro Bay	0	0	0	0	0	0
Killer whale	Eastern North Pacific Offshore.	0	0	0	0	0	0
	Eastern North Pacific Transient or West Coast Transient[6].	0	0	0	0	0	0
Long-beaked common dolphin.	California	66	44	9	454	310	65
Mesoplodont spp	California, Oregon, and Washington.	0	0	0	0	0	0
Northern right whale dolphin.	California, Oregon, and Washington.	3	2	1	22	16	4
Pacific white-sided dolphin	California, Oregon, and Washington.	11	8	2	76	58	14
Pygmy killer whale	NSD	0	0	0	0	0	0
Pygmy sperm whale	California, Oregon, and Washington.	20	31	6	141	219	44

TABLE 21—ANNUAL AND 7-YEAR TOTAL SPECIES-SPECIFIC TAKE ESTIMATES FROM EXPLOSIVES FOR ALL TRAINING AND TESTING ACTIVITIES IN THE PMSR STUDY AREA (Not Inclusive of Launch Events on SNI)—Continued

Common name	Stock/DPS	Annual take by Level A harassment and Level B harassment			7-Year total take by Level A harassment and Level B harassment**		
		Behavioral response	TTS	PTS	Behavioral response	TTS	PTS
Risso's dolphins	California, Oregon, and Washington.	6	3	1	39	24	6
Short-beaked common dolphin.	California, Oregon, and Washington.	90	65	15	630	456	103
Short-finned pilot whale	California, Oregon, and Washington.	0	0	0	0	0	0
Sperm whale*	California, Oregon, and Washington.	1	1	0	7	8	0
Striped dolphin	California, Oregon, and Washington.	1	1	0	5	4	0
Harbor seal	California	202	120	14	1,415	842	99
Northern elephant seal	California	37	63	22	258	444	152
California sea lion	U.S. Stock	8	12	2	58	81	16
Guadalupe fur seal*	Mexico to California	1	1	0	5	7	0
Northern fur seal	California	0	0	0	0	0	0

*ESA-listed species in PMSR.
**7-Year total impacts may differ from the annual total times seven as a result of standard rounding.
†Only the indicated DPS is ESA-listed.
Note: NSD = No stock designation.

TABLE 22—ANNUAL AND 7-YEAR TOTAL SPECIES-SPECIFIC TAKE ESTIMATES FROM TARGET AND MISSILE LAUNCH ACTIVITIES ON SNI IN THE PMSR STUDY AREA

Species	Stock	Annual take by Level B harassment	7-year total take by Level B harassment
California sea lion	U.S	11,000	77,000
Harbor seal	California	480	3,360
Northern elephant seal	California	40	280

Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that a determination of ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In *Conservation Council for Hawaii* v. *National Marine Fisheries Service,* 97 F. Supp. 3d 1210, 1229 (D. Haw. 2015), the Court stated that NMFS ''appear[s] to think [it] satisf[ies] the statutory 'least practicable adverse impact' requirement with a 'negligible impact' finding.'' Expressing similar concerns in a challenge to a U.S. Navy Surveillance Towed Array Sensor System Low Frequency Active Sonar (SURTASS LFA) incidental take rule (77 FR 50290; August 20, 2012), the Ninth Circuit Court of Appeals in *Natural Resources Defense Council (NRDC)* v. *Pritzker,* 828 F.3d 1125, 1134 (9th Cir. 2016), stated, ''[c]ompliance with the 'negligible impact' requirement does not mean there [is] compliance with the 'least practicable adverse impact' standard.'' As the Ninth Circuit noted in its opinion, however, the Court was interpreting the statute without the benefit of NMFS' formal interpretation. We state here explicitly that NMFS is in full agreement that the ''negligible impact'' and ''least practicable adverse impact'' requirements are distinct, even though both statutory standards refer to species and stocks. With that in mind, we provide further explanation of our interpretation of least practicable adverse impact, and explain what distinguishes it from the negligible impact standard. This discussion is consistent with previous rules we have issued, such as the Navy's Hawaii-Southern California Training and Testing (HSTT) rule (85 FR 41780; July 10, 2020), Atlantic Fleet Training and Testing (AFTT) rule (84 FR 70712; December 23, 2019), and Mariana Islands Training and Testing (MITT) rule (85 FR 46302; July 31, 2020).

Before NMFS can issue incidental take regulations under section 101(a)(5)(A) of the MMPA, it must make a finding that the total taking will have a ''negligible impact'' on the affected ''species or stocks'' of marine mammals. NMFS' and U.S. Fish and Wildlife Service's implementing regulations for section 101(a)(5) both define ''negligible impact'' as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103 and 50 CFR 18.27(c)). Recruitment (*i.e.,* reproduction) and survival rates are used to determine

population growth rates [1] and, therefore are considered in evaluating population level impacts.

As stated in the preamble to the proposed rule for the MMPA incidental take implementing regulations, not every population-level impact violates the negligible impact requirement. The negligible impact standard does not require a finding that the anticipated take will have ''no effect'' on population numbers or growth rates: The statutory standard does not require that the same recovery rate be maintained, rather that no significant effect on annual rates of recruitment or survival occurs. The key factor is the significance of the level of impact on rates of recruitment or survival (54 FR 40338, 40341; September 29, 1989).

While some level of impact on population numbers or growth rates of a species or stock may occur and still satisfy the negligible impact requirement—even without consideration of mitigation—the least practicable adverse impact provision separately requires NMFS to prescribe means of effecting the least practicable adverse impact on the species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, 50 CFR 216.102(b), which are typically identified as mitigation measures.[2]

The negligible impact and least practicable adverse impact standards in the MMPA both call for evaluation at the level of the ''species or stock.'' The MMPA does not define the term ''species.'' However, Merriam-Webster Dictionary defines ''species'' to include ''related organisms or populations potentially capable of interbreeding.'' See *www.merriam-webster.com/dictionary/species.* Section 3(11) of the MMPA defines ''stock'' as a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature. The definition of ''population'' is a group of interbreeding organisms that represents the level of organization at which speciation begins (*www.merriam-webster.com/dictionary/population*). The definition of ''population'' is strikingly similar to the MMPA's definition of ''stock,'' with both involving groups of individuals that belong to the same species and located in a manner that allows for interbreeding. In fact under MMPA section 3(11), the term ''stock'' in the MMPA is interchangeable with the statutory term ''population stock.'' Both the negligible impact standard and the least practicable adverse impact standard call for evaluation at the level of the species or stock, and the terms ''species'' and ''stock'' both relate to populations; therefore, it is appropriate to view both the negligible impact standard and the least practicable adverse impact standard as having a population-level focus.

This interpretation is consistent with Congress' statutory findings for enacting the MMPA, nearly all of which are most applicable at the species or stock (*i.e.,* population) level. *See* MMPA section 2 (finding that it is species and population stocks that are or may be in danger of extinction or depletion; that it is species and population stocks that should not diminish beyond being significant functioning elements of their ecosystems; and that it is species and population stocks that should not be permitted to diminish below their optimum sustainable population level). Annual rates of recruitment (*i.e.,* reproduction) and survival are the key biological metrics used in the evaluation of population-level impacts, and accordingly these same metrics are also used in the evaluation of population level impacts for the least practicable adverse impact standard.

Recognizing this common focus of the least practicable adverse impact and negligible impact provisions on the ''species or stock'' does not mean we conflate the two standards; despite some common statutory language, we recognize the two provisions are different and have different functions. First, a negligible impact finding is required before NMFS can issue an incidental take authorization. Although it is acceptable to use the mitigation measures to reach a negligible impact finding (see 50 CFR 216.104(c)), no amount of mitigation can enable NMFS to issue an incidental take authorization for an activity that still would not meet the negligible impact standard. Moreover, even where NMFS can reach a negligible impact finding—which we emphasize does allow for the possibility of some ''negligible'' population-level impact—the agency must still prescribe measures that will effect the least practicable amount of adverse impact upon the affected species or stocks.

Section 101(a)(5)(A)(i)(II) requires NMFS to issue, in conjunction with its authorization, binding—and enforceable—restrictions (in the form of regulations) setting forth how the activity must be conducted, thus ensuring the activity has the ''least practicable adverse impact'' on the affected species or stocks. In situations where mitigation is specifically needed to reach a negligible impact determination, section 101(a)(5)(A)(i)(II) also provides a mechanism for ensuring compliance with the ''negligible impact'' requirement. Finally, the least practicable adverse impact standard also requires consideration of measures for marine mammal habitat, with particular attention to rookeries, mating grounds, and other areas of similar significance, and for subsistence impacts, whereas the negligible impact standard is concerned solely with conclusions about the impact of an activity on annual rates of recruitment and survival.[3] In *NRDC* v. *Pritzker,* the Court stated, ''[t]he statute is properly read to mean that even if population levels are not threatened *significantly,* still the agency must adopt mitigation measures aimed at protecting *marine mammals* to the greatest extent practicable in light of military readiness needs.'' Pritzker at 1134 (emphases added). This statement is consistent with our understanding stated above that even when the effects of an action satisfy the negligible impact standard (*i.e.,* in the Court's words, ''population levels are not threatened significantly''), still the agency must prescribe mitigation under the least practicable adverse impact standard. However, as the statute indicates, the focus of both standards is ultimately the impact on the affected ''species or stock,'' and not solely focused on or directed at the impact on individual marine mammals.

We have carefully reviewed and considered the Ninth Circuit's opinion in *NRDC* v. *Pritzker* in its entirety. While the Court's reference to ''marine mammals'' rather than ''marine mammal species or stocks'' in the italicized language above might be construed as holding that the least practicable adverse impact standard applies at the individual ''marine mammal'' level, *i.e.,* that NMFS must require mitigation to minimize impacts to each individual marine mammal unless impracticable, we believe such an interpretation reflects an incomplete appreciation of the Court's holding. In our view, the opinion as a whole turned on the Court's determination that NMFS had not given separate and independent meaning to the least practicable adverse impact standard apart from the negligible impact standard, and further,

[1] A growth rate can be positive, negative, or flat.

[2] Separately, NMFS also must prescribe means of effecting the least practicable adverse impact on the availability of the species or stocks for subsistence uses, when applicable. See the *Subsistence Harvest of Marine Mammals* section for separate discussion of the effects of the specified activities on Alaska Native subsistence use.

[3] Outside of the military readiness context, mitigation may also be appropriate to ensure compliance with the ''small numbers'' language in MMPA sections 101(a)(5)(A) and (D).

that the Court's use of the term ''marine mammals'' was not addressing the question of whether the standard applies to individual animals as opposed to the species or stock as a whole. We recognize that while consideration of mitigation can play a role in a negligible impact determination, consideration of mitigation measures extends beyond that analysis. In evaluating what mitigation measures are appropriate, NMFS considers the potential impacts of the specified activities, the availability of measures to minimize those potential impacts, and the practicability of implementing those measures, as we describe below.

Implementation of Least Practicable Adverse Impact Standard

Given the *NRDC* v. *Pritzker* decision, we discuss here how we determine whether a measure or set of measures meets the ''least practicable adverse impact'' standard. Our separate analysis of whether the take anticipated to result from Navy's activities meets the ''negligible impact'' standard appears in the *Analysis and Negligible Impact Determination* section below.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors. (1) The first factor is the manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, and their habitat. This analysis considers the nature of the potential adverse impact (likelihood, scope, and range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), and the likelihood of effective implementation (probability implemented as planned). (2) The second factor is the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations or specific activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (when evaluating measures to reduce adverse impact on the species or stocks).

Assessment of Mitigation Measures for the PMSR Study Area

Section 216.104(a)(11) of NMFS' implementing regulations requires an applicant for incidental take authorization to include in its request, among other things, ''the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and [where applicable] on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' Thus NMFS' analysis of the sufficiency and appropriateness of an applicant's measures under the least practicable adverse impact standard will always begin with evaluation of the mitigation measures presented in the application.

NMFS has fully reviewed the specified activities together and the mitigation measures included in the Navy's rulemaking/LOA application and the 2022 PMSR FEIS/OEIS to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat. NMFS worked with the Navy in the development of the Navy's initially proposed measures, which were informed by years of implementation and monitoring. A complete discussion of the Navy's evaluation process used to develop, assess, and select mitigation, which was informed by input from NMFS, can be found in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS. The process described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS robustly supported NMFS' independent evaluation of whether the mitigation measures meet the least practicable adverse impact standard. The Navy is required to implement the mitigation measures identified in this rule for the full 7 years to avoid or reduce potential impacts from explosives, launch activities, and physical disturbance and vessel strike stressors.

As a general matter, where an applicant proposes measures that are likely to reduce impacts to marine mammals, the fact that they are included in the 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 still necessary for NMFS to consider whether there are additional practicable measures that would meaningfully reduce the probability or severity of impacts that could affect reproductive success or survivorship.

Overall, 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 explosives and launch activities, vessel strike, and impacts to marine mammal habitat. Specifically, the Navy will use a combination of delayed starts, and cease firing to avoid mortality or serious injury, minimize the likelihood or severity of PTS or other injury, and reduce instances of TTS or more severe behavioral disruption caused by explosives and launch activities.

The Navy assessed the practicability of these measures in the context of personnel safety, practicality of implementation, and their impacts on the Navy's ability to meet their Title 10 requirements and found that the measures are supportable. As described in more detail below, NMFS has independently evaluated the measures the Navy proposed in consideration of their ability to reduce adverse impacts on marine mammal species and their habitat and their practicability for implementation. We have determined that the measures will significantly and adequately reduce impacts on the affected marine mammal species and stocks and their habitat and, further, be practicable for Navy implementation. Therefore, the mitigation measures assure that the Navy's activities will have the least practicable adverse impact on the species or stocks and their habitat.

The Navy also evaluated numerous measures in the 2022 PMSR FEIS/OEIS that were not included in the Navy's rulemaking/LOA application, and NMFS independently reviewed and concurs with the Navy's analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Navy considered these additional potential mitigation measures in two groups. First, Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, in the Measures Considered but Eliminated section, includes an analysis of an array of different types of mitigation that have been recommended over the years by non-governmental organizations or the public, through scoping or public comment on environmental compliance documents. As described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, commenters sometimes recommend that the Navy reduce explosive use, or include area restrictions. Many of these mitigation measures could potentially reduce the number of marine mammals taken, via

direct reduction of the activities or amounts. However, as described in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, the Navy needs to train and test in the conditions in which it conducts warfare, and these types of modifications fundamentally change the activity in a manner that will not support the purpose and need for the training and testing (*i.e.,* are entirely impracticable) and therefore are not considered further. NMFS finds the Navy's explanation for why adoption of these recommendations would unacceptably undermine the purpose of the testing and training persuasive. After independent review, NMFS finds Navy's judgment on the impacts of potential mitigation measures to personnel safety, practicality of implementation, and the effectiveness of training and testing within the PMSR Study Area persuasive, and for these reasons, NMFS finds that these measures do not meet the least practicable adverse impact standard because they are not practicable.

Second, in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, the Navy evaluated an additional potential procedural mitigation measure, the use of thermal detection. The use of thermal detection had the potential to incrementally reduce take to some degree in certain circumstances, though the degree to which this would occur is typically low or uncertain. However, as described in the Navy's analysis, the measures would have significant direct negative effects on mission effectiveness and are considered impracticable (see Chapter 5 Standard Operating Procedures and Mitigation of 2022 PMSR FEIS/OEIS). NMFS independently reviewed the Navy's evaluation and concurs with this assessment, which supports NMFS' findings that the impracticability of this additional mitigation measure would greatly outweigh any potential minor reduction in marine mammal impacts that might result; therefore, this additional mitigation measure is not warranted.

Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS also describes a comprehensive method for analyzing potential geographic mitigation that includes consideration of both a biological assessment of how the potential time/area limitation would benefit the species and its habitat (*e.g.,* is a key area of biological importance or would result in avoidance or reduction of impacts) in the context of the stressors of concern in the specific area and an operational assessment of the practicability of implementation (*e.g.,* including an assessment of the specific importance of that area for training, considering proximity to training ranges and emergency landing fields and other issues). For most of the areas that were considered in the 2022 PMSR FEIS/OEIS but not included in this rule, the Navy found that geographic mitigation was not warranted because the anticipated reduction of adverse impacts on marine mammal species and their habitat was not sufficient to offset the impracticability of implementation.

The Navy considered that moving activities farther from SNI and outside of the SNI Feeding Area would not be practicable, because the added distance would substantially limit the capabilities of ground-based telemetry systems, antennas, surveillance, and metric radar systems, as well as command transmitter systems located at Point Mugu, Laguna Peak, Santa Cruz Island, and SNI. These systems are required to measure, monitor, and control various test platforms in real time; collect transmitted data for post event analysis; and enable surveillance of the area to ensure the safety of the public. Optimal functional distance for some of the ground-based radar systems is 10–200 nmi (19–370 km) and may be limited by line-of-sight for some systems. Ground-based telemetry systems rely on using in-place fiber optic cables directly linked to remote locations or microwave to transmit signals. The ground-based command transmitter system provides safe, controlled testing of unmanned targets, platforms, and missiles, including unmanned aircraft, boat or ship targets, ballistic missiles, and other long-range vehicles, all within a 40-mi radius of the transmitter. The command transmitter system also provides flight termination capability for weapons and targets that are considered too hazardous for test flights. Relocating ground-based instrumentation to other locations would result in an extensive cost to the Navy, or potentially reduce military readiness.

NMFS has reviewed the Navy's analysis in Chapter 5 (Standard Operating Procedures and Mitigation) of the 2022 PMSR FEIS/OEIS, which considers the same factors that NMFS considers to satisfy the least practicable adverse impact standard, and concurs with the analysis and conclusions. Therefore, NMFS is not including any of the measures that the Navy ruled out in the 2022 PMSR FEIS/OEIS. Below are the mitigation measures that NMFS determined will ensure the least practicable adverse impact on all affected species and their habitat, including the specific considerations for military readiness activities. The following sections describe the mitigation measures that will be implemented in association with the training and testing activities analyzed in this document. The mitigation measures all consist of procedural mitigation.

Procedural Mitigation

Procedural mitigation is mitigation that the Navy will implement whenever and wherever an applicable training or testing activity takes place within the PMSR Study Area. Procedural mitigation generally involves: (1) the use of one or more trained Lookouts to diligently observe for specific biological resources (including marine mammals) within a mitigation zone, (2) requirements for Lookouts to immediately communicate sightings of specific biological resources to the appropriate watch station for information dissemination, and (3) requirements for the watch station to implement mitigation (*e.g.,* halt an activity) until certain recommencement conditions have been met. The first procedural mitigation (Table 23) is designed to aid Lookouts and other applicable Navy personnel with their observation, environmental compliance, and reporting responsibilities. The remainder of the procedural mitigation measures (Table 24 though Table 32) are organized by stressor type and activity category and include acoustic stressors (*i.e.,* weapons firing noise), explosive stressors (*i.e.,* medium-caliber and large-caliber projectiles, missiles and rockets, bombs), and physical disturbance and strike stressors (*i.e.,* vessel movement, small-, medium-, and large-caliber non-explosive practice munitions, non-explosive missiles, and non-explosive bombs). NMFS and the Navy took into account public comments received on the 2022 PMSR FEIS/OEIS and the 2021 PMSR proposed rule, best available science, and the practicability of implementing additional mitigation measures.

TABLE 23—MITIGATION FOR ENVIRONMENTAL AWARENESS AND EDUCATION

Mitigation description
Stressor or Activity: • All testing and training activities, as applicable. Mitigation Zone Size and Mitigation Requirements: • Appropriate personnel involved in mitigation and training or testing activity reporting under the specified activities will complete one or more modules of the U.S Navy Afloat Environmental Compliance Training Series, as identified in their career path training plan. Modules include: —Introduction to the U.S. Navy Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.,* ESA, MMPA) and the corresponding responsibilities relevant to Navy testing and training. The material explains why environmental compliance is important in supporting the Navy's commitment to environmental stewardship. —Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel will successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on *marine mammals* and *sea turtles,* and including floating vegetation, jellyfish aggregations, and flocks of seabirds. —U.S. Navy Protective Measures Assessment Protocol. This module provides the necessary instruction for accessing mitigation requirements during the event planning phase using the Protective Measures Assessment Protocol software tool.

Mitigation measures for weapons firing noise as an acoustic stressor is provided below in Table 24.

TABLE 24—MITIGATION FOR WEAPONS FIRING NOISE

Mitigation description
Stressor or Activity: • Weapons firing noise associated with large-caliber gunnery activities. Number of Lookouts and Observation Platform: • 1 Lookout positioned on the ship conducting the firing. —Depending on the activity, the Lookout could be the same as the one described in Table 29 (Mitigation for Small-, Medium-, and Large-Caliber Non-Explosive Practice Munitions). Mitigation Requirements: • Mitigation zone: —30° on either side of the firing line out to 70 yd. from the muzzle of the weapon being fired. • Prior to the initial start of the activity: —Observe the mitigation zone for floating vegetation; if observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals if observed, relocate or delay the start of weapons firing. • During the activity: —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease weapons firing. • Conditions for commencing/recommencing the activity after a marine mammal sighting before or during the activity: —The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing weapons firing) until one of the following conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the firing ship; (3) the mitigation zone has been clear from any additional sightings for 30 min.; or (4) for mobile activities, the firing ship has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting and there have been no new sightings.

The Navy will implement mitigation measures to avoid or reduce potential impacts on marine mammals from the explosive stressors occurring at or near the surface resulting in underwater noise and energy. Mitigation measures for explosive stressors are provided in Table 25 though Table 27.

TABLE 25—MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES

Mitigation description
Stressor or Activity: • Gunnery activities using explosive medium-caliber and large-caliber projectiles. • Activities using a maritime surface target. Number of Lookouts and Observation Platform: • 1 Lookout on the vessel or aircraft conducting the activity. —For activities using explosive large-caliber projectiles, depending on the activity, the Lookout could be the same as the one described in Table 24 (Mitigation for Weapons Firing Noise). • If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zones:

TABLE 25—MITIGATION FOR EXPLOSIVE MEDIUM-CALIBER AND LARGE-CALIBER PROJECTILES—Continued

Mitigation description
—200 yd (182.88 m) around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles, or —600 yd (548.64 m) around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles, or —1,000 yd (914.4 m) around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles. • Prior to the start of the activity (*e.g.,* when maneuvering on station): —Observe for floating vegetation and marine mammals; if observed, relocate or delay the start until the mitigation zone is clear. —During the activity, observe for floating vegetation and marine mammals; if resource is observed, cease firing. • Conditions for commencing/recommencing the activity after a marine mammal sighting before or during the activity: —The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met until one of the re-commencement conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-based firing or 30 min. for vessel-based firing; or (4) for activities using mobile targets, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting and there have been no new sightings . • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals, follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

TABLE 26—MITIGATION FOR EXPLOSIVE MISSILES AND ROCKETS

Mitigation description
Stressor or Activity: • Aircraft-deployed explosive missiles and rockets. • Activities using a maritime surface target at ranges up to 75 nmi (139 km). Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft. • If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zones: —900 yd (822.96 m) around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight. —2,000 yd (1,828.8 m) around the intended impact location for missiles with 21–500 lb net explosive weight. • Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone): —Observe the mitigation zone for floating vegetation; if observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease firing. • Conditions for commencing/recommencing the activity after a marine mammal sighting before or during the activity: —The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals or ESA-listed species are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

TABLE 27—MITIGATION FOR EXPLOSIVE BOMBS

Mitigation description
Stressor or Activity: • Explosive bombs. • Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km). Number of Lookouts and Observation Platform: • 1 Lookout positioned in the aircraft conducting the activity. • If additional platforms are participating in the activity, personnel positioned in those assets (*e.g.,* safety observers, evaluators) will support observing the mitigation zone for applicable biological resources while performing their regular duties. Mitigation Requirements: • Mitigation zone: —2,500 yd (2,286 m) around the intended target. • Prior to the start of the activity (*e.g.,* when arriving on station):

TABLE 27—MITIGATION FOR EXPLOSIVE BOMBS—Continued

Mitigation description
—Observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of bomb deployment. • During the activity (*e.g.,* during target approach): —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease bomb deployment. • Conditions for commencing/recommencing of the activity after a marine mammal sighting before or during the activity: —The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the recommencement conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target; (3) the mitigation zone has been clear from any additional sightings for 10 min.; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting and there have been no new sightings. • After completion of the activity (*e.g.,* prior to maneuvering off station): —When practical (*e.g.,* when platforms are not constrained by fuel restrictions or mission-essential follow-on commitments), observe the vicinity of where detonations occurred; if any injured or dead marine mammals or ESA-listed species are observed, follow established incident reporting procedures. —If additional platforms are supporting this activity (*e.g.,* providing range clearance), these assets will assist in the visual observation of the area where detonations occurred.

Mitigation for physical disturbance and strike stressors are provided in Table 28 through Table 32.

TABLE 28—MITIGATION FOR VESSEL MOVEMENT

Mitigation description
Stressor or Activity: • Vessel movement. • The mitigation will not be required if (1) the vessel's safety is threatened, (2) the vessel is restricted in its ability to maneuver (*e.g.,* during launching and recovery of aircraft or landing craft, during towing activities, when mooring, *etc.*), (3) the vessel is operated autonomously, or (4) when impracticable based on mission requirements (*e.g.,* There are a few specific testing and training events that include requirements for certain systems where vessels will operate at higher speeds. As an example, some tests involve using the High-Speed Maneuvering Surface Target (HSMST). During these events, ships will operate across the full spectrum of capable speeds to accomplish the primary testing objectives). Number of Lookouts and Observation Platform: • 1 Lookout on the vessel that is underway. Mitigation Requirements: • Mitigation zone: —500 yd (457.2 m) around whales. —200 yd (182.88 m) around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels). • During the activity: —When underway, observe the mitigation zone for marine mammals; if observed, maneuver to maintain distance. • Additional requirements: —If a marine mammal vessel strike occurs, the Navy will follow the established incident reporting procedures.

TABLE 29—MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS

Mitigation description
Stressor or Activity: • Gunnery activities using small-, medium-, and large-caliber non-explosive practice munitions. • Activities using a maritime surface target. Number of Lookouts and Observation Platform: • 1 Lookout positioned on the platform conducting the activity. • Depending on the activity, the Lookout could be the same as the one described in Table 24 (Mitigation for Weapons Firing Noise). Mitigation Requirements: • Mitigation zone: —200 yd (182.88 m) around the intended impact location. • Prior to the initial start of the activity (*e.g.,* when maneuvering on station): —Observe the mitigation zone for floating vegetation; if observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease firing. • Conditions for commencing/recommencing the activity after a marine mammal sighting before or during the activity:

TABLE 29—MITIGATION FOR SMALL-, MEDIUM-, AND LARGE-CALIBER NON-EXPLOSIVE PRACTICE MUNITIONS—Continued

Mitigation description
—The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; (3) the mitigation zone has been clear from any additional sightings for 10 min. for aircraft-based firing or 30 min. for vessel-based firing; or (4) for activities using a mobile target, the intended impact location has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting and there have been no new sightings.

TABLE 30—MITIGATION FOR NON-EXPLOSIVE MISSILES AND ROCKETS

Mitigation description
Stressor or Activity: • Aircraft-deployed non-explosive missiles and rockets. • Activities using a maritime surface target at ranges of up to 75 nmi (139 km). Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft. Mitigation Requirements: • Mitigation zone: —900 yd (822.96 m) around the intended impact location. • Prior to the initial start of the activity (*e.g.,* during a fly-over of the mitigation zone): —Observe the mitigation zone for floating vegetation; if observed, relocate or delay the start until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if observed, relocate or delay the start of firing. • During the activity: —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease firing. • Conditions for commencing/recommencing the activity after a marine mammal sighting prior to or during the activity: —The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended impact location; or (3) the mitigation zone has been clear from any additional sightings for 10 min. when the activity involves aircraft that have fuel constraints, or 30 min. when the activity involves aircraft that are not typically fuel constrained.

TABLE 31—MITIGATION FOR NON-EXPLOSIVE BOMBS

Mitigation description
Stressor or Activity: • Non-explosive bombs. • Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km). Number of Lookouts and Observation Platform: • 1 Lookout positioned in an aircraft. Mitigation Requirements: • Mitigation zone: —900 yd (822.96 m) around the intended impact location. • Prior to the start of the activity (*e.g.,* when arriving on station): —Observe the mitigation zone for floating vegetation; if observed, relocate or delay the start of bomb deployment until the mitigation zone is clear. —Observe the mitigation zone for marine mammals; if observed, relocate or delay the start of bomb deployment. • During the activity (*e.g.,* during approach of the target): —Observe the mitigation zone for floating vegetation and marine mammals; if observed, cease bomb deployment. • Conditions for commencing/recommencing the activity after a marine mammal sighting prior to or during the activity: The Navy will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment or mine laying) until one of the following conditions has been met: (1) the animal is observed exiting the mitigation zone; (2) the animal is thought to have exited the mitigation zone based on a determination of its course, speed, and movement relative to the intended target or minefield location; (3) the mitigation zone has been clear from any additional sightings for 10 min.; or (4) for activities using mobile targets, the intended target has transited a distance equal to double that of the mitigation zone size beyond the location of the last sighting and there have been no new sightings.

Target and Missile Launches From SNI

Mitigation for target and missile launch activities from SNI are provided below in Table 32.

TABLE 32—MITIGATION FOR TARGET AND MISSILE LAUNCHES FROM SNI

Mitigation description
Stressor or Activity: • Target and Missile launches from SNI. Mitigation Requirements: • Navy personnel shall not enter pinniped haulouts or rookeries. Personnel may be adjacent to pinniped haulouts and rookeries prior to and following a launch for monitoring purposes. • Missiles shall not cross over pinniped haulouts at elevations less than 305 m (1,000 ft) above the haulout. • The Navy will not conduct more than 40 launch events annually. • The Navy will not conduct more than 10 launch events at night of the 40 annual launch events. • Launches shall be scheduled to avoid peak pinniped pupping periods between January and July, to the maximum extent practicable. • All manned aircraft and helicopter flight paths will maintain a minimum distance of 305 m (1,000 ft) from recognized pinniped haulouts and rookeries, except in emergencies or for real-time security incidents. • For unmanned aircraft systems (UAS), the following minimum altitudes will be maintained over pinniped haulout areas and rookeries: Class 0–2 UAS will maintain a minimum altitude of 300 ft; Class 3 UAS will maintain a minimum altitude of 500 ft; Class 4 or 5 UAS will not be flown below 1,000 ft. • If a species for which authorization has not been granted is taken, or a species for which authorization has been granted but the authorized takes are met, the Navy will consult with NMFS to determine how to proceed. • The Navy will review the launch procedure and monitoring methods, in cooperation with NMFS, if any incidents of injury or mortality of a pinniped are discovered during post-launch surveys, or if surveys indicate possible effects to the distribution, size, or productivity of the affected pinniped populations as a result of the specified activities. If necessary, appropriate changes will be made through modification to this Authorization prior to conducting the next launch of the same vehicle.

In addition, the Navy will issue awareness notification messages seasonally to alert ships and aircraft to the possible presence of concentrations of large whales in the PMSR Study Area. In order to maintain safety of navigation and to avoid interactions with large whales during transit, vessels will be instructed to remain vigilant to the presence of certain large whale species, which, especially when concentrated seasonally, may become vulnerable to vessel strikes. Lookouts will use the information from the awareness notification messages to assist their visual observations of mitigation zones and to aid in implementing mitigation. The Navy anticipates that providing Lookouts additional information about the possible presence of concentrations of large whales in certain locations seasonally will likely help the Navy further avoid interactions with these animals during vessel transits and when training and testing activities are conducted in the PMSR Study Area. The Navy will follow reporting requirements should a vessel strike occur. The Navy will issue awareness notification messages for the species and seasons indicated in Table 33.

TABLE 33—LARGE WHALE AWARENESS NOTIFICATION MESSAGES

Blue Whale Awareness Notification Message (June 1–October 31), Gray Whale Awareness Notification Message (November 1–March 31), and Fin Whale Awareness Notification Message (November 1–May 31): • The Navy will issue a seasonal awareness notification message to alert ships and aircraft operating in the area to the possible presence of concentrations of large whales, including blue whales (June 1 through October 31), gray whales (November 1 through March 31) and fin whales (November 1 through May 31). • To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy will instruct vessels to remain vigilant to the presence of large whale species (including blue whales), that when concentrated seasonally, may become vulnerable to vessel strikes. • Lookouts will use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during testing and training activities and to aid in the implementation of mitigation observation of applicable mitigation zones during testing and training activities and to aid in the implementation of mitigation.

Mitigation Conclusions

NMFS has carefully evaluated the Navy's mitigation measures—many of which were developed with NMFS' input during the previous phases of Navy training and testing authorizations—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the 2022 PMSR 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 or 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 their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's proposed mitigation measures, as well as other measures considered by the Navy and NMFS, NMFS has determined that the mitigation measures included in this final rule are the appropriate means of effecting the least practicable adverse impact on the 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, an adaptive management provision 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 this final rule satisfy the statutory standard and that any adverse impacts that remain cannot be practicably 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 the PMSR, the Navy has been monitoring missile launches at SNI in accordance with the MMPA under IHAs or LOAs since 2001 (NMFS, 2014a, 2019a). Associated with those authorizations, monitoring reports submitted to NMFS in various periodic reports have included sound levels measurements from the launches and have documented the behavior of hauled out pinnipeds before, during, and after those launches by direct observation and in video recordings (Burke, 2017; Holst and Lawson, 2002; Holst and Greene Jr., 2005, 2006; Holst and Greene Jr., 2008; Holst and Greene Jr., 2010; Holst *et al.* 2011; Holst *et al.* 2003; Ugoretz and Greene Jr., 2012; Ugoretz, 2014, 2015, 2016).

In other locations where Navy testing and training activities occur, the Navy has also been conducting marine mammal research and monitoring in the Pacific Ocean for decades. A formal coordinated marine species monitoring program in support of the MMPA and ESA authorizations for the Navy Range Complexes worldwide was first implemented in 2009. This robust program has resulted in hundreds of technical reports and publications on marine mammals that have informed Navy and NMFS analyses in environmental planning documents, MMPA rules, and ESA Biological Opinions. The reports are made available to the public on the Navy's marine species monitoring website (*www.navymarinespecies monitoring.us*), and the data on the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) (*https://seamap.env.duke.edu/*) and the Animal Telemetry Network (*https://atn.ioos.us/*).

The Navy will continue collecting monitoring data to inform our understanding of the occurrence of, and impacts of the Navy's activities on, marine mammals on SNI in the PMSR Study Area. NMFS and the Navy will coordinate and discuss how monitoring in the PMSR Study Area could contribute to the Navy's Marine Species Monitoring Program. Taken together, mitigation and monitoring comprise the Navy's integrated approach for reducing environmental impacts from the specified activities. The Navy's overall monitoring approach seeks to leverage and build on existing research efforts whenever possible.

As agreed upon between the Navy and NMFS, the monitoring measures presented here, as well as the mitigation measures described above, focus on the protection and management of potentially affected marine mammals. A well-designed monitoring program can provide important feedback for validating assumptions made in analyses and allow for adaptive management of marine resources. Monitoring is required under the MMPA, and details of the monitoring program for the specified activities have been developed through coordination between NMFS and the Navy through the regulatory process for previous Navy at-sea training and testing activities.

Required Monitoring on SNI

In consultation with NMFS, the Navy shall implement a monitoring plan for beaches exposed to target and missile launch noise with the goal of assessing baseline pinniped distribution/abundance and potential changes in pinniped use of these beaches after launch events. Marine mammal monitoring will include:

- Multiple surveys (*e.g.,* time-lapse photography) during the year that record the species, number of animals, general behavior, presence of pups, age class, gender and reactions to launch noise or other natural or human caused disturbances, in addition to environmental conditions that may include tide, wind speed, air temperature, and swell.
- In addition, video and acoustic monitoring of up to three pinniped haulout areas and rookeries will be conducted during launch events that include missiles or targets that have not been previously monitored using video and acoustic recorders for at least three launch events. Video monitoring cameras would be either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events.

Integrated Comprehensive Monitoring Program (ICMP)

The Navy's ICMP is intended to coordinate marine species monitoring efforts across all regions and to allocate the most appropriate level and type of effort for each range complex based on a set of standardized objectives, and in acknowledgement of regional expertise and resource availability. The ICMP is designed to be flexible, scalable, and adaptable through the adaptive management and strategic planning processes to periodically assess progress and reevaluate objectives. This process includes conducting an annual adaptive management review meeting, at which the Navy and NMFS jointly consider the prior-year goals, monitoring results, and related scientific advances to determine if monitoring plan modifications are warranted to more effectively address program goals. Although the ICMP does not specify actual monitoring field work or individual projects, it does establish a matrix of goals and objectives that have been developed in coordination with NMFS. As the ICMP is implemented through the Strategic Planning Process for Marine Species Monitoring, detailed and specific studies are developed which support the Navy's and NMFS' top-level monitoring goals. In essence, the ICMP directs that monitoring activities relating to the effects of Navy training and testing activities on marine species should be designed to contribute towards one or more of the following top-level goals:

- An increase in our understanding of the likely occurrence of marine mammals and/or ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and/or density of species);
- An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammals and/or ESA-listed species to any of the potential stressor(s) associated with the action (*e.g.,* sound, explosive detonation, or military expended materials) through better understanding of the following: (1) the action and the environment in which it occurs (*e.g.,* sound source characterization, propagation, and ambient noise levels); (2) the affected species (*e.g.,* life history or dive patterns); (3) the likely co-occurrence of marine mammals and/or ESA-listed marine species with the action (in whole or part); and/or (4) the likely biological or behavioral context of exposure to the stressor for the marine mammal and/or ESA-listed marine

species (*e.g.,* age class of exposed animals or known pupping, calving or feeding areas);

- An increase in our understanding of how individual marine mammals or ESA-listed marine species respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.,* at what distance or received level);
- An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: (1) the long-term fitness and survival of an individual or (2) the population, species, or stock (*e.g.,* through effects on annual rates of recruitment or survival);
- An increase in our understanding of the effectiveness of mitigation and monitoring measures;
- A better understanding and record of the manner in which the Navy complies with the incidental take regulations and LOAs and the ESA Incidental Take Statement;
- An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the mitigation zones (thus allowing for more effective implementation of the mitigation), and in general, to better achieve the above goals; and
- Ensuring that adverse impact of activities remains at the least practicable level.

Strategic Planning Process for Marine Species Monitoring

The Navy also developed the Strategic Planning Process for Marine Species Monitoring, which establishes the guidelines and processes necessary to develop, evaluate, and fund individual projects based on objective scientific study questions. The process uses an underlying framework designed around intermediate scientific objectives and a conceptual framework incorporating a progression of knowledge spanning occurrence, exposure, response, and consequence. The Strategic Planning Process for Marine Species Monitoring is used to set overarching intermediate scientific objectives; develop individual monitoring project concepts; identify potential species of interest at a regional scale; evaluate, prioritize and select specific monitoring projects to fund or continue supporting for a given fiscal year; execute and manage selected monitoring projects; and report and evaluate progress and results. This process addresses relative investments to different range complexes based on goals across all range complexes, and monitoring will leverage multiple techniques for data acquisition and analysis whenever possible. The Strategic Planning Process for Marine Species Monitoring is also available online (*https://www.navymarinespeciesmonitoring.us/*). NMFS and the Navy will coordinate and discuss how monitoring in the PMSR Study Area could contribute to the Navy's Marine Species Monitoring Program in addition to the monitoring that will be conducted on SNI.

Past and Current Monitoring in the PMSR Study Area

NMFS has received multiple years' worth of annual monitoring reports addressing launch activities on SNI within the PMSR Study Area and other Navy range complexes. The data and information contained in these reports have been considered in developing mitigation and monitoring measures for the training and testing activities on SNI within the PMSR Study Area. The Navy's annual exercise and monitoring reports may be viewed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities* and *https://www.navymarinespeciesmonitoring.us.*

Numerous publications, dissertations, and conference presentations have resulted from research conducted under the Navy's marine species monitoring program (*https://www.navymarinespeciesmonitoring.us/reading-room/publications/*), resulting in a significant contribution to the body of marine mammal science. Publications on occurrence, distribution, and density have fed the modeling input, and publications on exposure and response have informed Navy and NMFS analyses of behavioral response and consideration of mitigation measures.

Furthermore, collaboration between the monitoring program and the Navy's research and development (*e.g.,* the Office of Naval Research) and demonstration-validation (*e.g.,* Living Marine Resources) programs has been strengthened, leading to research tools and products that have already transitioned to the monitoring program. These include Marine Mammal Monitoring on Ranges (M3R), controlled exposure experiment behavioral response studies (CEE BRS), acoustic sea glider surveys, and global positioning system-enabled satellite tags. Recent progress has been made with better integration of monitoring across all Navy at-sea study areas, including study areas in the Pacific and the Atlantic Oceans, and various testing ranges. Publications from the Living Marine Resources and the Office of Naval Research programs have also resulted in significant contributions to information on hearing ranges and acoustic criteria used in effects modeling, exposure, and response, as well as developing tools to assess biological significance (*e.g.,* population-level consequences).

NMFS and the Navy also consider data collected during mitigations as monitoring. Data are collected by shipboard personnel on hours spent training, hours of observation, and marine mammals observed within the mitigation zones when mitigations are implemented. These data are provided to NMFS in both classified and unclassified annual exercise reports, which will continue under this rule.

Research funded by the Navy that has included the PMSR Study Area includes, but is not limited to the following efforts:

- The Navy has funded a number of passive acoustic monitoring efforts in the PMSR Study Area as well as locations farther to the south in the SOCAL Range Complex. These studies have helped to characterize the soundscape resulting from general anthropogenic sound as well as the Navy testing and training sound energy contributions (Baumann-Pickering *et al.* 2013; Baumann-Pickering *et al.* 2015a; Baumann-Pickering *et al.* 2018; Curtis *et al.* 2020; Debich *et al.* 2015a; Debich *et al.* 2015b; Hildebrand *et al.* 2012; Rice *et al.* 2018a; Rice *et al.* 2017; Rice *et al.* 2018b; Sirovic *et al.* 2016; Sirovic *et al.* 2017; Sirovic *et al.* 2015b; Wiggins *et al.* 2018).
- Fieldwork involving photo-ID, biopsy, visual survey, and satellite tagging of blue, fin, and humpback whales were undertaken by Oregon State University. This research provided seasonal movement tracks, distribution, and behavior of these species in addition to biopsy samples used for sex determination and individual identifications (Mate *et al.* 2016; Mate *et al.* 2018b, 2018c; Mate *et al.* 2015b). The findings from this work have been instrumental in supplementing our understanding of the use of BIAs in the PMSR Study Area for these species.
- The Navy has been collecting abundance data and behavioral reactions of pinnipeds during target and missile launch on SNI since 2001. The marine mammals monitoring reports for SNI can be found here: *https://www.navymarinespeciesmonitoring.us/reporting/pacific/.*

Additional details on the scientific objectives for the Navy's marine species monitoring program in the Pacific (and elsewhere) can be found at *https://*

www.navymarinespeciesmonitoring.us/regions/pacific/current-projects/. Projects can be either major multi-year efforts, or 1 to 2-year special studies.

The majority of the testing and training activities Navy is proposing for the foreseeable future in the PMSR Study Area are similar if not nearly identical to activities that have been occurring in the same locations for decades. In the PMSR Study Area, there are no Major Exercises, testing and training events are, by comparison to other Navy areas, less frequent and are in general small in scope, so as a result the majority of Navy's research effort has been focused elsewhere. For this reason, the vast majority of scientific fieldwork, research, and monitoring efforts have been expended in the SOCAL Range Complex and Hawaii, where Navy training and testing activities have been more concentrated. Since 2006, the Navy has been submitting exercise reports and monitoring reports to NMFS for the Navy's range complexes in the Pacific and the Atlantic. These publicly available exercise reports, monitoring reports, and the associated research findings have been integrated into adaptive management decisions regarding the focus for subsequent research and monitoring as determined in collaborations between Navy, NMFS, Marine Mammal Commission, and other marine resource subject matter experts using an adaptive management approach. For example, see the 2019 U.S. Navy Annual Marine Species Monitoring Report for the Pacific that was made available to the public in September 2020.

Adaptive Management

The regulations governing the take of marine mammals incidental to Navy training and testing activities in the PMSR Study Area contain an adaptive management component. Our understanding of the effects of Navy training and testing activities (*e.g.,* 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 7-year regulations.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes to existing mitigation and monitoring requirements are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation or monitoring measures could be modified if new data suggests that such modifications will 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 activity reports, as required by MMPA authorizations; (2) compiled results of Navy funded research and development 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: *https://www.navymarinespeciesmonitoring.us.*

Notification of Injured, Live Stranded or Dead Marine Mammals

The Navy will consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-testing-and-training-activities-point-mugu-sea-range.*

Annual SNI Monitoring Report

The Navy will submit an annual report to NMFS of the SNI target and missile launch activities. The draft annual monitoring report will be submitted to the Director, Office of Protected Resources, NMFS, within 3 months after the end of the reporting year. NMFS will submit comments or questions on the draft monitoring report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submission of the draft if NMFS does not provide comments on the draft report. The report will summarize the launch events conducted during the year; assess any direct impacts to pinnipeds from launch events; assess any cumulative impacts on pinnipeds from launch events; and summarize pinniped monitoring and research activities conducted on SNI and any findings related to effects of launch noise on pinniped populations.

Annual PMSR Training and Testing Activity Report

Each year the Navy will submit a detailed report (Annual PMSR Training and Testing Activity Report) to NMFS within 3 months after the one-year anniversary of the date of issuance of the LOA. NMFS will submit comments or questions on the report, if any, within 1 month of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 1 month after submission of the draft if NMFS does not provide comments on the draft report. The annual report will contain information on all explosives used, total annual number of each type of explosive activities; and total annual expended/detonated rounds (missiles, bombs *etc.*) for each explosive bin. The annual report will also specifically include information on sound sources used. The annual report will also contain the current year's explosive use data as well as the cumulative explosive use quantity from previous years' reports. Additionally, if there were any changes to the explosives allowance in the reporting year or cumulatively, the 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 2022 PMSR FEIS/OEIS and MMPA final rule. See the regulatory text below for detail on the content of the annual report.

The final annual/close-out report at the conclusion of the authorization period (year 7) will also serve as the comprehensive close-out report, and will include both the final year annual use compared to annual authorization and a cumulative 7-year annual use compared to 7-year authorization. NMFS will submit comments on the

draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submission of the draft if NMFS does not provide comments.

Information included in the annual reports may be used to inform future adaptive management of activities within the PMSR Study Area.

Other Reporting and Coordination

The Navy will continue to report and coordinate with NMFS for the following:

- Annual marine species monitoring technical review meetings (in-person or remote, as circumstances allow and agreed upon by NMFS and the Navy) that also include researchers and the Marine Mammal Commission (currently every 2 years a joint Pacific-Atlantic meeting is held); and
- Annual Adaptive Management meetings (in-person or remote, as circumstances allow and agreed upon by NMFS and the Navy) that also include the Marine Mammal Commission (recently modified to occur in conjunction with the annual monitoring technical review meeting).

Analysis and Negligible Impact Determination

General Negligible Impact Analysis

Introduction

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In considering how Level A harassment or Level B harassment factor into the negligible impact analysis, in addition to considering the number of estimated takes, 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 baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known).

In the *Estimated Take of Marine Mammals* section, we identified the subset of potential effects that are reasonably expected to occur and rise to the level of takes both annually and over the 7-year period covered by this rule, based on the methods described. The impact that any given take will have on an individual, and ultimately the species or stock, 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 rule, we evaluated the likely impacts of the number of harassment takes reasonably expected to occur, and are authorized, in the context of the specific circumstances surrounding these predicted takes. Last, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific assessments that support our negligible impact conclusions for each species and stock. Because all of the Navy's specified activities will 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).

As explained in the *Estimated Take of Marine Mammals* section, no take by serious injury or mortality is authorized or anticipated to occur.

The specified activities reflect maximum levels of training and testing activities. The *Description of the Specified Activity* section describes annual activities. There may be some flexibility in the exact number of detonations that may vary from year to year, but take totals will not exceed the 7-year totals indicated in Table 21 as well as take annual and 7-year totals described for missile launch activities on SNI in Table 22. We base our analysis and negligible impact determination on the maximum number of takes that are reasonably expected to occur and are authorized, although, as stated before, the number of takes are only a part of the analysis, which includes qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, we provide some general analysis in this *General Negligible Impact Analysis* section that applies to all the species and stocks listed in Table 21 and Table 22, given that some of the anticipated effects of the Navy's training and testing activities on marine mammals are expected to be relatively similar in nature. Then, in the *Group and Species-Specific Analyses* section, we subdivide into discussions of Mysticetes, Odontocetes, and Pinnipeds as there are broad life history traits that support an overarching discussion of some factors considered within the analysis for those groups (*e.g.,* high-level differences in feeding strategies). Last, we break our analysis into species (and/or stocks), or groups of species (and their associated stocks) where relevant similarities exist, to provide more specific information related to the anticipated effects on individuals of a specific stock or where there is information about the status or structure of any species or stocks that would lead to a differing assessment of the effects on the species or stock. Organizing our analysis by grouping species or stocks that share common traits or that will respond similarly to effects of the Navy's activities and then providing species- or stock-specific information allows us to avoid duplication while assuring that we have analyzed the effects of the specified activities on each affected species or stock.

The Navy's take request, which, as described above, is for harassment only, is based on its acoustic model. The model calculates sound energy propagation from explosives during naval activities; the sound or impulse received by animat dosimeters representing marine mammals distributed in the area around the modeled activity; and whether the sound or impulse energy received by a marine mammal exceeds the thresholds for effects. Assumptions in the Navy model intentionally err on the side of overestimation when there are unknowns. Naval activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no mitigation is considered and without any avoidance of the activity by the animal. NMFS provided input to, independently reviewed, and concurred with the Navy on this process and the Navy's analysis, which is described in detail in Section 6 of the Navy's rulemaking/LOA application, was used to quantify harassment takes for this rule.

Generally speaking, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to

higher received levels (though this is in no way a strictly linear relationship for behavioral effects throughout species, individuals, or circumstances), and less severe effects from takes resulting from exposure to lower received levels. However, there is also growing evidence of the importance of distance in predicting marine mammal behavioral response to sound—*i.e.,* sounds of a similar level emanating from a more distant source have been shown to be less likely to evoke a response of equal magnitude (DeRuiter 2012, Falcone *et al.* 2017). The estimated number of Level A harassment and Level B harassment takes does not equate to the number of individual animals the Navy expects to harass (which is lower), but rather to the instances of take (*i.e.,* exposures above the Level A harassment and Level B harassment threshold) that are anticipated to occur annually and over the 7-year period. These instances may represent either brief exposures (seconds) or, in some cases, several exposures within a day. Most explosives detonating at or near the surface, especially those involving the larger explosive bins such as a MISSILEX, have brief exposures lasting only a few milliseconds to minutes for the entire event. Explosive events may be a single event involving one explosion (single exposure) or a series of intermittent explosives (multiple explosives) occurring over the course of a day. Gunnery events, in some cases, may have longer durations of exposure to intermittent sound. In general, gunnery events can last intermittently over 1–3 hrs in total; however the actual exposure during the event will be of a much shorter duration (seconds to minutes).

Behavioral Response

Behavioral reactions from explosive sounds are likely to be similar to reactions studied for other impulsive sounds such as those produced by air guns. Impulsive signals, particularly at close range, have a rapid rise time and higher instantaneous peak pressure than other signal types, making them more likely to cause startle responses or avoidance responses. Most data has come from seismic surveys that occur over long durations (*e.g.,* on the order of days to weeks), and typically utilize large multi-air gun arrays that fire repeatedly. While seismic air gun data provides the best available science for assessing behavioral responses to impulsive sounds (*i.e.,* sounds from explosives) by marine mammals, it is likely that these responses represent a worst-case scenario compared to most Navy explosive noise sources. There are no explosives planned to detonate underwater, only those that detonate at or near the surface of the water. For explosives detonating at or near the surface, an animal is considered exposed to a sound if the received sound level at the animal's location is above the background ambient noise level within a similar frequency band. For launches of targets and missiles from SNI, years of monitoring have demonstrated that sound levels at the nearest pinniped haulout site will produce short-term, localized changes in behavior, including temporarily vacating haulouts.

As described in the Navy's application, the Navy identified (with NMFS' input) the types of behaviors that would be considered a take (moderate behavioral responses as characterized in Southall *et al.* (2007) (*e.g.,* altered migration paths or dive profiles, interrupted nursing, breeding or feeding, or avoidance) that also would be expected to continue for the duration of an exposure). The Navy then compiled the available data indicating the received sound levels and distances from the sources when those responses have occurred to predict how many instances of Level B harassment by behavioral disturbance occur in a day. Take estimates alone do not provide information regarding the potential fitness or other biological consequences of the reactions on the affected individuals. NMFS therefore considers the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

In the range of potential behavioral effects that might be expected to be part of a response that qualifies as an instance of Level B harassment by behavioral disturbance (which by nature of the way it is modeled/counted, occurs within one day), the less severe end might include exposure to comparatively lower levels of a sound, at a detectably greater distance from the animal, for a few seconds or a minute. A less severe exposure of this nature could result in a behavioral response such as avoiding an area that an animal would otherwise have chosen to move through or feed in for some amount of time or breaking off one or a few feeding bouts. More severe effects could occur when the animal gets close enough to the source to receive a comparatively higher level, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day. However, such severe behavioral effects are expected to occur infrequently.

The majority of Level B harassment takes are expected to be in the form of milder responses (*i.e.,* lower-level exposures that still rise to the level of take) of a generally shorter duration. We anticipate more severe effects from takes when animals are exposed to higher received levels or at closer proximity to the source. However, depending on the context of an exposure (*e.g.,* depth, distance, if an animal is engaged in important behavior such as feeding), a behavioral response can vary across species and individuals within a species. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment from Navy activities would be expected to potentially result in more severe responses (see the *Group and Species-Specific Analyses* section below for more detailed information). To fully understand the likely impacts of the predicted/authorized take on an individual (*i.e.,* what is the likelihood or degree of fitness impacts), one must look closely at the available contextual information, such as the duration of likely exposures and the likely severity of the exposures (*e.g.,* whether they will occur for a longer duration over sequential days or the comparative sound level that will be received). Ellison *et al.* (2012) and Moore and Barlow (2013), among others, emphasize the importance of context (*e.g.,* behavioral state of the animals, distance from the sound source) in evaluating behavioral responses of marine mammals to acoustic sources.

Diel Cycle

Many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral reactions to noise exposure, when taking place in a biologically important context, such as disruption of critical life functions, displacement, or avoidance of important habitat, are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007) due to diel and lunar patterns in diving and foraging behaviors observed in many cetaceans, including beaked whales (Baird *et al.* 2008, Barlow *et al.* 2020, Henderson *et al.* 2016, Schorr *et al.* 2014). Henderson *et al.* (2016) found that ongoing smaller scale events had little to no impact on

foraging dives for Blainville's beaked whale, while multi-day training events may decrease foraging behavior for Blainville's beaked whale (Manzano-Roth *et al.* 2016). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). There are very few multi-day training or testing events for PMSR Study Area.

Durations of Navy activities utilizing explosives vary and are fully described in Appendix A (PMSR Scenarios Descriptions) of the 2022 PMSR FEIS/OEIS. The PMSR Study Area has activity occurring daily, but tests range from just a single missile launch or multiple launches, or may only be a captive carry where no munitions are air launched but the test is to determine the aircraft's ability to function properly with a missile on board, to a single or dual target launch from SNI, or a CSSQT where the ship's capability is tested by how it performs with a multiple weapons systems against a target. Also, while some tests are planned well in advance, some portions of or the entire test may be canceled due to weather or atmospheric conditions, sea state, a particular system or support infrastructure dysfunction, or many other factors. Most explosive detonation events are scheduled to occur over a short duration (one to a few hours); however, the explosive detonation component of the activity only lasts for seconds. Although explosive detonation events may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time, or demonstrate sustained behavioral responses. All of these factors make it unlikely that individuals would be exposed to the event for extended periods or on consecutive days.

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

As described previously, Navy modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are quantified as harassment takes. However, these numbers from the model do not identify whether and when the enumerated instances occur to the same individual marine mammal on different days, or how any such repeated takes may impact those individuals. One method that NMFS uses to help better understand the overall scope of the impacts is to compare the total instances of take against the abundance of that species (or stock if applicable). For example, if there are 100 estimated harassment takes in a population of 100, one can assume either that every individual will be exposed above acoustic thresholds in no more than one day, or that some smaller number will be exposed in one day but a few individuals will be exposed multiple days within a year and a few not exposed at all. However, in this rule the percentage of takes relative to abundance is under five percent for all species and in most cases less than one percent, meaning that it is less likely that individuals of most species will be taken multiple times, although we note that pinnipeds that haul out regularly in areas where activities are regularly conducted are more likely to be taken on multiple days.

Temporary Threshold Shift

NMFS and the Navy have estimated that some species and stocks of marine mammals may sustain some level of TTS from explosive detonations. In general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Explosives are generally referenced as broadband because of the various frequencies. Table 21 indicates the number of takes by TTS that may be incurred by different species and stocks from exposure to explosives. The TTS sustained by an animal is primarily classified by three characteristics:

1. Frequency—Available data (of mid-frequency hearing specialists exposed to mid- or high-frequency sounds; Southall *et al.* 2007) suggest that most TTS occurs in the frequency range of the source up to one octave higher than the source (with the maximum TTS at ½ octave above). TTS from explosives would be broadband.

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of the hearing is reduced)—Generally, both the degree of TTS and the duration of TTS will be greater if the marine mammal is exposed to a higher level of energy (which would occur when the peak dB level is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this rule. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL. The sound resulting from an explosive detonation is considered an impulsive sound and shares important qualities (*i.e.,* short duration and fast rise time) with other impulsive sounds such as those produced by air guns. Given the anticipated duration and levels of sound exposure, we would not expect marine mammals to incur more than relatively low levels of TTS (*i.e.,* single digits of sensitivity loss).

3. Duration of TTS (recovery time)—In the TTS laboratory studies (as discussed in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section of the proposed rule), some using exposures of almost an hour in duration or up to 217 SEL, almost all individuals recovered within 1 day (or less, often in minutes), although in one study (Finneran *et al.* 2007) recovery took 4 days. For the same reasons discussed in the *Analysis and Negligible Impact Determination—Diel Cycle* section, and because of the short distance animals would need to be from the sound source, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that their recovery is impeded.

The TTS takes would be the result of exposure to explosive detonations (broad-band). As described above, we expect the majority of these takes to be in the form of mild (single-digit), short-term (minutes to hours) TTS. This means that for one time a year, for several minutes, a taken individual will have slightly diminished hearing sensitivity (slightly more than natural variation, but nowhere near total deafness). The expected results of any one of these small number of mild TTS occurrences could be that (1) it does not overlap signals that are pertinent to that animal in the given time period, (2) it overlaps parts of signals that are important to the animal, but not in a manner that impairs interpretation, or (3) it reduces detectability of an important signal to a small degree for a short amount of time—in which case the animal may be aware and be able to compensate (but there may be slight energetic cost), or the animal may have some reduced opportunities (*e.g.,* to detect prey) or reduced capabilities to react with maximum effectiveness (*e.g.,* to detect a predator or navigate optimally). However, given the small number of times that any individual might incur TTS, the low degree of TTS and the short anticipated duration, and the low likelihood that one of these instances would occur across a time period in which the specific TTS overlapped the entirety of a critical signal, it is unlikely that TTS of the

nature expected to result from the Navy activities would result in behavioral changes or other impacts that would impact any individual's (of any hearing sensitivity) reproduction or survival.

Auditory Masking or Communication Impairment

The ultimate potential impacts of masking on an individual (if it were to occur) are similar to those discussed for TTS, but an important difference is that masking only occurs during the time of the signal, versus TTS, which continues beyond the duration of the signal. Fundamentally, masking is referred to as a chronic effect because one of the key potential harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency). As our analysis has indicated, because of the sound sources primarily involved in this rule, we do not expect the exposures with the potential for masking to be of a long duration. Masking is fundamentally more of a concern at lower frequencies, because low frequency signals propagate significantly further than higher frequencies and because they are more likely to overlap both the narrower low-frequency calls of mysticetes, as well as many non-communication cues, such as sounds from fish and invertebrate prey and geologic sounds that inform navigation. Masking is also more of a concern from continuous sources (versus intermittent) where there is no quiet time between a sound source within which auditory signals can be detected and interpreted. Explosions introduce low-frequency, broadband sounds into the environment, which could momentarily mask hearing thresholds in animals that are nearby, although sounds from explosions last for only a few seconds at most. Masking due to these short duration detonations would not be significant. Activities that have multiple, repeated detonations, such as some naval gunfire activities, could result in masking for mysticetes near the target impact area over the duration of the event. Effects of masking are only present when the sound from the explosion is present, and the effect is over the moment the sound is no longer detectable. Therefore, short-term exposure to the predominantly intermittent explosions are not expected to result in a meaningful amount of masking. For the reasons described here, any limited masking that could potentially occur from explosives would be minor and short-term and intermittent. Long-term consequences from physiological stress due to the sound of explosives would not be expected. In conclusion, masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as from vessels; however, the duration of temporal and spatial overlap with any individual animal and the spatially separated sources that the Navy uses would not be expected to result in more than short-term, low impact masking that would not affect reproduction or survival of individuals.

Auditory Injury (Permanent Threshold Shift)

Table 21 indicates the number of individuals of each species for which Level A harassment in the form of PTS resulting from exposure to or explosives is estimated to occur. The number of individuals to potentially incur PTS annually (from explosives) for each species ranges from 0 to 49 (49 is for Dall's porpoise), but is more typically 0 or 1. As described previously, no species are expected to incur non-auditory injury from explosives.

As discussed previously, the Navy utilizes aerial monitoring in addition to Lookouts on vessels to detect marine mammals for mitigation implementation. These Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur PTS, and we have analyzed them accordingly. In relation to TTS, the likely consequences to the health of an individual that incurs PTS can range from mild to more serious depending upon the degree of PTS and the frequency band it is in. Any PTS accrued as a result of exposure to Navy activities would be expected to be of a small amount. Permanent loss of some degree of hearing is a normal occurrence for older animals, and many animals are able to compensate for the shift, both in old age or at younger ages as the result of stressor exposure (Green *et al.* 1987; Houser *et al.* 2008; Ketten 2012; Mann *et al.* 2010; McGowan *et al.* 2020). While a small loss of hearing sensitivity may include some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals.

Physiological Stress Response

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* would likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. However, we would not expect the Navy's generally short-term and intermittent activities to create conditions of long-term, continuous noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

Group and Species-Specific Analyses

In this section, we build on the general analysis that applies to all marine mammals in the PMSR Study Area from the previous section, and include first information and analysis that applies to mysticetes or, separately, odontocetes, and pinnipeds and then within those three sections, more specific information that applies to smaller groups, where applicable, and the affected species or stocks. The specific authorized take numbers are discussed in Table 34 and Table 35, and here we provide some additional context and discussion regarding how we consider the authorized take numbers in those analyses. The maximum amount and type of incidental take of marine mammals reasonably likely to occur from explosive detonations and target and missile launch activities and therefore authorized during the 7-year training and testing period are shown in Table 34 and Table 35 below. The vast majority of predicted exposures are expected to be Level B harassment (TTS and behavioral disturbance) from explosive sources during training and testing activities and target and missile launch activities on SNI.

TABLE 34—ANNUAL ESTIMATED TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR MARINE MAMMALS IN THE PMSR STUDY AREA (EXCLUDING SNI) AND THE NUMBER INDICATING THE INSTANCES OF TOTAL TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Common name	Stock/DPS	Annual take by Level A harassment and Level B harassment			Total take	Abundance (2021 draft SARs or most recent SARs)	Percent taken by abundance
		Behavioral response	TTS	PTS			
Blue whale *	Eastern North Pacific.	7	4	0	11	1,496	0.74
Fin whale *	California, Oregon, and Washington.	14	7	1	22	9,029	0.24
Gray whale	Eastern North Pacific.	9	5	0	14	26,960	0.05
Humpback whale *	California, Oregon, and Washington/ Mexico DPS.	7	4	0	11	2,900	0.38
	California, Oregon, and Washington/ Central America DPS.	1	0	0	1	2,900	0.03
Minke whale	California, Oregon, and Washington.	2	1	0	3	636	0.47
Bottlenose dolphin	California, Oregon, and Washington Offshore.	5	5	1	[a] 16	1924	0.57
Dall's porpoise	California, Oregon, and Washington.	261	406	49	716	25,750	2.78
Dwarf sperm whale	California, Oregon, and Washington.	20	31	6	57	4,111	1.39
Long-beaked common dolphin.	California	66	44	9	255	101,305	0.12
Northern right whale dolphin.	California, Oregon, and Washington.	3	2	1	[c] 14	26,556	0.02
Pacific white-sided dolphin.	California, Oregon, and Washington.	11	8	2	[d] 26	26,814	0.08
Pygmy sperm whale.	California, Oregon, and Washington.	20	31	6	57	4,111	1.39
Risso's dolphins	California, Oregon, and Washington.	6	3	1	[e] 19	6,336	0.16
Short-beaked common dolphin.	California, Oregon, and Washington.	90	65	15	170	969,861	0.02
Sperm whale *	California, Oregon, and Washington.	1	1	0	2	1,997	0.10
Striped dolphin	California, Oregon, and Washington.	1	1	0	[f] 56	29,211	0.01
Harbor seal	California	202	120	14	336	30,968	1.08
Northern elephant seal.	California	37	63	22	122	179,000	0.07
California sea lion	U.S. Stock	8	12	2	22	257,606	0.01
Guadalupe fur seal *.	Mexico to California.	1	1	0	2	34,187	0.01

Note: Percentages taken by abundance may be less for some stocks as the abundance would be less in the PMSR Study Area depending on the range of a particular stock.

* ESA-listed species in PMSR Study Area.

[a] Total Annual Level B harassment takes for the California, Oregon, and Washington Offshore stock of Bottlenose dolphin were increased from 11 annual modeled takes to 16 annual takes to account for group size.

[b] Total Annual Level B harassment takes for the California stock of Long-beaked Common dolphin were increased from 119 annual modeled takes to 255 annual takes to account for group size.

[c] Total Annual Level B harassment takes for the California, Oregon, and Washington stock of Northern right whale dolphin were increased from 6 annual modeled takes to 14 annual takes to account for group size.

[d] Total Annual Level B harassment takes for the California, Oregon, and Washington stock of Pacific white-sided dolphin were increased from 21 annual modeled takes to 26 annual takes to account for group size.

[e] Total Annual Level B harassment takes for the California, Oregon, and Washington stock of Risso's dolphin were increased from 10 annual modeled takes to 19 annual takes to account for group size.

[f] Total Annual Level B harassment takes for the California, Oregon, and Washington stock of Striped dolphin were increased from 2 annual modeled takes to 56 annual takes to account for group size.

TABLE 35—ANNUAL ESTIMATED TAKES BY LEVEL B HARASSMENT FOR PINNIPEDS ON SNI AND INSTANCES OF TAKE AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Annual take by Level B harassment	Abundance (2021 draft SARs or most recent SARs)	Percent taken by abundance	7-year total take by Level B harassment
California sea lion	U.S	11,000	257,606	4.27	77,000
Harbor seal	California	480	30,968	1.55	3,360
Northern elephant seal	California	40	179,000	0.02	280

In the discussions below, the estimated takes by Level B harassment represent instances of take, not the number of individuals taken (the much lower and less frequent takes by Level A harassment are far more likely to be associated with separate individuals). The total take numbers (by any method of taking) for species are compared to their associated abundance estimates to evaluate the magnitude of impacts across the species and to individuals. Abundance percentage comparisons are less than three percent for all species and stocks and nearly all are one percent or less and zero in many cases for explosives and less than five percent for all species on SNI from target and missile launch activities. This means that: (1) not all of the individuals will be taken, and many will not be taken at all; (2) barring specific circumstances suggesting repeated takes of individuals (such as in circumstances where all activities resulting in take are focused in one area and time where the same individual marine mammals are known to congregate, such as pinnipeds on SNI), the average or expected number of days taken for those individuals taken is one per year; and (3) we would not expect any individuals to be taken more than a few times in a year, or for those days to be sequential.

To assist in understanding what this analysis means, we clarify a few issues related to estimated takes and the analysis here. An individual that incurs PTS or TTS may sometimes, for example, also be subject to direct behavioral disturbance at the same time. As described above in this section, the degree of PTS, and the degree and duration of TTS, expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal incurs PTS or TTS and also has an additional direct behavioral response would result in impacts to reproduction or survival. Accordingly, in analyzing the numbers of takes and the likelihood of repeated and sequential takes, we consider all the types of take, so that individuals potentially experiencing both threshold shift and direct behavioral responses are appropriately considered. The number of Level A harassment takes by PTS are so low (and zero in most cases) compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

On the less severe end, exposure to comparatively lower levels of sound at a detectably greater distance from the animal, for a few or several minutes, could result in a behavioral response such as avoiding an area that an animal would otherwise have moved through or fed in, or breaking off one or a few feeding bouts. More severe behavioral effects could occur when an animal gets close enough to the source to receive a comparatively higher level of sound, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more, or potentially losing feeding opportunities for a day. However, such severe behavioral effects are not expected to occur.

Occasional, milder behavioral reactions are unlikely to cause long-term consequences for individual animals or populations, and even if some smaller subset of the takes are in the form of a longer (several hours or a day) and more severe responses, if they are not expected to be repeated over sequential days, impacts to individual fitness are not anticipated. Nearly all studies and experts agree that infrequent exposures of a single day or less are unlikely to impact an individual's overall energy budget (Farmer *et al.* 2018; Harris *et al.* 2017; King *et al.* 2015; NAS 2017; New *et al.* 2014; Southall *et al.* 2007; Villegas-Amtmann *et al.* 2015).

The analyses below in some cases address species and stocks collectively if they occupy the same functional hearing group (*i.e.,* low, mid, and high-frequency cetaceans and pinnipeds), share similar life history strategies, and/or are known to behaviorally respond similarly to stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species. In addition, similar species typically have the same hearing capabilities and behaviorally respond in the same manner.

Thus, our analysis below considers the effects of the Navy's activities on each affected species or stock even where discussion is organized by functional hearing group and/or information is evaluated at the group level. Where there are meaningful differences between species that would further differentiate the analysis, they are either described within the section or the discussion for those species or stocks is included as a separate subsection. Specifically, below, we first give broad descriptions of the mysticete, odontocete, and pinniped groups and then differentiate into further groups as appropriate.

Mysticetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species and stocks could potentially or will likely to incur, the applicable mitigation, and the status of the species and stocks to support the negligible impact determinations for each species or stock. We have described (above in the *General Negligible Impact Analysis* section) the unlikelihood of any masking having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. We also described in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section of the proposed rule that the specified activities would not have adverse or long-term impacts on marine mammal habitat, and therefore the unlikelihood of any habitat impacts affecting the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. No new information has been received that

affects this analysis and conclusion. There is no predicted non-auditory tissue damage from explosives for any species, and only one take by PTS of any mysticete (fin whale) annually. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects. Because there are species-specific considerations, at the end of the section we break out our findings on a species-specific basis.

In Table 34 above, we indicate for each species the total annual numbers of take by Level A harassment and Level B harassment for mysticetes, and a number indicating the instances of total take as a percentage of abundance in the PMSR Study Area. Note also that for mysticetes, the abundance within the PMSR Study Area represents only a portion of the species or stock abundance.

No Bryde's whales, gray whales (Western North Pacific stock), or sei whales would be taken by Level A harassment or Level B harassment and therefore are not discussed further. For other mysticetes, exposure to explosives will result in small numbers of take: 1–14 takes by Level B harassment by behavioral disturbance per species, and 4–7 by TTS per species. One take by PTS will result for fin whales and 0 for all other mysticetes. Based on this information, the majority of the Level B harassment by behavioral disturbance is expected to be of low severity and of shorter duration. No non-auditory tissue damage from training and testing activities is anticipated to occur or authorized for any species.

Research and observations show that if mysticetes are exposed to impulsive sounds such as those from explosives, they may react in a number of ways, which may include alerting, startling, breaking off feeding dives and surfacing, diving or swimming away, changing vocalization, or showing no response at all (DoD, 2017; Nowacek, 2007; Richardson, 1995; Southall *et al.* 2007). Overall and in consideration of the context for an exposure, mysticetes have been observed to be more reactive to acoustic disturbance when a noise source is located directly in their migration path or the source is nearby (somewhat independent of the sound level) (Dunlop *et al.* 2016; Dunlop *et al.* 2018; Ellison *et al.* 2011; Friedlaender *et al.* 2016; Henderson *et al.* 2019; Malme *et al.* 1985; Richardson *et al.* 1995; Southall *et al.* 2007a). Mysticetes have been observed to be more reactive to acoustic disturbance when a noise source is located directly on their migration route. Mysticetes disturbed while migrating could pause their migration or route around the disturbance, while males en route to breeding grounds have been shown to be less responsive to disturbances. Although some may pause temporarily, they will resume migration shortly after the exposure ends. Animals disturbed while engaged in other activities such as feeding or reproductive behaviors may be more likely to ignore or tolerate the disturbance and continue their natural behavior patterns. Because noise from most activities using explosives is short term and intermittent, and because detonations usually occur within a small area, behavioral reactions from mysticetes, if they occur at all, are likely to be short term and of little to no significance.

Noise from explosions is broadband with most energy below a few hundred Hz; therefore, any reduction in hearing sensitivity from exposure to explosive sounds is likely to be broadband with effects predominantly at lower frequencies. Mysticetes that do experience threshold shift (*i.e.,* TTS or the one instance of PTS for fin whale) from exposure to explosives may have reduced ability to detect biologically important sounds (*e.g.,* social vocalizations). For example, during the short period that a mysticete experiences TTS, social calls from conspecifics could be more difficult to detect or interpret, the ability to detect predators may be reduced, and the ability to detect and avoid sounds from approaching vessels or other stressors might be reduced. Any TTS that occurs would be of short duration.

While NMFS can make a negligible impact determination on Navy's estimated take numbers, the implementation of mitigation and the sightability of mysticetes (especially given their large size) reduces the potential for, and severity of, any threshold shift for mysticetes. When we look in ocean areas where the Navy has been intensively training and testing with explosive and other active acoustic sources for decades, there are no data suggesting any long-term consequences to reproduction or survival rates of mysticetes from explosives and other active acoustic sources. All the mysticete species discussed in this section will benefit from the mitigation measures described earlier in the *Mitigation Measures* section. Below we compile and summarize the information that supports our determination that the Navy's activities will not adversely affect any species or stock through effects on annual rates of recruitment or survival for any of the affected mysticete species.

Humpback whale—As noted in the *Description of Marine Mammals and Their Habitat in the Area of the Specified Activities* section, humpback whales in the PMSR Study Area are part of the ESA-threatened Mexico DPS and ESA-endangered Central America DPS of the California/Oregon/Washington (CA/OR/WA) stock with an increasing population trend. ESA Critical Habitat has been designated (86 FR 21082; April 21, 2021) in nearshore waters of the North Pacific Ocean for the endangered Central America DPS and the threatened Mexico DPS of humpback whales since the proposed rule with some overlap in the PMSR Study Area. There are two biologically important areas for humpback whale feeding that overlap with a portion of the PMSR Study Area—the Morro Bay to Point Sal Feeding Area (designated from April to November) and the Santa Barbara Channel-San Miguel Feeding Area (designated from March to September) (Calambokidis *et al.* 2015). Navy testing and training activities that use explosives could occur year round within the PMSR Study Area, although they generally would not occur in these relatively nearshore feeding areas, because both areas are close to the northern Channel Islands NMS, oil production platforms, and major vessel routes leading to and from the ports of Los Angeles and Long Beach. Further, even if some small number of humpback whale takes occurred in these BIAs and were to disrupt feeding behaviors, the short-term nature of the anticipated takes from these activities, combined with the likelihood that they would not occur on more than one day for any individual within a year, means that they are not expected to impact the reproduction or survival of any individuals.

NMFS has authorized 12 takes by Level B harassment (see Table 34): 7 takes by behavioral disturbance and 4 takes by TTS for Mexico DPS humpback whales and 1 take by behavioral disturbance and 0 takes by TTS for Central America DPS humpback whales (Table 34). Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disruption, we have explained that the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short duration) (*i.e.,* of a low level and unlikely to evoke a severe response). Regarding the severity of takes by TTS,

they are expected to be low-level, of short duration not at a level that will impact reproduction or survival.

Altogether, the CA/OR/WA stock includes the ESA-listed Mexico DPS (threatened) and Central America (endangered) DPS of humpback whales and has an increasing population trend. There is critical habitat for humpback whales in the PMSR Study Area. Our analysis suggests only a very small portion of the stock will be taken and disturbed at a low-level with those individuals disturbed on likely one day within a year. The authorized takes are 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. No Level A harassment, serious injury, or mortality is anticipated to occur or is authorized. 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. Therefore, the total take will not adversely affect this species 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 humpback whales.

Blue whale—Blue whales are listed as endangered under the ESA throughout their range. The Eastern North Pacific stock occurs in the PMSR Study Area with a stable population trend (NMFS 2019; Calambokidis and Barlow, 2020). There is no ESA-designated critical habitat, but there are three biologically important areas (BIAs) for feeding identified for blue whales in the PMSR Study Area. The feeding areas overlap (one wholly and two partially) with the PMSR Study Area (June through October). Navy testing and training activities that use explosives could occur year round within the PMSR Study Area. However, activities using explosives generally would not take place in the Point Conception/Arguello to Point Sal Feeding Area or the Santa Barbara Channel and San Miguel Feeding Area, because both areas are close to the northern Channel Islands NMS, oil production platforms, and major vessel routes leading to and from the ports of Los Angeles and Long Beach. The SNI feeding area overlaps a part of the PMSR Study Area that has been in high use for Navy testing and training activities for decades. Over the years, there has been very little change in Navy testing and training off SNI, and the waters within Warning Area 289, which overlap with the SNI Feeding Area, are essential for testing and training given their proximity to SNI. The area is used during activities requiring an aerial target impact area, missile launches from SNI, aerial and ship-based gunnery events, and sea surface missile launches. Even if some small number of blue whale takes occurred in these BIAs and were to disrupt feeding behaviors, the short-term nature of the anticipated takes from these activities, combined with the likelihood that they would not occur on more than one day for any individual within a year, means that they are not expected to impact the reproduction or survival of any individuals.

NMFS has authorized 11 takes by Level B harassment, 7 takes by behavioral disturbance and 4 takes by TTS for blue whales (Table 34). Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained that the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short duration) (*i.e.,* of a low-level). Regarding the severity of takes by TTS, they are expected to be low-level, of short duration not at a level that will impact reproduction or survival.

Altogether, blue whales are listed as endangered, though the Eastern North Pacific stock is stable, and has a very large range. Our analysis suggests that a very small portion of the stock will be taken and disturbed at a low-level, with those individuals disturbed on likely one day within a year. No Level A harassment, serious injury, or mortality is anticipated to occur or authorized. 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. Therefore, the total take will not adversely affect this species 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 blue whales.

Fin whale—Fin whales are listed as endangered under the ESA throughout their range, with no ESA designated critical habitat or known biologically important areas identified for this species in the PMSR Study Area. The population trend for the CA/OR/WA stock, found in the PMSR Study Area, is increasing (NMFS 2019).

NMFS has authorized 22 takes by Level B harassment, 14 takes by behavioral disturbance, 7 takes by TTS, and 1 take by PTS for fin whales (Table 34. Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained that the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short) (*i.e.,* of a low level). Regarding the severity of takes by TTS, they are expected to be low-level, of short duration not at a level that will impact reproduction or survival.

Altogether, fin whales are listed as endangered, with no designated critical habitat or biologically important areas in the PMSR Study Area, and the CA/OR/WA stock is increasing. Our analysis suggests that a very small portion of the stock will be taken and disturbed at a low level, with those individuals disturbed on likely one day within a year. No serious injury or mortality is anticipated to occur or authorized. 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. Therefore, the total take will not adversely affect this species 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 fin whales.

Gray whale (Eastern North Pacific stock)—The Gray whale (Eastern North Pacific stock) is not listed as endangered or threatened under the ESA and has an increasing population trend. There is an active UME for gray whales off the West Coast. The Eastern North Pacific population of gray whales that migrate along the West Coast has declined about 24 percent since 2016. It now stands at an estimated 20,580 whales (Stellar and Weller 2021). That is similar to previous fluctuations in the Eastern North Pacific population that has since recovered from the days of whaling. The decline coincides with the UME declared in 2019 and resembles a similar 23 percent decline documented after a UME 20 years earlier, in 1999–2000. The gray whale population rebounded following that previous UME to greater numbers than before. The continuing change in

gray whale numbers suggests that large-scale fluctuations of this nature are not rare. The observed declines in abundance appear to represent short-term events that have not resulted in any detectable longer-term impacts on the population. We do not anticipate any mortality or impacts on reproduction or survival of any individuals, and given the low magnitude and severity of effects from Level B harassment only, even with the UME, they will not result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. Therefore, population-level effects to gray whales from the Navy's activities despite the UME are not anticipated.

Four designated biologically important areas for migration for gray whales (Calambokidis *et al.* 2015) overlap with the PMSR Study Area and are active migration areas from October through July, although each individual area has its own specific date range depending on what portion of the northbound or southbound migration it is meant to cover. Gray whales will cross the PMSR Study Area twice a year during their annual southbound and northbound migrations. Navy testing and training activities that use explosives could occur year round within the PMSR Study Area, but generally they will occur farther offshore than the shallow-water, nearshore habitat generally preferred by gray whales during their migration. In an early study investigating the behavior of migrating gray whales exposed to an impulsive source in their migration path, a startle response was observed in 42 percent of the cases, but the change in behavior, when it occurred, did not persist (Malme *et al.* 1984; Malme *et al.* 1988; Richardson, 1995). If a gray whale were to react to sound from an explosion, it may pause its migration until the noise ceases or moves, or it may choose an alternate route around the location of the sound source if the source was directly in the whale's migratory path. Even if some small number of gray whale takes occurred in these BIAs in the form of disrupted feeding behaviors or traveling for migration, the short-term nature of the anticipated takes from these activities, combined with the likelihood that they would not occur on more than one day for any individual within a year, mean that they are not expected to impact the reproduction or survival of any individuals.

NMFS has authorized 14 takes by Level B harassment, 9 takes by behavioral disturbance and 5 takes by TTS for gray whales (Table 34). Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of takes by TTS, they are expected to be low-level, of short duration not at a level that will impact reproduction or survival.

Altogether, gray whales (Eastern North Pacific stock) are not listed under the ESA and the population is increasing. Our analysis suggests that a very small portion of the stock will be taken and disturbed at a low level, with those individuals disturbed on likely one day within a year. No Level A harassment, serious injury, or mortality is anticipated to occur or authorized. This low magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals, either alone or in combination with the effects of the UME, let alone have impacts on annual rates of recruitment or survival. Therefore, the total take will not adversely affect this species 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 gray whales.

Minke whale—Minke whale is not listed as endangered or threatened under the ESA and there are no known biologically important areas identified for these species in the PMSR Study Area. The CA/OR/WA stock occurs in the PMSR Study Area with no known population trend.

NMFS has authorized 3 takes by Level B harassment, 2 takes by behavioral disturbance and 1 take by TTS for minke whales (Table 34). Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained that the duration of any exposure is expected to be between minutes and hours (*i.e.,* relatively short) (*i.e.,* of a moderate or lower level, less likely to evoke a severe response). Regarding the severity of takes by TTS, they are expected to be low-level, of short duration not at a level that will impact reproduction or survival.

Altogether, minke whales are not listed under the ESA and with no known population trend. Our analysis suggests that a very small portion of the stock will be taken and disturbed at a low level, with those individuals disturbed likely one day within a year. No Level A harassment, serious injury, or mortality is anticipated to occur or authorized. 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. Therefore, the total take will not adversely affect this species 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 minke whales.

Odontocetes

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species and stocks could potentially or will likely to incur, the applicable mitigation, and the status of the species and stock to support the negligible impact determinations for each species or stock. We have described (above in the *General Negligible Impact Analysis* section) the unlikelihood of any masking having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. We also described in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section of this proposed rule that the specified activities would not have adverse or long-term impacts on marine mammals habitat, and therefore the unlikelihood of any habitat impacts having affecting the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. No new information has been received that affects this analysis and conclusion. There is no predicted PTS from explosives for most odontocetes, with the exception of a few species, which is discussed below. There is no predicted non-auditory tissue damage from explosives for any species. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects. Here, we include information that applies to all of the odontocete species, which are then

further divided and discussed in more detail in the following subsections: Kogia whales; sperm whales; beaked whales; porpoise, and dolphins and small whales. These subsections include more specific information about the groups, as well as conclusions for each species represented.

In Table 34 above, we indicate for each species the total annual numbers of take by Level A harassment and Level B harassment for odontocetes, and a number indicating the instances of total take as a percentage of abundance in the PMSR Study Area. Note also that, for all odontocetes where estimated take is authorized their abundance within the PMSR Study Area represents only a portion of their respective species population.

No Baird's beaked whale, Cuvier's beaked whale, *Mesoplodont* spp. harbor porpoise, bottlenose dolphin (California coastal stock), killer whale, or short-finned pilot whale will be taken by Level A harassment or Level B harassment and, therefore, these species and stocks are not discussed further.

Odontocete echolocation occurs predominantly at frequencies significantly higher than 20 kHz, though there may be some small overlap at the lower part of their echolocating range for some species, which means that there is little likelihood that threshold shift, either temporary or permanent would interfere with feeding behaviors. Many of the other critical sounds that serve as cues for navigation and prey (*e.g.,* waves, fish, invertebrates) occur below a few kHz, which means that detection of these signals will not be inhibited by most threshold shift either. The low number of takes by threshold shift that might be incurred by individuals exposed to explosives will likely be lower frequency (5 kHz or less) and spanning a wider frequency range, which could slightly lower an individual's sensitivity to navigational or prey cues, or a small portion of communication calls, for several minutes to hours (if temporary) or permanently. There is no reason to think that any of the individual odontocetes taken by TTS would incur these types of takes over more than one day, and therefore they are unlikely to result in impacts on reproduction or survival. The number of PTS takes from these activities are very low (0 annually for most, 1–15 for a few species, and 49 for Dall's porpoise), and as discussed previously because of the low degree of PTS (*i.e.,* low amount of hearing sensitivity loss), it is unlikely to affect reproduction or survival of any individuals.

The range of potential behavioral effects of sound exposure on marine mammals generally, and odontocetes specifically, has been discussed in detail previously. There are behavioral patterns that differentiate the likely impacts on odontocetes as compared to mysticetes. First, odontocetes echolocate to find prey, which means that they actively send out sounds to detect their prey. While there are many strategies for hunting, one common pattern, especially for deeper diving species, is many repeated deep dives within a bout, and multiple bouts within a day, to find and catch prey. As discussed above, studies demonstrate that odontocetes may cease their foraging dives in response to sound exposure. If enough foraging interruptions occur over multiple sequential days, and the individual either does not take in the necessary food, or must exert significant effort to find necessary food elsewhere, energy budget deficits can occur that could potentially result in impacts to reproductive success, such as increased cow/calf intervals (the time between successive calving). Second, while many mysticetes rely on seasonal migratory patterns that position them in a geographic location at a specific time of the year to take advantage of ephemeral large abundances of prey (*i.e.,* invertebrates or small fish, which they eat by the thousands), odontocetes forage more homogeneously on one fish or squid at a time. Therefore, if odontocetes are interrupted while feeding, it is often possible to find more prey relatively nearby.

Dwarf Sperm Whales and Pygmy Sperm Whales (Kogia species)—This section builds on the broader odontocete discussion above and brings together the discussion of the different types and amounts of take that these two species could potentially or will likely incur, the applicable mitigation, and the status of the species and stocks to support the negligible impact determinations for each species or stock. Some Level A harassment by PTS is anticipated annually (6 takes each for dwarf and pygmy sperm whale, see Table 34).

In Table 34 above, we indicate for *Kogia* species the total annual numbers of take by Level A harassment and Level B harassment above for dwarf sperm whales and pygmy sperm whales, and a number indicating the instances of total take as a percentage of the abundance within the PMSR Study Area. Note also that, for dwarf and pygmy sperm whales (and all odontocetes), the abundance within the PMSR Study Area represents only a portion of the species abundance.

As discussed above, the majority of takes by Level B harassment by behavioral disturbance of odontocetes, and thereby dwarf and pygmy sperm whales, is expected to be in the form of low severity of a shorter duration. As discussed earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels or for longer durations. Occasional milder Level B harassment by behavioral disturbance, as is expected here, is unlikely to cause long-term consequences for either individual animals or populations.

We note that dwarf and pygmy sperm whales, as HF-sensitive species, have a lower PTS threshold than all other groups and therefore are generally likely to experience larger amounts of TTS and PTS. NMFS accordingly has evaluated slightly higher numbers of take for these species than most odontocetes (some of which have zero takes of TTS/PTS). Even though the number of TTS and PTS takes are higher than for other odontocetes, any TTS and PTS is expected to be at a low to moderate level and for all of the reasons described above, TTS and PTS takes are not expected to impact reproduction or survival of any individual.

Neither pygmy sperm whales nor dwarf sperm whales are listed under the ESA, and there are no known biologically important areas identified for these species in the PMSR Study Area. The CA/OR/WA stocks specified for pygmy sperm whales and dwarf sperm whales are found in the PMSR Study Area. There is no information on trends for these species within the PMSR Study Area. Both pygmy and dwarf sperm whales will benefit from the mitigation measures described earlier in the Mitigation Measures section.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 2 percent for both dwarf and pygmy sperm whales in the PMSR Study Area (Table 34). 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 seconds and minutes (*i.e.,* short duration). Regarding the severity of TTS takes, they are expected to be low to moderate level, of short duration, but any associated lost opportunities and detection capabilities are not at a level that will impact reproduction or survival. Dwarf sperm whales and pygmy sperm whales could be taken by a small amount of PTS annually, of

likely low to moderate severity as described previously. 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 degree the estimated takes by Level A harassment takes by PTS for dwarf sperm whales and pygmy sperm whales are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that will interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival for the species or stock.

Altogether, although dwarf and pygmy sperm whales are not listed under the ESA and there are no known population trends, our analysis suggests that a small portion of the stock in the PMSR Study Area will be taken, and disturbed at a low to moderate level, with those individuals likely not disturbed on more than one day a year. No serious injury or mortality is anticipated to occur or authorized. The low magnitude and low to moderate 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. Therefore, the total take will not adversely affect this species through impacts on annual rates of recruitment or survival. Some individuals are estimated to be taken by PTS of likely low to moderate 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 takes by Level A harassment by PTS are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on both dwarf and pygmy sperm whales.

Sperm whale—This section brings together the broader discussion above with the discussion of the different types and amounts of take that sperm whales could potentially incur, the applicable mitigation, and the status of the species to support the negligible impact determination.

In Table 34 above, we indicate the total annual numbers of take by Level A harassment and Level B harassment for sperm whales, and a number indicating the instances of total take as a percentage of the abundance within the PMSR Study Area. Note also that, for sperm whales, the abundance within the PMSR Study represents only a portion of the species abundance.

As discussed above, the majority of takes by Level B harassment by behavioral disturbance of odontocetes, and thereby sperm whales, is expected to be in the form of low severity of a generally shorter duration and is unlikely to cause long-term consequences for either individual animals or populations.

Sperm whales are listed as endangered under the ESA throughout their range, but there is no ESA designated critical habitat or known biologically important areas identified for this species within the PMSR Study Area. The CA/OR/WA stock occurs in the PMSR Study with a stable population trend (NMFS 2019). Sperm whales will benefit from the mitigation measures described earlier in the *Mitigation Measures* section.

Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 1 percent in the PMSR Study Area (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained that the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short duration) and of a low level. Regarding the severity of TTS takes, they are expected to be low-level, of short duration, and would not be at a level that will impact reproduction or survival.

Altogether, although sperm whales are listed as endangered under the ESA and have a stable population trend, our analysis suggests that very few individuals within the PMSR Study Area will be taken and disturbed at a low level, with those individuals disturbed on likely one day within a year. No Level A harassment, serious injury, or mortality is anticipated to occur or authorized. This low magnitude and low 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. Therefore, the total take will not adversely affect this species 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 sperm whales.

Porpoise (Dall's Porpoise)—This section builds on the broader odontocete discussion above and brings together the discussion of the different types and amounts of take that Dall's porpoise are likely to incur, the applicable mitigation, and the status of the species to support the negligible impact determinations for each species. Some Level A harassment by PTS is anticipated annually (49 takes, see Table 34).

In Table 34 above, we indicate the total annual numbers of take by Level A harassment and Level B harassment for Dall's porpoise, and a number indicating the instances of total take as a percentage of the abundance within the PMSR Study Area. Note also that, for Dall's porpoise (and all odontocetes), the abundance within the PMSR Study Area represents only a portion of the species abundance.

As discussed above, the majority of takes by Level B harassment by behavioral disturbance of odontocetes, and thereby Dall's porpoise, is expected to be in the form of low to moderate severity of a shorter duration. As discussed earlier in this section, we anticipate more severe effects from takes when animals are exposed to higher received levels or for longer durations. Occasional milder Level B harassment by behavioral disturbance, as is expected here, is unlikely to cause long-term consequences for either individual animals or populations.

We note that Dall's porpoise, as HF-sensitive species, have a lower PTS threshold than all other groups and therefore are generally likely to experience larger amounts of TTS and PTS. NMFS accordingly has evaluated slightly higher numbers of take for these species than most odontocetes (some of which have zero takes of TTS/PTS). Therefore, even though the number of TTS and PTS takes are higher than for other odontocetes, any TTS or PTS is expected to be at a low to moderate level and for all of the reasons described above, TTS and PTS takes are not expected to impact reproduction or survival of any individual.

Dall's porpoise are not listed under the ESA, and there are no known biologically important areas identified for these species in the PMSR Study Area. The CA/OR/WA stock is found in the PMSR Study Area. There is no information on trends for this species within the PMSR Study Area. Dall's porpoise will benefit from the mitigation measures described earlier in the *Mitigation Measures* section.

Regarding the magnitude of Level B harassment takes (TTS and behavioral disruption), the number of estimated total instances of take compared to the abundance is less than 3 percent for Dall's porpoise in the PMSR Study Area (Table 34). 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 seconds and minutes (*i.e.,* relatively short duration). Regarding the severity of TTS takes, they are expected to be low to moderate level, of short duration, and any associated lost opportunities and detection capabilities are not at a level that will impact reproduction or survival. Dall's porpoise could be taken by a small amount of PTS annually, of likely low to moderate severity as described previously. 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 degree the estimated takes by Level A harassment takes by PTS for Dall's porpoise are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that will interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival.

Altogether, although Dall's porpoise are not listed under the ESA and there are no known population trends for the CA/OR/WA stock our analysis suggests that a small portion of the stock will be taken, and disturbed at a low to moderate level, with those individuals likely not disturbed on more than one day or so a year. No serious injury or mortality is anticipated to occur or authorized. The low magnitude and low to moderate 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. Therefore, the total take will not adversely affect this species through impacts on annual rates of recruitment or survival. Some individuals are estimated to be taken by PTS of likely low to moderate 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 takes by Level A harassment by PTS are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival. For these reasons, we have determined, in consideration of all of the effects of the Navy's activities combined, that the authorized take will have a negligible impact on Dall's porpoise.

Small Whales and Dolphins—This section builds on the broader odontocete discussion above and brings together the discussion of the different types and amounts of take that different small whale and dolphin species are likely to incur, the applicable mitigation, and the status of the species and stocks to support the negligible impact determinations for each species or stock.

In Table 34 above, we indicate for each species the total annual numbers of take by Level A harassment and Level B harassment for dolphins and small whales, and a number indicating the instances of total take as a percentage of abundance in the PMSR Study Area. Note also that, for dolphins and small whales, the abundance within the PMSR Study Area represents only a portion of the respective species' abundance.

The majority of takes by Level B harassment are expected to be in the form of low severity of a shorter duration. Occasional milder Level B harassment by behavioral disturbance, as is expected here, is unlikely to cause long-term consequences for either individual animals or populations that have any effect on reproduction or survival. Limited Level A harassment (PTS) is anticipated to occur or authorized for six species (Long and short-beaked common dolphins, bottlenose dolphin, Risso's dolphin, Pacific white-sided dolphin, and Northern right whale dolphin).

Research and observations show that if delphinids are exposed to sounds they may react in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the acoustic exposure. Delphinids may not react at all until the sound source is approaching within a few hundred meters, such as with a ship with hull-mounted sonar, to within a few kilometers, depending on the environmental conditions and species. Some dolphin species (the more surface-dwelling taxa—typically those with ''dolphin'' in the common name, such as bottlenose dolphins, spotted dolphins, spinner dolphins, rough-toothed dolphins, *etc.,* but not Risso's dolphins), especially those residing in more industrialized or busy areas, have demonstrated more tolerance for disturbance and loud sounds and many of these species are known to approach vessels to bow-ride. These species are often considered generally less sensitive to disturbance. Dolphins and small whales that reside in deeper waters and generally have fewer interactions with human activities are more likely to demonstrate more typical avoidance reactions and foraging interruptions as described above in the odontocete overview.

All the dolphin and small whale species discussed in this section will benefit from the mitigation measures described earlier in the *Mitigation Measures* section.

None of the small whale and dolphin species are listed as endangered or threatened species under the ESA. There are CA/OR/WA stocks for most of the small whales and dolphins found in the PMSR Study Area and most have unknown population trends, with the exception of the Short-beaked common dolphin that has a stable population trend and the Long-beaked common dolphin (California stock) that has an increasing population trend.

Regarding the magnitude of takes by Level B harassment (TTS and behavioral disturbance), the number of estimated total instances of take compared to the abundance is less than one percent for the dolphins and small whales in the PMSR Study Area (Table 34). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance, we have explained the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short duration). Regarding the severity of takes by TTS, they are expected to be low-level, of short duration and not at a level that will impact reproduction or survival. One to two individuals each of four species (Bottlenose dolphin, Northern right whale dolphin, Pacific white-dolphin, Risso's dolphin) are estimated to be taken by one to two PTS annually, of likely low severity as described previously. Slightly more takes by PTS for short-beaked common dolphin and long-beaked common dolphin are authorized, 15 and 9 takes, respectively. 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, but at the expected scale the estimated takes by Level A harassment by PTS are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that will interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival.

Altogether, none of the small whale or dolphin species are listed under the ESA and there are no known population trends for most species. No serious injury or mortality is anticipated to occur or authorized. Our analysis suggests that only a small portion of the individuals of any of these species in the PMSR Study Area will be taken and disturbed at a low level, with those individuals likely disturbed no more than a day a year. Some take by PTS for five dolphin species is anticipated to occur and authorized, but at the expected scale the estimated take by Level A harassment by PTS is unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival of any individuals, let alone annual rates of recruitment or survival. 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. Therefore, the total take will not adversely affect these species 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 all of these species of small whales and dolphins.

Pinnipeds

This section builds on the broader discussion above and brings together the discussion of the different types and amounts of take that different species and stocks of pinnipeds will likely incur, the applicable mitigation, and the status of the species and stocks to support the negligible impact determinations for each species or stock. We have described (above in the *General Negligible Impact Analysis* section) the unlikelihood of any masking having effects that will impact the reproduction or survival of any of the individual marine mammals affected by the Navy's activities. We have also described in the *Potential Effects of Specified Activities on Marine Mammals and their Habitat* section of this proposed rule that the specified activities would not have adverse or long-term impacts on marine mammal habitat, and therefore the unlikelihood of any habitat impacts affecting the reproduction or survival of any individual marine mammals affected by the Navy's activities. For pinnipeds, no serious injury or mortality is anticipated to occur or is authorized. Here, we include information that applies to all of the pinniped species and stocks.

In Table 34 and Table 35 above, we indicate the total annual numbers of take by Level A harassment and Level B harassment for pinnipeds, and a number indicating the instances of total take as a percentage of the abundance within the PMSR Study Area by explosives and also by target and missile launch activities on SNI. Note also that, for pinniped species and stocks, the abundance within the PMSR Study Area represents only a portion of the species abundance.

The majority of take by Level B harassment by behavioral disturbance of pinnipeds, is expected to be in the form of low severity of short duration for explosives and low to moderate severity of short duration for target and missile launches on SNI and is unlikely to cause long-term consequences for either individual animals or populations.

Pinnipeds in the PMSR Study Area are not listed under the ESA with the exception of the threatened Guadalupe fur seal (Mexico stock), but there is no ESA designated critical habitat for the Guadalupe fur seal. Pupping does occur on SNI beaches, January through July. The Guadalupe fur seal has an increasing population trend. Nevertheless, there is an active UME for Guadalupe fur seal. Since 2015, there have been 724 strandings of Guadalupe fur seals (including live and dead seals). However, we do not anticipate any mortality or impacts on reproduction or survival of any individuals, and, given the low magnitude and severity of effects from Level B harassment only (2 Level B harassment takes annually), even with the UME they will not result in impacts on individual reproduction or survival, much less annual rates of recruitment or survival. Therefore, population-level effects to Guadalupe fur seal from the Navy's activities despite the UME are not anticipated. The California sea lion UME was recently closed, as elevated strandings occurred from 2013–2016. The U.S. stock of California sea lions has an increasing population trend. The California stocks of Northern Elephant seal and Northern fur seals also have an increasing population trend. The California stock of harbor seals has a stable population trend. Pinnipeds will benefit from the mitigation measures described earlier in the *Mitigation Measures* section.

Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption) for explosives, the number of estimated total instances of take compared to the abundance is approximately 1 percent or less in the PMSR Study Area (Table 34). Regarding the magnitude of takes by Level B harassment (TTS and behavioral disruption) for target and missile launches, the number of estimated total instances of take compared to the abundance is less than five percent in the PMSR Study Area (Table 35). Given this information and the ranges of these stocks (*i.e.,* large ranges, but with individuals often staying in the vicinity of haulouts), only a small portion of individuals in these stocks are likely impacted and repeated exposures of individuals are not anticipated during explosives (*i.e.,* individuals are not expected to be taken on more than a few days within a year). Regarding the severity of those individual takes by Level B harassment by behavioral disturbance for explosives, the duration of any exposure is expected to be between seconds and minutes (*i.e.,* short duration). Regarding the severity of TTS takes from explosives, they are expected to be of low-level and short duration, and any associated lost opportunities and capabilities would not be at a level that will impact reproduction or survival.

Three species of pinnipeds (harbor seals, Northern elephant seal, and California sea lions) are estimated to be taken by PTS from explosives, 14, 22, and 2 takes, respectively, 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 takes by Level A harassment by PTS are unlikely to impact behaviors, opportunities, or detection capabilities to a degree that will interfere with reproductive success or survival of any individuals, let alone affect annual rates of recruitment or survival.

For missile launch activities on SNI, the planned activities may result in take, in the form of Level B harassment only, from airborne sounds of target and missile launch activities (Table 35). A portion of individuals in these stocks are likely impacted and repeated exposures of individuals are anticipated during missile and target launches for pinnipeds hauled out on SNI (*i.e.,* individuals are expected to be taken on up to several days within a year), however, there is no reason to expect that these disturbances would occur on sequential days.

Regarding the magnitude of takes by Level B harassment, the number of estimated total instances of take compared to the abundance is less than 5 percent on SNI for all pinniped species (Table 35). Based on the best available information, including

monitoring reports from similar activities that have been authorized by NMFS, Level B harassment will likely be limited behavioral reactions such as alerting to the noise, with some animals possibly moving toward or entering the water (*i.e.,* movements of more than 10 m (11 yd) and occasional flushing into the water with return to haulouts), depending on the species and the intensity of the launch noise. Regarding the severity of those individual takes by Level B harassment, any exposure is expected to be low to moderate and of relatively short duration and are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Given the launch acceleration and flight speed of the missiles, most launch events are of extremely short duration. Strong launch sounds are typically detectable near the beaches at western SNI for no more than a few seconds per launch (Holst *et al.* 2010; Holst *et al.* 2005a; Holst *et al.* 2008; Holst *et al.* 2005b). Pinnipeds hauled out on beaches where missiles fly over when launched from the Alpha Launch Complex routinely haul out and continue to use these beaches in large numbers, but at the Building 807 Launch Complex few pinnipeds are known to haul out on the shoreline immediately adjacent to this launch site. We do not expect repeated exposures to occur on sequential days as it can take up to several weeks of planning between launch events. Responses of pinnipeds on beaches during launches are highly variable. Harbor seals can be more reactive when hauled out compared to other species, such as northern elephant seals. Northern elephant seals generally exhibit no reaction at all, except perhaps a heads-up response or some stirring. However, stronger reactions may occur if California sea lions are in the same area mingled with the northern elephant seals and the sea lions react strongly. While the reactions are variable, and can involve abrupt movements by some individuals, biological impacts of these responses appear to be limited. Even some number of repeated instances of Level B harassment (with no particular likelihood of sequential days or more sustained effect) of some small subset of an overall stock is unlikely to result in any decrease in fitness to those individuals, and thus would not result in any adverse impact to a stock as a whole. Flushing of pinnipeds into the water has the potential to result in mother-pup separation, or a stampede, either of which could potentially result in serious injury or mortality. For example, in some cases, harbor seals at SNI appear to be more responsive during the pupping/breeding season (Holst *et al.* 2005a; Holst *et al.* 2008), while in others, mothers and pups seem to react less to launches than lone individuals (Ugoretz and Greene Jr. 2012), and California sea lions seem to be consistently less responsive during the pupping season (Holst *et al.* 2010; Holst *et al.* 2005a; Holst *et al.* 2008; Holst *et al.* 2011; Holst *et al.* 2005b; Ugoretz and Greene Jr. 2012). Though pup abandonment could theoretically result from these reactions, site-specific monitoring data indicate that pup abandonment is not likely to occur as a result of the target and missile launches, as it has not been previously observed. As part of mitigation the Navy will avoid target and missile launches during the peak pinniped pupping season to the maximum extent practicable, and missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft). Based on the best available information, including reports from almost 20 years of marine mammal monitoring during launch events, no injury, serious injury, or mortality of marine mammals has occurred from any flushing events or is anticipated to occur or authorized.

Altogether, pinnipeds are not listed under the ESA (except for Guadalupe fur seal that are threatened) and all pinniped stocks have increasing, stable, or unknown population trends. Our analysis suggests that a small portion of the stocks will be taken and disturbed at a low-moderate level, with those individuals disturbed on likely one day within a year from explosives and some individuals on SNI likely disturbed a few days a year within a year from target and missile launches. No serious injury or mortality is anticipated to occur or is authorized. No more than 22 individuals from three pinniped stocks are estimated to be taken by PTS (resulting from the use of explosives as PTS is not likely to occur at SNI from launches), of likely low severity, annually. Additionally, no PTS is expected for Guadalupe fur seal. This low to moderate magnitude and severity of harassment effects is not expected to result in impacts on the reproduction or survival of any individuals (either alone or in combination with the effects of the UME for Guadulupe fur seal), let alone have impacts on annual rates of recruitment or survival, and therefore the total take will not adversely affect this species 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 pinnipeds.

Determination

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the specified activities will have a negligible impact on all affected marine mammal species or stocks.

Subsistence Harvest of Marine Mammals

In order to issue an incidental take authorization, NMFS must find that the total estimated take will not have an ''unmitigable adverse impact'' on the availability of the affected marine mammal species or stocks for taking for subsistence uses by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

When applicable, NMFS must prescribe means of effecting the least practicable adverse impact on the availability of the species or stocks for subsistence uses. As discussed in the *Mitigation Measures* section, 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 on the availability of species or stocks for subsistence uses, and (2) the practicability of the measure(s) for applicant implementation.

To our knowledge there are no relevant subsistence uses of the affected marine mammal stocks or species implicated by the specified activities. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of the species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act

There are seven marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA (16 U.S.C. 1531 *et seq.*) with confirmed or possible occurrence in the PMSR Study Area: blue whale, fin whale, gray whale, humpback whale (Central America DPS and Mexico DPS,) sei whale, and sperm whale), and Guadalupe fur seal. NMFS published a final rule on ESA-designated critical habitat for humpback whales (86 FR 21082; April 21, 2021).

The Navy consulted with NMFS pursuant to section 7 of the ESA for PMSR activities, and NMFS also consulted internally on the promulgation of this rule and the issuance of an LOA under section 101(a)(5)(A) of the MMPA. NMFS issued a biological opinion concluding that the promulgation of the rule and issuance of a subsequent LOA are not likely to jeopardize the continued existence of threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of designated or proposed critical habitat in the PMSR Study Area. The biological opinion is available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

National Marine Sanctuaries Act

NMFS consulted with the NOAA's Office of National Marine Sanctuaries and if an activity is not likely to destroy, cause the loss of, or injure any sanctuary resource an action agency can determine that consultation under NMSA section 304(d) is not required. NMFS and NOAA's Office of National Marine Sanctuaries agreed that consultation on the NMSA is not required because the proposed military activities are limited to air and vessel (including surface targets) transits through the sanctuary and these activities are not likely to cause the destruction of, loss of, or injury to sanctuary resources or qualities.

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 2022 PMSR FEIS/OEIS, which was published January 2022, and is available at *https://pmsr-eis.com/.* In accordance with 40 CFR 1506.3, NMFS independently reviewed and evaluated the 2022 PMSR FEIS/OEIS and determined that it is adequate and sufficient to meet our responsibilities under NEPA for the issuance of this rule and associated LOA. NOAA therefore, has adopted the 2022 PMSR FEIS/OEIS. NMFS has prepared a separate Record of Decision. NMFS' Record of Decision for adoption of the 2022 PMSR FEIS/OEIS and issuance of this final rule and subsequent LOA can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

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; 5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce has 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

NMFS has determined that there is good cause under the Administrative Procedure Act (APA; 5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than the Navy is affected by the provisions of these regulations. The Navy has requested that this final rule take effect by mid-July, so as to not cause a disruption in training and testing activities. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are in place by the time the previous authorizations expire. Any delay in effectiveness of the final rule would result in either: (1) A suspension of planned naval training and testing, which would disrupt vital training and testing essential to national security; or (2) the Navy's procedural non-compliance with the MMPA (should the Navy conduct training and testing without LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy is ready to implement the regulations immediately. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, by granting an exception to the Navy, the rule relieves restrictions under the MMPA, which provides a separate basis for waiving the 30-day effective date for the rule under section 553(d)(1) of the APA.

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.

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 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. Add subpart B to read as follows:

Subpart B—Taking and Importing Marine Mammals; U.S. Navy's Point Mugu Sea Range (PMSR) Training and Testing Study Area (PMSR Study Area)

Sec.

Subpart B—Taking and Importing Marine Mammals; U.S. Navy's Point Mugu Sea Range (PMSR) Training and Testing Study Area

§ 218.10 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 occur in the area described in paragraph (b) of this section and that occur 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 a Letter of Authorization (LOA) only if it occurs within the PMSR Training and Testing Study Area. The PMSR Study Area is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties along the Pacific Coast of Southern California and includes a 36,000-square-mile sea range. The two primary components of the PMSR Complex are Special Use Airspace and the ocean Operating Areas.

(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) Air warfare;

(ii) Electronic warfare; and

(iii) Surface warfare.

(2) *Testing.*

(i) Air warfare;

(ii) Electronic warfare; and

(iii) Surface warfare.

§ 218.11 Effective dates.

Regulations in this subpart are effective from July 7, 2022, through July 7, 2029.

§ 218.12 Permissible methods of taking.

(a) Under an LOA issued pursuant to §§ 216.106 of this subchapter and 218.16, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.10(b) by Level A harassment and Level B harassment associated with the use of explosives and missile launch activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

(b) The incidental take of marine mammals by the activities listed in § 218.10(c) is limited to the species and stocks listed in Table 1 of this section.

TABLE 1 TO § 218.12(b)

Common name	Scientific name	Stock
Blue whale	*Balaenoptera musculus*	Eastern North Pacific.
Fin whale	*Balaenoptera physalus*	California, Oregon, and Washington.
Gray whale	*Eschrichtius robustus*	Eastern North Pacific.
Humpback whale	*Megaptera novaeangliae*	California, Oregon, Washington.
Minke whale	*Balaenoptera acutorostrata*	California, Oregon, and Washington.
Common Bottlenose dolphin	*Tursiops truncatus*	California, Oregon, and Washington Offshore.
Dall's porpoise	*Phocoenoides dalli*	California, Oregon, and Washington.
Dwarf sperm whale	*Kogia sima*	California, Oregon, and Washington.
Long-beaked common dolphin	*Delphinus capensis*	California.
Mesoplodont beaked whales	*Mesoplodon spp*	California, Oregon, and Washington.
Northern right whale dolphin	*Lissodelphis borealis*	California, Oregon, and Washington.
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California, Oregon, and Washington.
Pygmy killer whale	*Feresa attenuata.*	
Pygmy sperm whale	*Kogia breviceps*	California, Oregon, and Washington.
Risso's dolphins	*Grampus griseus*	California, Oregon, and Washington.
Short-beaked common dolphin	*Delphinus delphis*	California, Oregon, and Washington.
Sperm whale	*Physeter macrocephalus*	California, Oregon, and Washington.
Striped dolphin	*Stenella coeruleoalba*	California, Oregon, and Washington.
Harbor seal	*Phoca vitulina*	California.
Northern elephant seal	*Mirounga angustirostris*	California.
California sea lion	*Zalophus californianus*	U.S. Stock.
Guadalupe fur seal	*Arctocephalus townsendi*	Mexico to California.

§ 218.13 Prohibitions.

Except for incidental takings contemplated in § 218.12(a) and authorized by an LOA issued under §§ 216.106 of this chapter and 218.16, it shall be unlawful for any person to do any of the following in connection with the activities listed in § 218.10(c):

(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 218.16;

(b) Take any marine mammal not specified in § 218.12(b);

(c) Take any marine mammal specified in § 218.12(b) in any manner other than as specified in the LOA issued under §§ 216.106 of this chapter and 218.16; or

(d) Take a marine mammal specified in § 218.12(b) if NMFS determines such taking is having, or may have, more than a negligible impact on the species or stock concerned.

§ 218.14 Mitigation requirements.

When conducting the activities identified in § 218.10(c), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.16 will be implemented. These mitigation measures include, but are not limited to:

(a) *Procedural mitigation.* Procedural mitigation is mitigation that the Navy will implement whenever and wherever an applicable training or testing activity takes place within the PMSR Study Area for each applicable activity category or stressor category and includes acoustic stressors (*i.e.,* weapons firing noise), explosive stressors (*i.e.,* medium-caliber and large-caliber projectiles, missiles and rockets, bombs), and physical disturbance and strike stressors (*i.e.,* vessel movement; towed in-water devices (*e.g.,* surface targets); small-, medium-, and large-caliber non-explosive practice munitions; non-explosive missiles and rockets; and non-explosive bombs).

(1) *Environmental awareness and education.* Navy personnel (including civilian personnel) involved in mitigation and training or testing 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, and U.S. Navy Protective Measures Assessment Protocol.

(2) *Weapons firing noise.* Weapons firing noise associated with large-caliber gunnery activities.

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned on the ship conducting the firing. Depending on the activity, the

Lookout could be the same as the one provided for under paragraph (a)(7)(i) of this section.

(ii) *Mitigation zone and requirements.* The mitigation zone will be 30 degrees on either side of the firing line out to 70 yd from the muzzle of the weapon being fired.

(A) *Prior to the initial start of the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of weapons firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will 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:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from weapons firing noise;

(*3*) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 30 minutes (min); or

(*4*) *Firing ship transit.* 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.

(3) *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 will 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 paragraph (a)(2)(i) of this section. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.,* safety observers, evaluators) will support observing the relevant mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 200 yd (182.88 m) around the intended impact location for air-to-surface activities using explosive medium-caliber projectiles; 600 yd (548.64 m) around the intended impact location for surface-to-surface activities using explosive medium-caliber projectiles; and 1,000 yd (914.4 m) around the intended impact location for surface-to-surface activities using explosive large-caliber projectiles.

(A) *Prior to the initial start of the activity (e.g., when maneuvering on station).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will 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:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on a its course, speed, and movement away from the intended impact location;

(*3*) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing; or

(*4*) *Impact location transit.* 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.

(D) *After completion of the activity (e.g., prior to maneuvering off station).* Navy personnel will, 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 will follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), Navy personnel on these assets will assist in the visual observation of the area where detonations occurred.

(4) *Explosive missiles and rockets.* Aircraft-deployed explosive missiles and rockets. Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned in an aircraft. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.,* safety observers, evaluators) will support observing the relevant mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 900 yd (822.96 m) around the intended impact location for missiles or rockets with 0.6–20 lb net explosive weight; and 2,000 yd (1,828.8 m) around the intended impact location for missiles with 21–500 lb net explosive weight.

(A) *Prior to the initial start of the activity* (*e.g.,* during a fly-over of the mitigation zone). Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location; or

(*3*) *Clear from additional sightings.* 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 will, 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 will follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), Navy personnel on these assets will assist in the visual observation of the area where detonations occurred.

(5) *Explosive bombs.* Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned in an aircraft conducting the activity. If additional platforms are participating in the activity, Navy personnel positioned on those assets (*e.g.,* safety observers, evaluators) will support observing the relevant mitigation zone for marine mammals and other applicable biological resources while performing their regular duties.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones is 2,500 yd (2,286 m) around the intended target.

(A) *Prior to the initial start of the activity (e.g., when arriving on station).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of bomb deployment.

(B) *During the activity (e.g., during target approach).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease bomb deployment.

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended target;

(*3*) *Clear from additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(*4*) *Intended target transit.* 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 will, 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 will follow established incident reporting procedures. If additional platforms are supporting this activity (*e.g.,* providing range clearance), Navy personnel on these assets will assist in the visual observation of the area where detonations occurred.

(6) *Vessel movement.* The mitigation will not be required 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 submerged or operated autonomously; or if impracticable based on mission requirements (*e.g.,* during Amphibious Assault and Amphibious Raid exercises).

(i) *Number of Lookouts and observation platform.* One Lookout will be on the vessel that is underway.

(ii) *Mitigation zone and requirements.* The relevant mitigation zones are as follows: 500 yd (457.2 m) around whales; and 200 yd (182.88 m) around all other marine mammals (except bow-riding dolphins and pinnipeds hauled out on man-made navigational structures, port structures, and vessels).

(A) *During the activity.* When underway Navy personnel will observe the mitigation zone for marine mammals; if marine mammals are observed, Navy personnel will maneuver to maintain distance.

(B) [Reserved]

(iii) *Reporting.* If a marine mammal vessel strike occurs, Navy personnel will follow the established incident reporting procedures.

(7) *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 will be positioned on the platform conducting the activity. Depending on the activity, the Lookout could be the same as the one described in paragraph (a)(2)(i) of this section.

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 200 yd (182.88 m) around the intended impact location.

(A) *Prior to the initial start of the activity (e.g., when maneuvering on station).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting before or during the activity.* Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location;

(*3*) *Clear of additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min for aircraft-based firing or 30 min for vessel-based firing;

(4) *Impact location transit.* 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.

(8) *Non-explosive missiles and rockets.* Aircraft-deployed non-explosive missiles and rockets. Mitigation applies to activities using a maritime surface target at ranges of up to 75 nmi (139 km).

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 900 yd (822.96 m) 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 will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of firing.

(B) *During the activity.* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will cease firing.

(C) *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity.* Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing firing) until one of the following conditions has been met:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based on its course, speed, and movement away from the intended impact location; or

(*3*) *Clear of additional sightings.* 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.

(9) *Non-explosive bombs.* Mitigation applies to activities using a maritime surface target at ranges up to 75 nmi (139 km).

(i) *Number of Lookouts and observation platform.* One Lookout will be positioned in an aircraft.

(ii) *Mitigation zone and requirements.* The relevant mitigation zone is 900 yd (822.96 m) around the intended target.

(A) *Prior to the initial start of the activity (e.g., when arriving on station).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals; if floating vegetation or marine mammals are observed, Navy personnel will relocate or delay the start of bomb deployment.

(B) *During the activity (e.g., during approach of the target or intended minefield location).* Navy personnel will observe the mitigation zone for floating vegetation and marine mammals and, if floating vegetation or marine mammals are observed, Navy personnel will cease bomb deployment.

(C) *Commencement/recommencement conditions after a marine mammal sighting prior to or during the activity.* Navy personnel will allow a sighted marine mammal to leave the mitigation zone prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing bomb deployment) until one of the following conditions has been met:

(*1*) *Observed exiting.* The animal is observed exiting the mitigation zone;

(*2*) *Determined to have exited.* The animal is determined to have exited the mitigation zone based its course, speed, and movement away from the intended target or minefield location;

(*3*) *Clear of additional sightings.* The mitigation zone has been clear from any additional sightings for 10 min; or

(*4*) *Intended target transit.* 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.

(10) *Target and missile launches from San Nicolas Islands (SNI).* Target and missile launch activities from SNI.

(i) *Mitigation zone and requirements.* 305 m (1,000 ft) over pinniped haulouts. Missiles will not cross over pinniped haulouts at elevations less than 305 m (1,000 ft) above the haulout. All manned aircraft and helicopter flight paths will maintain a minimum distance of 305 m (1,000 ft) from recognized seal haulouts and rookeries, except in emergencies or for real-time security incidents. For unmanned aircraft systems (UAS), the following minimum altitudes will be maintained over pinniped haulout areas and rookeries: Class 0–2 UAS will maintain a minimum altitude of 300 ft; Class 3 UAS will maintain a minimum altitude of 500 ft; Class 4 or 5 UAS will not be flown below 1,000 ft.

(A) *Pinniped haulouts.* Navy personnel will not enter pinniped haulouts or rookeries. Personnel may be adjacent to pinniped haulouts and rookeries prior to and following a launch for monitoring purposes.

(B) *Number of launch events.* Navy will not conduct more than 40 launch events annually. Up to 10 launch events of the 40 annual launch events may occur at night.

(C) *Launches during the peak pinniped pupping season.* Launches will be scheduled to avoid peak pinniped pupping periods between January and July, to the maximum extent practicable.

(D) *Unauthorized species.* If a species for which authorization has not been granted is taken, or a species for which authorization has been granted but the authorized takes are met, the Navy will consult with NMFS to determine how to proceed.

(E) *Review of launch procedures.* The Navy will review the launch procedure and monitoring methods, in cooperation with NMFS, if any incidents of injury or mortality of a pinniped are discovered during post-launch surveys, or if surveys indicate possible effects to the distribution, size, or productivity of the affected pinniped populations as a result of the specified activities. If necessary, appropriate changes will be made through modification to the LOA prior to conducting the next launch of the same vehicle.

(ii) [Reserved]

(b) *Seasonal awareness messages.* In addition to procedural mitigation, Navy personnel will implement seasonal awareness notification messages throughout the PMSR Study Area to avoid interaction with large whales during transit.

(1) *Blue whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating throughout the PMSR Study Area to the possible presence of increased concentrations of blue whales June 1 through October 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel will instruct vessels to remain vigilant to the presence of blue whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

(2) *Gray whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating through the PMSR Study Area to the possible presence of increased concentrations of gray whales November 1 through March 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel will instruct vessels to remain vigilant to the presence of gray whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

(3) *Fin whale awareness notification message.* (i) Navy personnel will issue a seasonal awareness notification message to alert Navy ships and aircraft operating throughout the PMSR Study Area to the possible presence of increased concentrations of fin whales November 1 through May 31.

(ii) To maintain safety of navigation and to avoid interactions with large whales during transits, Navy personnel

will instruct vessels to remain vigilant to the presence of fin whales that, when concentrated seasonally, may become vulnerable to vessel strikes.

(iii) Navy personnel will 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.

§ 218.15 Requirements for monitoring and reporting.

(a) *Unauthorized take.* Navy personnel will notify NMFS immediately (or as soon as operational security considerations allow) if the specified activity identified in § 218.10 is thought to have resulted in the serious injury or mortality of any marine mammals, or in any Level A harassment or Level B harassment of marine mammals not identified in this subpart.

(b) *Monitoring and reporting under the LOA.* The Navy will conduct all monitoring and reporting required under the LOA. The Navy will coordinate and discuss with NMFS how monitoring in the PMSR Study Area could contribute to the Navy's Marine Species Monitoring Program.

(c) *Notification of injured, live stranded, or dead marine mammals.* Navy personnel will consult the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-testing-and-training-activities-point-mugu-sea-range.*

(d) *Pinniped monitoring plan on SNI.* In consultation with NMFS, the Navy will implement a monitoring plan for beaches exposed to missile launch noise with the goal of assessing baseline pinniped distribution/abundance and potential changes in pinniped use of these beaches after launch events. Marine mammal monitoring shall include multiple surveys (*e.g.,* time-lapse photography) during the year that record the species, number of animals, general behavior, presence of pups, age class, gender and reactions to launch noise or other natural or human caused disturbances, in addition to environmental conditions that may include tide, wind speed, air temperature, and swell. In addition, video and acoustic monitoring of up to three pinniped haulout areas and rookeries will be conducted during launch events that include missiles or targets that have not been previously monitored using video and acoustic recorders for at least three launch events. Video monitoring cameras would be either high-definition video cameras, or Forward-Looking Infrared Radiometer (FLIR) thermal imaging cameras for night launch events.

(e) *Annual pinniped monitoring report on SNI.* The Navy will submit an annual report to NMFS of the SNI rocket and missile launch activities. The draft annual monitoring report will be submitted to the Director, Office of Protected Resources, NMFS, within 3 months after the end of the reporting year. NMFS will submit comments or questions on the draft monitoring report, if any, within 3 months of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 3 months after the submission of the draft if NMFS does not provide comments on the draft report. The report will summarize the launch events conducted during the year; assess any direct impacts to pinnipeds from launch events; assess any cumulative impacts on pinnipeds from launch events; and, summarize pinniped monitoring and research activities conducted on SNI and any findings related to effects of launch noise on pinniped populations.

(f) *Annual PMSR Study Area Training and Testing Activity Report.* Each year, the Navy will submit a detailed report PMSR (Annual Training and Testing Activity Report) to the Director, Office of Protected Resources, NMFS, within 3 months after the one-year anniversary of the date of issuance of the LOA. NMFS will submit comments or questions on the report, if any, within 1 month of receipt. The report will be considered final after the Navy has addressed NMFS' comments, or 1 month after submission of the draft if NMFS does not provide comments on the draft report. The annual report will contain information on all sound sources used (total hours or quantity of each bin; total annual number of each type of explosive events; and total annual expended/detonated rounds (missiles, bombs, *etc.*) for each explosive bin). The annual report will also contain both the current year's data as well as explosive use quantity from previous years' reports. Additionally, if there were any changes to the explosive allowance in a given year, or cumulatively, the 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 2022 PMSR Final Environment Impact Statement/Overseas Environmental Impact Statement (''FEIS/OEIS''; available at *https://pmsr-eis.com/*) and the analysis in the Marine Mammal Protection Act (MMPA) final rule (87 FR [INSERT FR PAGE NUMBER], July 8, 2022). The annual report will also include the details regarding specific requirements associated with monitoring on SNI. The final annual/close-out report at the conclusion of the authorization period (year 7) will serve as the comprehensive close-out report and include both the final year annual use compared to annual authorization as well as a cumulative 7-year annual use compared to 7-year authorization. The detailed reports will contain the information identified in paragraphs (f)(1) and (2) of this section.

(1) *Explosives.* This section of the report will include the following information for explosive activities completed that year.

(i) Activity information gathered for each explosive event.

(A) Location by Special Use Airspace (*e.g.,* Warning Area).

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

(D) Total annual expended/detonated ordnance (*i.e.,* missile, bombs *etc.*) number and types of explosive source bins detonated.

(E) Wave height in feet (high, low, and average) during exercise.

(F) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) Individual marine mammal observation (by Navy Lookouts) information for each sighting where mitigation was implemented.

(A) Date/time/location of sighting.

(B) Species (if not possible, indicate whale or dolphin).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.,* sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd (183 m), 200 to 500 yd (183 m to 457 m), 500 to 1,000 yd (457 m to 914 m), 1,000 to 2,000 yd (914 m to 1,829 m), or greater than 2,000 yd (1,829 m).

(J) Lookouts will 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 will 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.

(2) *Summary of sources used.* This section of the report will include the following information summarized from the authorized sound sources used in all training and testing events:

(i) Total annual quantity (per the LOA) of each explosive bin; and

(ii) Total annual expended/detonated ordnance (missiles, bombs, *etc.*) for each explosive bin.

(g) *Final close-out report.* The final (year 7) draft annual/close-out report will be submitted within 3 months after the expiration of this subpart to the Director, Office of Protected Resources, NMFS. NMFS will submit comments on the draft close-out report, if any, within 3 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.

§ 218.16 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations in this subpart, the Navy will apply for and obtain an LOA in accordance with § 216.106 of this chapter.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed between October 31, 2021, and October 30, 2028.

(c) If an LOA expires prior to October 30, 2028, 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 § 218.17(c)(1)) required by an LOA issued under this subpart, the Navy will apply for and obtain a modification of the LOA as described in § 218.17.

(e) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Geographic areas for incidental taking;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species or stocks of marine mammals and their habitat; and

(4) Requirements for monitoring and reporting.

(f) Issuance of the LOA(s) will be based on a determination that the level of taking is consistent with the findings made for the total taking allowable under the regulations in this subpart.

(g) Notice of issuance or denial of the LOA(s) will be published in the **Federal Register** within 30 days of a determination.

§ 218.17 Renewals and modifications of Letters of Authorization.

(a) An LOA issued under §§ 216.106 of this chapter and 218.16 for the activity identified in § 218.10(c) may be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for 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 in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of 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 218.16 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 annual monitoring report and annual exercise report from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies;

(C) Results from specific stranding investigations; or

(D) 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 a new 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 of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.16, an LOA may be modified without prior notice or opportunity for public comment. Notice will be published in the **Federal Register** within 30 days of the action.

§§ 218.18–218.19 [Reserved]

[FR Doc. 2022–14307 Filed 7–7–22; 8:45 am]

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Part III

Pension Benefit Guaranty Corporation

29 CFR Part 4262
Special Financial Assistance by PBGC; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4262

RIN 1212–AB53

Special Financial Assistance by PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule with request for comment.

SUMMARY: On July 9, 2021, PBGC issued an interim final rule setting forth the requirements for special financial assistance applications and related restrictions and conditions pursuant to the American Rescue Plan Act of 2021. PBGC is making changes to its regulation in response to public comments received on the interim final rule, with an additional opportunity for comment solely on the condition requiring a phased recognition of special financial assistance in a plan's determination of withdrawal liability.

DATES:

Effective date: This final rule is effective on August 8, 2022.

Applicability dates: This final rule is applicable to plans that apply or have applied for special financial assistance.

For a plan that received special financial assistance under part 4262 in effect before August 8, 2022, § 4262.14 will not apply unless and until the plan files a supplemented application under this part. Before the date that the plan files a supplemented application under this part, the rules under § 4262.14 in effect before August 8, 2022 apply to the plan.

For a plan that received special financial assistance under part 4262 in effect before August 8, 2022, § 4262.16(g)(2) will not apply unless the plan files a supplemented application under this final rule. If the plan files a supplemented application, § 4262.16(g)(2) applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application.

Comment date for withdrawal liability condition in § 4262.16(g)(2): Comments, which should address only the withdrawal liability condition in § 4262.16(g)(2), must be received on or before August 8, 2022 to be assured of consideration.

ADDRESSES: Comments on § 4262.16(g)(2) of this final rule may be submitted by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and title for this rulemaking (Special Financial Assistance by PBGC) and the Regulation Identifier Number for this rulemaking (RIN 1212–AB53). Comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026 or calling 202–229–4040 during normal business hours. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Daniel S. Liebman (*liebman.daniel@pbgc.gov;* 202–229–6510), Deputy General Counsel, Program Law and Policy Department, Hilary Duke (*duke.hilary@pbgc.gov;* 202–229–3839), Assistant General Counsel for Regulatory Affairs, or Stephanie Cibinic (*cibinic.stephanie@pbgc.gov;* 202–229–6352), Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

On July 9, 2021, the Pension Benefit Guaranty Corporation (PBGC) issued an interim final rule adding to its regulations a new part 4262 to implement the requirements under section 9704 of the American Rescue Plan Act of 2021, ''Special Financial Assistance Program for Financially Troubled Multiemployer Plans.'' [1] This program enhances retirement security for millions of Americans by providing eligible multiemployer defined benefit pension plans with special financial assistance (SFA) in the amounts required for the plans to pay all benefits due during the period beginning on the date of payment of SFA through the plan year ending in 2051. In consultation with, and with the approval of, PBGC's board of directors (Board of Directors or Board), PBGC is making changes to part 4262 of its regulations in response to public comments received on the interim final rule, including changes to the methodology to calculate SFA, permissible investments for SFA funds (SFA received and any earnings thereon), the application of conditions on a plan that merges with a plan that receives SFA, and the withdrawal liability conditions that apply to a plan that receives SFA.[2]

PBGC's legal authority for this rulemaking comes from section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) (Special Financial Assistance by the Corporation), which requires PBGC to issue regulations or guidance setting forth requirements for SFA applications, permits PBGC to provide for how SFA and earnings thereon are to be invested, and permits PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions by regulation or other guidance on an eligible multiemployer plan that receives SFA. PBGC's legal authority also comes from section 4002(b)(3) of ERISA, which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and from section 4003(a) of ERISA, which authorizes PBGC to conduct investigations and audits.

Major Provisions of the Regulatory Action

Part 4262 sets forth what information a plan is required to file to demonstrate eligibility for SFA and the amount of SFA to be paid by PBGC to the plan. The regulation identifies which plans will be given priority to file applications before March 11, 2023, and provides for a processing system to accommodate the filing and review of many applications

[1] The rule was published in the **Federal Register** on July 12, 2021, at 86 FR 36598.

[2] Under section 4002(a) of ERISA, PBGC is administered in accordance with policies established by the Board of Directors, which is made up of the Secretaries of the Department of Labor, the Department of the Treasury, and the Department of Commerce.

in a limited amount of time. This part also establishes permissible investments of SFA funds and other restrictions and conditions on plans that receive SFA.

PBGC is making changes in this final rule that revise part 4262, including changes to the SFA measurement date, the methodology to calculate SFA, permissible investments of SFA funds, the application of conditions on a plan that merges with a plan that receives SFA, and the withdrawal liability conditions that apply to a plan that receives SFA.

Background

PBGC and the Multiemployer Insurance Program

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of ERISA: one for single-employer defined benefit pension plans and one for multiemployer defined benefit pensions plans (multiemployer plans). In general, a multiemployer plan is a plan which is maintained pursuant to one or more collective bargaining agreements involving two or more unrelated employers. The multiemployer insurance program protects the benefits of approximately 10.9 million workers and retirees in approximately 1,400 plans. This final rule deals with multiemployer plans.

The multiemployer insurance program provides PBGC with tools to help plans that are insolvent or approaching insolvency to be able to pay guaranteed benefits.[3] This help is primarily in the form of financial assistance loans under section 4261(a) of ERISA. Under that provision, when a multiemployer plan becomes insolvent, PBGC provides periodic financial assistance payments to the insolvent plan in amounts that, together with existing plan assets and any other plan income, are sufficient to pay guaranteed benefit amounts to participants and beneficiaries. In general terms, a plan is insolvent if it cannot pay benefits under the plan when due during the current plan year.

The Multiemployer Pension Reform Act of 2014 (MPRA) created pathways under ERISA to enable certain distressed plans to avoid insolvency. Plans that are in critical and declining status[4] may apply to the U.S. Department of the Treasury (Treasury Department) for a suspension of benefits under section 305(e)(9) of ERISA, which requires plans to show that the proposed suspension would enable them to avoid insolvency. Without such a showing, the Treasury Department cannot approve the application for a suspension of benefits. Generally, under this process, plans may propose a reduction of benefits to no less than 110 percent of PBGC's guaranteed benefit amount. A plan that has taken all reasonable measures, including applying for a suspension of benefits, may also request partition assistance from PBGC (under section 4233 of ERISA). A partition allows the plan to transfer responsibility for paying monthly guaranteed benefits for a portion of the plan's participants and beneficiaries to a newly created successor plan that receives financial assistance from PBGC. When a partition is approved, the original plan has an ongoing obligation to pay and preserve benefits for all participants at levels above PBGC's guaranteed amounts. All plans approved for benefit suspensions under MPRA as of March 11, 2021, certified—and Treasury confirmed through review of plan applications—that the proposed suspensions (in combination with any partition) would enable the plans to avoid insolvency indefinitely, as set forth in the Treasury Department's implementing regulations.

MPRA also allows critical and declining plans to request financial assistance from PBGC upon merging with another multiemployer plan (''facilitated mergers'' under section 4231(e) of ERISA) if such financial assistance is necessary for the multiemployer plan to become or remain solvent. Financial assistance to the merged plan may promote mergers with more viable plans and eliminate the need for benefit reductions.

In recent years, Congress considered a range of proposals to address the funding crisis in the multiemployer pension system, including proposals to expand PBGC's partition authority, loan programs, and broader reforms to stabilize multiemployer plans and extend the solvency of PBGC's multiemployer insurance program. Many of the prominent efforts to address issues facing the multiemployer pension system included ideas to effectively reverse MPRA benefit suspensions and provide for reinstatement of the suspended benefits. On March 11, 2021, the President signed into law the American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2), which amended title IV of ERISA to address the immediate crisis facing severely underfunded multiemployer plans and the solvency of PBGC, and to assist plans by providing funds to reinstate suspended benefits.

American Rescue Plan Act of 2021—Special Financial Assistance Program for Financially Troubled Multiemployer Plans

Section 4262 of ERISA creates a program to enhance retirement security for millions of Americans by providing SFA to financially troubled multiemployer plans. Under current conditions, the SFA program is expected to assist about 200 financially troubled plans. The SFA provided to these plans will forestall their insolvency for many years into the future and includes funds to reinstate suspended monthly benefits going forward, and for make-up payments to restore previously suspended benefits. In addition, the SFA program improves the financial outlook for PBGC's multiemployer insurance program.

Section 9704 of ARP amends section 4005 of ERISA to establish an eighth fund for SFA from which PBGC will provide SFA to multiemployer plans pursuant to section 4262 of ERISA. The eighth fund will be credited with amounts from time to time as the Secretary of the Treasury, in conjunction with the Director of PBGC, determines appropriate, from the general fund of the Treasury Department. Transfers from the general fund to the eighth fund cannot occur after September 30, 2030.

Section 4262 of ERISA sets forth the provisions for SFA, including which plans are eligible to apply, the cutoff date for applications, rules relating to actuarial assumptions and PBGC's determinations on applications, restrictions on the use of SFA, and that certain plans with suspended benefits[5] must reinstate those benefits prospectively and provide make-up payments to restore previously suspended benefits. Unlike the financial assistance provided under section 4261 of ERISA, which is in the form of a loan, a plan receiving SFA under section 4262 has no obligation to repay SFA.

Section 4262 of ERISA requires PBGC to prescribe in regulations or other guidance the requirements for SFA applications, including an alternate application for plans with an approved

[3] Multiemployer plan guaranteed benefits are primarily nonforfeitable benefits and the maximum guarantee is set by law under section 4022A of ERISA.

[4] Amultiemployer plan is incritical and declining status if the plansatisfies the criteria for critical statusunder section 305(b)(2) of ERISA and is projectedto become insolvent within the meaningof section 4245 during the current planyear or any of the 14 succeeding planyears (or 19succeeding plan years if theplan has a ratio of inactive participantsto active participants thatexceeds 2 to 1 or if the funded percentage of theplan is less than 80 percent).

[5] Plans with suspended benefits pursuant to section 305(e)(9) or 4245(a) of ERISA.

partition under section 4233 of ERISA. In addition, PBGC may prioritize applications during the first 2 years after March 11, 2021, prescribe how SFA funds are to be invested, and impose reasonable conditions on plans that receive SFA.

Although PBGC's rulemakings generally involve coordination and consultation with two other agencies that have jurisdiction over pension plans (the Treasury Department and the U.S. Department of Labor (Department of Labor or Department)), section 4262 of ERISA specifically provides for coordination and consultation with the Treasury Department, particularly on SFA applications involving a plan's reinstatement of benefits suspended under section 305(e)(9) of ERISA.[6] The statute also provides for consultation with the Treasury Department with respect to a plan that proposes in its application to change certain assumptions, with respect to a plan that files an application under PBGC regulations or guidance prioritizing certain applications, and on the conditions imposed on plans that receive SFA.[7] This final rule is a result of that coordination and consultation, which will continue during the SFA program's operation as plans apply for SFA.

Interim Final Rule

On July 9, 2021, PBGC issued an interim final rule on Special Financial Assistance by PBGC. Before the interim final rule was issued, PBGC held listening sessions with interested parties at their request. Representatives of PBGC's Board of Directors (the Secretaries of the Department of Labor, the Treasury Department, and the Department of Commerce) also participated in these listening sessions. Most of the requesters provided letters or agendas outlining their concerns. In addition, other interested parties sent PBGC letters communicating their views. PBGC considered the views and concerns expressed, which helped to inform the interim final rule.

PBGC provided a 30-day comment period [8] for the interim final rule and received over 100 comment letters from multiemployer plans and associations representing multiemployer plans, contributing employers and associations representing employers, labor organizations, actuarial consulting firms and practitioners, financial services firms, other plan professionals, participants, members of Congress, and other individuals. The comments, PBGC's responses to the comments, and a summary of changes made to the interim final rule are discussed in the next section.

Section-by-Section Discussion of Public Comments

Overview and Purpose

The final rule amends part 4262, including changes from the interim final rule regarding the SFA measurement date, the determination of eligibility and the amount ofSFA (including interest rate assumptions and the calculation of SFA for plans with an approved MPRA benefit suspension as of March 11, 2021), the content of an application for SFA, the process of applying, PBGC's review of applications,and restrictions (including permissible investment of SFA funds) and conditions on plans receiving SFA. The final rule also makes other clarifying and editorial changes to part 4262.

In this document, PBGC is providing for a 30-day comment period solely on the condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability in § 4262.16(g)(2), because it is an area of complexity that may benefit from additional public comment. This will provide an opportunity for additional public comment on the condition and will allow PBGC to assess the effectiveness of this withdrawal liability condition, consider adjustments or changes, and determine whether more clarification is needed regarding the condition or the mechanics of implementation. To the extent PBGC determines that adjustments or changes to this withdrawal liability condition are appropriate and authorized, or that further clarification is needed, PBGC may revise the condition accordingly.

Broadly, PBGC is interested in hearing from commenters about whether the condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability strikes the correct balance among stakeholders, or if a different condition might work better. Additionally, PBGC is interested in hearing from stakeholders about what the expected impact of such a condition is likely to be, and whether additional clarification or guidance would be useful.

PBGC also requests comments about whether the phased recognition of SFA, which reflects projected rather than actual market earnings and losses, expenses, and benefit payments, strikes the correct balance. If commenters disagree with this condition, PBGC is interested in comments that articulate the rationale supporting such disagreement. PBGC requests comments on whether the determination of the timeline under the final rule appropriately balances the interests of various stakeholders, or whether a shorter (or longer) phase-in period might protect the financial security of plan participants and beneficiaries without placing an undue burden on withdrawing employers. PBGC is also interested in comments about a partial phase-in condition, including how such a condition might work, and whether a partial phase-in condition has any benefits or drawbacks as compared to the phase-in condition in this rule. Finally, should there be a different phase-in rule for plans that will receive a large amount of SFA compared to their non-SFA assets than for plans that will receive a relatively small amount of SFA compared to their non-SFA assets (so that the SFA account is projected to be exhausted after a relatively short period)?

Definitions—SFA Measurement Date

The SFA measurement date used in calculating the amount of SFA under § 4262.4 was defined in § 4262.2 of the interim final rule as the last day of the calendar quarter immediately preceding the date the plan's application was filed. This date was established by the filing of the plan's initial application for SFA.

A few commenters raised general concerns about the uncertainty of the plan's SFA measurement date and having to change the SFA measurement date immediately after the end of the calendar quarter because of PBGC's metering system described in § 4262.10. One of the commenters recommended that PBGC consider adjusting the SFA measurement date to allow plans intending to file, but unable to file during a temporary closure of the filing window, to use the plan's original intended SFA measurement date. A suggestion was made to allow plans to submit a notice of intent to file. Another commenter recommended that non-priority group plans be given the option to freeze the SFA measurement date as of the earliest date a plan in priority group 6 could apply or the end of the calendar quarter before the date PBGC begins to accept applications for non-priority group plans. The commenters stated this would save plans the burden and expense of having to re-do their applications if the applications cannot be filed until the following calendar quarter.

PBGC understands that some commenters would like greater certainty

[6] See section 4262(n) of ERISA.

[7] See sections 4262(m) and 4262(n) of ERISA.

[8] PBGC considered comments received up to 1 week after the 30-day comment period as timely received during the comment period.

about when an initial application may be filed to establish the plan's SFA measurement date. To address timing concerns related to preparing a plan's application, in the final rule, PBGC is changing the definition of the SFA measurement date in § 4262.2 from ''the last day of the calendar quarter immediately preceding the date the plan's application was filed'' to ''the last day of the third calendar month immediately preceding the date the plan's initial application for special financial assistance was filed.'' For example, if the plan's initial application was filed on March 15, 2023, its SFA measurement date would be December 31, 2022; if the plan's initial application was filed on July 1, 2023, its SFA measurement date would be April 30, 2023.

In addition, based on a commenter suggestion, PBGC is adding a provision in § 4262.10 to provide a mechanism for plans to file a ''lock-in application.'' If a plan files a lock-in application, it will be considered the plan's initial application for SFA, establishing the filing date for a plan's initial application and the plan's base data (SFA measurement date, census data, non-SFA interest rate assumption, and SFA interest rate assumption). This provision is described in more detail later in the preamble under the subheading *Lock-in Application.*

Eligible Multiemployer Plans

There are four types of multiemployer plans identified in section 4262(b)(1) of ERISA that are eligible to apply for SFA under § 4262.3 of PBGC's regulation. This list is in section 4262(b)(1)(A) through (D) of ERISA and consists of:

(1) A plan in critical and declining status (within the meaning of section 305(b)(6) of ERISA) in any plan year beginning in 2020, 2021, or 2022.

(2) A plan with a suspension of benefits approved under section 305(e)(9) of ERISA as of the date ARP became law (March 11, 2021).

(3) A plan certified to be in critical status (within the meaning of section 305(b)(2) of ERISA) that has a modified funded percentage of less than 40 percent and a ratio of active to inactive participants which is less than 2 to 3, in any plan year beginning in 2020, 2021, or 2022.

(4) A plan that became in solvent [9] for purposes of section 418E of the Internal Revenue Code (the Code) after December 16, 2014 (the date MPRA became law) and has remained insolvent and has not terminated under section 4041A of ERISA as of March 11, 2021.

In its interim final rule, PBGC noted that a plan that terminated by mass withdrawal in a plan year that ended before January 1, 2020, is not eligible for SFA under section 4262(b)(1)(A) of ERISA and § 4262.3(a)(1) (plans that are in critical and declining status in any plan year beginning in 2020, 2021, or 2022). This is because the rules under section 432 of the Code, for plans in endangered, critical, and critical and declining status, do not apply to such a plan in any of those plan years.[10] The interim final rule provided as an example that, if a plan that was in critical and declining status in 2019 terminated by mass withdrawal in that year, the plan would not be eligible for SFA under § 4262.3(a)(1) because it was not in critical and declining status in 2020, 2021, or 2022. To provide further clarification, PBGC notes that for the same reason, a plan that terminated by mass withdrawal in a plan year beginning before 2020 cannot be eligible for SFA under section 4262(b)(1)(C) of ERISA or under § 4262.3(a)(3) (plans that are in critical status in any plan year beginning in 2020, 2021, or 2022).

Two commenters stated that plans terminated by mass withdrawal should be eligible to apply for SFA. In particular, one commenter suggested that if a plan terminated by mass withdrawal, but is not currently insolvent, it should be eligible to apply for SFA, arguing that section 4262 of ERISA does not state that any plan terminated before 2020 through mass withdrawal is not eligible for relief. Section 4262(b)(1) of ERISA provides a list of four types of plans that are eligible to apply for SFA, and PBGC cannot extend eligibility for SFA through its regulation to a plan that is not included in that list. As noted above, a plan that is terminated by mass withdrawal in a plan year beginning before 2020 does not meet the eligibility requirements under section 4262(b)(1)(A) or (C) of ERISA or § 4262.3(a)(1) or (3).

Section 4262.3(c)(1) of the regulation provides that aplan that has elected to be in critical status under section 305(b)(4) of ERISA, but is not certified to be in critical status under section 305(b)(2), is not an eligible multiemployer plan. In response to a commenter, PBGC is further clarifying that a plan is an eligible multiemployer plan if it is certified to be in critical status under section 305(b)(2) of ERISA during the 2020, 2021, or 2022 plan years (and otherwise meets the other criteria for an eligible critical status plan under § 4262.3(a)(3)), regardless of whether the plan made an election under section 305(b)(4) of ERISA to be in critical status in a previous year.

In addition, a commenter requested clarification as to how an election under section 9701(a) of ARP affects SFA eligibility. Section 9701(a) of ARP permits a multiemployer plan sponsor to make an election relating to the plan's status under section 432(b) of the Code and section 305(b) of ERISA (section 432 status) for certain plan years. If the plan sponsor makes the election under section 9701(a) of ARP for a plan year, then, notwithstanding the actuarial certification of the plan's status for the plan year, the plan will have the same status as it had for the preceding plan year. IRS Notice 2021–57, 2021–44 IRB 706, refers to an election under section 9701(a)(1) of ARP as a ''freeze election,'' and a multiemployer plan sponsor may make a freeze election for the first plan year beginning on or after March 1, 2020, or the next succeeding plan year. That guidance also provides that if a freeze election applies for a plan year, then the plan has an elected section 432 status, which may be different than the plan's section 432 status as certified by the plan's actuary under section 432(b)(3) of the Code for that plan year. Accordingly, if a plan is certified to be in critical status (within the meaning of section 305(b)(2) of ERISA) in any plan year beginning in 2020 through 2022 and meets the other criteria for an

[9] A multiemployer plan is regarded as insolvent as of the first day of the plan year in which it is projected to have insufficient resources to pay all benefits under the plan when due during the plan year.

[10] Section 412(a)(1) of the Code requires a pension plan to satisfy the minimum funding standard applicable to the plan for each plan year. In the case of a multiemployer plan, section 412(a)(2)(C) provides that participating employers must make contributions under the plan for a plan year that, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of the plan year. Section 412(e)(4) provides that the minimum funding rules under section 412 apply to a multiemployer plan until the last day of the plan year in which a plan terminates within the meaning of section 4041A(a)(2) of ERISA (that is, termination by mass withdrawal or a cessation of the obligation of all employers to contribute under the plan). Accordingly, the rules of section 431 of the Code do not apply to such a plan for periods after the plan year of termination.

The Internal Revenue Service (IRS) has informed PBGC that section 432 of the Code, which provides rules for multiemployer plans in endangered status or critical status, likewise does not apply to a multiemployer plan for periods after the plan year of termination within the meaning of section 4041A(a)(2) of ERISA. This is consistent with section 301(c) of ERISA (over which the Secretary of the Treasury has interpretive jurisdiction pursuant to section 101 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App.)), which provides that part 3 of title I of ERISA, including the minimum funding rules parallel to sections 412, 431, and 432 of the Code, applies until the last day of the plan year in which the plan terminates within the meaning of section 4041A(a)(2) of ERISA.

eligible critical status plan under § 4262.3(a)(3), the plan would be eligible to apply for SFA regardless of whether the plan has made a freeze election.

To ensure uniformity for applications and clarify what data to use to satisfy eligibility requirements for critical status plans under section 4262(b)(1)(C) of ERISA, § 4262.3(a)(3) and (c)(2) of the final rule specify the data that is used for this purpose on the Form 5500 Schedule MB to determine the ''modified funded percentage,'' and the data on either the Form 5500 or the Form 5500 Schedule MB to determine the ratio of active to inactive participants.

Section 4262(b)(2) of ERISA defines ''modified funded percentage'' to mean the percentage equal to a fraction the numerator of which is the current value of plan assets (as defined in section 3(26) of ERISA) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of the Code).

The numerator for the plan's funded percentage under § 4262.3(c)(2) is calculated using the current value of assets on line 2a of Form 5500 Schedule MB,[11] which is also required to be reported on line 1*l,* column (a) of the Schedule H,[12] and adding to it the current value of withdrawal liability payments due to be received by the plan on an accrual basis reflecting a reasonable allowance for amounts considered uncollectible [13] (if not already included in the current value of net assets reported on line 2a). The value calculated for the numerator is consistent with the meaning of current value of assets under section 3(26) of ERISA.[14] The current value of assets includes total cash contributions due to be received on an accrual basis. One commenter suggested that the inclusion of withdrawal liability receivables in the asset value may cause some plans to be ineligible and that, due to the uncertain nature of future withdrawal liability payments, PBGC should consider excluding these payments from the determination of the plan's eligibility for SFA. PBGC considered the comment but is not making the suggested change. The inclusion of withdrawal liability payments due to be received by the plan is consistent with the meaning of current value of assets under section 3(26) of ERISA, and the provision, as drafted, recognizes the uncertain nature of future withdrawal liability payments by providing for an allowance for amounts of withdrawal liability considered uncollectible.

As explained earlier in this section of the preamble, section 4262(b)(1)(C) of ERISA requires, as one of the conditions of eligibility, that critical status plans have a ratio of active to inactive participants that is less than 2 to 3. The statute does not specify what participant count to use. To fill in this gap, the interim final rule referred to end-of-year participant counts on the Form 5500. On the 2021 Form 5500, these are the number of participants identified on line 6a(2) (for total number of active participants) and the sum of lines 6b, 6c, and 6e (for inactive participants: retired or separated participants receiving benefits, other retired or separated participants entitled to future benefits, and deceased participants whose beneficiaries are receiving or are entitled to receive benefits). One commenter suggested that plans be permitted to use either the participant counts from the Form 5500 or the participant counts reported on the Form 5500 Schedule MB, which the commenter noted may be different for a variety of reasons from the counts reported on the Form 5500. PBGC considered the comment and decided to permit plans to use either the participant counts from the Form 5500, as described above, or the beginning-of-the-year participant counts on the Form 5500 Schedule MB. On the Form 5500 Schedule MB, these are the number of participants identified on line 2b(3)(c) (for total number of active participants) and the sum of lines 2b(1) and 2b(2) (for inactive participants: retired participants and beneficiaries receiving payment and terminated vested participants).

In the final rule, PBGC makes changes to § 4262.3(a)(4) to clarify that an eligible insolvent plan must have become insolvent after December 16, 2014, and remained insolvent and not terminated as of March 11, 2021. In order to have remained insolvent as of March 11, 2021, the plan must have become insolvent before that date.

Summary of Changes Affecting the Amount of Special Financial Assistance

The calculation of the amount of SFA under section 4262 of ERISA has multiple interacting and technical components, including factors that the statute does not define and leaves to PBGC's reasonable interpretation. Congress' instruction to PBGC under section 4262(c) of ERISA to ''issue regulations or guidance setting forth requirements for special financial assistance applications'' therefore requires PBGC, in coordination with its Board agencies,[15] to apply its expertise in, and responsibility for, the administration of title IV of ERISA to promulgate regulations and application instructions that comport with the statutory requirements.

Many commenters argued that PBGC should exercise its discretion to interpret various components of the calculation of the amount of SFA differently than in the interim final rule. PBGC has considered these comments and assessed whether any proposed changes to the interim final rule would better achieve the statutory purpose evidenced by the text of the statute, which is discussed later in the preamble. Following extensive analysis, including projections of various proposed changes on long-term plan solvency and funded status through 2051, as well as implementing the statutory instruction that PBGC consult with the Treasury Department regarding considerations specific to the calculation of the amount of SFA for plans with approved suspensions of benefits under section 305(e)(9) of ERISA as of March 11, 2021 (MPRA plans), PBGC has decided to adjust some of the interpretive choices set forth in the interim final rule on which PBGC received comments. Among the adjustments in this final rule are the expected rate of return on SFA assets to be used in determining the amount of SFA and the calculation of the amount of SFA for MPRA plans.

1. Pay All Benefits Due Through 2051

Section 4262(j) of ERISA sets certain requirements for how much SFA an eligible plan is to receive. Section 4262(j)(1) provides that ''[t]he amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment . . . and ending on the last day

[11] All line references in this section are to the 2021 Form 5500 and schedules.

[12] The 2021 Form 5500 instructions provide that, with certain exceptions, assets reported on line 2a of Form 5500 Schedule MB should be the same as reported on line 1*l,* (column (a)) of the Schedule H.

[13] PBGC notes that Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 960, Plan Accounting—Defined Benefit Pension Plans 960–310–25–3A states: ''A multiemployer plan may also have a receivable for a withdrawing employer's share of the plan's unfunded liability. The plan should record the receivable, net of any allowance for an amount deemed uncollectible, when entitlement has been determined.''

[14] The withdrawal liability payments due to be received by the plan are not included in the actuarial value of assets or the fair market value of assets for purposes of sections 431 and 432 of the Code and the corresponding sections 304 and 305 of ERISA.

[15] The Departments of Labor, the Treasury, and Commerce.

of the plan year ending in 2051, with no reduction in'' benefits. Section 4262(j)(2) provides that ''the funding projections for purposes of this section shall be performed on a deterministic basis.''

Many commenters argued that the mandatory language of section 4262(j)(1) of ERISA, which states that the amount of SFA ''shall'' be such amount ''required for the plan to pay all benefits due'' through the end of 2051, means that if an eligible plan does not receive SFA sufficient to project solvency through 2051, taking into account the amount that SFA assets can reasonably be expected to earn given the statutory investment restrictions imposed by section 4262(*l*), then the statute has not been implemented properly. Section 4262(j)(1) clearly requires an eligible plan's SFA to be the amount necessary for the plan to pay all benefits through 2051. In addition to the use of the term ''shall'' in section 4262(j)(1) itself, other provisions of section 4262 refer to section 4262(j) as ''required'' or a ''requirement.'' [16]

2. Interest Rates for SFA and Non-SFA Assets

Plans will necessarily invest—and pay benefits out of—two separate pools of assets between the date of SFA payment and the end of 2051. This is because section 4262(*l*) of ERISA requires plans to ''segregate'' SFA assets from ''other plan assets'' and circumscribes investment of SFA assets. For a plan to project accurately how much SFA is ''required'' for the plan ''to pay all benefits due'' through the end of the plan year ending in 2051, it must project the SFA assets, adjusted for earnings, needed to cover each year's benefit payments and expenses until exhausted, and the non-SFA ''other plan assets,'' adjusted for contributions and earnings, needed to cover each year's benefit payments and expenses after the SFA assets are exhausted through the end of the SFA coverage period. Thus, an amount of SFA that accounts for existing plan assets under section 4262(j), and the segregation and separate investment of those assets from SFA assets under section 4262(*l*), requires two asset projections: one for a plan's SFA assets, and one for a plan's non-SFA assets.

To make these two projections, plans must make assumptions about future events—including expected returns on investments—for each pool of assets to calculate that pool's projected value. Differences in expected investment returns for each pool of assets affect the amount of SFA needed to meet projected liabilities through 2051. Using an accurate projected rate of return for each pool is critical for determining whether SFA paid now is in the amount projected to ''pay all benefits due'' through the end of 2051, as required by section 4262(j)(1) of ERISA.

In the interim final rule, PBGC concluded that the same investment-return assumption should be used to project both pools of assets. In reaching this conclusion, PBGC gave substantial weight to section 4262(e)(2) of ERISA which, as noted in the preamble to the interim final rule, requires a plan to use an interest rate that is based on the rate used in the plan's most recent certification of plan status before January 1, 2021, subject to an interest rate limit. PBGC also gave substantial weight to section 4262(e)(4), which provides that if a ''prior assumption is unreasonable,'' a plan may propose to change that assumption if it explains why the assumption ''is no longer reasonable,'' except that the plan ''may not propose a change to the interest rate otherwise required under this subsection.''

Many commenters raised concerns with PBGC's approach. If the interest rate in section 4262(e) of ERISA (which, for many plans would be close to 5.3 percent based on pension funding segment rates in December 2021), were used to project the value of both SFA and non-SFA assets, but SFA investments are limited to investment grade bonds under section 4262(*l*) (which would likely result in an actual rate of return close to 2 percent as of December 2021, assuming that PBGC permitted no investments other than investment grade bonds and that current yields on such bonds continued through 2051), the SFA amount would be insufficient to meet the requirement of section 4262(j)(1) that it be the ''amount required for the plan to pay all benefits due'' through the end of 2051. There is thus, asserted the commenters, an inconsistency between these two provisions of the statute. Providing a separate investment-return assumption for SFA assets that reflects the investment restrictions under section 4262(*l*) of ERISA would avoid this inconsistency. PBGC recognizes that the interim final rule, without giving more weight to the requirement of section 4262(j)(1), did not sufficiently address this inconsistency. PBGC agrees with commenters that this concern would be alleviated by giving more weight to the language of section 4262(j) than was given in the interim final rule.

PBGC is therefore adjusting the rules set forth in the interim final rule to account for the fact that section 4262(*l*) of ERISA requires plans receiving SFA to have two separate pools of assets and expressly contemplates that they will be invested separately—with different expected rates of return. PBGC also believes that this approach better harmonizes sections 4262(e), (j), and (*l*) with each other. The statute must be read as a whole, and each section construed in a manner that renders them compatible, not contradictory.

3. SFA for MPRA Plans

As described earlier in the preamble, the interim final rule provided a method for eligible multiemployer plans to calculate the amount of SFA based on the ''amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment . . . and ending on the last day of the plan year ending in 2051 . . .'' under section 4262(j)(1) of ERISA. The interim final rule provided only one way to calculate the ''amount required'' for both MPRA plans and plans that are not MPRA plans.[17] PBGC received several comments that raised issues with how this calculation would work for MPRA plans. The commenters stated that the final rule should treat MPRA plans differently when calculating the amount of SFA.

Commenters raised several issues that were unique to MPRA plans. For example, as part of the MPRA process, all MPRA plans now eligible for SFA were required statutorily to demonstrate that a proposed benefit suspension would improve their funded status such that the plan would avoid insolvency ''indefinitely.'' To accept SFA, MPRA plans must permanently reinstate those suspended benefits. Under the interim final rule, however, MPRA plans would not receive more SFA than an amount necessary to avoid insolvency through 2051. Thus, commenters described MPRA plan trustees as facing an unenviable choice between retaining the existing benefit suspensions (enabling the plan to avoid insolvency indefinitely at the cost of forgoing SFA) or applying for and receiving SFA and reinstating the suspended benefits (potentially jeopardizing the long-term financial health of the plan which MPRA was originally intended to promote). Either choice would involve favoring one set of participants over

[16] Sections 4262(i)(1) and 4262(n)(1)(B) of ERISA.

[17] For purposes of determining the amount of SFA under § 4262.4, the final rule defines a MPRA plan under § 4262.4(a)(3)(ii) as a plan that is eligible for SFA under § 4262.3(a)(2).

another.[18] A discussion of the comments on determining the amount of SFA, including for plans that implemented MPRA benefit suspensions, is presented later in this preamble under the subheading *Comments on Amount of Special Financial Assistance.*

Section 4262(n) of ERISA requires PBGC to coordinate with the Secretary of Treasury in prescribing the application process for eligible multiemployer plans, and the amount of SFA needed by a plan that has suspended benefits under section 305(e)(9) of ERISA that takes into account the projected funded status of the plan at the end of 2051, the payment of previously suspended benefits, and other relevant factors. Following consideration of the issues raised by commenters, and as determined after consultation with the Treasury Department, the final rule provides a methodology for determining an amount of SFA for MPRA plans that considers these factors. PBGC's consultation with the Treasury Department and the methodology for MPRA plans are discussed later in the preamble under the subheading *Calculating the Amount of SFA.*

4. Permissible Investments

One explicit avenue under the statute that could assist plans in being able to pay all benefits due through 2051 is through PBGC's authority under section 4262(*l*) of ERISA to allow SFA assets to be invested in types of investments other than investment grade bonds. Such other investments, for example, could have both a higher potential for reward and a higher risk than investment grade bonds, though the higher risk of these investments may raise different concerns about a plan's likelihood of paying all benefits due through 2051.

As noted in the interim final rule, PBGC shares the concerns expressed by some commenters that overly conservative limits on investment of SFA could adversely impact plans' financial health. Permitting a wider range of investments could help plans be able to pay all benefits due through 2051. But the language of section 4262(*l*) of ERISA also evinces an intent that SFA investments be relatively safe. Allowing SFA assets to be invested predominantly in return-seeking assets risks plans not being able to pay all benefits due through 2051 given the potential for severely adverse market events. It could also put taxpayer-funded assistance at significant risk of loss.

As discussed later in the preamble, in consideration of comments received in response to PBGC's specific request, PBGC has amended in the final rule the investment limitations set forth in the interim final rule. Given PBGC's intention that the investment choices provided under the interim final rule were always only a starting point for discussion to find a more appropriate balance between certainty and safety of investments on the one hand, and the opportunity for plans to have flexibility to decide appropriate overall investment policies on the other, PBGC examined how to adjust permissible investments in light of the feedback from commenters. In the final rule, PBGC is allowing plans that have received SFA to invest a percentage of SFA assets and earnings thereon in certain ''return-seeking assets,'' with the remainder invested in investment grade fixed income securities to help ensure that risk of investment losses is mitigated.

While expanding the range of permissible investments to include a percentage of return-seeking assets eases the path for the plans to be able to pay all benefits due through 2051, PBGC's modeling showed that it alone is unlikely to close the gap between the interest rate assumption to calculate the amount of SFA and the expected rate of return on investment of SFA. Thus, PBGC and its Board examined other approaches that, in combination with greater flexibility in investments, could fulfill the expectation of being able to pay all benefits due through 2051 for all eligible plans. Alternatives are described in the *Regulatory Impact Analysis* section later in this preamble.

PBGC and its Board have considered the commenters' views and the alternative approaches for assisting plans to be able to pay all benefits due through 2051. As noted earlier in the preamble, the final rule allows plans to use a separate, specified interest rate assumption for projecting SFA assets that is more closely aligned with the rate of return estimated to be achievable on the permitted investments of SFA assets. PBGC determined that this change, together with the change in permitted investments, was necessary to help enable eligible plans to pay all benefits due through 2051, while limiting the risk that plans would incur significant losses through the investment of SFA dollars. This is supported by PBGC modeling and analysis. The changes to the interest rate assumption and to permissible investments are discussed later in this preamble under the subheadings *Interest Rates for SFA and Non-SFA Assets* and *Permissible Investments,* respectively.

Comments on Amount of Special Financial Assistance

Under section 4262(a)(1) of ERISA, PBGC is to provide SFA to an eligible multiemployer plan upon application. As discussed earlier in the preamble, under section 4262(j)(1) the amount of SFA to be provided is the ''amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment . . . and ending on the last day of the plan year ending in 2051. . . .'' This is referred to in section 4262(i)(1) as ''the amount necessary as demonstrated by the plan sponsor.'' Section 4262.4(a) of the interim final rule implemented section 4262(j)(1) by providing that the amount of SFA for a plan is the amount (if any), by which the value of all plan obligations exceeds the value of all plan resources, determined as of the plan's SFA measurement date and limited to the SFA coverage period (the period ending on the last day of the last plan year ending in 2051).

PBGC received numerous comments on this section of the rule, as noted earlier in the preamble. Many of the commenters on the interim final rule argued that PBGC's implementation of section 4262(j)(1) was contrary to Congressional intent and the statutory direction for plans to receive SFA in an amount required for the plan to pay all benefits due through 2051.

Many commenters disagreed with PBGC that the statute should be interpreted to require all plan assets and future income (together, a plan's resources) to be considered when determining the amount of SFA.

Several commenters raised the concern that some critical status plans that meet statutory eligibility

[18] In July of 2021, the Department of Labor issued the ''Statement on PBGC 'Special Financial Assistance' Interim Final Rule for Eligible Multiemployer Plans.'' In that Statement, the Department said that in its ''view, ARP's inclusion of plans that suspended benefits under MPRA and the prohibition against a future MPRA suspension for a plan receiving SFA reflects a clear legislative objective to allow plan fiduciaries to restore benefits that were previously suspended and to encourage all eligible plans to apply for SFA without raising potential fiduciary liability concerns about undoing current or precluding future MPRA suspensions.'' The Department has advised PBGC that in its view the approach of the final rule removes the risk that receipt of SFA will harm the projected status of a MPRA plan at the end of 2051 more than not applying for and receiving SFA. Accordingly, the Department takes the view that a plan sponsor's decision to apply for SFA would not violate section 404 of ERISA and the Department will bring no enforcement action with respect to such decision. The implementation of such decision, however, will be subject to the fiduciary and other requirements of title I of ERISA.

requirements and that may apply under § 4262.3 will not receive SFA or will receive only minimal SFA under § 4262.4 of the interim final rule. Commenters said this is because many of these plans will have assets and other resources that equal or exceed the present value of benefit obligations through 2051, although insolvency may be projected after that date. Some commenters also noted that the outcome of some eligible plans receiving zero or minimal SFA is inequitable and will penalize plans whose trustees and associated bargaining parties have been proactive under collective bargaining agreements or rehabilitation plans to improve plan finances. Commenters suggested this outcome would be contrary to Congress' intent in including these plans as eligible for SFA. Without SFA, these critical status plans will remain ''financially vulnerable'' according to the commenters.

One commenter described SFA as an important tool to address the current crisis, but the commenter said that it does not address the structural issues that created the need for SFA. Another commenter expressed support for the interim final rule's implementation of the amount of SFA. The commenter said to exclude current assets and future contributions from the calculation of SFA would be irresponsible.

Some commenters suggested there is support in the statute for alternatives to § 4262.4(a) of the interim final rule. Suggested alternatives include disregarding certain plan resources, such as future contributions and future accruals, or carving out a portion of current assets or future contributions to fund benefits after 2051. Others suggested that the interim final rule's standard based on a projection of sufficiency to the last day of the plan year ending in 2051 should be replaced with one consistent with MPRA's standard to avoid insolvency indefinitely. One commenter suggested this can be accomplished by interpreting section 4262(j)(1) of ERISA as providing SFA in an amount required for a deterministic projection of plan assets to be increasing during the last plan year ending in 2051. Under one suggested approach, the present value of plan resources needed to increase plan funding post-2051 would not be included in SFA-eligible plan resources. Other commenters suggested disregarding all plan resources in determining the amount of SFA.

Some MPRA plans commented that the receipt of SFA in the amount provided for under the interim final rule will put their long-term solvency projections at risk. They noted that the interim final rule would result in these plans receiving less in SFA than the present value of the benefits the plans would be required to restore. Some of these commenters suggested excluding from the calculation of SFA that portion of existing assets or future contributions to fund post-2051 benefit obligations. Others suggested providing an amount of SFA sufficient to pay the reinstated benefits beyond the plan year ending in 2051. Commenters said the rule should allow MPRA plans to receive SFA and continue to meet the MPRA solvency standard.

As explained in the preamble to the interim final rule, the heart of the matter is found in the requirement that SFA be ''the amount necessary'' or ''required for the plan to pay all benefits due.'' The statutory text provides not merely that the amount of SFA be what is ''required'' in the abstract to pay benefits due through the end of 2051, but specifies that SFA be in the amount required ''for the plan'' to pay all benefits due during this period. PBGC believes that Congress' choice to modify the term ''required'' with ''for the plan'' indicates that the amount of SFA should take into account what resources the plan already has to pay benefits through the end of 2051.

Moreover, since the statute requires deterministic projections to be made through the end of the last plan year ending in 2051, the resources to be considered must include plan assets and income. If Congress had contemplated a different approach from accepted actuarial practice, Congress would have explicitly excluded the resources that it did not intend to be included in the determination of the amount of SFA ''required for the plan.'' Accordingly, the additional funding necessary for the plan to pay benefits depends on what funding—plan assets, contributions, investment returns, etc.—the plan already has available to pay those benefits. To the extent that a plan has other means available to pay benefits, it does not require or need SFA for that purpose.

According to PBGC's modeling, not accounting for plan's non-SFA assets would easily enable all eligible plans to pay all benefits due through 2051, as SFA would cover the entirety of plans' projected liabilities from ''benefits due'' over the next 3 decades. However, PBGC's modeling also shows that this approach could potentially triple the cost of the SFA program.

One exception added to the final rule in § 4262.4(c)(3) permits plans to exclude from plan resources certain contribution rate increases agreed to on or after July 9, 2021. This change is being made in response to comments PBGC received on assumptions guidance it issued on July 9, 2021—specifically, on the acceptable changes to a plan's contribution rate assumption. An example provided in the assumptions guidance showed contribution rate increases negotiated before March 11, 2021, being included in the plan's contribution rate assumption. Practitioners asked whether the example meant that contribution rate increases negotiated after March 11, 2021, could be excluded. PBGC is providing in the final rule that contribution rate increases agreed to on or after July 9, 2021, the date PBGC's interim final rule and initial assumptions guidance were issued, are excluded from employer contributions paid and expected to be paid to the plan during the SFA coverage period (and, if applicable, any benefit increases that result from the contribution increases are excluded from plan obligations under § 4262.4(b)(1) and (c)(1)). PBGC does not expect that excluding these negotiated contribution rate increases will result in an increase in the amount of SFA that a plan would receive without the new provision. This is because, without the provision, PBGC expects that bargaining parties would wait until after the plan applies for SFA to negotiate contribution rate increases (so as to exclude the contribution increases from plan resources in the calculation of SFA). However, this practice would be detrimental to the plan's financial health. PBGC expects that the new provision will eliminate this reason for delaying negotiation of contribution rate increases.

Except for excluding the contribution rate increases described directly above, the final rule does not adopt the suggestions from commenters to exclude some or all of a plan's resources. However, the final rule changes the methodology for calculating the amount of SFA in § 4262.4, by specifying the interest rate assumption used to project returns on SFA assets and by providing a methodology for determining SFA for MPRA plans that are eligible for SFA under § 4262.3(a)(2), and changes § 4262.14 to allow more flexibility in permissible investments of SFA. PBGC's modeling shows that these provisions are expected to enable plans to pay benefits due through the plan year ending in 2051 if future experience is in line with plan assumptions. The provisions are discussed in detail in the preamble under the subheadings *Calculating the Amount of SFA, Interest Rates for SFA and Non-SFA Assets, and Permissible Investments.*

Calculating the Amount of SFA

Section 4262.4(a) of the interim final rule provided that the amount of SFA for a plan is the amount (if any), subject to adjustment for the date of payment as described in § 4262.12, by which the value of all plan obligations exceeds the value of all plan resources, determined as of the plan's SFA measurement date and limited to the SFA coverage period (the period ending on the last day of the last plan year ending in 2051). Under the interim final rule, the value of plan obligations was the sum of the present value of specified benefit payments and administrative expenses. The value of plan resources was the total of the fair market value of assets on the SFA measurement date and the present value of future contributions, withdrawal liability payments, and other payments expected to be made to the plan (excluding the amount of financial assistance under section 4261 of ERISA and the amount of SFA to be received by the plan) during the SFA coverage period.

Two commenters stated that the present value approach to determine the amount of SFA in the interim final rule does not properly take into account the timing of cash flows. The commenters were concerned that under the present value approach, plans with positive cash flow toward the end of the projection period could receive an amount of SFA that results in a projected plan asset value below zero before the end of the SFA coverage period. However, the commenters acknowledged that plans eligible for SFA are not expected to have a positive cash flow during the projection period. In addition, as described in detail in other sections of the preamble, PBGC received many comments related to the interest rate assumption a plan was required to use under the interim final rule to calculate the amount of SFA in the plan's application. To address these comments and to meet the statutory requirements of section 4262(j) of ERISA, in the final rule, PBGC is changing the methodology that a plan must use to determine the amount of SFA from a present value approach to a projection approach that ensures that plan assets cannot go below zero before the end of the SFA coverage period.

In addition, the final rule, in § 4262.4(a)(1) and (2), prescribes methodologies to determine SFA for plans that are not MPRA plans and for plans that are MPRA plans. Section 4262(n) of ERISA requires PBGC to coordinate with the Secretary of Treasury in prescribing the application process for eligible multiemployer plans and the amount of SFA needed by a plan that has suspended benefits under section 305(e)(9) of ERISA. To determine the amount of SFA under § 4262.4, the final rule defines a MPRA plan under § 4262.4(a)(3) as a plan that is eligible for SFA under § 4262.3(a)(2) (a plan with an approved MPRA benefit suspension as of March 11, 2021). Thus, a plan that is eligible for SFA under § 4262.3(a)(1), (3), or (4) and has implemented a suspension of benefits that has been approved under section 305(e)(9) of ERISA *after* March 11, 2021, is not eligible for the amount of SFA determined under § 4262.4(a)(2) for a MPRA plan.

1. Calculation of SFA for MPRA Plans

Following consideration of the issues raised by commenters described earlier in the preamble and of the harmonization of the statutory text and structure, and after consultation with the Treasury Department regarding the administration of the MPRA program, this final rule provides a different methodology for the calculation of SFA for MPRA plans than was provided in the interim final rule. Section 4262(n)(1)(B) of ERISA requires PBGC to consult with the Treasury Department regarding the amount of SFA needed for a MPRA plan based on the projected funded status of the plan at the end of 2051, the payment of previously suspended benefits, and other relevant factors. These factors are distinct from the generally applicable provision in section 4262(j)(1) of ERISA and reflect that Congress sought to ensure that PBGC accounts for MPRA plans' unique circumstances.

As described earlier in the preamble, under the interim final rule, MPRA plans faced the predicament where either accepting or not accepting SFA could raise fiduciary concerns. In deciding whether to apply for and accept SFA, MPRA plans must consider not only the positive impact of reinstated benefits on participants and beneficiaries currently receiving benefits, particularly current retirees receiving benefits, but also consider whether the plan may put the future benefits of active participants at risk if it cannot project to avoid insolvency indefinitely.

Under the final rule, a MPRA plan can apply for the greatest of: (1) the amount of SFA calculated for a plan that is not a MPRA plan; (2) the lowest amount of SFA that is sufficient to ensure that the plan will project rising assets at the end of the 2051 plan year; and (3) an amount of SFA equal to the present value of reinstated benefits (accounting for both make-up payments needed, as well as payments of the reinstated portion of benefits through 2051, and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3)). These additional SFA calculations in (2) and (3), set forth in the final rule, accord with requirements and considerations that are unique to MPRA plans.

Under the second calculation, the amount of SFA is the lowest amount necessary for actuarial projections to show the plan's assets are increasing as of the last day of the plan year ending in 2051. In calculating the amount of SFA for plans that are not MPRA plans, the statute requires that the amount of SFA ''shall be such amount required for the plan to pay all benefits'' due through the end of the coverage period.[19] The statutory text in section 4262(n)(1)(B) of ERISA, which applies specifically and only to MPRA plans, adds a further consideration—the plan's ''projected funded status.'' The final rule draws upon the demonstrations of ''projected funded status'' that current MPRA plans made as part of the MPRA process, which distinguishes them from other SFA-eligible plans. As discussed earlier, all SFA-eligible MPRA plans demonstrated to the Treasury Department that their proposed suspensions of benefits under MPRA would be sufficient for the plan to avoid insolvency indefinitely. Thus, the methodology under the final rule provides the amount of SFA projected to be necessary to ensure that a MPRA plan's projected funded status at the end of the plan year ending in 2051 continues to correspond to avoiding insolvency indefinitely, which the plan demonstrated as a requirement of suspending benefits under MPRA. In particular, MPRA plans will be able to accept SFA without harming their projected funded status at the end of the 2051 plan year.

PBGC has consulted with the Treasury Department as required by section 4262(n)(1)(B) of ERISA. The final rule aligns with the standard for avoiding insolvency indefinitely in the Treasury Department's final regulations on the suspension of benefits under MPRA. This requirement generally is satisfied under the Treasury Department's MPRA regulations if the value of plan assets is projected to increase at the end of the relevant measurement period.[20] This approach in the final rule, based on the Treasury Department's MPRA regulations, takes into account Congress' direction in section 4262(n)(1)(B) of ERISA that PBGC consult with the Treasury

[19] 29 U.S.C. 1432(j)(1).

[20] 26 CFR 1.432(e)(9)–1(d)(5)(ii).

Department regarding the amount of SFA needed ''based on the projected funded status of the plan as of the last day of the plan year ending in 2051.''

Under the third calculation, the amount of SFA is the amount equal to the present value of reinstated benefits, including make-up payments and the reinstated portion of future benefits through 2051. Section 4262(n)(1)(B) of ERISA requires PBGC to consult with the Treasury Department to consider the ''projected funded status'' of MPRA plans and ''any other relevant factors'' and that ''the amount of assistance . . . is sufficient to pay benefits as required in subsection (j)(1).'' The determination of the amount of SFA under section 4262(j)(1) of ERISA must take into account ''the reinstatement of benefits required under subsection (k).'' The ''benefits required under subsection (k)'' include both make-up payments to account for previously suspended past benefits, *i.e.,* those benefits described in section 4262(k)(2), and the reinstated portion of future payments effective as of the month SFA is paid to the plan, *i.e.,* those benefits described in section 4262(k)(1). Thus, the statute requires MPRA plans that receive SFA to reinstate benefits and requires the amount of SFA to take into account the ''reinstatement of benefits'' by MPRA plans. This present value approach does that by providing MPRA plans an amount of SFA that is sufficient to pay reinstated benefits. The ''amount of assistance'' is sufficient only if a MPRA plan takes into account the reinstatement of suspended benefits under both section 4262(k)(1) and (k)(2) of ERISA. The present value approach is consistent with Congress' direction that PBGC should consult with the Treasury Department regarding the amount of SFA needed ''to ensure the amount of assistance is sufficient . . . to pay benefits as required in subsection (j)(1).'' [21]

Following PBGC's consultation with the Treasury Department, this final rule provides a MPRA plan the amount of SFA that is the greatest of these three calculations, which take into account the enumerated considerations the statute sets forth in section 4262(n)(1)(B).

2. Calculation of SFA for a Plan That Is Not a MPRA Plan

The amount of SFA for a plan that is a not a MPRA plan is calculated under § 4262.4(a)(1) of the final rule as the lowest whole dollar amount (not less than $0) for which, as of the last day of each plan year during the SFA coverage period, projected SFA assets and projected non-SFA assets are both greater than or equal to zero.

The projected SFA assets for a plan are determined by projecting SFA forward annually until fully exhausted, using the annual cash flows specified in § 4262.4(b) of the final rule, including benefits and administrative expenses paid and expected to be paid by the plan during the SFA coverage period (excluding benefit increases resulting from certain contribution increases and excluding the amount owed to PBGC under section 4261 of ERISA), and investment returns expected to be earned on the SFA assets (calculated using the SFA interest rate described in new § 4262.4(e)(2)).

The projected non-SFA assets for a plan are determined by projecting the fair market value of plan assets on the SFA measurement date forward annually, using the annual cash flows specified in § 4262.4(c) of the final rule, including: the benefits and administrative expenses paid and expected to be paid by the plan during the SFA coverage period (excluding benefit increases resulting from certain contribution increases and excluding the amount owed to PBGC under section 4261 of ERISA) after the projected SFA assets are fully exhausted; employer contributions (excluding certain contribution rate increases), withdrawal liability payments reflecting a reasonable allowance for amounts considered uncollectible, and other payments expected to be made to the plan (excluding the amount of financial assistance under section 4261 of ERISA and SFA) during the SFA coverage period; and investment returns expected to be earned on the non-SFA assets (calculated using the non-SFA interest rate described in new § 4262.4(e)(1)).

Under § 4262.4, the deterministic projections must be based on recent participant census data. Section 4262.4(d) of the interim final rule provided that participant census data must be as of the first day of the plan year in which the plan's initial application is filed, or, if the date on which the plan's initial application is filed is less than 270 days after the beginning of the current plan year and the actuarial valuation for the current plan year is not complete, the projections may instead be based on the participant census data as of the first day of the plan year preceding the year in which the plan's initial application is filed. PBGC received one comment stating that some plans may be unable to complete the actuarial valuation report within 270 days due to reporting delays and plan complexity. The commenter recommended extending the 270 days to 1 year to enable these plans to apply without having to wait until the current valuation is completed. PBGC considered this comment and has concluded that a simpler rule will provide for data that are adequately up to date. Under § 4262.4(d), as revised by the final rule, projections must be based on participant census data used to prepare the plan's actuarial valuation report for the plan year that includes the plan's SFA measurement date, or, if there is no such report for that plan year, for the preceding plan year.

If a plan experiences a significant change in plan experience between the date of the plan's participant census data used to prepare the SFA projections and the plan's SFA filing date, PBGC's assumptions guidance (issued on PBGC's website at *www.pbgc.gov/guidance*) provides guidelines on how to reflect that significant change. Plans may, but are not required to, use the guidelines if they are reasonable for the plan.

Interest Rates for SFA and Non-SFA Assets

As discussed earlier in the preamble, PBGC interprets the requirement in section 4262(j)(1) of ERISA that SFA be provided in the ''amount required for the plan to pay all benefits due'' through the end of 2051 to mean the amount required in addition to the plan's non-SFA assets. This means that plans will pay benefits from two separate pools of assets which, under the statute, must be segregated and invested separately. Therefore, to calculate the amount of SFA ''necessary for the plan to pay all benefits due'' through the end of 2051, plans must perform separate calculations to project the value of each pool of assets, each of which requires the use of an interest rate assumption to reflect expected returns on that pool of assets.

Section 4262(e)(2)(A) of ERISA provides an interest rate that plans must use as part of the determination of the amount of SFA under section 4262(j)(1). This rate is based on the rate used in the plan's most recently completed certification of plan status before January 1, 2021, subject to an interest rate limit. The interest rate limit specified in section 4262(e)(3) is the rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under clause (iv) of such section) ''for the month in which the plan's application for SFA is filed or the 3 preceding months.'' This provision places a ''cap'' on the interest rate, which is any permissible rate for a

[21] Section 4262(n)(1)(B) of ERISA.

month during the 4-month period ending with the month in which the plan's initial application was filed.

The interim final rule provided that a plan must use this interest rate as an assumption for the expected rate of return for both the SFA and the non-SFA assets. Under § 4262.4(e)(1) of the interim final rule, the ''assumed interest rate'' was the interest rate that is the lesser of the rate used by the plan for funding standard account projections in the plan's most recently completed certification of plan status before January 1, 2021, or the rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under clause (iv) of such section) for any month selected by the plan in the 4-month period ending with the month in which the plan's application was filed (or the month in which the initial application was filed if there was more than one filing date).

Many commenters discussed the difference between the interest rate assumption used to calculate SFA under § 4262.4(e)(1) of the interim final rule, and the expected lower return on SFA assets invested in permissible investments under § 4262.14. These commenters argued that the approach of applying a single interest rate to each pool of plan assets would be at odds with the statutory language in section 4262(j) of ERISA that the amount of SFA ''*shall* be such amount *required* for the plan to pay all benefits due during the period beginning on the date of payment of [SFA] and ending on the last day of the plan year ending in 2051'' (emphasis added). As noted earlier, commenters argued that, under the interim final rule approach, many, if not most, SFA-eligible plans would not receive the SFA amount ''required'' to enable the plans to pay benefits through the 2051 plan year. These commenters suggested that an interest rate assumption required to be used to calculate the amount of SFA under section 4262(e) and the expected rate of return on permissible investments under section 4262(*l*), which were limited in the interim final rule primarily to investment grade bonds, would make it impossible for plans to receive the amount of SFA required to pay benefits through 2051. Some commenters illustrated this point by noting that their modeling showed that their plans would run out of money before 2051, a conclusion that PBGC has confirmed through its own additional, more detailed modeling performed since issuance of the interim final rule. Commenters argued that plans therefore should not be required to use the rate in section 4262(e) to project both SFA and non-SFA assets, given their different expected rates of return, and that allowing plans to apply a different reasonable rate to SFA assets would be a permissible exercise of PBGC's discretion that would better achieve the statute's requirements.

In contrast, a few commenters stated that the interest rate set forth in section 4262(e) of ERISA and the investment restrictions in section 4262(*l*) are plain directives of the statute. These commenters instead asked PBGC to reinterpret section 4262(j)(1) to change the determination of the amount of SFA by, for example, disregarding certain categories of plan resources (or all plan resources) in determining the amount of SFA required by a plan.

Other commenters provided a number of suggestions regarding what interest rate assumptions plans should be permitted to use for SFA and non-SFA assets. The most common suggestion was that the interest rate required under section 4262(e) of ERISA should apply only to non-SFA assets and that PBGC should allow a separate rate to apply to SFA assets. Many commenters contended that the statute did not specify an interest rate for SFA assets, providing several arguments in support of these contentions. Some pointed out that although section 4262(e) requires plans to use the rate identified in that section in calculating the amount of SFA, the statute does not specify how it is to be used, nor require that such rate be used for all purposes. Commenters also argued that using the rate under section 4262(e) to project returns on SFA assets would not make sense given that section 4262(*l*) provides that SFA assets will be invested separately and likely at lower rates of return than non-SFA assets, and because section 4262(j)(1) cannot be satisfied without SFA assets being projected—for most plans—using an investment-return assumption lower than the interest rate in section 4262(e). Thus, many commenters argued that PBGC should allow plans to use a different interest rate for SFA assets so that plans will receive sufficient SFA to pay full benefits through 2051, as required by section 4262(j)(1). These commenters argued that PBGC has the authority and the mandate to harmonize the various provisions of section 4262 in this manner.

Some commenters further argued that, because the 2020 certifications of plan status did not include an interest rate assumption for projecting investment returns on SFA assets, the interest rate should be a newly established assumption and reflect expected returns on SFA assets. A few other commenters suggested that PBGC should provide a rate equal to the IRS' third segment rate, without adding the 200 basis points. One commenter requested allowing plans to submit two calculations, with one calculation based on the interest rate assumption in the interim final rule and a second calculation using interest rate assumptions that would more reasonably project actual returns for SFA and non-SFA assets. PBGC would then provide the plan an amount of SFA to make up any discrepancy between the two calculations.

In the interim final rule, PBGC explained that to determine eligibility for SFA, for certifications of plan status completed after December 31, 2020, section 4262(e)(1) of ERISA requires a plan to use assumptions from its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable. To determine the amount of SFA, the interim final rule noted that section 4262(e)(2) provides that a plan must ''use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate may not exceed the interest rate limit.'' Under section 4262(e)(4), if a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose to change such assumption. Section 4262(e)(4) also provides that, notwithstanding this language, plans cannot propose a change to the interest assumption. In the interim final rule, PBGC interpreted these subsections of 4262(e), read together, to mean that plans should use the section 4262(e) interest rate to determine the amount of SFA, without a separate interest rate assumption for projecting SFA assets. In interpreting section 4262(e), PBGC, in the interim final rule, stated that it does not have authority to provide a different rate or bifurcate the statutorily mandated interest rate.

After further review of the statute, PBGC observes that section 4262(e) of ERISA is general in its language regarding the determination of the amount of SFA and does not speak directly to the precise question of the use of an interest rate to project returns on SFA assets. Thus, PBGC has, after this further review of the statute, additional consultation with its Board agencies, consideration of comments, and extensive actuarial modeling, determined that an alternative interpretation of section 4262(e) that addresses the limitations imposed by the statute and PBGC on permissible investments, is reasonable and more

likely to result in the SFA an eligible plan receives being sufficient for the plan to pay full benefits through 2051, as provided under section 4262(j)(1) of ERISA, than the interpretation adopted in the interim final rule. This result would not be possible solely by the increased flexibility in the investment of SFA assets under revised § 4262.14. Therefore, after considering section 4262(e) together with sections 4262(j)(1) and 4262(*l*) of ERISA, and in order to harmonize these provisions of the statute more effectively than in the interim final rule, PBGC is providing for two interest rate assumptions in the final rule.

PBGC has considered, but does not agree with, comments that argued that PBGC has discretion to permit plans to not use in any manner the interest rate identified in section 4262(e) of ERISA when calculating the amount of SFA. The text of section 4262(e)(2) states that ''[i]n determining the amount of special financial assistance in its application, an eligible multiemployer plan *shall use* the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate may not exceed the interest rate limit'' (emphasis added). Because the statute speaks directly to whether plans must use this rate, PBGC does not have discretion to allow plans not to use the interest rate in section 4262(e)(2) at all. Although plans may be able to forgo using other assumptions from their most recently completed certification of plan status before January 1, 2021, if they demonstrate to PBGC that those assumptions ''are no longer reasonable,'' section 4262(e)(4) makes clear that plans cannot propose to change the requirement to use the interest rate in section 4262(e)(2). This final rule therefore maintains the requirement that plans use the section 4262(e) rate when calculating the amount of SFA. Under the final rule, plans must use this rate as the assumed rate of return on non-SFA plan assets.

PBGC has considered arguments from commenters that the statute does not expressly speak to whether the section 4262(e) rate must also be used as the assumed rate of return on SFA assets, which did not exist at the time of a plan's most recent certification of plan status before January 1, 2021, and which will be invested separately, and under different statutory restrictions, from non-SFA assets. As explained earlier in the preamble, the final rule maintains that at least one of the components of this overall calculation must be projected using the rate specified in section 4262(e)(2) of ERISA because of the statute's instruction that plans ''shall'' use that rate in determining the amount of SFA.[22]

However, after further statutory analysis and consideration of comments, PBGC recognizes that the statute does not specify the pool of assets for which that rate must be used as the assumed rate of return. In light of this statutory silence, PBGC is exercising discretion to make a reasonable choice, consistent with section 4262(j)(1), about the pool of assets for which the interest rate assumption in section 4262(e)(2) shall be used. As discussed earlier in the preamble, PBGC has interpreted the requirement in section 4262(j) that SFA shall be the amount ''required for the plan'' to pay all benefits due through the end of the plan year 2051 to mean that plans must consider existing assets in calculation of the SFA amount. Plans receiving SFA will therefore pay these benefits from two pools of assets: SFA assets and non-SFA assets. Section 4262(*l*) expressly contemplates that the SFA assets may have a different expected rate of return than non-SFA assets. In addition, as many commenters noted, a mismatch between the investment restrictions in section 4262(*l*) and the interest rate identified in section 4262(e)(2) also supports the reasonableness of allowing plans to apply a different and more realistic rate to SFA assets, including to meet the requirements of section 4262(j)(1). Given the investment restrictions under section 4262(*l*), if the section 4262(e)(2) interest rate assumption were required to be used in projecting SFA assets, PBGC would not be providing the amount of SFA reasonably projected to be ''required for the plan to pay all benefits due'' through the plan year ending in 2051.

Requiring plans to use the section 4262(e) rate for projecting the value of non-SFA assets, while providing for a different rate for projecting the value of SFA assets, is a reasonable interpretation of the statute that harmonizes sections 4262(e), (j), and (*l*).

Accordingly, to calculate the amount of SFA for a plan under § 4262.4, the plan must use two interest rate assumptions: (1) the plan's non-SFA interest rate used for calculating investment returns expected to be earned on the plan's non-SFA assets, and (2) the plan's SFA interest rate used for calculating the investment return expected to be earned on the plan's SFA assets.

The first interest rate, defined in § 4262.4(e)(1) of the final rule, is the plan's ''non-SFA interest rate.'' This rate replaces the ''assumed interest rate'' under the interim final rule. The ''assumed interest rate'' was defined as the interest rate that is the lesser of the rate used by the plan for funding standard account projections in the plan's most recently completed certification of plan status before January 1, 2021, or the interest rate ''cap'' selected by the plan in the 4-month period ending with the month in which the plan's application was filed (or the month in which the initial application was filed if there was more than one filing date). PBGC recognizes that it is always to a plan's advantage to use the rate for the month in which the rate is lowest. For simplicity, therefore, in the final rule PBGC is revising § 4262.4(e)(1)(ii) by specifying that the non-SFA interest rate ''cap'' is the interest rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under clause (iv) of such section) for the month in which that rate is the lowest among the 4 calendar months ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the Internal Revenue Service as of the day that is the day before the date the plan's initial application is filed.

The second interest rate, defined in § 4262.4(e)(2) of the final rule, is the plan's ''SFA interest rate.'' The SFA interest rate is the lesser of the rate used by the plan for funding standard account projections in the plan's most recently completed certification of plan status before January 1, 2021, and an interest rate cap that is lower than the non-SFA interest rate cap. This lower cap reflects the restrictions on investment of SFA funds and the investment returns plans can reasonably expect to earn on SFA funds.[23] The SFA

[22] See section 4262(e)(2) of ERISA.

[23] PBGC determined that the average of the first and second segment rates specified in sections 303(h)(2)(C)(i) and (ii) of ERISA (disregarding modifications made under clause (iv) of such section) is likely to reasonably represent the yield and therefore the expected return at any point in time on the portion of the SFA required to be invested in investment grade fixed income. As discussed later in the preamble under the subheading *Permissible Investments,* up to 33 percent of SFA may be invested in return-seeking assets and the expected return on SFA assets is the weighted average of the expected returns for the component parts. Using the interest rate cap applicable to plan assets that are not subject to an investment limitation (200 basis points above the third segment rate) as a cap for return-seeking assets and an allocation of 33 percent of SFA to those assets, the cap on the SFA interest rate—the weighted average of the caps for the component

Continued

interest rate cap is the interest rate that is 67 basis points higher than the average of the rates specified in section 303(h)(2)(C)(i), (ii), and (iii) of ERISA (disregarding modifications made under clause (iv) of such section) for the month in which such average is the lowest among the 4 calendar months ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the Internal Revenue Service as of the day that is the day before the date the plan's initial application is filed.

Section 4262(f) of ERISA suggests that a plan may have multiple filing dates by providing two application deadlines: One for initial applications and one for revised applications. Until an application is approved, there is no limit to the number of times that a plan sponsor may file a revised application as long as the last revised application is filed by the statutory deadline of December 31, 2026. Once PBGC has accepted an application for processing, PBGC believes that it is in the best interest of all parties to avoid the duplicative work and delays that would result if a revised application were to use different interest rate assumptions. To prevent multiple filings for purposes of changing the interest rate assumptions, if a plan's application is revised as provided under § 4262.11, the non-SFA interest rate and SFA interest rate used for any revised application must be the same as the non-SFA interest rate and SFA interest rate required to be used for the plan's initial application for SFA.

Calculating the Amount of SFA With Respect to Certain Events

Section 4262.4(f) of the regulation addresses the possibility that a plan may implement certain changes to obtain more SFA than was intended by section 4262 of ERISA. In these situations, the amount of SFA that would apply to a plan is limited to the amount of SFA determined as if the events described in § 4262.4(f) had not occurred. These events include mergers, transfers of assets or liabilities (including spinoffs), certain increases in accrued or projected benefits, and certain reductions in contribution rates. The limitation applies to events that occur between July 9, 2021, and the SFA measurement date. To accommodate the possibility of multiple events, the limitation does not apply on an event-by-event basis but is based on comparing the amount of SFA a plan applies for with the amount of SFA a plan (or all plans in the case of a merger) would have received had the events not occurred. PBGC included these provisions in the interim final rule in consultation with the Treasury Department.

With respect to mergers, § 4262.4(f)(1)(ii) of the regulation provides that if two or more plans are merged, then the SFA is limited so that it does not exceed the sum of the SFA that would have been calculated for all of the plans involved in the merger had the plans applied separately for SFA. Thus, a plan that would not have been entitled to any SFA if not for a merger that occurs on or after July 9, 2021, cannot become entitled to SFA by merging with a plan that also would not otherwise be entitled to any SFA. A plan eligible for SFA may remain eligible after the merger; however, a plan may not increase the amount of SFA to which it is entitled by merging with another plan or plans on or after July 9, 2021.

PBGC considered two comments it received related to these provisions and decided not to make any changes to § 4262.4(f) in the final rule. One commenter stated generally that PBGC should not limit SFA or access to SFA because the protections already in place under the Pension Protection Act of 2006, MPRA, and ARP are sufficient to avoid abuse. A second commenter suggested that the amount of SFA available to merged plans should not be limited to the amount each plan would have been separately eligible to receive. The commenter argued that PBGC does not have authority to make rules limiting SFA for two or more plans that are merged, that a prohibition is not a reasonable condition regarding diversion of contributions, and that the rule denies needed assistance to plans that are facing insolvency.

PBGC disagrees with the commenter's assertion that PBGC does not have authority to address possible abuse of the SFA program or to limit SFA, in the case of a merger, to the amount each plan would have been separately eligible to receive. As explained in the interim final rule, section 4262(b)(1) of ERISA establishes criteria for eligibility of a multiemployer plan for SFA, and section 4262(j) provides for determining the amount of the SFA. It is appropriate for PBGC, with its responsibility for carrying out the purposes of the title IV insurance program,[24] to impose conditions on plans receiving SFA designed to ensure that plans do not receive more than the amount of SFA to which they are entitled. As provided in the interim final rule, PBGC concludes that, to achieve that end, it is reasonable not to give effect to changes made to a plan's structure or terms on or after July 9, 2021, if such changes would either artificially inflate the amount of SFA to which a plan is entitled or convert an ineligible plan into an eligible plan.

Informing this conclusion, section 4262(e)(2)(B) of ERISA provides, as a general rule, that the actuarial assumptions to be used by a plan are the assumptions used in the plan's actuarial certification for the most recently completed certification of plan status before January 1, 2021 (unless those assumptions are unreasonable), indicating that the plan applying for SFA must have been in existence and had an actuarial certification as to its status before January 1, 2021. The provisions regarding interest rate assumptions under section 4262(e)(2)(A) are specific to the plan in its most recent certification of plan status completed before January 1, 2021, and, under section 4262(e)(4), those assumptions may not be changed. A manipulation of those rates via a merger would not be consistent with that prohibition. Although the statute does not directly address plan mergers, in the case of merged plans, each plan's assumptions from the most recently completed pre-2021 certification of plan status must be maintained in order for section 4262(e) to be given effect with respect to the plans that merged. PBGC's rule fills the gap left in the statute for the calculation of SFA for plans that have been involved in a merger occurring on or after July 9, 2021.

In addition, section 4262(m)(1) of ERISA expressly authorizes PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions ''on an eligible multiemployer plan that receives special financial assistance'' relating to certain aspects of plan terms or operations. Such conditions include those relating to the diversion of contributions to and allocation of expenses to other benefit plans, increases in future accrual rates, retroactive benefit improvements, and reductions in employer contribution rates. PBGC's authority to impose reasonable conditions under section 4262(m)(1) is not limited to restrictions on a plan following its receipt of SFA. PBGC is authorized to impose conditions on a plan that ''receives'' SFA. PBGC's authority is not limited to imposing conditions on a plan that *has received* SFA. That understanding of

parts—is the average of the three segment rates plus 67 basis points.

[24] PBGC's inherent authority under section 4002(b)(3) of ERISA allows PBGC to adopt regulations to carry out the purposes of the title IV insurance program.

section 4262(m)(1) finds further support in section 4262(m)(2), which restricts the conditions that PBGC can impose not only ''following receipt of'' SFA, but also ''as a condition of'' SFA. That broad prohibition would be unnecessary if PBGC's authority under section 4262(m)(1) were limited to imposing only post-receipt conditions.

The condition respecting mergers is consistent with PBGC's authority under section 4262(m)(1) of ERISA to impose reasonable conditions relating to the ''diversion of contributions to, and allocation of expenses to, other benefit plans.'' When two or more plans merge, each predecessor plan has diverted its contributions and allocated its expenses to the merged plan and thereby to each other merging plan. A merged plan, which combines assets and liabilities of two or more plans, each with its own set of participants and beneficiaries, to all of whom all the assets (and, thus, all the contributions) must be available following the merger, is, in effect, diverting contributions intended to benefit one set of participants (the participants in the plan that received SFA) to another (the participants in each other merging benefit plan).

Accordingly, under section 4262(m) of ERISA, in conjunction with section 4002(b)(3), PBGC is authorized to impose reasonable conditions that ensure that SFA is provided to plans in an amount that is not artificially inflated by plan mergers. Conditions regarding events other than mergers are discussed in the preamble of the interim final rule and examples illustrating the provisions are included in § 4262.4(f)(6).

Calculating the Amount of SFA for Plans That Applied for SFA Under the Interim Final Rule

Pursuant to its authority under section 4262(c) of ERISA, PBGC in the final rule adds new § 4262.4(g) to provide guidance on the requirements for SFA applications for plans that applied for SFA under the interim final rule.

If a plan's application for SFA was approved under the regulation as in effect before August 8, 2022 (meaning under the interim final rule), the plan should look to the rules set forth under § 4262.4(g)(1) for ''approved applications.'' Those rules provide that the plan may supplement its application after SFA is paid under the terms of the interim final rule. When a plan files a supplemented application, the amendments in this final rule to permissible investments in § 4262.14 and to the withdrawal liability condition in § 4262.16(g)(2) become applicable upon the date the supplemented application is filed even if the supplemented application is not approved. A supplemented application may be filed even if a plan would not receive additional SFA as the result of the filing. If the plan chooses to supplement, the plan will file a supplemented application with the changes and information specified in the SFA supplemented application instructions on PBGC's website at *www.pbgc.gov* to implement the provisions of the final rule for determining the amount of the plan's SFA, including the interest rate assumptions under § 4262.4(e). A supplemented application, like a revised application, must be filed by December 31, 2026, and in accordance with the processing system (including priority groups) described in § 4262.10. PBGC must review a supplemented application within 120 days of the filing date. The plan cannot change the plan's SFA measurement date, fair market value of assets, or participant census data used in the plan's application approved under the interim final rule. The plan also cannot propose a change in assumptions, except to propose a change to the plan's employer contribution assumption to exclude contribution rate increases agreed to on or after July 9, 2021, as permitted under § 4262.4(c)(3) (in which case, the plan must exclude any benefit increases resulting from those contribution increases). A plan may withdraw the plan's supplemented application and file a new supplemented application at any time before the supplemented application is denied or approved. If PBGC denies a plan's supplemented application, the plan may file a new supplemented application. Any new supplemented application filed by the plan must address the reasons cited by PBGC for the denial. Any SFA paid to the plan under the provisions of the final rule will be adjusted as described in § 4262.12, including to reflect the prior receipt of SFA.

If a plan applied for SFA under the interim final rule and the plan's application was not approved, withdrawn, or denied, and was pending, as of August 8, 2022, the plan should look to the rules set forth under § 4262.4(g)(2) for ''pending applications.'' They provide that the plan's pending application may be withdrawn (as described in § 4262.11(d)) and a revised application filed, or not withdrawn and determined under terms of the interim final rule. Any revised application must use the plan's base data defined in § 4262.4(g)(5). Base data include the plan's SFA measurement date, determined under the interim final rule as the last day of the calendar quarter immediately preceding the date the plan's initial application for SFA was filed; the plan's participant census data required to be used in the plan's initial application for SFA under the interim final rule; and the plan's non-SFA interest rate and SFA interest rate determined under § 4262.4(e)(1) and (2) of the final rule. Any SFA paid to the plan under the provisions of the final rule will be adjusted as described in § 4262.12. A plan with a ''pending application'' that chooses not to withdraw and revise its application will be paid the amount of SFA as determined under the interim final rule. The plan is not precluded from later filing a supplemented application.

If a plan applied for SFA under the interim final rule and it was not pending as of August 8, 2022, because the plan's application was denied or the filer withdrew the plan's application in accordance with § 4262.11(d), the plan may file a revised application (see the provisions for a ''withdrawn application'' and a ''denied application'' under § 4262.4(g)(3) and (4) respectively). Any revised application must use the plan's base data defined in § 4262.4(g)(5). Base data include the plan's SFA measurement date, determined under the interim final rule as the last day of the calendar quarter immediately preceding the date the plan's initial application for SFA was filed; the plan's participant census data required to be used in the plan's initial application for SFA under the interim final rule; and the plan's non-SFA interest rate and SFA interest rate determined under § 4262.4(e)(1) and (2) of the final rule. Any SFA paid to the plan under the provisions of the final rule will be adjusted as described in § 4262.12.

PBGC Review of Plan Assumptions

PBGC's review of an application for SFA focuses on the reasonableness of the plan's demonstration regarding the amount of SFA for the plan. Section 4262.5 sets forth how PBGC reviews plan assumptions.

Section 4262 of ERISA generally looks to plan assumptions previously selected by the plan actuary for determining eligibility for and calculating the amount of SFA. A mechanism is provided for a plan to propose changes to actuarial assumptions if it determines that the use of one or more of its original assumptions (other than the interest rate) is unreasonable.

Under section 4262 of ERISA, actuarial assumptions generally are

derived from a plan's certification of plan status under section 305 of ERISA. In general, PBGC believes that a plan's actuarial assumptions adopted for the certification of plan status (and not for entitlement to SFA) represent a neutral view of circumstances, unbiased by the prospect of receiving a substantial sum of money. Accordingly, as provided in the interim final rule, PBGC expects to give less intensive scrutiny to ''original'' assumptions than to changed assumptions.

Section 4262(e)(1) of ERISA requires PBGC to accept actuarial assumptions incorporated in a plan's certification of plan status completed before 2021 for purposes of eligibility unless PBGC determines that such assumptions are ''clearly erroneous.'' For all other purposes (including determining the amount of SFA), the statute requires PBGC to accept the assumptions used unless PBGC determines that they are unreasonable.

Several commenters recommended that PBGC take a deferential approach when reviewing assumptions used by a plan's actuary in the most recent certification of plan status completed before 2021. These commenters argued that if a plan sponsor does not propose a change, PBGC should refrain from challenging the plan's assumptions because the intent of the statute is to allow those assumptions to serve as default assumptions. They argue that this would allow SFA applications, in comparison to MPRA applications, to be expeditiously reviewed by avoiding the level of scrutiny that was imposed when reviewing actuarial assumptions for MPRA applications. These commenters requested guidance from PBGC stating that the pre-2021 assumptions are deemed acceptable. One commenter requested that PBGC accept the plan's assumptions unless they are clearly erroneous or unreasonable. Another suggested that PBGC not challenge pre-2021 assumptions unless clearly unreasonable. Yet another commenter requested that PBGC clarify that pre-2021 assumptions that were reasonable for purposes of the pre-2021 certification of plan status will not be deemed unreasonable for purposes of the SFA application because of the passage of time, subsequent events, or the different purpose of measurement.

PBGC agrees that, in comparison to a plan's changed assumptions, for the reasons discussed earlier in the preamble, PBGC should take a more deferential approach in reviewing a plan's use of pre-2021 assumptions. However, given the language in section 4262(e)(2)(B) of ERISA that a plan shall use the pre-2021 assumptions ''unless such assumptions are unreasonable,'' PBGC disagrees that a lesser standard, such as clearly erroneous or clearly unreasonable, should be used by PBGC when reviewing a plan's assumptions used to determine the amount of SFA for the plan. In addition, PBGC disagrees with the one commenter's assertion that the passage of time, subsequent events, or the different purpose of the measurement should not be considered by the plan's actuary. As described later in this section of the preamble, the statute provides a mechanism for changing prior assumptions that are no longer reasonable (excluding the interest rate assumption). This indicates that the passage of time, subsequent events, and the purpose of the measurement should be considered by the plan's actuary. If the plan's actuary does not determine that one or more of the pre-2021 assumptions are unreasonable for the purpose of determining the amount of SFA, PBGC will defer to the plan's use of those assumptions unless PBGC finds the assumptions unreasonable. PBGC, however, may request additional information from the plan to determine whether a pre-2021 assumption is unreasonable.

Each of the actuarial assumptions and methods used for the actuarial projections (excluding the interest rate assumptions) must be reasonable in accordance with generally accepted actuarial principles and practices,[25] taking into account the experience of the plan and reasonable expectations. To be reasonable, an actuarial assumption or method generally must, among other things, be appropriate for the purpose of the measurement, reflect the actuary's professional judgment, take into account current and historical data that is relevant to selecting the assumption for the measurement date, reflect the actuary's estimate of future experience, and reflect the actuary's observation of the estimates inherent in market data (if any). In addition, an actuarial assumption or method must be expected to have no significant bias (*i.e.,* it is not significantly overly optimistic or pessimistic).

The statute provides a mechanism for changing prior assumptions (other than the interest rate assumption) that are no longer reasonable. If a plan actuary determines that one or more original assumptions are unreasonable and must be changed, § 4262.5(c) provides that the plan's application must describe why the original assumption is no longer reasonable, propose to use a different assumption (the changed assumption), and demonstrate that the changed assumption is reasonable. If there is a change in assumptions, each of the actuarial assumptions and methods (other than the interest rate assumptions) must be reasonable, and the combination of actuarial assumptions and methods (excluding the interest rate assumptions) also must be reasonable. Plans are required to provide detailed information about any changed assumptions, and PBGC will perform a less deferential analysis of those assumptions than of the original pre-2021 assumptions.

Concurrent with the interim final rule, PBGC issued assumptions guidance containing guidelines for changes to certain assumptions that plans may use for purposes of determining eligibility for SFA and the amount of SFA. Plans may, but are not required to, use the guidelines. Plans that do not use the guidelines may demonstrate that the change is reasonable by providing additional information beyond what would be required under the guidelines. Guidelines are available for contribution base units (CBUs), administrative expenses, mortality, contribution rates, and new entrant profiles, and can be found in the guidance issued on PBGC's website at *www.pbgc.gov/guidance.* In addition, for various reasons, a plan may have a gap in the assumption for projected CBUs and administrative expenses used in the prior certification of plan status such that the assumption cannot be used ''as is'' for determining SFA. To assist applicants and aid in the review of a plan's CBU assumption and administrative expense assumption, PBGC developed standard extensions that plans can use to complete the assumption set for a plan that otherwise can use its original assumptions. With respect to the § 4262.5(c)(1)(iii) requirement to demonstrate that the changed assumption is reasonable, it is sufficient to include a statement to that effect in the application instead of a detailed demonstration if the plan uses standard extensions described in the assumptions guidance.

Two commenters suggested that PBGC could permit MPRA plans to use projected CBUs consistent with their approved MPRA applications as a safe-harbor assumption. One of these commenters also suggested a safe harbor for MPRA plans to use other actuarial

[25] Actuarial Standards of Practice (ASOPs) are issued by the Actuarial Standards Board and are available at *http://www.actuarialstandardsboard.org/standards-of-practice.* Certain ASOPs, including ASOPs Nos. 4, 23, 27, 35, 41, and 56 may be relevant to the actuary's work related to special financial assistance, including the assessment of the reasonableness of the actuary's assumptions and methods.

assumptions from their approved MPRA application. If an assumption used in a plan's approved MPRA application is the same as an assumption used in the plan's last pre-2021 certification of plan status, and the plan's actuary determines that the assumption is not unreasonable for the purpose of determining the amount of SFA, PBGC will provide deference to the actuary's determination unless PBGC finds the assumption unreasonable. If an assumption used in a plan's approved MPRA application is not the same as an assumption used in the plan's last pre-2021 certification of plan status, the plan actuary may propose to change the assumption to the assumption used in the plan's approved MPRA application in accordance with § 4262.5(c). PBGC is amending its assumptions guidance to provide that PBGC will generally accept a change in assumption to an assumption used in a plan's approved MPRA application, including projected CBUs, if the plan includes the information required by § 4262.5(c) in the application and the demonstration provided by the plan shows the assumption is reasonable for the purpose of determining the amount of SFA.

Several commenters requested that PBGC's guidance provide more flexibility in contribution assumptions or recommended specific changes, such as eliminating the requirement that a change in CBU assumption be adequately supported by historical data. The commenters stated that historical data is not necessarily predictive of future changes. One commenter explained that the historical data requirement defies economic trends in many industries, is inconsistent with the reasonableness standard in the statute, and may contravene actuarial standards which require actuaries to consider factors that may affect future experience, such as economic conditions for the industry and the availability of alternative employment due to automation. Another commenter asked for guidance, or clarifications of PBGC's guidance, on various assumptions, including mortality, new entrant assumptions, and employer withdrawals.

PBGC has updated its assumptions guidance to address some of the comments received, provisions of this final rule, and to provide more clarity and additional guidance based on experience in reviewing applications. In addition to the change described earlier in the preamble for plans with approved MPRA applications, PBGC added guidelines on acceptable changes to a plan's disabled life mortality assumption and on the acceptable adoption of or update to a plan's mortality improvement projection scale. PBGC specified the information needed to show that a plan's assumed new entrant profile and administrative expenses assumption are based on the acceptable methodology as indicated by the guidance. For a plan that reflects significant plan experience between the participant census date and the application filing date, PBGC added that the plan should provide a rationale for how it determined that the plan experience was significant, and made other updates to the related example. PBGC added examples and other clarifications to acceptable assumption changes.

PBGC also added guidelines on projecting future receipt of employer withdrawal liability payments, noting that the projection should reflect the actuary's best estimate of future plan experience and that the plan's actuary should consider reflecting a reasonable allowance for amounts considered uncollectible. PBGC added guidelines for plans where all the assumptions required to be used for projections in the pre-2021 certification of plan status were not identified. The assumptions guidance also provides guidelines on acceptable changes for the exclusion of terminated vested participants over a certain age. Finally, PBGC added information about how applicants can schedule an informal pre-application conference with PBGC.

PBGC considered the comments on CBU assumptions and, except for some clarifying changes, did not adopt the suggestion of commenters to eliminate the guideline that a change in CBU assumption be adequately supported by historical data. Instead, PBGC included examples in the guidelines to illustrate how historical data and industry trends can be used to project future changes in CBUs under the guidelines.

PBGC's guidance on CBUs and other assumptions may not be reasonable for all plans and is not binding on plans. A plan should follow the assumptions guidance only if it is reasonable for the plan to do so. As explained earlier in the preamble, applicants may propose changes to the plan's assumptions by following § 4262.5(c), including describing why the original assumption is no longer reasonable, disclosing the changed assumption, and demonstrating that the changed assumption is reasonable.

Information To Be Filed

Sections 4262.6 through 4262.8 of the interim final rule described the information that must be included in a plan's SFA application. Section 4262.6 summarized the requirements for an application to be considered complete, including: plan information; actuarial and financial information (including the amount of SFA requested); a completed checklist (per the SFA instructions on PBGC's website at *www.pbgc.gov*); the signature of an authorized trustee who is a current member of the board of trustees; a signed statement under penalty of perjury; a copy of the executed plan amendment providing that, beginning with the SFA measurement date, the plan must be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and this regulation; if the plan suspended benefits under sections 305(e)(9) or 4245(a) of ERISA, a copy of the proposed plan amendment to reinstate suspended benefits and pay make-up payments and a certification by the plan sponsor that the plan amendment will be adopted timely; and any information required by PBGC to clarify or verify the information in a filed application. If any of the information required under the regulation and in the SFA instructions is missing from the filed application, the application will not be considered complete.

The SFA instructions (on PBGC's website at *www.pbgc.gov*), including templates, supplement the regulation and provide guidance to plan sponsors and practitioners on how to prepare and file the required application information. Sections 4262.6 through 4262.8 and the instructions specify the minimum necessary plan, actuarial, and financial information that PBGC requires to approve or deny an application for SFA and to verify the amount of SFA within the short 120-day review period provided under section 4262(g) of ERISA.

PBGC in the final rule is amending the information required to be filed as described in §§ 4262.6 through 4262.8 to reflect the new methodology in § 4262.4 for determining the amount of a plan's SFA and making other clarifying changes.

Based on its experience reviewing applications, in the final rule, PBGC is amending § 4262.6(a) to provide that, if information is not accurately completed or not filed with the application, PBGC may, in its discretion, either require the plan sponsor to file additional information to correct the error or omission or consider the application incomplete. If correction of any error or omission requires a change to the amount of SFA requested, the application will be considered incomplete. This provision is intended

to provide some flexibility in the application review process to enable some errors to be corrected without plans having to file revised applications.

In addition, PBGC is modifying the language of the required statement under penalty of perjury in § 4262.6(b) to make the language more precise and is modifying the language of the required amendments to the plan in § 4262.6(e). In the final rule, clarifying language, ''notwithstanding anything to the contrary in this or in any other governing document'' is added to § 4262.6(e)(1) so that the required language for the amendment reads, ''Beginning with the SFA measurement date selected by the plan in the plan's application for special financial assistance, notwithstanding anything to the contrary in this or any other governing document, the plan shall be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and 29 CFR part 4262. This amendment is contingent upon approval by PBGC of the plan's application for special financial assistance.'' PBGC is also providing model language for the benefit reinstatement amendments under § 4262.6(e)(2) to assist filers in complying with the amendment requirements. In addition, PBGC is amending § 4262.7(e)(2) to require that the certification by the plan sponsor that the benefit reinstatement amendments will be timely adopted must be signed either by all members of the plan's board of trustees or by one or more trustees duly authorized to sign the certification on behalf of the entire board of trustees.

As described in the *Paperwork Reduction Act* section of the interim final rule, the application instructions and checklist were submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. PBGC received approval for this information collection on an emergency basis for a period of 180 days, expiring on January 31, 2022, under control number 1212–0074. Subsequently, OMB extended its approval for the information collection for an additional 3 years, expiring on January 31, 2025.

With the final rule, PBGC is submitting this information collection, with the described modifications, to OMB and its decision will be available at *www.Reginfo.gov.*

Unless confidential under the Privacy Act, all information that is filed with PBGC for an application for SFA may be made publicly available, at PBGC's sole discretion, on PBGC's website at *www.pbgc.gov* or otherwise publicly disclosed. Except to the extent required by the Privacy Act, PBGC provides no assurance of confidentiality in any information or documentation included in an application for SFA.

Application for Plans With a Partition

Under section 4233 of ERISA, a plan may apply to PBGC for a partition to fund a portion of the plan's benefits to avoid insolvency. Upon PBGC's approval of an application for partition, PBGC issues a partition order to provide: (1) for a transfer from the original plan to the plan created by the partition order (the successor plan), the minimum amount of benefit liabilities necessary for the original plan to remain solvent, and (2) financial assistance from PBGC under section 4261 to pay those benefits. The successor plan is but a creature of PBGC's partition order, terminated and insolvent from its inception. The original and successor plans are required by section 4233(d)(2) to have the same plan sponsor and administrator.

Section 4262(c)(3) of ERISA requires PBGC to provide an alternative application for SFA that may be used for a plan approved for a partition before March 11, 2021. Section 4262.9 of PBGC's regulation describes this application.

Section 4262.9 does not provide eligibility for SFA. As explained earlier in the preamble under the subheading *Eligible Multiemployer Plans,* section 4262(b)(1) of ERISA lists four categories of plans that are eligible for SFA, and PBGC cannot extend eligibility for SFA through its regulation to a plan that is not included in any of those categories. In the case of a partitioned plan, the original and successor plans must each be separately eligible. Each must have been approved for a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021, to be eligible for SFA under section 4262(b)(1)(B) of ERISA and § 4262.3(a)(2). To avoid any confusion about the eligibility of a partitioned plan, PBGC is clarifying this requirement in § 4262.9(a) of the final rule.

The plan sponsor of a partitioned plan where the original and successor plans are each eligible to apply for SFA must apply for SFA using the alternative application, which contemplates PBGC's rescission of the partition order as prescribed under § 4262.9(c) and other conditions particular to a partitioned plan as described under § 4262.9(b). One of these conditions is that the plan sponsor must file a single application for SFA, consisting of information about the original plan and the successor plan. The combined information must reflect that, on the date SFA is transferred to the plan, PBGC will rescind the order that created the successor plan, and the plan sponsor will remove plan provisions and amendments that were required to be adopted under the order.

Another condition is that the application must include a statement that the plan was partitioned and a copy of the provisions or amendments that the plan was required to adopt under the partition order. A partitioned plan's application must include all the required information described in §§ 4262.6 through 4262.8 for applications generally. However, if the plan sponsor of a partitioned plan has already filed any of the required information with PBGC, the sponsor is not required to include that information again with its SFA application. Instead, the sponsor need only note on the checklist described under § 4262.6(a) that the information was already filed.

Partitioned plans also have benefit suspensions that must be reinstated if the plan is approved for SFA. Under § 4262.15, a plan receiving SFA must reinstate benefits suspended under section 305(e)(9) of ERISA and provide make-up payments to participants and beneficiaries to restore previously suspended benefits in accordance with guidance issued by the Treasury Department and the IRS in Notice 2021–38, 2021–30 IRB 155. This requirement applies to both the original plan and the successor plan created by a partition. Having the original and successor plans apply as one will ensure coordinated benefit reinstatements for all participants in the partitioned plan.

The filing of an application for a partitioned plan falls under priority group 2 for purposes of § 4262.10(d) (explained in this preamble under the subheading *Processing Applications*), consistent with other plans that are eligible for SFA because they have implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021.

Successor plans created in a partition have also been receiving financial assistance from PBGC with repayment obligations under section 4261 of ERISA. How financial assistance under section 4261 is repaid is prescribed under § 4262.12.

Processing Applications

Under section 4262(c) of ERISA, PBGC must issue regulations or guidance setting forth requirements for SFA applications. Applications are considered timely filed under section 4262(g) only if they are filed in

accordance with PBGC's regulations. PBGC's inherent authority under section 4002(b)(3) of ERISA allows PBGC to adopt regulations relating to the conduct of its business and to carry out the purposes of the title IV insurance program. Under section 4262(d) of ERISA, PBGC also may limit the filing of SFA applications to filings for plans that are in one or more of four ''priority'' categories during a period limited to within the first 2 years after March 11, 2021.

Section 4262.10 of the regulation sets forth the system for processing applications within 120 days, as required by section 4262(g) of ERISA and § 4262.11 of the regulation. The processing system will provide every prospective submitter a fair opportunity to file its application by December 31, 2025 (or December 31, 2026, for a revised or supplemented application). This electronic filing system is based on three mechanisms. The first mechanism permits PBGC to accept applications in a manner that, in PBGC's estimation, allows for sufficient review and processing within 120 days of filing. The second mechanism is a priority system permitted by section 4262(d) of ERISA. The third mechanism is a notification system on PBGC's website to keep prospective applicants apprised of when a filing window opens or closes and (if applicable) to what priority groups filing is limited. This mechanism will enable applicants to know when the system is accepting applications from plans in their priority group. The statutory authority and rationale behind these mechanisms are fully explained in the preamble to the interim final rule.

PBGC received several comment letters on this section of the interim final rule. Most of these commenters focused on allowing more plans to apply earlier during the 2-year priority-group period to speed up the provision of SFA to eligible plans. These commenters wanted plans eligible to file in a later priority group to be given the opportunity to file in an earlier priority group—*e.g.,* allow plans projected to become insolvent within 1 year of filing an application and designated to file in priority group 2 to file in priority group 1, or allow plans that implemented benefit suspensions under MPRA and also able to file in priority group 2 to file in priority group 1. Some of these commenters explained that the plans in priority group 2 that are projected to become insolvent in 2022 should be able to apply earlier to avoid the complexity of preparing for insolvency or even becoming insolvent before receiving SFA, and to avoid the disruption this would cause plan participants. Commenters who are participants in MPRA plans (*i.e.,* plans that implemented benefit suspensions) described the reduction in their benefits as a life-altering loss. They asked that their plans be able to apply in priority group 1 along with insolvent plans because the impact of benefit cuts on plan participants is the same.

Other commenters wanted PBGC to move up the beginning date identified in the interim final rule for a plan in a priority group to file—*e.g.,* priority group 6 plans should be permitted to file before priority group 5.

The filing dates provided in the interim final rule are the latest dates PBGC expects to begin accepting applications from plans in each group. A plan in a priority group may file an application beginning on that date, or an earlier date as processing capacity permits, as updated on PBGC's website at *www.pbgc.gov*. As priority groups open, PBGC will continue to accept applications from plans in earlier priority groups. While the priority mechanism may entail a relatively short deferral of an application for a given plan until its respective priority group opens, the amount of SFA ultimately awarded will reflect the amount required to pay all benefits due pursuant to the statute.

The final rule does not make changes to the filing dates for plans in a priority group under § 4262.10(d)(2), but using its discretion under the regulation, PBGC has updated its website at *www.pbgc.gov* to allow a plan in priority group 2 that is expected to become insolvent within 1 year of the date the plan's application for SFA is filed, to file an application earlier. PBGC agrees with comments that this would lessen the disruption for plans and participants. In November 2021, the earliest date of filing for these plans was changed from January 1, 2022, to December 27, 2021, enabling these plans to prepare and file their applications earlier. PBGC will continue to monitor the flow of applications to consider earlier filing dates as processing capacity permits. PBGC will inform prospective applicants of any earlier dates through updates on its website at *www.pbgc.gov*.

Taking into account the previously described change, the following table describes each priority group and the date that it is currently scheduled to open:

Priority group	Description of priority group—date plans may apply for SFA	Description of priority group—date plans may apply for SFA
1	Plans already insolvent or projected to become insolvent before March 11, 2022.	Beginning on July 9, 2021
2	Plans expected to be insolvent within 1 year of the date an application for SFA is filed.	Beginning on December 27, 2021.
	Plans that implemented a benefit suspension under ERISA section 305(e)(9) as of March 11, 2021.	Beginning on January 1, 2022.
3	Plans in critical and declining status that had 350,000 or more participants.	Beginning on April 1, 2022.
4	Plans projected to become insolvent before March 11, 2023	Beginning on July 1, 2022.
5	Plans projected to become insolvent before March 11, 2026	Date to be specified on PBGC's website at least 21 days in advance of such date, but no later than February 11, 2023.
6	Plans for which PBGC computes the present value of financial assistance under section 4261 of ERISA to be in excess of $1 billion (in the absence of SFA).	Date to be specified on PBGC's website at least 21 days in advance of such date, but no later than February 11, 2023.

Other commenters suggested expanding the priority categories to include other similar plans or to expand the number of priority groups by identifying plans for a priority group 7.

The final rule does not change the composition of priority groups as commenters suggested, such as by including in priority group 2 plans that had or still have a benefit suspension application under section 305(e)(9) of ERISA pending before the Treasury Department (and so had not implemented a benefit suspension as of March 11, 2021) or plans that had applied for a benefit suspension but had their application withdrawn or denied.

A plan in any of the four priority categories identified in section 4262(d) of ERISA will have a fair opportunity to file an application under § 4262.10(d)(2) of the regulation during the 2-year priority period ending on March 11, 2023. As noted in the interim final rule, PBGC's objective is to accept and process as many applications in the highest priority group as possible before opening the submission process to the next priority group. Ultimately—and no later than March 11, 2023—the submission process will be opened to all eligible plans (whether or not in a statutory priority category) to ensure that every prospective applicant has a fair opportunity to file its application during the statutory period.

Other commenters wanted more certainty about which plans fall into the final priority group 6 under the interim final rule, or groups 6 and 7, and when the plans could begin applying. Commenters recommended that PBGC identify and post as quickly as possible the names of the plans it determines to be in priority group 6 to provide certainty to plans expecting to apply in priority group 6. Under § 4262.10(d)(2)(vi), a plan is in priority group 6 if the plan is projected by PBGC to have a present value of financial assistance payments under section 4261 of ERISA that exceeds $1 billion if SFA is not ordered. PBGC will list the plans in priority group 6 on its website at *www.pbgc.gov* well in advance of the first date filings may be accepted, but not later than the earlier of November 15, 2022, or 30 days before opening the filing period for priority group 6. The date a plan in priority group 6 may file an application will be posted at least 21 days in advance of such filing date, which will be no later than February 11, 2023.

A commenter also recommended including plans with unfunded vested benefits (UVBs) over $1 billion in a priority group 7, with UVBs determined using current liability assumptions reported in the plan's last Form 5500 Schedule MB filed before 2021. The commenter suggested defining this group so that a plan with the expectation of being in priority group 6, but not named to priority group 6, could know that it could apply shortly thereafter and not have to significantly revise its application.

Commenters also reasoned that providing SFA to these large plans earlier (by allowing them to apply earlier) means the plans will have expended less of their assets to meet obligations, and therefore need less SFA, which in turn may result in less cost to the SFA program overall. Another commenter argued that plans that do not meet the $1 billion threshold are likely plans that cover workers in lower wage industries, and that these workers also are entitled to know when their plans may apply for SFA.

PBGC considered commenter requests to define a new priority group 7. Section 4262.10(d)(2)(vii) of the interim final rule provides that PBGC may add additional priority groups based on other circumstances similar to those described for priority groups 1 through 6. While PBGC has not made changes to § 4262.10(d)(2) to add additional priority groups, PBGC will continue monitoring its application processing to determine whether additional priority groups should be added. Any additional priority groups added and the date PBGC will begin accepting applications for such groups will be posted in guidance on PBGC's website at *www.pbgc.gov*.

The final rule makes some clarifying changes in § 4262.10(d), including to clarify that an application filed by a plan to which benefit liabilities were transferred (by merger or otherwise) from a plan that filed an initial application for SFA will be treated as a revised application and not an initial application.

Lock-in Application

Section 4262.10(d)(1) of the interim final rule provides that SFA applications are processed based on capacity to allow for sufficient review and processing by PBGC within the short period of time required by the statute. Once the number of applications reaches that level, the filing window will temporarily close until PBGC has capacity to process more applications. An application will be considered filed on the date it is submitted electronically to PBGC if the application meets applicable filing requirements, including authorized signatures, and can be accommodated in accordance with the processing system. Otherwise, PBGC will not consider the application filed and will notify the applicant that the application must be filed in accordance with the processing system and instructions on PBGC's website. PBGC maintains a dedicated web page for applications on its website at *www.pbgc.gov* to inform prospective applicants about the current status of the filing window, as well as to provide advance notice of when PBGC expects to open or temporarily close the filing window.

One commenter remarked that an effect of the ''metering system'' is that a plan preparing its initial application for submission on a particular date, with the plan's SFA measurement date and other base data aligned with that date, may nonetheless be prevented from filing on that date because the filing window has closed temporarily. If a temporary closure extends into the next calendar quarter, a plan's application may have to be significantly revised to include a new SFA measurement date and possibly new census data. The commenter suggested that PBGC could allow plans that were ready to file an application, but that were unable to do so because the filing window closed temporarily, to submit a ''notice of intent to file'' that would lock in the plan's SFA measurement date and other base data. The suggested notice would allow the plan to apply on a different date when the filing window re-opened but with the same application.

PBGC considered the comment and, to address the problem described by the commenter, has created in § 4262.10(g) of the final rule a simple process for ''locking in'' a plan's SFA measurement date and other base data, which is available for all plans that file after March 11, 2023, and on or before December 31, 2025. The process also is available for plans in priority groups 5, 6, and any additional priority group PBGC may add before March 11, 2023, if PBGC temporarily closes the filing window when it is otherwise accepting applications for plans in those priority groups. A lock-in application is a pro forma initial application submitted via email and containing the plan's identifying information, priority group information (if applicable), a statement of intent to lock in the plan's base data, a certification signed by an authorized trustee, and other information as described in the lock-in application instructions on PBGC's website at *www.pbgc.gov*. If the lock-in application satisfies the requirements for a lock-in application, it will be considered filed and immediately denied for incompleteness.

PBGC may learn, during its review of a plan's revised application, that the plan is not eligible for SFA. In that situation, the lock-in application will not establish the plan's base data. If the plan subsequently becomes eligible for SFA, the plan may file a revised application to demonstrate that the plan is eligible for SFA and establish the plan's base data.

Emergency Filings

Section 4262.10(f) of the interim final rule provides for an emergency filing process for priority applications from a plan that is insolvent or expected to be insolvent under section 4245(a) of ERISA within 1 year of filing an

application, or a plan that has implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021. Beginning with PBGC's acceptance of priority group 2 filings, PBGC is accepting emergency filings from these plans during periods when PBGC would not otherwise accept such applications because the filing window is closed. A filer submitting an application under the emergency filing process must substantiate the claim of emergency status and notify PBGC, in accordance with the SFA instructions on PBGC's website at *www.pbgc.gov,* before submission of the impending application.

One commenter suggested that another option for advancing the date that a plan in priority group 2 may apply would be to allow emergency filings beginning with PBGC's acceptance of applications from plans in priority group 1. PBGC has not made a change to the emergency filing process, but as discussed earlier, has advanced to December 27, 2021, the earliest filing date for a plan projected to be insolvent within 1 year of the date the plan's application is filed. Accordingly, insolvent plans and any plan projected to be insolvent within 1 year of the date the plan's application is filed are also eligible to submit emergency applications beginning December 27, 2021. PBGC will continue to monitor application processing and will continue to update its website to advance filing dates as capacity permits.

PBGC Action on Applications

Section 4262(g) of ERISA provides that PBGC can either approve or deny an application for SFA and establishes a 120-day review period during which PBGC must act or an application is deemed approved. PBGC is given authority to manage the application review process by issuing regulations or guidance under section 4262(c) of ERISA setting forth requirements for SFA applications. Pursuant to that authority, § 4262.11 provides requirements for plan applications that are denied by PBGC or withdrawn by a plan.

As described under § 4262.11, PBGC must act on an application within 120 days after the date an initial, revised, or supplemented application is properly and timely filed. If PBGC approves an application, it will notify the plan sponsor of the payment of SFA in accordance with § 4262.12.

If PBGC denies an application, it will notify the plan sponsor in writing of the reasons for the denial. An application may be denied because it is incomplete (it does not accurately include the information required to be filed); because an assumption is unreasonable, a proposed change in assumption is individually unreasonable, or the proposed changed assumptions are unreasonable in the aggregate; or because the plan is not an eligible multiemployer plan. For example, pending approval of an application, if PBGC determines that documentation supporting a certification of critical and declining status is missing, or if the plan sponsor has not responded to a PBGC request for information to clarify an item in that documentation, PBGC's notice will identify the missing information or documentation required to complete the application. If PBGC denies an application, the plan sponsor may submit a revised application. If the plan sponsor submits a revised application following a denial, the revised application must address the reasons for denial stated in PBGC's notification. PBGC is not requiring a plan sponsor to refile the entire application. PBGC only needs the information that cures the reasons specified in the denial notice. However, the plan sponsor may address other matters provided that the revised application addresses the reasons for the denial.

The plan sponsor may withdraw an application (in writing and in accordance with the SFA instructions on PBGC's website at *www.pbgc.gov*) at any time before PBGC denies or approves the application. If an application is withdrawn or denied, the plan sponsor may refile the application as a revised application. As explained earlier in the preamble, under section 4262(f) of ERISA, and until the plan's application is approved, there is no limit to the number of times that a plan sponsor may file a revised application (after the application is withdrawn or denied) as long as the last revised application is filed by the statutory deadline of December 31, 2026.

For any revised application, PBGC requires that the base data remain the same as required to be used in the plan's initial application to guard against multiple filings for purposes of changing this data. In the final rule, PBGC clarifies that the base data defined in § 4262.11(c) for an eligible plan includes the plan's SFA measurement date, participant census data, non-SFA interest rate assumption, and SFA interest rate assumption. Once PBGC has accepted an initial application for processing, it is in the best interest of all parties to avoid the duplicative work and delays associated with changes to the base data. Accordingly, if the application is denied or the plan sponsor withdraws an application, and the plan sponsor submits a revised application, it must use the base data required to be used in its initial application, but it may make other changes. However, in the final rule, PBGC clarifies that if the plan was not eligible for SFA on the date the plan filed its initial application, the plan's base data will not be fixed. Instead, if the plan is able to demonstrate eligibility for SFA at a later date in a revised application, the revised application will establish the plan's base data.

PBGC's decision on an application for SFA is a final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701–706).

Payment of Special Financial Assistance

Section 4262(j) of ERISA provides that SFA is the amount required for an eligible plan to pay all benefits due from the date PBGC pays the SFA to the plan until the last day of the plan year ending in 2051. However, because a plan sponsor does not know when SFA will be paid at the time the sponsor prepares an application, the SFA amount supported by an application and approved by PBGC will be the amount appropriate as of a date in the past. The amount of SFA could be recomputed as of the date of payment, yet the result would still be an estimate and the burden of recomputing the amount of SFA would be significant. Instead, § 4262.12 provides that PBGC will pay a plan the amount demonstrated under the plan's application, determined as of the SFA measurement date, plus interest on that amount for the time between the SFA measurement date and the date PBGC sends payment (not the bank settlement date).

The final rule clarifies the interest rate applied on the amount of SFA demonstrated under the plan's application from the time between the SFA measurement date and the date PBGC sends payment. For initial or revised applications filed on or after the effective date of the final rule, the interest rate applied is the SFA rate under § 4262.4(e)(2). For applications filed under the interim final rule where the plan has not filed an initial or revised application on or after the effective date of the final rule and there has not been any previous payment of SFA, and where the plan's application is not supplemented, the interest rate applied is the non-SFA rate under § 4262.4(e)(1).

For a supplemented application, where the plan received a previous

payment of SFA, the interest rate applied is the SFA rate required under § 4262.4(e)(2) from the SFA measurement date to the payment date of the additional SFA. Interest is applied on the excess of the amount of SFA determined under § 4262.4 of the final rule as of the SFA measurement date (demonstrated on the plan's supplemented application) over the SFA amount determined under § 4262.4 of the interim final rule as of the SFA measurement date.

Section 4262.12(g) otherwise remains unchanged in substance from the interim final rule by providing that PBGC will pay SFA to a plan in a lump sum or substantially so [26] as soon as practicable upon approval of the plan's SFA application. As stated in the interim final rule, PBGC expects payment to be made usually within 60 days, and no later than 90 days after the plan's SFA application is approved or deemed approved (and in any event not later than September 30, 2030). Payment will be made in accordance with payment instructions provided by the plan in its application. Payment will be considered made when, in accordance with the plan's payment instructions, PBGC no longer has ownership of the amount being paid. Any adjustment for delay will be borne by PBGC only to the extent that it arises while PBGC has ownership of the funds.

For a plan with an obligation to repay financial assistance under section 4261 of ERISA, the process for that repayment is described in § 4262.12(e).

Unlike assistance under section 4261, section 4262(a)(2) of ERISA provides that payment of SFA is not a loan subject to repayment. However, under § 4262.12(g)(1), SFA is subject to recalculation or adjustment to correct any clerical or arithmetic error. PBGC will, and plans must, make payments as needed to reflect any such changes in a timely manner. SFA is also subject to debt collection if PBGC determines that a payment for SFA to a plan exceeded the amount to which the plan was entitled. Section 4262.12(g)(2) provides the rules for payment of a debt owed to the Federal Government.

Restrictions on Special Financial Assistance

Section 4262(*l*) of ERISA places restrictions on the use of SFA. These restrictions are described in § 4262.13 of the regulation. SFA received, and any earnings thereon, must be segregated from other plan assets and may only be used to make benefit payments and pay plan expenses (but SFA may be used before other plan assets are used for these purposes). In addition, SFA (and earnings) must be invested by plans in investment grade bonds or other investments as permitted by PBGC in § 4262.14. These limitations on the use of SFA reflect the purpose of SFA. As provided for under section 4262(j)(1) of ERISA and in § 4262.4, SFA is the amount required for the plan to pay all benefits due during the SFA coverage period taking into account all plan resources and obligations. SFA should not be used in a manner that would divert SFA funds to other purposes—for instance, reducing sources of plan income, such as employer contributions or withdrawal liability, or increasing plan obligations, such as to pay for additional future increases in benefits (that are not exempted under § 4262.16).

Permissible Investments

Section 4262(*l*) of ERISA requires that SFA received, and any earnings thereon, may be used to make benefit payments and pay plan expenses, and such SFA and earnings (''SFA funds'' or ''amounts attributable to special financial assistance'') must be held separately from other plan assets. Section 4262(*l*) also requires that SFA funds be invested in investment grade bonds or other investments permitted by PBGC. Given the statutory constraints and the likelihood that SFA funds will be paid out before non-SFA funds, PBGC believes that SFA funds should be invested conservatively, in broad, liquid markets.

While the allowance under section 4262(*l*) for ''other investments permitted by the corporation'' could provide some flexibility (and limited exposure to other assets), in the interim final rule PBGC did not allow for investments with fundamentally different characteristics than investment grade bonds. Section 4262.14 of the interim final rule permitted SFA funds to be invested only in fixed income securities that are publicly traded, denominated in U.S. dollars, and that must be considered investment grade except for a 5 percent allowance for a plan to hold investments that were considered investment grade at the time of purchase but are no longer of that credit quality. Recognizing that the interim final rule took a conservative approach for permissible investments, PBGC specifically requested comment from the public on how to arrive at an appropriate balance between predictability of returns and safety of investments on the one hand, and the flexibility to pursue greater asset returns and the opportunity to extend plan solvency on the other.

PBGC received many comments on § 4262.14 of the interim final rule and in response to its specific request for comment on the issue of appropriate risk level. Commenters generally favored allowing plans to have more flexibility in their options for investing SFA funds. They stated that increased flexibility in investment decisions would not necessarily create an excessive level of risk to plans and would enable plans to remain solvent longer.

Other commenters expressed the view that the investment restrictions in the interim final rule do not allow plans to invest SFA funds in a diversified portfolio. They stated that not allowing for diversification will increase overall risk to the plans. Commenters also stated that other investments, some low-risk, likely would yield higher returns and allow plans to remain solvent longer. These commenters suggested various types of fixed income that have higher yields.

As to which investments PBGC should permit, many commenters suggested that PBGC allow plans to invest SFA funds in a manner that targets a specific rate of return. Some commenters recommended permitting plans to target a rate of return close to an interest rate used to calculate the amount of SFA—*e.g.,* the interest rate limit under section 4262(e)(3) of ERISA or approximately 5.3 percent based on pension funding segment rates in December 2021.

Other commenters recommended that PBGC allow specific investment vehicles and approaches. Suggestions included the allowance for various types of fixed income investments, real estate and infrastructure, and risk transfer buy-in contracts offered by life insurers.

Some commenters suggested that PBGC set restrictions for plans individually. They said that PBGC should consider the unique circumstances of each plan and vary the permissible investment options based on the assumptions applicable to the plan.

Some commenters recommended that PBGC allow a percentage of SFA funds in investments other than fixed income. Suggestions ranged from 10 percent to 50 percent. Other commenters recommended having no delineations between SFA and non-SFA assets, meaning that SFA funds could be invested without restriction and would not need to be segregated from non-SFA funds. One commenter suggested that

[26] For example, if a plan's SFA payment exceeds the statutory limitation for a Federal wire of $10 billion, the plan will receive multiple federal wire payments that will equal the approved lump sum amount.

removing all restrictions would eliminate the incentive to assume added risk in investing non-SFA funds. Another commenter said the restrictions are cumbersome and that, to develop an appropriate investment strategy for a plan, a fiduciary must consider all of the plan's assets.

Finally, two commenters agreed with the investment restrictions on SFA funds in the interim final rule. They stated that allowing additional investment options would lead to an excessive level of risk-taking for taxpayer funds.

PBGC stated in the interim final rule that it was reluctant to allow for investment vehicles with fundamentally different characteristics than investment grade bonds without public input. Although public comments reflected both sides of this issue, the comments largely suggested that the final rule should permit greater flexibility in investments with the objective of extending potential solvency. After considering the comments, and to support projected plan solvency through the plan year ending in 2051 as provided in section 4262(j)(1) of ERISA, PBGC is making changes to § 4262.14 to allow for a wider range of investments for SFA assets.

As provided in § 4262.14(i), the changes to permissible investments in this final rule are applicable to a plan that applies or has applied for SFA. However, for a plan that received SFA under the terms of the interim final rule, the changes to permissible investments under this final rule will not apply unless and until the plan files a supplemented application. Until that date, the provisions of § 4262.14 under the interim final rule apply to the plan.

The changes in the final rule permit plans to invest a specified percentage—up to 33 percent—of their SFA funds in return-seeking assets (RSA) as described in § 4262.14(c) of the final rule. That leaves 67 percent or more of SFA funds to be invested in investment grade fixed income securities (IGFI). PBGC believes this ratio (67 percent IGFI to 33 percent RSA) appropriately considers the need to protect SFA assets to pay projected benefits of the participants and expenses of the plan. The 33 percent that may be invested in RSA as defined in the final rule will enable plans to grow SFA funds and increase the potential to pay benefits through 2051 while limiting the total risk exposure of taxpayer-funded assistance.

The final rule provides that the permissible allocation in RSA of SFA funds is no more than 33 percent measured each time RSA are purchased (other than through the reinvestment of fund distributions) and at least once in any rolling period of 12 consecutive months. A purchase of RSA includes a fair market value exchange of investments between a plan's SFA and non-SFA segregated accounts. Portfolio allocations also naturally get out of balance due to cash flow and as prices of investments fluctuate over time, so the percentage of SFA funds in RSA could at times be greater than 33 percent. The rule provides clear guidance to plans on when the percentage allocation in RSA is determined, and that it does not mean, for example, no greater than 33 percent in RSA on each and every day. Requiring the 33 percent cap on RSA to be met at purchase and at least one day during any rolling 12-month period reflects acceptable deviation from the basic restriction. While there may be some drift during a year above the 33 percent, it would be very limited, and the burden of frequent rebalancing or inopportune forced sales of assets is minimized. A plan will be required to attest in the plan's annual statement of compliance (under § 4262.16(i)) that the plan has met the allocation restriction on RSA at purchase and at least once in every rolling period of 12 consecutive months beginning from the date the plan receives SFA.

The final rule describes permissible RSA to include equity securities limited to common stock that is denominated in U.S. dollars and publicly traded (registered with the U.S. Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934); as well as in ''permissible fund vehicles'' described in § 4262.14(g), which include mutual funds and exchange-traded funds (ETFs) registered with the SEC under the Investment Company Act of 1940 (including ETFs organized as unit investment trusts), and collective trusts that operate under a statutory exemption from registration. Permissible fund vehicles abide by an investment policy that limits investment predominantly to publicly traded equity securities (and short-term U.S. Treasury securities, cash or cash equivalents, and investments in money market funds). The permissible RSA funds are intended to include equity funds that track broad-based U.S. indexes, such as the Standard & Poor's 500 Index (S&P 500).

Permissible RSA also includes certain debt instruments (*e.g.,* bonds) that are excluded from the definition of fixed income securities under the final rule. These include debt instruments that pay a fixed amount or fixed rate of interest, are denominated in U.S. dollars, are investment grade, and have been resold in an offering pursuant to 17 CFR 230.144A (SEC Rule 144A under the Securities Act of 1933). However, the final rule explicitly excludes such debt securities issued by a foreign issuer.[27] Permissible RSA also include high-yield (''junk'') corporate bonds that were considered investment grade at the time of purchase by the SFA segregated account for the IGFI portfolio but are no longer of that credit quality. This list of permissible RSA facilitates some diversification and eliminates the potential for investment in aggressive or exotic investments that would clearly be at odds with section 4262(*l*) of ERISA.

PBGC considered suggestions for expanding permissible investments that are RSA to include real estate and infrastructure. Inclusion of these assets would allow for more diversified portfolios of return-seeking SFA funds with significant return potential, but most plans will achieve this diversification through their non-SFA assets. Also, the complexity of these investment categories and the lack of recognized passive index funds that invest directly in real estate and infrastructure make these assets less suitable as permissible investments. Real estate investment trusts (REITs) that issue publicly traded equity are included within the RSA that are allowed as permissible investments and exposure to infrastructure is also available through permissible equity investments.

PBGC also considered commenters' suggestions for expanding the types of fixed income allowable as permissible IGFI to include various fixed income securities that have higher yields. In general, investments that do not share the low risk and relatively high liquidity characteristics of IGFI are not considered appropriate to meet the 67 percent floor for that type of investment. Bonds that were rated investment grade at the time of purchase must be considered RSA if they no longer meet the criteria for being considered investment grade. As noted earlier, the final rule also allows for bonds resold in an offering pursuant to Rule 144A under the Securities Act of 1933 to be considered permissible RSA as long as they meet the investment grade criterion.

PBGC views investments such as leveraged loans, collateralized loan obligations, convertible bonds, preferred stock, and private credit as not

[27] The term ''foreign issuer'' is as defined in 17 CFR 240.3b–4(b) (Rule 3b–4(b) under the Securities Exchange Act of 1934), *i.e.,* any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

appropriate to include as IGFI because they tend to trade in relatively small, illiquid markets that generally require active management. Collateralized loan obligations, collateralized mortgage obligations and other collateralized debt obligations are complex instruments and are only permitted as RSA to the extent they pay a fixed rate of interest. Convertible bonds may have significant liquidity risk.

The final rule clarifies that permissible IGFI securities considered to meet the 67 percent floor must be a bond or other debt instrument that pays a fixed amount or fixed rate of interest, denominated in U.S. dollars, sold in an offering registered under the Securities Act of 1933, and investment grade, and includes such securities held in permissible fund vehicles (defined in § 4262.14(g)). These IGFI funds must abide by an investment policy that limits investment primarily to securities that are denominated in U.S. dollars and are investment grade. Permissible IGFI includes securities issued or guaranteed by the U.S. government or its designated agencies, such as U.S. Savings Bonds, Treasury Bonds, Treasury Bills, and GNMA (''Ginnie Mae''), and government-sponsored enterprise (GSE)-issued debt securities (*e.g.,* by ''Fannie Mae,'' ''Freddie Mac,'' etc.), that are reported on line 1c(2) of the Form 5500 Schedule H. It also includes municipal bonds defined under the Securities Act of 1933 that are investment grade. Dollar-denominated emerging market bonds that are rated as investment grade are viewed as meeting the definition of IGFI.

The final rule clarifies that cash and cash equivalents required to be reported on the Form 5500 Schedule H are permissible investments within the 67 percent floor. These are noninterest-bearing cash on line 1a of Form 5500 Schedule H (total noninterest-bearing cash which includes, among other things, cash on hand or cash in a noninterest-bearing checking account), and interest-bearing cash equivalents on line 1c(1) of Form 5500 Schedule H (all assets that earn interest in a financial institution account such as interest-bearing checking accounts, passbook savings accounts, or in money market accounts). Also permissible are investments in money market funds regulated pursuant to rule 2a-7 under the Investment Company Act of 1940.

PBGC determined not to include as permissible investments insurance contracts, such as risk transfer buy-in contracts described by a commenter. There may be an inherent inequity with this type of investment unless it covers all the benefits for all participants, as suggested by another commenter.

The substance of the definition of investment grade with respect to fixed income securities in the interim final rule is unchanged in the final rule except for removing the words ''publicly traded'' which is evident in the final rule requirement that fixed income securities are sold in an offering registered under the Securities Act of 1933. As described in the interim final rule preamble, investment grade means securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure. Adequate capacity means that the risk of default by the issuer (or obligor) is low and the full and timely repayment of principal and interest on the security is expected. These definitions are consistent with other Federal agency regulations that refer to investment grade securities in compliance with Section 939A of the Dodd Frank Act of 2010. Further, the securities must be considered investment grade by a fiduciary who is, or seeks the advice of, an experienced investor.

Like the interim final rule, the final rule acknowledges that securities (IGFI or RSA) held in permissible fund vehicles (ETFs, mutual funds, or collective trusts), or directly through a portfolio of individual securities, often are supplemented by derivatives that replicate exposure to physical bonds or that implement hedging strategies to protect against downside risk. The final rule permits investment in vehicles allowing for such strategies so long as any derivative or leveraging strategy does not increase the risk of the investments beyond the risk in a similar portfolio of physical securities (*i.e.,* non-derivative securities) with the same market value. Further, any notional derivative exposure on permissible investments that are held in separate accounts (*i.e.,* not through permissible fund vehicles), must be supported by liquid assets that are cash or cash equivalents denominated in U.S. dollars. This will ensure that the plan or the investment manager will be able to cover the derivative exposure with little risk to SFA funds. This provision remains substantively unchanged from the interim final rule and applies to investments in permissible IGFI and RSA.

Lastly, the final rule clarifies that the requirement in section 4262(*l*) of ERISA and § 4262.13 that SFA funds ''shall be segregated from other plan assets'' means that SFA funds must be held in an account separate from the remaining assets of the plan and invested consistent with the requirements in § 4262.14. PBGC expects that if there is any investment policy or investment management agreement governing such account, that it would be consistent with such investment requirements. Custody and accounting of SFA funds should be clearly separated to properly track and account for SFA funds.

Reinstatement of Benefits Previously Suspended

Section 4262(k) of ERISA imposes two conditions on a plan that receives SFA and had previously suspended benefits in accordance with section 305(e)(9) or 4245(a) of ERISA.[28] A plan must reinstate any benefits that were suspended and must provide payments to certain participants or beneficiaries to make up past amounts of benefits previously suspended.

As provided under section 4262(k) of ERISA, § 4262.15 of the interim final rule requires plans to reinstate these previously suspended benefits as of the month in which SFA is paid, and to provide make-up payments with respect to previously suspended benefits to participants or beneficiaries in pay status as of the date that SFA is paid, in accordance with guidance issued by the Secretary of the Treasury. Section 4262(k) and § 4262.15 give the plan sponsor flexibility to design payment of make-up amounts as a single lump sum, with no interest, within 3 months of the payment date of SFA, or in equal monthly installments over a period of 5 years, commencing within 3 months of the payment date, with no installment payment adjusted for interest. PBGC notes that IRS has advised that a late make-up payment should be adjusted to account for the delay, and that the correction method described in section 6.02(4)(d) of Revenue Procedure 2021–30, 2021–31 IRB 172 (which sets forth the current version of the IRS Employee Plans Compliance Resolution System (EPCRS)), with respect to correction of a late distribution from a defined benefit plan is a reasonable method for computing the adjustment.

Several commenters expressed views on the payment of make-up amounts to participants and beneficiaries in pay status. Some of those commenters

[28] Section 4262(k) of ERISA includes rules that are parallel to section 432(k) of the Code. Under section 9704(d)(3) of ARP, the Secretary of the Treasury has interpretive jurisdiction over the rules for determining the benefit reinstatement and make-up payments that must be made by a multiemployer plan receiving SFA, for purposes of ERISA as well as the Code. Under section 4262(k), the Secretary of Labor, in coordination with the Secretary of the Treasury, must ensure benefits are reinstated and previously suspended benefits are paid.

preferred that make-up payments be made in a lump sum, while others expressed concerns about the tax implications of lump sums and suggested that retirees and beneficiaries should be able to choose the form for their make-up payments. In addition, some commenters expressed concern that, if a participant who had received reduced benefits because of a suspension dies before the SFA is paid to the plan, then the participant's estate or beneficiary would not receive make-up payments for the benefits the participant lost because of suspension.

PBGC consulted with the IRS, which pursuant to section 432(k) of the Code and section 4262(k) of ERISA provided guidance in Notice 2021–38 on the make-up payments for benefits previously suspended and the tax treatment of those payments. With respect to the form of payment, the IRS advised PBGC that while section 432(k)(2)(A)(ii) of the Code (which governs the repayment obligation) expressly provides for the plan to determine whether make-up payments are paid as a lump sum or in equal monthly installment payments over 5 years, there is no requirement that the same form of payment must be used for all recipients. With respect to the payment of make-up payments to deceased participants, the IRS advised PBGC that section 432(k)(2)(A)(ii) of the Code requires that make-up payments be made to participants and beneficiaries who are in ''pay status'' on the effective date of the SFA. Because a participant who died before the SFA is paid is not in pay status as of the effective date of the SFA, no make-up payments are made for reductions that applied to that participant and, accordingly, make-up payments are limited to the total amount of benefits that would have been paid to the beneficiary in the absence of the suspension but that were not paid to the beneficiary because of the suspension. However, if a participant dies after the SFA is paid to the plan but before all of the make-up payments are paid to the participant, the unpaid portion of the make-up payments must be made to the participant's beneficiary.

Section 4262.15(c) of the interim final rule requires the plan sponsor of a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA to furnish a notice of reinstatement to participants and beneficiaries whose benefits were previously suspended and then reinstated in accordance with section 4262(k) of ERISA. The requirements for the notice, including content requirements, are in the notice of reinstatement instructions, in an addendum to the SFA instructions, available on PBGC's website at *www.pbgc.gov.* PBGC received no comment on the requirement to provide notice and did not make changes to § 4262.15(c) in the final rule.

Section 4262(k) of ERISA states that ''the Secretary, in coordination with the Secretary of the Treasury, shall ensure that an eligible multiemployer plan that receives special financial assistance'' reinstates suspended benefits and provides make-up payments required by the statute. The Department of Labor notes that it will need access to records, and, if requested, copies of records to ensure that plans receiving SFA reinstate the suspended benefits of participants and beneficiaries as required by section 4262(k). Plan fiduciaries have an obligation under title I of ERISA to maintain complete and accurate records, including information the Department may need to ensure the timely reinstatement of suspended benefits and payment of make-up payments under section 4262(k) of ERISA. The Department is considering issuing guidance to address the records and information that plans that receive SFA will need to maintain and retain to comply with title I of ERISA.

Conditions for Special Financial Assistance

To ensure that SFA is used for the purpose of paying benefits and the expenses related to those benefit payments, PBGC used its authority under section 4262(m)(1) of ERISA, after consulting with the Secretary of the Treasury, to impose reasonable conditions on an eligible multiemployer plan that receives SFA. These conditions are described in § 4262.16 of the regulation and relate to increases in future accrual rates and retroactive benefit improvements; allocation of plan assets; reductions in employer contribution rates; diversion of contributions to, and allocation of expenses to, other benefit plans; and withdrawal liability.

Under certain circumstances, a plan sponsor may request approval from PBGC for an exception from the conditions relating to reductions in employer contribution rates, transfers or mergers, and settlement of withdrawal liability. PBGC solicited public comment on whether there are other circumstances relating to the conditions described under § 4262.16 where PBGC should consider providing approval for exceptions. Commenters suggested adding exceptions to conditions on retrospective benefit increases and mergers, which are discussed under the sections on Benefit Increases and Transfers or Mergers.

(a) Benefit Increases

Section 4262(m) provides authority to impose conditions relating to increases in future accrual rates (prospective benefit increases) and any retroactive benefit improvements (retrospective benefit increases). Section 4262.16(b) of the regulation imposes reasonable conditions on a plan that receives SFA with respect to the types of benefits and benefit increases described in section 4022A(b)(1) of ERISA, without regard to the time the benefit or benefit increase has been in effect. These conditions are intended to prevent excessive increases in benefits that would result in a transfer of SFA to participants beyond the payment of benefits at the level they had been promised as of the date of enactment of section 4262, without being overly restrictive. The condition does not apply to the required reinstatement of benefits suspended under section 305(e)(9) or 4245(a) of ERISA or any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3).

The condition in § 4262.16(b)(1) restricts retrospective benefit increases (also referred to in this preamble as retroactive benefit increases or retroactive benefit improvements) by providing that a benefit or benefit increase must not be adopted during the SFA coverage period (defined in § 4262.2) if it is in whole or in part attributable to service accrued or other events occurring before the adoption date of the amendment. PBGC said in the interim final rule that this condition is needed because retroactive increases in benefits harm the funded position of the plan without improving expected future plan income.

Commenters recommended that PBGC provide some flexibility for retroactive benefit increases if they are paid for by additional contributions without endangering the plan's ability to pay all benefits. Some commenters said that PBGC was wrong in its assertion that retroactive increases in benefits harm the funded position of the plan, and that the prohibition is likely to be counterproductive and reduce the likelihood of plans achieving their long-term contribution assumptions. The prospect of benefit restorations, they stated, could provide an incentive for active participants to remain in their plans and to seek increased contribution rates. The commenters made various suggestions, including permitting retroactive increases if the financial condition of the plan improves, permitting de minimis increases,

allowing an alternative pension arrangement for active workers, and providing a procedure under which a plan may apply for an exception from the condition restricting retrospective benefit increases.

PBGC considered whether to permit retroactive benefit increases, similar to its condition on prospective benefit increases, but remains concerned that retroactive benefit increases are more expensive and riskier than prospective benefit increases. A plan amendment that increases benefits for prior service has the effect of immediately increasing the plan's liability. Its cost is amortized over a future period of years and can significantly add to the employers' financial obligation with respect to funding the plan. In this situation, if the plan experiences actuarial losses in the future, the plan's funding costs could become unsustainable. In contrast, the cost of a prospective benefit increase, such as an increase in the benefit accrual rate, generally is paid for in the year the service is rendered and can be reduced or eliminated for future years if the plan's funding costs become excessive.

In consideration of the comments, however, PBGC is adding § 4262.16(b)(3) to provide a process by which a plan may request a determination from PBGC for an exception from the condition relating to retrospective benefit increases if future plan circumstances permit the plan to provide benefit increases without endangering the plan's ability to pay all benefits. This determination process will also apply to an exception from the condition relating to prospective benefit increases (discussed below). Under the new provision, beginning 10 years after the end of the plan year in which a plan receives payment of SFA, the plan may apply for an exception by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed benefit increase, the plan will avoid insolvency. PBGC considers the 10-year period necessary for the plan to demonstrate that its actuarial assumptions for a favorable long-term outlook, such as steadily solid projections of year-by-year contribution income, are being realized. Moreover, the agency believes that limiting the use of SFA initially to the protection of accrued benefits is essential to sound fiscal stewardship. The final rule specifies the information that a plan is required to file with its application for an exception.

The condition in § 4262.16(b)(2) of the regulation restricts prospective benefit increases by providing that a benefit or benefit increase must not be adopted during the SFA coverage period unless the plan actuary certifies that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to, provided that these increased contributions were not included in the determination of SFA. This condition is intended to guard against plans implementing significant benefit increases that may accelerate plan insolvencies and hasten an inability to pay plan-level benefits. However, plans still have the flexibility to offer active participants more attractive benefit accruals when the plans are able to afford them.

One commenter requested clarification of the conditions on benefit improvements stating that the interim final rule implies that prospective increases are possible during the SFA coverage period while the plan is deemed to be in critical status. The commenter stated that section 305(f)(1)(B) of ERISA includes a requirement that no benefit increase is permissible during a rehabilitation period unless the plan is on track to emerge from critical status by the end of the rehabilitation period, a date that may be decades earlier than the end of the SFA coverage period. The conditions on benefit increases provided under § 4262.16(b) are in addition to the limitations under section 305(f)(1)(B) of ERISA (and corresponding section 432(f)(1)(B) of the Code) applicable to plans in critical status. PBGC is unable to opine on the requirements of section 305(f)(1)(B) of ERISA as the funding rules are under the Treasury Department's interpretive jurisdiction.

(b) Allocation of Plan Assets

Section 4262.16(c) of the regulation imposes a condition on a plan that receives SFA relating to the allocation of plan assets. This condition requires that, during the SFA coverage period, plan assets, including SFA, must be invested in permissible investments as described in § 4262.14 sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses. Under § 4262.14 of the interim final rule, permissible investments were limited to fixed income.

PBGC set the condition in § 4262.16(c) under the authority provided to it in sections 4262(*l*) and 4262(m) of ERISA, which PBGC interprets as intending to prevent excessive risk-taking by plans that receive SFA. PBGC views the gradual increase in the proportion of assets allocated to fixed income as a plan approaches insolvency as a sensible and prudent approach to investing over a gradually shortening time horizon. Nonetheless, PBGC wanted feedback from the public on whether this condition is seen as preventing plans from achieving reasonable investment objectives. Accordingly, in the interim final rule, PBGC requested responses, with supporting data, to the following questions:

(1) Will the requirement to maintain 1 year (or until the date the plan is projected to become insolvent, if earlier) of benefit payments and administrative expenses in investment grade fixed income assets result in an allocation that is significantly different from the allocation that the plan's investment policy (after receiving SFA) would otherwise attain?

(2) What are the advantages and disadvantages of PBGC not imposing any conditions under section 4262(m) of ERISA on asset allocation compared to the proposed condition requiring 1 year (or until the date the plan is projected to become insolvent, if earlier) of benefit payments and administrative expenses in investment grade fixed income?

(3) Could an alternative condition, or modification of the condition under § 4262.16(c), better achieve the objective of preventing excessive risk-taking by plans while allowing plans to meet their investment objectives?

Several commenters offered answers to these questions and provided other comments about allocation of plan assets. Two commenters generally agreed with the condition stating that it would impact allocations only for a brief period of time and would not make a significant difference in the overall investment allocation. Another commenter recommended that PBGC base any restrictions on individual plans' net cash flow positions taking contributions into account, rather than just benefit payments. PBGC considered this comment but determined that factoring in contributions would introduce more administrative complexity. Other commenters disagreed with the condition stating that it would cause plans to become insolvent earlier than they would otherwise. After considering the comments, PBGC decided to retain the condition in the final rule to prevent excessive risk taking. PBGC concluded that the condition is unlikely to have a significant impact on plans, except in years when they are approaching insolvency.

Due to the expansion of permissible investments under § 4262.14 of the final rule, as described earlier in the

preamble under the subheading *Permissible Investments,* PBGC has made conforming changes to § 4262.16(c) to reflect that the condition is tied to fixed income. Accordingly, the final rule amends § 4262.16(c) to provide that during the SFA coverage period, plan assets, including SFA, must be invested in permissible investments that are fixed income as described in § 4262.14(d) sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses. Additionally, the investments used to meet this condition are also subject to the limitations on derivatives and leverage described in § 4262.14(h).

(c) Contribution Decreases and Allocating Contributions

Section 4262.16(d) imposes reasonable conditions on a plan that receives SFA relating to contribution decreases to ensure that SFA is used for the exclusive purpose of paying benefits and reasonable administrative expenses and is not effectively transferred to contributing employers through decreased contribution obligations. During the SFA coverage period, the contributions required for each CBU must not be less than, and the definition of the CBUs must not be different from, those set forth in collective bargaining agreements or plan documents in effect on March 11, 2021 (including agreed to contribution rate increases through the expiration date of the collective bargaining agreements). PBGC received one comment strongly supporting the condition on contribution decreases, stating that employers must continue to pay for promised benefits under the terms that they have agreed to in their collective bargaining agreements. Another commenter requested clarification of the exception to this condition and the threshold for PBGC approval. The regulation provides an exception to this condition where the plan sponsor determines that the risk of loss to plan participants and beneficiaries is lessened by the reduction. PBGC clarifies in the final rule that the threshold for the requirement that PBGC (in addition to the plan sponsor) must determine that the changes lessen the risk of loss to participants and beneficiaries is where the proposed reduction affects over $10 million of annual contributions and over 10 percent of all employer contributions. Except for this clarification in § 4262.16(d) and an addition in paragraph (d)(2)(ix) that PBGC may request additional information that it determines it needs to review a request for approval of a proposed contribution change, the final rule does not make any changes to this condition.

Section 4262.16(e) of the regulation imposes reasonable conditions relating to allocation of contributions and expenses between a plan that received SFA and another employee benefit plan and other practices. The condition prohibits a decrease in the proportion of income (contributions, investment returns, etc.) or an increase in the proportion of expenses allocated to a plan that receives SFA. This prohibition applies to written or oral agreements or practices (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which income or expenses are divided or to be divided between a plan that receives SFA and one or more other employee benefit plans.

The Department of Labor brought to PBGC's attention that there may be circumstances arising after March 11, 2021, beyond the control of the plan sponsor and the bargaining parties (*e.g.,* health benefit cost increases due to legislative changes) that would justify a good faith reallocation of income or expenses between employee benefit plans. To address this narrow circumstance, PBGC is adding an exception to § 4262.16(e). Under the new provision, beginning 5 years after the end of the plan year in which a plan receives payment of SFA, a plan may apply for an exception by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed reallocation, the plan that received SFA will avoid insolvency and that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law. The reallocation would be required to be no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, going to the pension plan and would be required to be temporary (no more than 5 years for a reallocation request relating to any single change in Federal law and no more than 10 years cumulatively for all reallocation requests during the plan's SFA coverage period). For example, if the negotiated contribution rate was $60 per CBU, with 50 percent ($30) allocated to the pension plan and 50 percent ($30) to the group health plan, the pension contribution rate could be reduced to $27 ($30 x 10 percent = $3) during the 5-year period. This temporary reallocation would give the bargaining parties time to negotiate contributions for the health plan under a collective bargaining agreement. For example, consistent with the requirement in § 4262.16(e)(1)(iv), by the end of the 5-year period, the bargaining parties could negotiate, without the approval of PBGC, a new contribution rate of $100 per CBU with an allocation of 30 percent to the pension plan and 70 percent to the group health plan, which would reinstate the $30 contribution rate for the pension plan. The final rule specifies the information that a plan is required to file with its application for an exception.

Except with respect to a merged plan, discussed in the section on Transfers or Mergers, PBGC did not receive any comments on this condition and did not make any other changes to this condition in the final rule.

(d) Transfers or Mergers

Section 4262.16(f) provides that during the SFA coverage period, a plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval. Notwithstanding anything to the contrary in PBGC's regulation on mergers and transfers between multiemployer plans (29 CFR part 4231), the plans involved in the transaction must request approval from PBGC. A request for approval must contain information that would be required to be submitted under § 4231.10 and the additional actuarial and financial information described in § 4262.16(f)(2). PBGC will approve a proposed transfer or merger if: (1) the transaction complies with section 4231(a)–(d) of ERISA, (2) the transfer or merger, or the larger transaction of which the transfer or merger is a part, does not unreasonably increase PBGC's risk of loss respecting any plan involved in the transaction, and (3) the transfer or merger is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction. An example of a larger transaction is where the trustees of a plan receiving SFA arrange a transfer of assets and liabilities from the plan and amend the plan to substantially or completely end benefit accruals in connection with the plan's active participants beginning to accrue benefits under another existing or newly formed plan. PBGC is unlikely to approve a transfer of assets and liabilities (that is not a merger) from a plan that receives SFA to another plan. If a transfer of assets and liabilities (that is not a merger) is approved, the application of the restrictions and conditions to the transferee plan will be determined as a condition of the approval. Also, generally, PBGC will not

approve a transfer from a single-employer plan to a plan that receives SFA, nor a merger of a single-employer plan with a plan that receives SFA.

Several commenters requested additional guidance on how the plan that received SFA before the merger (the ''SFA plan'') should be administered after the merger and whether the restrictions and conditions that applied to the SFA plan also will apply to the merged plan. One commenter suggested that the final rule should include a mechanism for PBGC to waive restrictions and conditions on the merger of an SFA plan into another plan and that such waivers could be considered as part of PBGC's review and approval of mergers.

In response to the commenters, PBGC is amending § 4262.16(f) to provide, as part of the reasonable conditions relating to plan mergers, rules on the restrictions and conditions that apply to the merged plan, the conditions that do not apply to the merged plan, the conditions that may be waived if certain criteria are met, and rules for the calculation of withdrawal liability. For purposes of § 4262.16(f), a merged plan means a plan that is the result of the merger of two or more multiemployer plans. These rules on the applicable restrictions and conditions apply even if, under the terms of the merger, the plan that did not receive SFA is designated as the merged plan.

Under section 4262(*l*) of ERISA and § 4262.13(b), SFA received by a plan and any earnings thereon must be segregated from other plan assets, may be used by the plan only to make benefit payments and pay administrative expenses, and must be invested in investment grade bonds or other permissible investments under § 4262.14. These statutory restrictions on the use of SFA and earnings continue to apply after the merger to the merged plan. Consistent with that requirement, the Treasury Department and the IRS have informed PBGC that the prohibition under section 432(k)(2)(D)(i) of the Code on taking SFA assets into account in determining minimum required contributions under section 431 of the Code continues to apply after the merger to the merged plan.

PBGC has determined that some of the regulatory conditions under § 4262.16 will continue to apply, as conditions of the merger, to the merged plan. If the merged plan engages in a future transfer or merger, the plan would be required to obtain PBGC's approval of the transaction under § 4262.16(f). The merged plan also would be subject to the condition on withdrawal liability requiring approval of certain settlements of withdrawal liability under § 4262.16(h). In addition, the merged plan will be required to demonstrate continued compliance with the restrictions and conditions by filing an annual statement of compliance under § 4262.16(i) through the last day of the last plan year ending in 2051 and will be subject to periodic compliance audits under § 4262.16(j). PBGC believes these are reasonable conditions for a plan that receives SFA that should continue to apply to the merged plan and will not create a significant impediment to plan mergers.

PBGC agrees that some of the conditions under § 4262.16 either should not apply or should be waived for certain mergers so that the conditions do not unduly impede beneficial mergers.

After considering comments received, PBGC is clarifying in § 4262.16(f) that the conditions relating to prospective benefit increases under § 4262.16(b)(2), allocation of plan assets under § 4262.16(c), and allocating expenses under § 4262.16(e) [29] will not continue to apply after the merger to the merged plan. A few commenters suggested that a large plan could not operate efficiently if the condition with respect to prospective benefit increases applied and every merged plan was required to retain its own benefit design. Another commenter explained that there would be a reasonable expectation that two participants under the same plan working with the same or similar contribution rates would have the same or similar benefit accrual for service after the merger. With respect to allocating expenses, a commenter stated that an SFA plan that has merged is not legally separate from the merged plan for this purpose and should not be treated differently than any other portion of the merged plan.

In addition, PBGC is amending § 4262.16(f) in the final rule to provide that, as part of a request for approval of a merger between plans where one or more of the plans are SFA plans and one or more of the plans are non-SFA plans, PBGC will provide a waiver of the conditions relating to retroactive benefit increases under § 4262.16(b)(1), contribution decreases under § 4262.16(d), and allocating contributions and other income under § 4262.16(e) if three requirements are met. First, the total current value of assets of the SFA plans pre-merger must be 25 percent or less of the total current value of assets of the merged plan, calculated using the current value of assets most recently required to be reported by the plans before the merger on line 2a of Form 5500 Schedule MB.[30] Second, the total current liability of the SFA plans pre-merger must be 25 percent or less of the total current liability of the merged plan, calculated using the current liability most recently required to be reported by the plans before the merger on line 2b(4) column (2) of Form 5500 Schedule MB. Third, in the most recent certification of plan status for the non-SFA plan, the plan actuary must have certified that the plan is not in endangered or critical status (including critical and declining status) and is not projected to be in critical status within 5 years from the date of the plan's request for approval, and the plan must not be a plan described in section 432(b)(5) of the Code. If any of the plans involved in the merger engage in multiple transactions in any 1-year period, the transactions will be considered in the aggregate.

Some commenters suggested that if PBGC retains certain conditions after the merger, the conditions should apply to participants in (and employers contributing to) the SFA plan part of the merged plan only and not to all participants in (and employers contributing to) the merged plan. PBGC is adopting this suggestion for conditions relating to retrospective benefit increases under § 4262.16(b)(1), contribution decreases under § 4262.16(d), allocating contributions and other income under § 4262.16(e), and withdrawal liability under § 4262.16(g). The condition relating to retrospective benefit increases, absent a waiver, will continue to apply to participants in the SFA plan immediately before the merger and not to other participants after the merger in the merged plan. For the condition relating to contribution decreases, absent a waiver, the condition will apply only to the employers who had an obligation to contribute to the SFA plan immediately before the merger. For the condition relating to allocating contributions and other income, absent a waiver, the condition will apply to contributions or income relative to the SFA plan before the date of the merger. With respect to the conditions relating to the calculation of withdrawal liability under § 4262.16(g) (described in the next section of the preamble), PBGC is limiting the conditions to the

[29] Section 4262.16(e) prohibits a decrease in the proportion of income (contributions, investment returns, etc.) or an increase in the proportion of expenses allocated to a plan that receives SFA. Unless, waived, the prohibition on a decrease in the proportion of income will continue to apply to the merged plan.

[30] All line references in this section are to the 2021 Form 5500 and schedules.

determination of unfunded vested benefits that arose under the SFA plan before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 and determining withdrawal liability.

PBGC agrees with a comment that this approach avoids the use of SFA assets to reduce the withdrawal liability of a withdrawing employer without unduly increasing the withdrawal liability of other employers who were never contributing employers to the SFA plan.

The following table summarizes the application of the restrictions and conditions in the event of a merger:

APPLICATION OF RESTRICTIONS AND CONDITIONS AFTER A MERGER

Applies to merged plan	Does not apply to merged plan	Other
• Restrictions (§ 4262.13(b)). • Transfer or merger (§ 4262.16(f)). • Withdrawal liability settlement (§ 4262.16(h)). • Annual compliance statement (§ 4262.16(i)). • Audit (§ 4262.16(j))	• Prospective benefit increase (§ 4262.16(b)(2)). • Allocation of plan assets (§ 4262.16(c)). • Allocating expenses (§ 4262.16(e)).	• Retrospective benefit increase (§ 4262.16(b)(1)): plan may apply for a waiver, and, absent a waiver, continues to apply to participants in the SFA plan. • Contribution decreases (§ 4262.16(d)): plan may apply for a waiver, and, absent a waiver, continues to apply to employers who had an obligation to contribute to the SFA plan. • Allocating contributions and other income (§ 4262.16(e)): plan may apply for a waiver, and, absent a waiver, continues to apply to contributions or income relative to the SFA plan before the date of the merger. • Withdrawal liability calculation (§ 4262.16(g)): no waiver; conditions required to be applied to determine unfunded vested benefits (UVBs) that arose under the SFA plan before the date of the merger for purposes of allocating UVBs under subpart D of part 4211 and determining withdrawal liability.

Commenters asked for clarification of whether the merged plan's certification of plan status will be affected by merging with a plan that receives SFA. Under section 4262(m)(4) of ERISA, section 432(b)(7) of the Code, and § 4262.17(c), an eligible multiemployer plan that receives SFA is deemed to be in critical status within the meaning of section 305(b)(2) of ERISA until the last day of the last plan year ending in 2051. The rules for critical status plans under section 305 of ERISA are under the jurisdiction of the Treasury Department.

Commenters also asked for clarification of whether a merged plan would be able to apply for a suspension of benefits under MPRA in the future. Under section 432(k)(2)(E) of the Code, section 4262(m)(6) of ERISA, and § 4262.17(e) an eligible multiemployer plan that receives SFA is not eligible to apply for a new suspension of benefits under section 305(e)(9) of ERISA. This statutory condition would apply to the SFA plan. Eligibility of a merged plan to apply for a suspension of benefits is under the jurisdiction of the Treasury Department.

(e) Withdrawal Liability

Under sections 4201 through 4225 of ERISA, when a contributing employer withdraws from an underfunded multiemployer plan, the plan sponsor assesses withdrawal liability against the employer. Withdrawal liability represents a withdrawing employer's proportionate share of the plan's unfunded benefit obligations and is an important source of income for the plan. To assess withdrawal liability, the plan sponsor must determine the withdrawing employer's (1) allocable share of the plan's unfunded vested benefits (the value of nonforfeitable benefits that exceeds the value of plan assets) as of the end of the plan year before the employer's withdrawal, or as otherwise provided under section 4211, and (2) annual withdrawal liability payment and amortization period under section 4219.

Interest Assumptions for Determining UVBs

Under § 4262.16(g) of the interim final rule, for withdrawals that occur after the plan year in which the plan receives SFA, the interest assumptions used in determining unfunded vested benefits (UVBs) for purposes of determining withdrawal liability must be the ''Interest Rates Used To Value Benefits'' in appendix B to 29 CFR part 4044. The interim final rule provided that the prescribed interest assumptions must be used until the later of 10 years after the end of the plan year in which the plan receives payment of SFA or the last day of the plan year in which the plan no longer holds SFA or any earnings thereon in a segregated account. The minimum 10-year period is similar to the time period over which special statutory withdrawal liability rules apply to plans that suspend benefits or are partitioned under MPRA.

Several commenters recommended changes related to the condition requiring plans to use the prescribed interest assumptions. Two commenters suggested that PBGC provide only a fixed period for the requirement to use mass withdrawal interest assumptions to eliminate a plan's ability to prolong application of the condition by keeping a small SFA balance. Other suggestions to avoid plans prolonging the application of the condition were to require that SFA funds be used first and to eliminate the reference to earnings on SFA. Other commenters agreed that requiring the use of the mass withdrawal interest assumptions is a reasonable condition and recommended that PBGC extend the requirement through 2051.

PBGC is retaining the ''later of'' structure for the period to which the condition applies. However, in consideration of comments suggesting the condition apply for a fixed period to prevent plans from holding a de minimis amount of SFA to prolong application of the condition, PBGC is modifying the period so that it ends after the later of 10 years or the projected life of the SFA assets. Specifically, the prescribed interest assumptions must be used until the later of: (1) 10 years after the end of the plan year in which the plan first receives payment of SFA, and (2) the last day of the plan year by which the plan projects that it will exhaust any SFA assets as determined under § 4262.4(b) (under which benefits and expenses are assumed to be paid exclusively from SFA assets until exhausted), extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the SFA measurement date. For example, if a calendar year plan's SFA measurement date is in 2022, the plan receives payment of SFA in 2023, and had projected that it will exhaust SFA assets in 2051, the exhaustion year for the plan to use the prescribed interest assumptions would be 2052 (29 years + 1 year). Under this example, employers

withdrawing before 2054 would have UVBs determined using the prescribed interest rate under the final rule. Eliminating a plan's ability to prolong application of the condition requiring use of mass withdrawal interest assumptions beyond the specified period does not preclude the use of settlement rates thereafter to determine withdrawal liability, as otherwise permitted by ERISA.

In addition, the final rule clarifies that the beginning of the 10-year period is the last day of the plan year in which the plan receives payment of SFA, renumbers § 4262.16(g) as § 4262.16(g)(1), and clarifies that the condition in § 4262.16(g)(1) for determining the value of UVBs also applies for determining the amortization schedule under section 4219(c)(1)(A) of ERISA. Section 4219(c)(1)(A)(ii) provides that ''[t]he determination of the amortization period described in clause [4219(c)(1)(A)](i) shall be based on the assumptions used for the most recent actuarial valuation for the plan.'' What is meant by ''the most recent actuarial valuation of the plan'' for amortization purposes is unclear. One reading would require that the amortization period be determined using the interest rate used for funding purposes, but that could have the odd result of, *e.g.,* valuing UVBs for withdrawal liability purposes as of 2020 calculated in 2023 using the interest rate used for the 2022 valuation as the ''most recent'' assumption used for the actuarial valuation. PBGC believes that a better reading would require that the amortization period be determined using the same assumptions that were used in the valuation of UVBs for withdrawal liability purposes. Providing in the final rule that the interest assumption required to be used for withdrawal liability purposes in § 4262.16(g)(1) is also to be used for amortization purposes, clarifies for plan actuaries what interest rate to use in determining the amortization period when this condition applies.

The final rule also clarifies that a plan cannot use SFA as a receivable as of the end of the plan year before the plan year in which the plan receives SFA.

Phased Recognition of SFA Assets

PBGC received a number of comment letters that discussed conditioning SFA on a disregard of SFA in a plan's withdrawal liability calculations. While one comment letter expressed opposition to excluding any amount of SFA from the calculation, other commenters requested that PBGC exercise its authority under section 4262(m) of ERISA to impose a condition requiring plans to exclude SFA from plan assets in calculating withdrawal liability, either instead of or in addition to requiring the use of mass withdrawal interest assumptions. One commenter suggested that an administratively simple approach would be to require plans to exclude the remaining amount of SFA from each year's determination of UVBs. Another stated that the condition under the interim final rule to use mass withdrawal interest assumptions would not ensure for all plans that SFA is preserved for payment of benefits and expenses. The commenter recommended that PBGC impose three additional withdrawal liability conditions: that SFA be disregarded in calculating withdrawal liability, that conservative assumptions be used for a 5-year period after SFA is exhausted, and that, for a 15-year period, withdrawal liability be no less than it would have been as of the date a plan applied for SFA. Most of the commenters were concerned that not including a condition to exclude SFA from plan assets for purposes of calculating withdrawal liability will incentivize employers to withdraw after the plan receives SFA.

As discussed in the preamble of the interim final rule, PBGC considered a condition requiring exclusion of SFA from plan assets in calculating withdrawal liability, but did not include such a condition in the interim final rule. However, PBGC has given further consideration to the impact of SFA on an employer's incentive to withdraw based on commenters' concerns about the effectiveness of the prescribed-interest-assumptions condition alone in disincentivizing employer withdrawals after a plan's receipt of SFA. Since publication of the interim final rule, rising interest rates, and corresponding increases in the prescribed interest assumptions, have further highlighted the limitation of the effectiveness of the condition in the interim final rule to achieve its purpose.

If a plan immediately recognizes the entire amount of SFA as a plan asset upon receipt, the plan's UVBs for purposes of determining withdrawal liability—and thus employers prospective withdrawal liability—will likely decline. Section 4262(*l*) of ERISA, which Congress titled ''Restrictions on the Use of Special Financial Assistance,'' and which sets forth such restrictions, requires that ''[SFA] received under this section and any earnings thereon may be used by an eligible multiemployer plan to make benefit payments and pay plan expenses.'' Section 4262(m)(1) also expressly grants PBGC authority, in consultation with the Secretary of the Treasury, to ''impose . . . reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to . . . withdrawal liability.'' To ensure that SFA is not used to subsidize employer withdrawals rather than to make benefit payments and pay plan expenses, a condition relating to the recognition of SFA as an asset in calculating UVBs is needed in addition to the condition prescribing the interest assumptions to be used in valuing plan liabilities.

After consideration of comments and analysis of the effectiveness of the interim final rule's withdrawal liability condition, PBGC declined to adopt the approach of fully disregarding SFA that was discussed in the interim final rule and suggested by some commenters. Instead, PBGC has concluded that a better approach to addressing commenters' concerns would be to phase in the recognition of SFA for purposes of withdrawal liability in a manner that is a more accurate and reasonable reflection of the period over which SFA is likely to be spent down by plans. Thus, under § 4262.16(g)(2) of the final rule, pursuant to PBGC's authority under section 4262(m) of ERISA, PBGC imposes an additional condition relating to withdrawal liability on a plan that receives SFA. This condition requires plans to recognize over time the amount of SFA received by the plan for the purpose of determining the plan's UVBs for calculating withdrawal liability.

Section 4262.16(g)(2) provides the procedures for determining the amount of SFA that is phased in for withdrawal liability purposes each year over the projected life of the SFA assets (determined as if SFA assets, *i.e.,* SFA and earnings thereon, are exhausted before other plan assets are used to pay benefits and expenses). The applicable phase-in period is from the first plan year in which the plan receives payment of SFA through the end of the plan year by which, according to the plan's projections, it will exhaust any SFA assets. For a plan that received payment of SFA under the terms of the interim final rule and files a supplemented application, the first plan year of payment is the year in which it received SFA under the terms of the interim final rule. Where a plan's first plan year of payment is not the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years the first plan year of payment is after the plan year that includes the SFA measurement date.

To calculate the amount of SFA assets excluded for each plan year during the phase-in period, the plan must take the

total amount of SFA paid to the plan and multiply that by a fraction, the numerator of which is the number of years remaining in the phase-in period as of the date that the UVBs are being determined, and the denominator is the total number of years in the phase-in period. For a plan that receives payment of SFA under the interim final rule and receives a supplemental payment under the final rule, the total amount (payment under the interim final rule and supplemental payment) will be included in the phased recognition of SFA assets in determining UVBs for withdrawals occurring in plan years after the plan year the supplemental payment is received by the plan. For withdrawals that occur after the date the supplemented application is filed and before the plan year after the plan year in which the supplemental payment is made, only the payment of SFA under the interim final rule is included in the phased recognition of SFA assets.

As provided in § 4262.16(g)(2)(xv), this condition is applicable to a plan in determining withdrawal liability for withdrawals occurring after the plan year in which the plan receives payment of SFA. However, for a plan that received SFA under the terms of the interim final rule, this condition will not apply unless the plan files a supplemented application under the final rule. If the plan files a supplemented application, this condition applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application. A plan may choose to file a supplemented application if it has already received SFA.

Three examples are included in § 4262.16(g)(2) to illustrate the procedures for the phased recognition of SFA assets.

Requiring phased recognition of SFA as a plan asset is a reasonable condition because SFA does not result from employer contributions, but is a transfer of taxpayer funds to eligible financially distressed plans for the purpose of enabling these plans to pay benefits and expenses. That purpose is reflected in sections 4262(j)(1) and 4262(*l*) of ERISA. Without the condition, the payment of SFA could instead result in indirect transfers of SFA to withdrawing employers from plans by reducing their withdrawal liability. For a majority of plans that receive SFA, all SFA will be recognized as a plan asset for withdrawal liability purposes within 10 years, and because additional SFA will be incorporated into the determination of withdrawal liability each year, the effect of the condition will lessen over time.

The phased recognition of SFA as a plan asset is consistent with ERISA, the Code, and actuarial practice. It is conceptually similar to the smoothed recognition of plan assets for purposes of calculating a plan's minimum funding requirements. The Treasury regulation at 26 CFR 1.412(c)(2)–1(b) permits multiemployer plans to ''smooth'' plan asset values when determining minimum funding by averaging the value of plan assets over up to five years rather than using the current fair market value of plan assets. It is also roughly comparable to the gradual recognition of SFA in determining minimum funding. Section 432(k)(2)(D) of the Code requires that SFA be disregarded in determining required contributions. IRS Notice 2021–38 provides that SFA is recognized in the plan's funding standard account over time, in that any benefit or plan expense paid from the SFA account generates an actuarial gain that is amortized over 15 years.

In listening sessions with interested parties before the issuance of the interim final rule, some interested parties representing employers argued that PBGC does not have authority to require that SFA be disregarded for purposes of calculating withdrawal liability and that, if Congress had intended for SFA to be disregarded, it would have expressly required that it be disregarded. For example, they cited provisions in MPRA for special withdrawal liability disregard rules in section 4233(d)(3) of ERISA regarding partitions and in section 305(g)(1) regarding benefit suspensions. PBGC does not agree that the absence of a statutory requirement that SFA be disregarded in determining withdrawal liability proves Congressional intent that SFA be immediately recognized in its entirety as a plan asset. Here, in contrast to MPRA, Congress chose to expressly delegate authority in section 4262(m) of ERISA to PBGC to impose reasonable conditions on a plan that receives SFA relating to withdrawal liability. This grant by Congress expands PBGC's authority beyond its existing authority under section 4002(b)(3) and sections 4201 through 4225 of ERISA to regulate withdrawal liability and authorizes PBGC to provide rules that define how SFA should be treated in the calculation of withdrawal liability. The final rule reflects the authority Congress delegated to PBGC to oversee the SFA program and ensure that SFA is preserved for the payment of benefits and expenses.

Settlement of Withdrawal Liability

An additional condition related to withdrawal liability is under § 4262.16(h) and requires that any settlement of withdrawal liability during the SFA coverage period must be made only with PBGC approval if the present value of the liability settled is greater than $50 million (calculated as described under § 4262.16(h)(1)). Approval ensures that any negotiated settlements of material size are in the best interests of the participants in the plan and do not create an unreasonable risk of loss to PBGC. One commenter stated that requiring approval of transactions over $50 million is a reasonable application of PBGC's oversight authority. PBGC did not make any changes to this provision in the final rule.

(f) Reporting and Audit

In order to monitor compliance with the conditions imposed on plans that receive SFA, the final rule requires under § 4262.16(i) that plan sponsors file with PBGC an annual statement of compliance with the terms and conditions of SFA for plan years through the last plan year ending in 2051. Under the interim final rule, each annual statement of compliance was required to be filed with PBGC no later than 90 days after the end of the plan year and in accordance with the statement of compliance instructions on PBGC's website at *www.pbgc.gov.* Except for questions related to mergers discussed earlier, PBGC did not receive comments on the statement of compliance.

Under the final rule, PBGC clarifies that the first annual statement of compliance must be filed with PBGC no later than 90 days after the end of the plan year in which a plan received payment of SFA and in accordance with the statement of compliance instructions on PBGC's website at *www.pbgc.gov.* However, based on PBGC's experience in processing applications, the final rule provides that a plan would defer reporting to the next plan year if six months or fewer remain in its plan year after the month in which the plan first received SFA. The first statement of compliance in this case must cover the period from the date the plan received payment of SFA through the last day of the plan year following the plan year in which the plan received payment of SFA. The statement must be filed no later than 90 days after the end of such plan year. For example, if a calendar year plan received payment of SFA on November 15, 2023, the plan's first statement of compliance would be

due by March 31, 2025, covering the period from November 15, 2023, through December 31, 2024. This would be less administratively burdensome to the plan and provide a more meaningful statement of compliance after receipt of SFA.

As described in the interim final rule, PBGC may conduct periodic audits of plans that have received SFA to review compliance with the terms and conditions of the SFA program.

Other Provisions

Section 4262 of ERISA contains other provisions that apply to SFA and plans receiving SFA. These provisions are enumerated under § 4262.17 of the regulation:

- SFA is not capped by the guarantee under section 4022A of ERISA.
- A plan receiving SFA is required to continue to pay premiums due under section 4007 of ERISA for participants and beneficiaries in the plan.
- A plan that receives SFA is deemed to be in critical status within the meaning of section 305(b)(2) of ERISA until the last plan year ending in 2051.
- A plan that receives SFA and subsequently becomes insolvent under section 4245 of ERISA will be subject to the rules and guarantee for insolvent plans in effect when the plan becomes insolvent.
- A plan that receives SFA is not eligible to apply for a suspension of benefits under section 305(e)(9) of ERISA.

Section 4262.17 also provides that a plan that receives SFA and meets the eligibility requirements for partition of the plan under section 4233(b) of ERISA may apply for partition under section 4233. One of those requirements, in section 4233(b)(2), provides that a multiemployer plan is eligible for partition if ''the corporation determines, after consultation with the Participant and Plan Sponsor Advocate . . ., that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9), if applicable[.]'' Section 4262(m)(6) provides that a plan that receives SFA is not eligible to apply for a subsequent suspension of benefits under MPRA. Therefore, for a plan that receives SFA, a suspension of benefits under section 305(e)(9) is not ''applicable'' within the meaning of section 4233(b)(2) and is not a reasonable measure available to the plan. Accordingly, PBGC will not reject a partition application from a plan that received SFA solely because the plan did not suspend the benefits of participants and beneficiaries under section 305(e)(9).

Finally, § 4262.17(g) includes a severability provision that provides that if any of the provisions of this final rule are found to be invalid or stayed pending further agency action, the remaining portions of the rule would remain operative. Although PBGC received no comments that directly addressed severability, in the final rule, PBGC makes a non-substantive clarifying change to delete the phrase ''and will not affect the remainder thereof'' from the provision in the interim final rule. PBGC does not intend the severability provision to be read to suggest that provisions of the regulation are only severable if the remainder of the rule is not affected by the severed provision. To the contrary, PBGC intends the regulation to operate either with or without the severed provision. The severability clause applies in the same way whether a provision is invalidated ''facially'' or ''as applied.'' The modified severability clause reads as follows: ''If any provision in this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding will be one of utter invalidity or unenforceability, in which event the provision will be severable from this part and the remaining provisions given effect without regard to the severed provision.''

PBGC received no comments on § 4262.17 and made no changes in the final rule except, as described, to § 4262.17(g).

Compliance With Rulemaking Guidelines

Administrative Procedure Act

As described in the interim final rule, under new section 4262(c) of ERISA, PBGC was required to issue regulations or guidance setting forth the requirements for eligible plans to apply for special financial assistance (SFA) within 120 days of the date of enactment of ARP (March 11, 2021). Congress authorized PBGC to prioritize the filing of applications for eligible plans with the greatest need, during the first two years after March 11, 2021, and PBGC provided for such a process. Moreover, PBGC must review applications within only 120 days of filing and plans must apply by the statutory cutoff date of December 31, 2025 (December 31, 2026, for revised applications). The compressed timeline for issuing rules, applying for assistance, and processing applications, particularly for prioritized plans, expressed a clear urgency to get appropriate assistance to eligible plans as quickly as possible.

In light of the compressed timeline, PBGC issued an interim final rule without prior notice and comment. The Administrative Procedure Act provides at 5 U.S.C. 553(b) that notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. An exception is also provided at 5 U.S.C. 553(d)(3) to the requirement of a 30-day delay before the effective date of a rule ''for good cause found and published with the rule.'' Section 9704 of the American Rescue Plan (ARP) Act of 2021 set up a ''Special Financial Assistance Program for Financially Troubled Multiemployer Plans.'' PBGC promulgated an interim final rule effective on publication, with a request for public comment, to allow for immediate implementation of this program and because of the need to get financial assistance to eligible plans as quickly as possible. Any delay in the effective date of the interim final rule would have been contrary to the public interest. See the ''Compliance With Rulemaking Guidelines'' section of the July 12, 2021, interim final rule for the applicability of the requirements of 5 U.S.C. 553.

In this final rule, after consideration of the comments received, PBGC is adopting changes to provisions of the interim final rule on the methodology to determine the amount of a plan's SFA, permissible investments of SFA funds, and the application of conditions on a plan that receives SFA. As discussed earlier in the preamble, PBGC in the interim final rule considered fully disregarding SFA for withdrawal liability purposes, and explained why it did not adopt that alternative. Interested persons submitted comments on that issue, and PBGC is now adopting a condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability in § 4262.16(g)(2) in response to those comments. The withdrawal liability condition adopted is consistent with PBGC's statutory authority to impose reasonable conditions on plans that receive SFA under section 4262(m) of ERISA. It is also more effective, along with the other conditions, for achieving the intended purpose of that statutory authority—to help enable plans that receive SFA to pay benefits due through 2051 and to preclude or disincentivize plans and employers from taking actions

that have the potential to accelerate plan insolvencies.

PBGC is also providing for a comment period of 30 days, solely on this withdrawal liability condition in § 4262.16(g)(2), because it is an area of complexity that may benefit from additional public comment. This will provide an opportunity for additional public comment on the condition, and will allow PBGC to assess the effectiveness of this withdrawal liability condition, consider adjustments or changes, and determine whether more clarification is needed regarding the condition or the mechanics of implementation. To the extent PBGC determines that adjustments or changes to this withdrawal liability condition are appropriate and authorized, or that further clarification is needed, PBGC may revise the condition accordingly.

PBGC is making this rule effective on August 8, 2022.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 801 *et seq.*), the Office of Management and Budget (OMB) has designated this final rule as a ''major rule,'' as defined by 5 U.S.C. 804(2)(a), which is a rule likely to result in an annual effect on the economy of $100 million or more. Section 808(2) of the CRA provides that, notwithstanding the effective date of a major rule defined under section 801, any rule which an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines. This good cause justification supports waiver of the 60-day delayed effective date for major rules under the CRA.

Because of the urgent need for the SFA program and to get appropriate financial assistance to eligible plans quickly, PBGC has determined that this final rule must take effect August 8, 2022. This effective date allows eligible plans to apply for and receive SFA under the terms of the final rule without unnecessary delay. Plans that already applied for, or received, SFA before the effective date of the final rule will be able to apply for any greater amount of SFA under the final rule. Plans that have not yet applied will be able to submit applications using the methodology provided under the final rule. Under the circumstances, PBGC has determined that public interest is best served by making this final rule effective on August 8, 2022. PBGC does not want to unduly delay providing financial assistance to plans.

Regulatory Impact Analysis

(1) Relevant Executive Orders for Regulatory Impact Analysis

Under Executive Order (E.O.) 12866, OMB reviews any regulation determined to be a ''significant regulatory action.'' Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

OMB has determined that this final rule is economically significant under section 3(f)(1) and has therefore reviewed this rule under E.O. 12866.

E.O. 13563 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in E.O. 12866, emphasizing the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity).

PBGC has provided an assessment of the potential benefits, costs, and transfers associated with the final rule.

(2) Introduction and Need for Regulation

As discussed earlier in the preamble, PBGC published an interim final rule adding to its regulations a new part 4262 to implement the requirements under section 9704 of the American Rescue Plan (ARP) Act of 2021, ''Special Financial Assistance Program for Financially Troubled Multiemployer Plans.'' It is through this program that PBGC is providing special financial assistance (SFA) to eligible multiemployer pension plans from a fund established by ARP for SFA purposes and credited with transfers from the general fund of the Treasury Department.[31]

In the *Regulatory Impact Analysis* of the interim final rule, PBGC provided estimates of the transfer amounts of the SFA program using the Multiemployer-Pension Insurance Modeling System (ME–PIMS), PBGC's stochastic modeling tool. The aggregate SFA was estimated to be approximately $94 billion in assistance payments paid to more than 200 plans and $150 million to PBGC to administer the SFA program. PBGC further estimated that plans that received financial assistance from PBGC under section 4261 of ERISA in the form of loans will repay PBGC in aggregate approximately $200 million.

Following consideration of comments on the interim final rule's methodology for determining the amount of SFA, this final rule makes changes to the regulation that impact that methodology. As a result, the aggregate SFA paid out under the program is expected to differ from the $94 billion estimated under the interim final rule. Additionally, since publication of the interim final rule PBGC has made updates to the ME–PIMS stochastic model, including incorporating more recent plan and economic data. PBGC now estimates that if the final rule had not included any changes to the provisions of the interim final rule, the aggregate SFA would have been $76.7 billion. The decrease of $17.3 billion is primarily attributed to incorporating more recent plan data, which reflects subsequent asset returns that were more favorable than expected in the prior estimate.[32] In general, an increase in the initial value of existing plan assets reduces the calculated amount of SFA. Under the final rule, when reflecting the changes to the determination of the amount of SFA, the aggregate SFA is expected to be approximately $82.3 billion. The expected cost to administer the SFA program remains unchanged from the $150 million estimate under the interim final rule, and total loan repayments under section 4261 of ERISA are estimated to be $385 million (an increase of $185 million compared to the previous estimate). The estimate of aggregate SFA under the program continues to be subject to significant uncertainty, and the actual aggregate

[31] Specifically, section 9704 of ARP establishes an eighth fund under section 4005 of ERISA.

[32] The latest version of the ME–PIMS model reflects asset return information through December 31, 2021. Actual SFA amounts will depend on plan asset performance through an application's SFA measurement date.

SFA will depend on plan experience prior to applying for SFA, particularly for asset returns. As such, the estimate is highly sensitive to the date of estimation. While the current estimate of SFA is based on investment returns through the end of 2021, capital market experience in early 2022 was characterized by equity losses and rising interest rates. As a result, plans are likely to have incurred asset losses, and it is expected that SFA amounts for many plans will increase from the current estimates. However, a rise in the SFA and non-SFA interest rates may cause SFA amounts for many plans to decrease from the current estimates. Future experience is uncertain and further changes to capital markets and interest rates prior to the time many plans submit their SFA applications will impact the final payment amounts. Based on PBGC's stochastic modeling, a range of projected outcomes spans from $74.3 billion at the 15th percentile to $90.8 billion at the 85th percentile.[33]

The final rule also makes changes to permissible investments under § 4262.14. Section 4262(*l*) of ERISA provides PBGC with specific regulatory authority to permit plans to invest SFA assets in investments other than investment grade bonds. The interim final rule did not permit a wide range of investments for SFA assets, and PBGC sought public feedback on whether to permit investment of SFA assets in investment vehicles with different characteristics from investment grade bonds. The investment portfolio of SFA assets can have a significant impact on a plan's future solvency projections, particularly for plans with a high proportion of SFA assets relative to non-SFA plan assets. The SFA asset allocation also impacts a plan's investment risk exposure. Use of the regulatory authority under section 4262(*l*) to expand permissible investments strikes a balance between the risk and potential reward of allowing plans to use taxpayer-funded SFA assets to purchase return-seeking investments.

Section 4262(m) of ERISA provides PBGC with regulatory authority (in consultation with the Secretary of the Treasury) to impose reasonable conditions on eligible multiemployer plans that receive SFA (see *Conditions for special financial assistance* earlier in the preamble). The final rule includes certain changes to the regulatory conditions in the interim final rule, based on consideration of public comments. The conditions in the final rule are more effective at achieving the intended purpose of not enabling plans that receive SFA to take actions that have the potential to accelerate plan insolvencies, which would bring about participant benefit cuts and increased future claims on PBGC's multiemployer insurance program.

(3) Regulatory Action

PBGC considered the public comments received in response to its interim final rule. The regulatory changes made in the final rule reflect feedback provided in these comments and align with key objectives described in the interim final rule: (1) to transfer to a plan the amount required under section 4262 of ERISA as soon as practicable; (2) to prioritize the applications of plans in imminent need of financial support and where participants' suspended benefits are to be restored; (3) to establish an efficient system for processing applications; (4) stewardship of taxpayer-funded appropriations for SFA; (5) maintaining the security of pension benefits (current accrued benefits and future accruals) of participants in plans that receive SFA; and (6) preservation of the solvency of the PBGC multiemployer insurance program. A detailed description of the rationale for each regulatory change made is included earlier in the preamble to this final rule, including applicable public comments.

A summary of the regulatory changes under the final rule and related economic considerations for each change are described as follows.

Expansion of SFA Permissible Investments

The final rule amends § 4262.14 to allow plans to invest up to 33 percent of SFA assets in return-seeking assets, *e.g.,* U.S. equities. Comments on the interim final rule were received in 2021 at a time when high quality fixed income provided yields below two percent. While fixed income yields have risen significantly in early 2022, prices on U.S. equities have dropped at the same time (which would increase their potential for higher future returns after the markets level off), thereby maintaining the expected advantage of allowing some investment in return-seeking assets. As a result, SFA assets generally are expected to achieve higher investment returns than under the provisions of the interim final rule and thus better enable plans to project to pay benefits through 2051. The impact of this change on plans' projected future solvency is greater for plans that are expected to have a large proportion of SFA assets to non-SFA plan assets, such as plans that are insolvent or nearly insolvent at the time of application for SFA.

Allowing plans to invest a portion of SFA in return-seeking assets increases expected investment returns, but also increases the risk of loss. Under adverse market scenarios, plans could incur losses in their SFA assets that would accelerate the future date of plan insolvency. The outcome may be particularly adverse if there is a severe, protracted market downturn shortly after plans receive SFA. The increased investment risk due to the allowance of return-seeking investments in SFA assets may be mitigated by the longer-term investment horizon for total plan assets following receipt of SFA.

Determination of the Amount of SFA: Use of a Separate Interest Rate Applied for the Projection of SFA Assets

The final rule amends § 4262.4 to include a separate interest rate assumption applicable for the projected SFA assets in the calculation used to determine a plan's SFA amount. The SFA interest rate is a more appropriate assumed rate of return for SFA assets that reflects the investment restrictions for these assets under § 4262.14, including allowing plans to invest up to 33 percent of the segregated SFA assets in return-seeking assets. The SFA interest rate also comports with the statutory requirements that the amount of SFA be the amount projected for plans to pay all benefits due through 2051. The deterministic projection used to determine the amount of SFA under § 4262.4 was also changed to assume that the SFA assets would be spent down by the plan before non-SFA plan assets are used. Although the final rule does not require SFA assets to be used before other plan assets to pay benefits and expenses, this assumption in the final rule reflects plans' expected behavior to minimize the impact of investment restrictions on SFA assets and applies even if a plan does not follow that behavior.

Use of a separate, lower interest rate in the deterministic projection increases the amount of SFA. For plans with a low proportion of SFA assets to non-SFA plan assets, the increase is minor because the SFA assets will not earn significant returns before they are projected to be spent down within a few years. For plans with a large proportion of SFA assets to non-SFA plan assets, such as plans that are insolvent or nearly insolvent at the time of application for SFA, the increase in the final SFA amount attributable to the separate lower interest rate is more significant.

[33] Actual experience could deviate outside this projected range.

Determination of the Amount of SFA: Calculation Methodology for Plans With an Approved MPRA Benefit Suspension as of March 11, 2021

The final rule amends § 4262.4 to specify a revised methodology for the calculation of SFA for plans with an approved suspension of benefits under MPRA as of March 11, 2021. This change provides that the amount of SFA is the greatest of: (1) the amount of SFA calculated for a plan that is not a MPRA plan; (2) the lowest amount of SFA that is sufficient to ensure that the plan will project rising assets at the end of the 2051 plan year; and (3) an amount of SFA equal to the present value of reinstated benefits (accounting for both make-up payments needed, as well as payments of the reinstated portion of benefits through 2051, and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3)). These additional SFA calculations in (2) and (3), set forth in the final rule, accord with requirements and considerations that are unique to MPRA plans.

The calculation will increase the amount of SFA for plans that had an approved suspension of benefits under MPRA as of March 11, 2021, and thereby increase the total amount of SFA distributed under the program. There are 18 plans expected to benefit from this change in the final rule.

Conditions Relating to Benefit Improvements

The final rule amends § 4262.16(b) to add a process by which a plan may request a determination from PBGC for an exception from the conditions prohibiting prospective and retrospective benefit increases if future plan circumstances permit the benefit increases without endangering the plan's ability to pay all benefits. Under the new provision, beginning 10 years after the end of the plan year in which a plan receives payment of SFA, the plan may apply for an exception by demonstrating to the satisfaction of PBGC, taking into account the proposed benefit increase, that the plan will avoid insolvency.

This provision is intended to provide plans with very limited flexibility to improve benefits in the future while preventing certain benefit increases that could imperil a plan's ability to remain solvent in the future. Because plans will have to demonstrate to PBGC that any proposed benefit increases will not lead to a projected date of insolvency, PBGC expects there to be little to no impact on projected future financial assistance under section 4261 of ERISA.

Conditions Relating to Allocation of Contributions and Other Income

The final rule amends § 4262.16(e) to add a process by which a plan may request a determination from PBGC for a limited exception from the condition prohibiting a decrease in the proportion of contributions allocated to a plan that receives SFA if future plan circumstances permit the reallocation of contributions without endangering the plan's ability to pay all benefits. Under the new provision, beginning 5 years after the end of the plan year in which a plan receives payment of SFA, the plan may apply for an exception by demonstrating to the satisfaction of PBGC, taking into account the proposed reallocation of contributions, that the plan will avoid insolvency and that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law. The reallocation would be required to be no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, going to the pension plan and would be required to be temporary (no more than 5 years for a reallocation request relating to any single change in Federal law and no more than 10 years cumulatively for all reallocation requests during the plan's SFA coverage period).

This provision is intended to provide plan sponsors with very limited flexibility to reallocate contributions temporarily to use for unexpected changes in Federal law. This temporary reallocation would give the bargaining parties time to negotiate contributions for the health plan under a collective bargaining agreement. Because plans will have to demonstrate to PBGC that any proposed reallocation of contributions will not lead to projected plan insolvency and because the reallocation will be temporary, PBGC expects there to be no impact on projected future financial assistance under section 4261 of ERISA.

Condition Related to Withdrawal Liability

The final rule amends § 4262.16(g) to modify the period of time for which a plan must use the interest assumptions in appendix B to 29 CFR part 4044 of PBGC's regulations in determining the UVBs of the plan under section 4213(c) of ERISA for purposes of determining an employer's withdrawal liability. Under § 4262.16(g) of the interim final rule, the interest assumptions in appendix B to part 4044 are applicable until the later of 10 years and the last day of the plan year in which the plan no longer holds any SFA assets. The final rule revises the latter date to the last day of the plan year in which the plan projects that it will exhaust any SFA assets (extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the SFA measurement date).

The final rule under § 4262.16(g)(2) adds a condition relating to withdrawal liability for a plan that receives SFA. This condition requires plans to recognize over time the amount of SFA received by the plan for the purpose of determining the plan's UVBs for calculating withdrawal liability. The amount of SFA is phased in for withdrawal liability purposes each year over the projected life of SFA assets (determined as if SFA assets and earnings thereon are exhausted before other plan assets are used to pay benefits and expenses).

As stated in the *Regulatory Impact Analysis* of the interim final rule, conditions on withdrawal liability are intended to prevent SFA payments from leading to significant decreases in withdrawal liability assessments that would incentivize employers to withdraw from these plans. The purpose of SFA is to help plans pay for benefits and plan expenses and not to indirectly subsidize employers and encourage them to exit these plans. As discussed in the interim final rule, PBGC considered a condition requiring exclusion of SFA from plan assets in calculating withdrawal liability, but did not include such a condition in the interim final rule. However, PBGC has given further consideration to the impact of SFA on incentives to withdraw based on commenters' concerns about the effectiveness of the prescribed-interest-assumptions condition alone in disincentivizing employer withdrawals after a plan's receipt of SFA. Since publication of the interim final rule, rising interest rates, and corresponding increases in the prescribed interest assumptions, have further highlighted the limitation of the effectiveness of the condition in the interim final rule to achieve its purpose. To ensure that SFA is not used for a purpose other than to make benefit payments and pay plan expenses, a condition relating to the phased recognition of SFA assets for purposes of calculating withdrawal liability is needed in addition to the interest rate condition on the measurement of liabilities.

Conditions Applicable to Merged Plans

The final rule amends § 4262.16(f) to provide that the conditions relating to prospective benefit increases under § 4262.16(b)(2), allocation of plan assets

under § 4262.16(c), and allocating expenses under § 4262.16(e) will not apply after the merger to the merged plan. In addition, as part of a request for approval of a merger between plans where one or more plans are SFA plans, PBGC will provide a waiver of the conditions on retroactive benefit increases and contribution decreases in § 4262.16(b)(1) and (d) if prescribed requirements are met. If the requirements for a waiver are not met, the final rule provides that these two conditions will apply, as applicable, to participants in, or employers that have an obligation to contribute to, the SFA plan immediately before the merger. The withdrawal liability conditions in § 4262.16(g) will not be waived. Those conditions, however, are limited to the determination of UVBs that arose under the SFA plan before the date of the merger for purposes of allocating UVBs under subpart D of part 4211 and determining withdrawal liability for employers that participated in the SFA plan. Finally, the restrictions on SFA in § 4262.13(b), conditions in § 4262.16(f) (merger or transfer), § 4262.16(h) (withdrawal liability settlement), § 4262.16(i) (statement of compliance), and § 4262.16(j) (audit) continue to apply to the merged plan.

The clarifications in the final rule on the application of conditions after a merger are intended to prevent the conditions that are not required by statute from creating an impediment to the consideration of a merger that would otherwise be beneficial to the plan and plan participants. The extent to which the final rule does not create an impediment to mergers is uncertain, but PBGC expects these clarifications on conditions applicable to merged plans to have no material impact on projected future financial assistance under section 4261 of ERISA.

(4) Estimated Impact of Regulatory Action

The following table summarizes the estimated transfers and costs expected as a result of implementation of the SFA program.

	PV amount (3% rate)	PV amount (7% rate)	2021	2022	2023	2024	2025	2026	2027–2051 (total) [34]
Annual Transfer Amounts									
Total transfer amounts based on Interim Final Rule (*total nominal value of $93.98 billion*).	$86.16 billion	$77.14 billion	$1.26 billion	$43.68 billion	$23.03 billion	$13.32 billion	$8.89 billion	$3.33 billion	$0.47 billion.
Change based on updated model data (plan & economic data) (*total nominal value of $17.30 billion*).	(15.91) billion	(14.28) billion	(1.26) billion	(7.13) billion ..	(4.19) billion ..	(2.42) billion ..	(1.61) billion	(0.60) billion	(0.08) billion.
Change based on updated provisions of Final Rule (*total nominal value of $5.64 billion*).	5.17 billion	4.63 billion	0.00 billion ..	2.71 billion	1.38 billion	0.80 billion	0.53 billion ..	0.19 billion ..	0.03 billion.
Total transfer amounts based on Final Rule (*total nominal value of $82.32 billion*).	75.42 billion ..	67.49 billion ..	0.00 billion ..	39.26 billion ..	20.22 billion ..	11.70 billion ..	7.81 billion ..	2.92 billion ..	0.42 billion.
Annual Cost Amounts									
Anticipated PBGC administrative expenses (*total nominal value of $150 million*).	129.57 million	108.41 million	20.50 million	17.50 million	15.75 million	15.00 million	14.75 million	14.00 million	52.50 million.
SFA applications ...	8,693,400	7,781,400	922,500	3,075,000	2,152,500	1,998,800	1,260,800 ...	78,800	0.
Lock-in applications.	54,800	48,400	0	0	43,750	16,625	0	0	0.
Benefit reinstatement participant notices.	68,900	63,800	0	73,100	0	0	0	0	0.
Annual compliance filings.	12,473,400	7,211,100	0	76,500	275,400	456,500	622,200	726,800	18,168,750.
Condition exemption filings.	354,000	209,900	0	0	19,600	19,600	19,600	19,600	489,250.
Total cost amounts.	151.21 million	123.72 million	21.42 million	20.72 million	18.24 million	17.49 million	16.65 million	14.83 million	71.16 million.

[34] SFA payments to plans are expected to be $416 million in 2027 and $0 thereafter. PBGC administrative expenses are expected to be $14 million per year from 2027 through 2029 and $10.5 million in 2030. Additional PBGC expenses are expected to be incurred from 2031 through 2051 but would not be funded through general appropriations. The costs relating to annual compliance filings are expected to be $726,800 per year from 2027 through 2051. The costs relating to condition exemption filings are expected to be $19,600 per year from 2027 through 2051.

Change to the Estimated Amount of SFA

In support of the development of the final rule, PBGC conducted modeling of the impact of changes to the calculation procedures for SFA under § 4262.4 and changes to permissible investments under § 4262.14. These provisions directly impact both the total estimated cost of the SFA program as well as the projected solvency of plans after receipt of SFA. The modeling is subject to significant limitations, including limited available data, uncertainty regarding the number of plans ultimately eligible to apply, uncertainty regarding future asset returns, and other factors. However, despite the future uncertainty, the modeling shows that under the final rule, eligible plans are significantly more likely to meet the statutory direction in section 4262(j)(1) of ERISA to project to be able to pay benefits due through plan year 2051, without incurring excessive investment risk exposure. The cost estimates in the table above also reflect general updates made to PBGC's ME–PIMS model to reflect more recent plan and economic data. These updates decreased the total nominal SFA estimate by $17.3 billion, primarily due to the incorporation of more recent plan asset return information that was more favorable than expected.[35]

Filing and Issuance Requirements

As discussed in this final rule, to request SFA for a multiemployer plan, a plan sponsor must, under section 4262 of ERISA and part 4262, file an application with PBGC. The applications for SFA must include information about the plan, plan documentation, and actuarial information. The information is necessary for PBGC to verify a plan's eligibility for SFA, amount of requested SFA, and if applicable, inclusion in a priority group. Also, under the final rule, a plan sponsor may, but is not required to, file a lock-in application as a plan's initial application. The lock-in application contains basic information about the plan and a statement of intent to lock-in base data. In addition, under part 4262, a plan that receives SFA is required to file a compliance notice with PBGC once every year through the plan year ending in 2051. As discussed further in the *Paperwork Reduction Act* section, the estimated average cost (dollar equivalent of the in-house hour burden + contractor costs) to prepare the one-time application to PBGC is $30,750, the estimated average cost to prepare the lock-in application is $875, and the estimated average cost to prepare the annual statement of compliance is $2,550. PBGC estimates that over the next 3 years (2022–2024) it will receive annually an average of 78 applications for SFA at an aggregate average annual cost of $2,398,500, 23 lock-in applications at an aggregate average annual cost of $20,125, and 106 annual statements of compliance at an aggregate average annual cost of $270,300.

In addition, certain plan sponsors that receive SFA are subject to participant disclosure and reporting requirements. A plan sponsor of a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA must issue a notice of reinstatement to participants and beneficiaries whose benefits were previously suspended and then reinstated. The estimated average cost (dollar equivalent of the in-house hour burden + contractor costs) to prepare the notice of reinstatement is $2,150. PBGC estimates that over the next 3 years (2022–2024) an average of 11.33 plans annually (34 total plans) will issue the notice of reinstatement to an average of 3,050 participants and beneficiaries at an aggregate average annual cost of $24,367.

A plan sponsor that receives SFA also is required to administer the plan in accordance with conditions prescribed by PBGC in § 4262.16. A plan sponsor may request approval from PBGC for an exception under certain circumstances for conditions relating to benefit increases, reductions in contributions, transfers or mergers, and settlement of withdrawal liability, prospective and retrospective benefit increases beginning 10 years after the date a plan receives SFA, and allocation of contributions beginning 5 years after the date a plan receives SFA. PBGC expects these determination requests to be infrequent. PBGC estimates that it will receive an average of 2.2 requests per year in 2023 and 2024 at a cost of $19,570 per year (averaged over 2022–2024 = $13,047).

The total average annual cost for the information collection is $2,724,614 ($2,398,500 + $18,400 + $270,300 + $24,367 + $13,047).

Conditions for Plans That Receive SFA

As discussed above, the changes made to § 4262.16 in the final rule are not expected to have a significant impact on future plan solvency experience. To the extent that the provisions in § 4262.16(f) setting forth which conditions continue to apply to a merged plan encourage mergers between healthier ''green zone'' plans and plans that receive SFA, there may be a decrease in projected future financial assistance under section 4261 of ERISA. The actual impact will depend on plan behavior and future experience, particularly future investment returns. Overall, PBGC does not expect a material impact as a result of the changes made in the final rule to the conditions.

(5) Regulatory Alternatives Considered

Expansion of SFA Permissible Investments

PBGC considered the implications of making no change to permissible investments under § 4262.14 in the final rule. In one alternative, if the regulation for permissible investments and for the applicable interest rate (§ 4262.4) both remained unchanged from the interim final rule, many plans would not be projected to pay all benefits due through 2051. Because of the investment restrictions, it would be unlikely that the SFA portion of assets would achieve a rate of return as high as the interest rate used to determine SFA. This issue, described in many public comment letters, is more pronounced for plans with a large proportion of SFA assets to existing plan assets, such as plans that are insolvent or nearly insolvent at the time of application for SFA.

In another alternative, if no change were made to expand permissible investments but the final rule allowed for a separate interest rate based exclusively on the expected return of investment grade bonds to be applied to the SFA portion of plan assets, plans would receive higher SFA payments enabling them to pay all benefits due through 2051 on a projected basis. However, this alternative would require using a lower interest rate for SFA assets under § 4262.4 than provided in the final rule, which would further increase the aggregate cost of the SFA program. PBGC projects that this alternative could have increased the total amount of SFA by a range of approximately $5 billion to $10 billion over the interim final rule.

PBGC also considered the implications of an even less restrictive definition of permissible investments than under the final rule, including an option to allow plans to invest all (not just a portion) of SFA funds in return-seeking assets and/or in other investments not included in the final rule's definition of permissible investments. Although an average projection scenario shows favorable outcomes that could allow plans to realize even greater investment returns to support being sufficiently funded to

[35] The latest version of the ME–PIMS model reflects asset return information through December 31, 2021. Actual SFA amounts will depend on plan asset performance through an application's SFA measurement date.

be able to pay plan benefits through 2051, and in fact, effectively extending plan solvencies beyond 2051, there is an overall increase in investment risk that adverse market conditions could put plans in greater jeopardy of becoming insolvent well before the last day of the 2051 plan year and undermine their potential to pay all benefits due through 2051. The final rule is more protective of the taxpayer assets used to fund SFA and PBGC's title IV insurance program and also protects plans from exposure to excessive investment risk and potential losses that may be difficult to recover.

Determination of the Amount of SFA: Use of a Separate Interest Rate Applied for the Projection of SFA Assets

PBGC considered making no changes to the SFA calculation under § 4262.4 of the interim final rule related to interest rate assumptions. Although this would have had a less significant impact on the transfer cost of the SFA program, PBGC's modeling shows that under the interim final rule, the vast majority of plans, including many plans with a large proportion of SFA assets to existing plan assets, would not be projected to be able to pay benefits due through plan year 2051 as set forth in section 4262(j)(1) of ERISA. Further, though PBGC found that loosening the investment restrictions for SFA assets under § 4262.14 would provide some assistance in this respect, this would introduce greater overall investment risk for SFA and could undermine the ability of plans to remain solvent through the end of plan year 2051 should particularly adverse market conditions occur.

Determination of SFA: Calculation Methodology for Plans With Approved MPRA Benefit Suspensions as of March 11, 2021

PBGC considered making no changes to the SFA calculation under § 4262.4 of the interim final rule for plans with approved suspensions of benefits under MPRA as of March 11, 2021. Although this would have kept the transfer cost of the SFA program unchanged, it would have allowed for a potential dilemma for these plans. Some commenters raised a concern that some plans with approved benefit suspensions under MPRA would receive less in SFA under the provisions of the interim final rule than would be necessary for the plan to pay for future benefit reinstatements (including those payable after the year 2051). Under the interim final rule, the plan's projected insolvency would be accelerated by choosing to receive SFA. A plan that is projected to avoid insolvency indefinitely—which is the standard these plans met in order to be approved for MPRA benefit suspensions—by reinstating the benefits suspended under MPRA might now be expected to run out of money in 2051. In this case, plans would have to consider the varying interests of its participants (*i.e.,* the positive impact of benefit reinstatements for participants receiving benefits in the near-term versus the negative impact of potential insolvency to participants receiving benefits in the long-term) in deciding whether to apply for SFA. The calculation procedures for MPRA plans under § 4262.4 under the final rule enable these plans to retain a strong projected funded position through 2051.

PBGC considered a variation of the SFA calculation such that plan assets must be projected to increase during each of the final 5 years of the SFA coverage period. This variation would be consistent with the required period for which available resources must be projected to increase in an application for a proposed MPRA benefit suspension. While this approach would help to further improve the expected future funded position for these plans, PBGC estimated that it could increase the total transfer cost of the SFA program by an additional $0.5 billion.

Conditions Related to Benefit Improvements and Allocation of Contributions and Other Income

PBGC considered making no changes to the conditions related to benefit improvements under § 4262.16(b) and allocation of contributions and other income under § 4262.16(e). However, PBGC recognizes that some plans may enjoy favorable experience after receiving SFA and outperform the projected experience in the deterministic projection included in the SFA application. Some plans may achieve a relatively strong financial position and be projected to remain solvent well beyond 2051. Under limited circumstances, it may be beneficial to plan participants to provide some plan sponsors with limited flexibility to improve benefits or to reallocate contributions temporarily to another plan while not jeopardizing the security of future benefit promises under the pension plan.

Conditions Related to Withdrawal Liability

PBGC considered making no changes to the withdrawal liability condition under § 4262.16(g). However, PBGC has given further consideration to the impact of SFA on incentives to withdraw based on commenters' concerns about the effectiveness of the prescribed-interest-assumptions condition alone in disincentivizing employer withdrawals after a plan receives SFA. Since publication of the interim final rule, rising interest rates, and corresponding increases in the prescribed interest assumptions, have further highlighted the limits to the effectiveness of the condition in the interim final rule to achieve its purpose. PBGC seeks to ensure that SFA is not used other than for its intended purpose of paying plan benefits and administrative expenses.

PBGC considered an alternative condition under which the reduction in plan assets taken into account for purposes of determining UVBs under section 4213(c) of ERISA is the projected amount of SFA determined under § 4262.4(b), but without any ratable decrease in the years following receipt of SFA. This alternative would also have prevented a sharp decrease in withdrawal liability in the year following the year of receipt of SFA, but would result in a sharp decrease in withdrawal liability in the year following the year the condition no longer applies. In place of that condition, PBGC has added a condition requiring phased recognition of SFA as a plan asset for withdrawal liability purposes. It is conceptually similar to the smoothed recognition of plan assets for purposes of calculating a plan's minimum funding requirements and is roughly comparable to the gradual recognition of SFA in determining minimum funding. For a majority of plans that receive SFA, all SFA will be recognized as a plan asset for withdrawal liability purposes within 10 years, and because an additional portion of the SFA will be reflected in the determination of withdrawal liability each year, the effect of the condition will lessen over time. PBGC determined that a phased recognition of SFA for withdrawal liability purposes is a reasonable condition in addition to the condition prescribing the interest assumptions to be used in valuing liabilities.

Conditions on Merged Plans

PBGC considered requiring all restrictions and conditions to apply to a merged plan for the conditions related to mergers under § 4262.16(f), in response to questions in public comment letters, whether or which conditions would continue to apply to a merged plan. Requiring a merged plan to comply with all § 4262.16 conditions would ensure that the plan does not subsequently take any actions that may jeopardize the SFA received by one or more of the plans involved in the

merger and therefore, the merged plan's future solvency. However, this could discourage plans from entering into transactions that would be beneficial to the plan and plan participants, such as a small plan that received SFA merging with a large ''green zone'' plan. PBGC believes that mergers can often be an effective tool to lower costs and streamline plan administration and does not want to inadvertently discourage transactions that are in the best interest of plan participants.

Regulatory Flexibility Act

Because PBGC is not publishing a general notice of proposed rulemaking under 5 U.S.C. 553(b), the regulatory flexibility analysis requirements of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2).

Paperwork Reduction Act

With the final rule, PBGC is submitting changes to the collection of information, previously approved under control number 1212–0074, to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. OMB's decision regarding this information collection request will be available at *www.Reginfo.gov*. Changes to the collection of information include changes to the application for SFA, annual statement of compliance, and determination requests. A new lock-in application form with corresponding instructions is added. 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.

PBGC estimates that in the next 3 years an annual average of 78 applications for SFA (initial and revised) will be filed (100 in 2022, 70 in 2023, and 65 in 2024). PBGC needs the information in the application to review a plan's eligibility for SFA, priority group status, and amount of requested SFA, and to make payment of SFA. PBGC estimates that each application requires $30,000 in contractor cost and 10 hours of in-house fund time. Thus, the application imposes estimated annual burdens of $2,340,000 (78 × $30,000) and 780 (78 × 10) hours.

An annual average of 23 plan sponsors are expected to file lock-in applications as initial applications for SFA (0 in 2022, 50 in 2023, and 19 in 2024). PBGC needs the information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data. PBGC estimates that each application requires $800 in contractor cost and 1 hour of in-house fund time. Thus, the lock-in application imposes estimated annual burdens of $18,400 (23 × $800) and 23 (23 × 1) hours.

PBGC estimates that an annual average of 106 plan sponsors will file Annual Statements of Compliance (30 in 2022, 108 in 2023, and 179 in 2024). PBGC needs the information in this statement to ensure that a plan is compliant with the conditions imposed upon its receiving SFA. PBGC estimates that each annual statement of compliance requires $2,400 in contractor cost and 2 hours of in-house fund time. The annual statement of compliance imposes estimated annual burdens of $254,400 (106 × $2,400) and 212 (106 × 2) hours.

An average of 11.33 plans per year (34 plans in 2022, 0 in 2023, and 0 in 2024) will be required to send notices to participants with suspended benefits. This notice is intended to ensure participants understand the calculation and dates of their reinstated benefits and, if applicable, make-up payments. PBGC estimates that the burden for each plan to prepare required notices is $2,000 in contractor cost and 2 hours of in-house fund time. Thus, these notices impose estimated annual burdens of $22,667 (11.33 × $2,000) and 22.66 (11.33 × 2) hours.

Also, PBGC estimates that in 2023 and 2024, PBGC will receive an average of 2.2 requests per year for determinations concerning a transfer of assets or liabilities (including a spinoff) or merger (1 per year); a withdrawal liability settlement greater than $50 million (1 per year); a contribution decrease (.2 (1 every 5 years)); (0 requests in 2022, 2.2 requests in 2023, and 2.2 requests in 2024). There will be no requests for determinations concerning prospective and retrospective benefit increases until at least 2032 and no requests for determinations concerning reallocation of contributions until at least 2027. The annual average for all requests for 2022–2024 is 1.47 requests per year. PBGC needs the information requested to make a determination on the proposed transaction, withdrawal liability settlement, contribution decrease, or benefit increase. PBGC estimates an average annual hour burden (employer and fund office hours) and average annual cost burden (contractor costs) per request of:

- 1.6 hours (8 hours × .2) and $5,000 ($25,000 × .2) for a proposed contribution change;
- 4 hours and $12,000 for a proposed transfer or merger; and
- 2 hours and $2,000 for a proposed settlement of withdrawal liability.

PBGC estimates that, beginning in 2023, for 2.2 determination requests, the aggregated average annual hour burden will be 7.6 hours (1.6+4+2 employer and fund office hours) and the aggregated average annual cost burden will be $19,000 ($5,000 + $12,000 + $2,000 in contractor costs). For 2022–2024, PBGC estimates an average annual hour burden of 5.07 hours ((7.6+7.6)/3) and an average annual cost burden of $12,667 (($19,000 + $19,000)/3).

The estimated aggregate average annual hour burden for 2022–2024 for the information collection in part 4262 is 1,042.73 hours (780 +23+ 212 + 22.66 + 5.07), which means a cost equivalent of $78,205 assuming a blended hourly rate of $75 for employer and fund office administrative, clerical, and supervisory time. The estimated aggregate average annual cost burden for 2022–2024 for the information collection in part 4262 is $2,648,134 ($2,340,000 + $18,400 + $254,400 + $22,667 + $12,667), which means approximately 6,620 contract hours assuming an average hourly rate of $400 for work done by outside actuaries and attorneys. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The estimated average annual burden figures for 2022–2024 are shown in the following table.

Information collection	Average # of respondents	Hour burden (hours)	Hour burden—equivalent cost	Cost burden
Applications for SFA	78	780	$58,500	$2,340,000
Lock-in application	23	23	1,725	18,400
Annual compliance statement	106	212	15,900	254,400
Notice of reinstatement	11(11.33)	22.66	1,700	22,667
Requests for determination	1(1.47)	5.07	380	12,667
Totals:	219	1,042.73	78,205	2,648,134

Plan sponsors of multiemployer plans applying for SFA are required to file an application with PBGC with the required information under part 4262. For payment of SFA, they are required to include with an application for SFA, common form SF 3881, ACH Vendor/Miscellaneous Payment Enrollment, OMB control no. 1530–0069.

List of Subjects in 29 CFR Part 4262

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

■ For the reasons given above, PBGC adopts as final the portion of the interim final rule adding 29 CFR part 4262, which was published at 86 FR 36598 on July 12, 2021, and further amends 29 CFR part 4262 by revising the part to read as follows:

PART 4262—SPECIAL FINANCIAL ASSISTANCE BY PBGC

Sec.

Authority: 29 U.S.C. 1302(b)(3), 1432.

§ 4262.1 Purpose.

The purpose of this part is to prescribe rules governing applications for special financial assistance under section 4262 of ERISA and related requirements.

§ 4262.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: *Code, controlled group, ERISA, fair market value, IRS, multiemployer plan, PBGC, plan,* and *plan sponsor.* In addition, for purposes of this part:

Form 5500 means the Annual Return/Report of Employee Benefit Plan required to be filed for employee benefit plans under sections 104 and 4065 of ERISA and sections 6058(a) and 6059(b) of the Code.

Merged plan means merged plan as defined in § 4231.2 of this chapter.

Merger means merger as defined in § 4231.2 of this chapter.

SFA coverage period means the period beginning on the plan's SFA measurement date and ending on the last day of the last plan year ending in 2051.

SFA measurement date for a plan other than a plan described in § 4262.4(g) means the last day of the third calendar month immediately preceding the date the plan's initial application for special financial assistance was filed.

Special financial assistance or *SFA* means special financial assistance from PBGC under section 4262 of ERISA.

Transfer and transfer of assets or liabilities means transfer and transfer of assets or liabilities as defined in § 4231.2 of this chapter.

§ 4262.3 Eligibility for special financial assistance.

(a) *In general.* Subject to all the provisions of this section, a multiemployer plan is eligible for special financial assistance in any of the following cases:

(1) *Critical and declining status plans.* The plan is in critical and declining status within the meaning of section 305(b)(6) of ERISA for the specified year; or

(2) *Plans with a suspension of benefits.* A suspension of benefits has been approved with respect to the plan under section 305(e)(9) of ERISA as of March 11, 2021; or

(3) *Critical status plans.* The plan:

(i) Is certified to be in critical status within the meaning of section 305(b)(2) of ERISA for a specified year; and

(ii) The percentage calculated under paragraph (c)(2) of this section was less than 40 percent; and

(iii) The ratio of the total number of active participants at the end of the plan year required to be entered on the Form 5500 that was required to be filed for a specified year to the sum of inactive participants (retired or separated participants receiving benefits, other retired or separated participants entitled to future benefits, and deceased participants whose beneficiaries are receiving or are entitled to receive benefits) required to be entered on such Form 5500 was less than 2 to 3; or, the ratio of the total number of active participants at the beginning of the plan year required to be entered on Form 5500 Schedule MB that was required to be filed for a specified year to the sum of inactive participants (retired participants and beneficiaries receiving payment and terminated vested participants) required to be entered on such Form 5500 Schedule MB was less than 2 to 3.

(4) *Insolvent plans.* The plan became insolvent for purposes of section 418E of the Code after December 16, 2014, and has remained insolvent and has not terminated under section 4041A of ERISA as of March 11, 2021.

(b) *Specified year.* For purposes of this section, the term *specified year* means a plan year specified by the plan sponsor beginning in 2020, 2021, or 2022. The specified years for paragraphs (a)(3)(i) through (iii) of this section need not be the same.

(c) *Additional rules for critical status plans*—(1) *Elected status.* Election of critical status under section 305(b)(4) of ERISA does not satisfy the requirement for the certification of critical status by the plan's actuary under paragraph (a)(3)(i) of this section.

(2) *Percentage.* The percentage calculated as—

(i) The current value of net assets as of the first day of the plan year that was required to be entered on the Form 5500 Schedule MB that was required to be filed for a specified year; plus

(ii) The current value of withdrawal liability due to be received by the plan on an accrual basis, reflecting a reasonable allowance for amounts considered uncollectible, as of the first day of the plan year for the specified year in paragraph (c)(2)(i) of this section (if not already included in the current value of net assets in paragraph (c)(2)(i)); divided by

(iii) The current liability attributable to all benefits as of the first day of the plan year required to be entered on the Form 5500 Schedule MB specified in paragraph (c)(2)(i) of this section.

(d) *Actuarial assumptions.* Determinations of eligibility under paragraph (a)(1) or (3) of this section must be made in accordance with the provisions in this paragraph (d).

(1) *Certifications completed before January 1, 2021.* For certifications of plan status completed before January 1, 2021, PBGC will accept assumptions incorporated in the determination of whether a plan is in critical status or critical and declining status as described in section 305(b) of ERISA unless such assumptions are clearly erroneous.

(2) *Certifications completed after December 31, 2020.* For certifications of plan status completed after December 31, 2020, the determination of whether a plan is in critical status or critical and declining status for purposes of eligibility for special financial

assistance must be made using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate assumption) are unreasonable.

(3) *Changes in assumptions.* If a plan determines that use of the assumptions under paragraph (d)(2) of this section is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the plan's interest rate assumption), as described in § 4262.5.

§ 4262.4 Amount of special financial assistance.

(a) *In general*—(1) *Plans other than MPRA plans.* Subject to paragraph (f) of this section and to the adjustment for the date of payment as described in § 4262.12, the amount of special financial assistance for a plan that is not a MPRA plan is the lowest whole dollar amount (not less than $0) for which, as of the last day of each plan year during the SFA coverage period, projected SFA assets and projected non-SFA assets are both greater than or equal to zero.

(2) *MPRA plans.* Subject to paragraph (f) of this section and to the adjustment for the date of payment as described in § 4262.12, the amount of special financial assistance for a MPRA plan is the greatest of the amount determined under paragraph (a)(1) of this section, the amount determined under paragraph (a)(2)(i) of this section, and the amount determined under paragraph (a)(2)(ii) of this section.

(i) The amount determined under this paragraph (a)(2)(i) is the lowest whole dollar amount (not less than $0) for which, as of the last day of each plan year during the SFA coverage period, projected SFA assets and projected non-SFA assets are both greater than or equal to zero, and, as of the last day of the SFA coverage period, the sum of projected SFA assets and projected non-SFA assets is greater than the amount of such sum as of the last day of the immediately preceding plan year.

(ii) The amount determined under this paragraph (a)(2)(ii) is the present value of benefits paid and expected to be paid by the plan during the SFA coverage period attributable to the reinstatement of benefits under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), calculated using the SFA interest rate under paragraph (e)(2) of this section.

(3) *MPRA plan definition.* For purposes of this section, *MPRA plan* means a plan that is eligible for special financial assistance under § 4262.3(a)(2).

(b) *Projected SFA assets.* The amount of projected SFA assets for a plan is determined by projecting special financial assistance forward annually until the projected SFA assets are exhausted, using the following annual cash flows:

(1) Benefits paid and expected to be paid by the plan during the SFA coverage period, including any reinstatement of benefits attributable to the elimination of reductions in a participant's or beneficiary's benefit due to a suspension of benefits under sections 305(e)(9) or 4245(a) of ERISA as required under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), assuming such reinstated benefits are paid beginning as of the SFA measurement date and excluding any benefit increases resulting from contribution increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document described in paragraph (c)(3) of this section;

(2) Administrative expenses paid and expected to be paid by the plan during the SFA coverage period, excluding the amount owed to PBGC under section 4261 of ERISA (which is added to the amount of special financial assistance in § 4262.12 determined as of the date special financial assistance is paid); and

(3) Investment returns expected to be earned by amounts attributable to special financial assistance calculated using the SFA interest rate described in paragraph (e)(2) of this section, excluding investment returns for the plan year in which the sum of annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets.

(c) *Projected non-SFA assets.* The amount of projected non-SFA assets for a plan is determined by projecting the fair market value of plan assets on the SFA measurement date forward annually, using the following annual cash flows:

(1) Benefits paid and expected to be paid by the plan during the SFA coverage period after the projected SFA assets described in paragraph (b) of this section are fully exhausted, including any reinstatement of benefits attributable to the elimination of reductions in a participant's or beneficiary's benefit due to a suspension of benefits under sections 305(e)(9) or 4245(a) of ERISA as required under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), assuming such reinstated benefits are paid beginning as of the SFA measurement date and excluding any benefit increases resulting from contribution increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document described in paragraph (c)(3) of this section;

(2) Administrative expenses paid and expected to be paid by the plan during the SFA coverage period after the projected SFA assets described in paragraph (b) of this section are fully exhausted, excluding the amount owed to PBGC under section 4261 of ERISA (which is added to the amount of special financial assistance in § 4262.12 determined as of the date special financial assistance is paid);

(3) Employer contributions paid and expected to be paid to the plan during the SFA coverage period, excluding contribution rate increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document increasing a plan's contribution rate. The document referred to in this paragraph (c)(3) is either—

(i) A collective bargaining agreement not rejected by the plan; or

(ii) A document reallocating contribution rates;

(4) Withdrawal liability payments made and expected to be made to the plan during the SFA coverage period taking into account a reasonable allowance for amounts considered uncollectible;

(5) Other payments made and expected to be made to the plan (excluding the amount of financial assistance under section 4261 of ERISA and special financial assistance to be received by the plan) during the SFA coverage period; and

(6) Investment returns expected to be earned by assets not attributable to special financial assistance calculated using the non-SFA interest rate described in paragraph (e)(1) of this section.

(d) *Deterministic basis.* The projections in paragraphs (b) and (c) of this section must be performed on a deterministic basis using assumptions as described in paragraph (e) of this section. For a plan other than a plan described in § 4262.4(g), the projections must be based on the participant census data used to prepare the plan's actuarial valuation report, either—

(1) For the plan year in which occurs the plan's SFA measurement date; or

(2) If there is no such report for that plan year, for the preceding plan year.

(e) *Actuarial assumptions.* The amount of special financial assistance must be determined in accordance with

generally accepted actuarial principles and practices and the provisions in this paragraph (e).

(1) The non-SFA interest rate is the lesser of the rate in paragraph (e)(1)(i) or (ii) of this section.

(i) The interest rate in this paragraph (e)(1)(i) is the interest rate used for funding standard account purposes as projected in the plan's most recently completed certification of plan status before January 1, 2021.

(ii) The interest rate in this paragraph (e)(1)(ii) is the interest rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under section 303(h)(2)(C)(iv)) for the month in which such rate is the lowest among the 4 calendar months ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the IRS as of the day that is the day before the date the plan's initial application is filed.

(2) The SFA interest rate is the lesser of the rate in paragraph (e)(2)(i) or (ii) of this section.

(i) The interest rate in this paragraph (e)(2)(i) is the interest rate in paragraph (e)(1)(i) of this section.

(ii) The interest rate in this paragraph (e)(2)(ii) is the interest rate that is 67 basis points higher than the average of the rates specified in section 303(h)(2)(C)(i), (ii), and (iii) of ERISA (disregarding modifications made under section 303(h)(2)(C)(iv)) for the month in which such average is the lowest among the 4 calendar months ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the IRS as of the day that is the day before the date the plan's initial application is filed.

(3) The actuarial assumptions (other than the interest rate assumptions under paragraphs (e)(1) and (2) of this section) are those used for the plan's most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

(4) If a plan determines that use of the actuarial assumptions under paragraph (e)(3) of this section is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the interest rate assumptions under paragraphs (e)(1) and (2) of this section), as described in § 4262.5.

(f) *Certain events*—(1) *General rules.* (i) The special financial assistance of a plan that experiences one or more of the events described in paragraph (f)(2), (3), or (4) of this section during the period beginning on July 9, 2021, and ending on the SFA measurement date is limited to the amount of special financial assistance that would have applied to the plan on the SFA measurement date if the events had not occurred, as determined in a reasonable manner.

(ii) The special financial assistance of a plan that experiences a merger event during the period described in paragraph (f)(1)(i) of this section is limited to the sum of the amounts of special financial assistance that would have applied to the plans involved in the merger on the SFA measurement date if the merger had not occurred, as determined in a reasonable manner. If any of the plans involved in the merger also experiences one or more of the events described in paragraph (f)(2), (3), or (4) of this section during the period described in paragraph (f)(1)(i) of this section, the amount of special financial assistance for that plan on the SFA measurement date, determined as if the merger had not occurred, must be determined in accordance with paragraph (f)(1)(i) of this section.

(2) *Transfers.* The event described in this paragraph (f)(2) is a transfer of assets or liabilities (including a spinoff).

(3) *Benefit increases.* The event described in this paragraph (f)(3) is the execution of a plan amendment increasing accrued or projected benefits under a plan, other than a restoration of suspended benefits that satisfies the requirements of 26 CFR 1.432(e)(9)–1(e)(3).

(4) *Contribution reductions.* The event described in this paragraph (f)(4) is the execution of a document reducing a plan's contribution rate (including any reduction in benefit accruals adopted simultaneously or arising from a pre-existing linkage between benefit accruals and contributions), but only if the plan does not demonstrate (in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov*) that the risk of loss to participants and beneficiaries is reduced (disregarding special financial assistance) by execution of the document. The document referred to in this paragraph (f)(4) is either—

(i) A collective bargaining agreement not rejected by the plan; or

(ii) A document reallocating contribution rates.

(5) *Effect of pre-event ineligibility.* In determining the amount of special financial assistance that would have applied to a plan if an event described in this paragraph (f) had not occurred, if the plan would have been ineligible for special financial assistance under § 4262.3 in the absence of the event, then the amount of special financial assistance is deemed to be $0 (zero).

(6) *Examples.* The following examples illustrate the provisions of paragraph (f) of this section.

(i) *Example 1.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $20X. Before the SFA measurement date, but on or after July 9, 2021, Plan A transferred a portion of its assets and liabilities to Plan B. If the transfer had not occurred, Plan A would, as of the SFA measurement date, be entitled to special financial assistance in the amount of $40X. Although an event described in paragraph (f)(2) of this section occurred with respect to Plan A, Plan A's special financial assistance is unaffected by the limitation in paragraph (f)(1)(i) of this section and is $20X. Plan B also applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan B would be entitled to special financial assistance in the amount of $30X. If the transfer from Plan A had not occurred, Plan B would, as of the SFA measurement date, be ineligible for special financial assistance. As a result of the event described in paragraph (f)(2) of this section, the limitation in paragraph (f)(1)(i) of this section reduces Plan B's special financial assistance from $30X to $0.

(ii) *Example 2.* Plan C applies for special financial assistance. If the limitation in paragraph (f)(1)(ii) of this section did not apply, Plan C would be entitled to special financial assistance in the amount of $40X. Before the SFA measurement date, but on or after July 9, 2021, Plans A and B were merged into existing Plan C. If the mergers had not occurred, Plan A would not be eligible for special financial assistance, and Plan B and Plan C would be entitled, respectively, to $10X and $5X of special financial assistance as of the SFA measurement date. As a result of the merger event described in paragraph (f)(1)(ii) of this section, the limitation in paragraph (f)(1)(ii) of this section reduces Plan C's special financial assistance from $40X to $15X.

(iii) *Example 3.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $10X. Before the SFA measurement date, but on or after July 9, 2021, projected benefits under Plan A were increased. If the increase had not occurred, Plan A would, as of the SFA measurement date, be ineligible for

special financial assistance. As a result of the event described in paragraph (f)(3) of this section, applying the limitation in paragraph (f)(1)(i) of this section and in accordance with paragraph (f)(5) of this section, Plan A is treated as being entitled to special financial assistance of $0.

(iv) *Example 4.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $10X. Before the SFA measurement date, but on or after July 9, 2021, Plan A's contribution rate was reduced. Plan A's benefit formula states that the monthly benefit accrual for a participant for a plan year is 2.0 percent of the contributions paid on behalf of the participant for that plan year. Since there is a pre-existing linkage between benefit accruals and contributions, the event described in paragraph (f)(4) of this section includes both the reduction in benefit accruals and the reduction in the contribution rate. If the contribution rate reduction and the reduction in benefit accruals had not occurred, Plan A would, as of the SFA measurement date, be entitled to special financial assistance of $8X. Plan A does not provide a demonstration that the risk of loss to participants and beneficiaries is reduced (disregarding special financial assistance) due to the reduction in contribution rate and the reduction in benefit accruals. As a result of the events described in paragraph (f)(4) of this section, the limitation in paragraph (f)(1)(i) of this section reduces Plan A's special financial assistance from $10X to $8X.

(g) *Filers under the interim provisions of this part.* If a plan's application for special financial assistance under the terms of this part as in effect before August 8, 2022 was filed before that date, the plan may choose to proceed in accordance with paragraph (g)(1), (2), (3), or (4) of this section (whichever applies).

(1) *Approved application.* If the plan's application for special financial assistance was approved as of August 8, 2022, the plan may—

(i) Supplement the plan's application as described in paragraphs (g)(6) and (8) of this section after special financial assistance is paid to or for the plan under the terms of this part as in effect before August 8, 2022; or

(ii) Not supplement the plan's application.

(2) *Pending application.* If the plan's application for special financial assistance was not approved, withdrawn, or denied, and was pending, as of August 8, 2022, the plan may—

(i) Withdraw the plan's application in accordance with § 4262.11(d) and file a revised application as described in paragraph (g)(5) of this section; or

(ii) Not withdraw the plan's application and have the application reviewed under the terms of this part as in effect before August 8, 2022 as described in paragraph (g)(7) of this section.

(3) *Withdrawn application.* If the plan's application for special financial assistance was not pending as of August 8, 2022, because the application was withdrawn, the plan may file a revised application as described in paragraph (g)(5) of this section.

(4) *Denied application.* If the plan's application for special financial assistance was not pending as of August 8, 2022, because the application was denied, the plan may file a revised application as described in paragraph (g)(5) of this section. Any revised application must address the reasons cited by PBGC for the denial.

(5) *Revised application.* Any revised application for special financial assistance filed by a plan under this paragraph (g) is processed in the same way as an initial application, and must demonstrate eligibility and the amount of the plan's special financial assistance determined under the provisions of this part as in effect on August 8, 2022, subject to adjustment as described in § 4262.12(a), and use the following base data:

(i) The plan's SFA measurement date determined as the last day of the calendar quarter immediately preceding the date the plan's initial application for special financial assistance was filed;

(ii) The plan's participant census data determined under this part as in effect before August 8, 2022; and

(iii) The plan's non-SFA interest rate and SFA interest rate as determined under paragraphs (e)(1) and (2) of this section.

(6) S*upplemented application.* Any supplemented application filed by a plan under this paragraph (g) must be filed in accordance with paragraph (g)(8) of this section and must be limited to the changes and information specified in the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov,* about the determination of the amount of special financial assistance under this part as of August 8, 2022 (including the interest rates in paragraph (e) of this section), and the filer must agree to be bound by the provisions of this part governing such a determination, in which case, special financial assistance is subject to adjustment as described in § 4262.12(c).

(7) *No supplement or withdrawal.* If special financial assistance has not been paid to or for the plan under the terms of this part as in effect before August 8, 2022, and the plan has not filed a supplemented application as described in paragraphs (g)(6) and (8) of this section, or withdrawn the plan's application in accordance with § 4262.11(d), the application will be reviewed under the terms of this part as in effect before August 8, 2022. The amount of special financial assistance for the plan will be determined under the terms of this part as in effect before August 8, 2022 and be subject to adjustment as described in § 4262.12(b).

(i) A plan that receives special financial assistance as described under this paragraph (g)(7) may subsequently file a supplemented application in accordance with paragraphs (g)(6) and (8) of this section.

(ii) If the plan's application is denied, the plan may file a revised application as described in paragraph (g)(5) of this section.

(8) *Supplemented application special rules.* (i) Except as provided in this paragraph (g)(8), the rules in §§ 4262.10 and 4262.11(a) and (b) and (f) and (g) for a revised application apply to a supplemented application.

(ii) A supplemented application must not change the plan's SFA measurement date, fair market value of assets, or participant census data, or include a proposed change in assumptions, except to propose a change to the plan's employer contribution assumption to exclude contribution rate increases agreed to on or after July 9, 2021, as permitted under paragraph (c)(3) of this section (in which case, the plan must exclude any benefit increases resulting from such contribution increases as required under paragraphs (b)(1) and (c)(1) of this section).

(iii) A supplemented application may be withdrawn and resubmitted at any time before PBGC denies or approves the supplemented application. Any withdrawal of a plan's supplemented application must be by written notice to PBGC submitted by any person authorized to submit an application for the plan and in accordance with the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

(iv) If PBGC denies a plan's supplemented application, any new supplemented application filed by the plan must address the reasons cited by PBGC for the denial.

§ 4262.5 PBGC review of plan assumptions.

(a) *In general.* (1) As set forth in § 4262.3(d)(1), PBGC will accept the assumptions used by a plan to determine eligibility for special financial assistance under § 4262.3(d)(1) unless PBGC determines that such assumptions are clearly erroneous.

(2) PBGC will accept the assumptions used by a plan to determine eligibility for special financial assistance under § 4262.3(d)(2) or to determine the amount of special financial assistance under § 4262.4(e)(3) unless PBGC determines that an assumption is unreasonable.

(3) PBGC will accept a plan's changes in assumptions under paragraph (c) of this section except to the extent that PBGC determines that an assumption is individually unreasonable, or the proposed changed assumptions are unreasonable in the aggregate.

(b) *Reasonableness of assumptions.* (1) Each of the actuarial assumptions and methods used for the actuarial projections (excluding the interest rate assumptions under § 4262.4(e)(1) and (2)) must be reasonable in accordance with generally accepted actuarial principles and practices, taking into account the experience of the plan and reasonable expectations. The actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and contribution rates) may be based on information provided by the plan sponsor, which must act in good faith in providing the information.

(2) If a plan has a change in assumptions under paragraph (c) of this section, each of the actuarial assumptions and methods (other than the interest rate assumptions under § 4262.4(e)(1) and (2)) must be reasonable and the combination of those actuarial assumptions and methods (excluding the interest rate assumptions under § 4262.4(e)(1) and (2)) must also be reasonable.

(c) *Changes in assumptions.* If a plan determines that use of an assumption described in § 4262.3(d)(2) or § 4262.4(e)(3) is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the plan's interest rate assumptions under § 4262.4(e)(1) and (2)).

(1) The application for special financial assistance must—

(i) Describe why the original assumption is no longer reasonable;

(ii) Propose to use a different assumption (the changed assumption); and

(iii) Demonstrate that the changed assumption is reasonable.

(2) PBGC will provide guidelines for changed assumptions on PBGC's website at *www.pbgc.gov.*

§ 4262.6 Information to be filed.

(a) *In general.* An application for special financial assistance must include the information specified in this section and §§ 4262.7 (plan information) and 4262.8 (actuarial and financial information); a copy of the executed plan amendment required under paragraph (e)(1) of this section; a copy of the proposed plan amendment required under paragraph (e)(2) of this section; and a completed checklist and other information as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov.* If any of the information required for an application for special financial assistance under this part is not accurately completed or not filed with the application, PBGC may require the plan sponsor to file additional information described under paragraph (d) of this section or PBGC may consider the application incomplete. If the correction of an error or omission requires a change to the amount of special financial assistance requested, the application will be considered incomplete.

(b) *Required trustee signature.* An application for special financial assistance must—

(1) Be signed and dated by an authorized trustee, who is a current member of the board of trustees and who is authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor, with such signature accompanied by the printed name and title of the signer; and

(2) Include the following statements signed by an authorized trustee who is a current member of the board of trustees, with such signature accompanied by the printed name and title of the signer: ''Under penalty of perjury under the laws of the United States of America, I declare that I am an authorized trustee who is a current member of the board of trustees of the [*insert plan name*] and that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application; all statements of fact contained in the application are true, correct, and not misleading because of omission of any material fact; and all accompanying documents are what they purport to be.''

(c) *Actuarial calculations.* All calculations that are required in an application for special financial assistance under this part must include a certification by the plan's enrolled actuary.

(d) *Clarifying and additional information.* PBGC may require a plan sponsor to file additional information, including information to clarify or verify information provided in the plan's application. The plan sponsor must promptly file any such information with PBGC upon request.

(e) *Duty to amend plan and notify PBGC.* The plan sponsor of a plan applying for special financial assistance must—

(1) Amend the plan to include the following special financial assistance provision effective through the end of the last plan year ending in 2051: ''Beginning with the SFA measurement date selected by the plan in the plan's application for special financial assistance, notwithstanding anything to the contrary in this or any other governing document, the plan shall be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and 29 CFR part 4262. This amendment is contingent upon approval by PBGC of the plan's application for special financial assistance.''

(2) If the plan suspended benefits under section 305(e)(9) or 4245(a) of ERISA, amend the plan to include provisions substantially similar to the following to, in accordance with guidance issued by the Secretary of the Treasury under section 432(k) of the Code, {I} reinstate benefits, as required by § 4262.15(a)(1), and {II} make payments of previously suspended benefits, as required by § 4262.15(a)(2): ''Effective as of the first month in which special financial assistance is paid to the plan, the plan shall reinstate all benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA. The plan shall pay each participant and beneficiary that is in pay status as of the date special financial assistance is paid to the plan the aggregate amount of the participant's or beneficiary's benefits that were not paid because of the suspension, with no actuarial adjustment or interest. Such payment shall be made [*choose whichever applies:* 'in a lump sum no later than 3 months after the date the special financial assistance is paid to the plan, irrespective of whether the participant or beneficiary dies after the date special financial assistance is paid' *or* 'in equal monthly installments over a period of 5 years, commencing no later than 3 months after the date the special financial assistance is paid to the plan, with all installments to be paid irrespective of whether the participant

or beneficiary survives to the end of the 5-year period'].''

(3) During any time in which an application is pending approval by PBGC, the plan sponsor must promptly notify PBGC in writing as soon as the plan sponsor becomes aware that any material fact or representation contained in or relating to the application, or in any supporting documents, is no longer accurate, or that any material fact or representation was omitted from the application or supporting documents.

(f) *Disclosure of information.* Unless confidential under the Privacy Act, all information that is filed with PBGC for an application for special financial assistance under this part may be made publicly available, at PBGC's sole discretion, on PBGC's website at *www.pbgc.gov* or otherwise publicly disclosed. Except to the extent required by the Privacy Act, PBGC provides no assurance of confidentiality in any information or documentation included in an application for special financial assistance.

§ 4262.7 Plan information.

(a) *Basic information.* An application for special financial assistance must include all of the following information with respect to the plan and amount of special financial assistance requested:

(1) Name of the plan, Employer Identification Number (EIN), and three-digit Plan Number (PN).

(2) Name of the individual filing the application and role of the individual with respect to the plan.

(3) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(4) The total amount of special financial assistance requested under § 4262.4(a)(1) or (2).

(b) *Eligibility.* An application must identify the eligibility requirements in § 4262.3 that the plan satisfies to be eligible for special financial assistance. An application for a plan that is eligible under section 4262(b)(1)(C) of ERISA must include a demonstration to support that the plan meets the eligibility requirements.

(c) *Priority group identification.* An application must identify any priority group under § 4262.10(d)(2) that the plan is in. An application must include a demonstration to support the plan's inclusion in a priority group, unless the plan is insolvent under section 4245(a) of ERISA, has implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021, is in critical and declining status (as defined in section 305(b)(6) of ERISA) and had 350,000 or more participants, or is listed on PBGC's website at *www.pbgc.gov* as a plan in priority group 6, as defined under § 4262.10(d)(2)(vi).

(d) *Plans with a suspension of benefits.* If a plan previously suspended benefits under section 305(e)(9) or 4245(a) of ERISA, its application must include a description of how the plan will reinstate the benefits that were previously suspended and a proposed schedule showing aggregate amount and timing of payments (in accordance with § 4262.15) to participants and beneficiaries under the plan. The proposed schedule should be prepared assuming the effective date for reinstatement is the SFA measurement date and that payments for previously suspended benefits described in § 4262.15(a)(2) are paid or commence on the SFA measurement date. If the plan restored benefits under 26 CFR 1.432(e)(9)–1(e)(3) before the SFA measurement date, the proposed schedule should reflect the amount and timing of payments of restored benefits and the effect of the restoration on the benefits remaining to be reinstated.

(e) *Plan documentation.* An application must include all of the following plan documentation:

(1) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any), including a copy of the executed plan amendment required under § 4262.6(e)(1).

(2) If the plan suspended benefits under section 305(e)(9) or 4245(a) of ERISA, a copy of the proposed plan amendment(s) required under § 4262.6(e)(2) and a certification by the plan sponsor that the plan amendment(s) will be timely adopted. Such certification must be signed either by all members of the plan's board of trustees or by one or more trustees duly authorized to sign the certification on behalf of the entire board and to commit the board to timely adopting the amendment after the plan's application for special financial assistance is approved, with each signature accompanied by the printed name and title of the signer.

(3) Most recent trust agreement or restatement of the trust agreement and all subsequent adopted amendments (if any).

(4) Most recent IRS determination letter.

(5) Actuarial valuation reports completed for the 2018 plan year and each subsequent actuarial valuation report completed before the date the plan's initial application for special financial assistance is filed.

(6) Most recent rehabilitation plan (or funding improvement plan, if applicable), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan for the most recent plan year available. If the most recent rehabilitation plan does not include historical documentation of rehabilitation plan changes (if any) that occurred in calendar year 2020 and later, these details must be provided in a clearly identified supplemental document.

(7) Most recent Form 5500 and all schedules and attachments (including the audited financial statement).

(8) Plan actuary's certification of plan status required under section 305(b)(3) of ERISA completed for the 2018 plan year and each subsequent annual certification of plan status completed before the date the plan's initial application was filed, with documentation supporting each certification, which must include the projections and information required in the special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

(9) Most recent statement for each of the plan's cash and investment accounts.

(10) Most recent plan financial statement (audited, or unaudited if audited is not available).

(11) Bank account and other information necessary for electronic payment of funds.

(12) All written policies and procedures governing withdrawal liability determination, assessment, collection, settlement, and payment.

§ 4262.8 Actuarial and financial information.

(a) *Required information.* An application for special financial assistance must include all of the following actuarial and financial information:

(1) For each plan year from the 2018 plan year until the most recent plan year for which the Form 5500 is required to be filed by the date the plan's initial application for special financial assistance is filed, the projection of expected benefit payments as required to be attached to the Form 5500 Schedule MB if the response to the question at line 8b(1) of the Form 5500 Schedule MB is ''Yes''.

(2) For a plan that has 10,000 or more participants required to be entered on line 6f of the plan's most recently filed Form 5500 (as of the date the plan's initial application for special financial assistance is filed), a listing of the 15

largest contributing employers and the contribution amounts for each such contributing employer for the most recently completed plan year (before the date the plan's initial application for special financial assistance is filed).

(3) Historical plan financial information for the 2010 plan year through the plan year immediately preceding the date the plan's initial application was filed that separately identifies: Total contributions; total contribution base units; average contribution rates; number of active participants at the beginning of each plan year; and other sources of non-investment income, including, if applicable, withdrawal liability payments collected, contributions from reciprocity agreements, and other sources of contributions or income not already identified.

(4) Information used to determine the amount of the requested special financial assistance, including all of the following information—

(i) Non-SFA interest rate required under § 4262.4(e)(1), including supporting details on how it was determined, and SFA interest rate required under § 4262.4(e)(2), including supporting details on how it was determined.

(ii) Fair market value of plan assets determined as of the SFA measurement date; a certification from the plan sponsor with respect to the accuracy of this amount, including information that substantiates the asset value and any projections to the SFA measurement date (including details and supporting rationale); and a reconciliation of the fair market value of plan assets from the date of the most recent audited plan financial statement to the SFA measurement date showing contributions, withdrawal liability payments, benefit payments, administrative expenses, and investment income.

(iii) For the calculation method used to determine the requested amount of special financial assistance, the plan year in which the sum of annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets.

(5) The amount of special financial assistance calculated under § 4262.4(a)(1) and information used to determine such amount, based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under § 4262.4(a)(1) determined as a lump sum as of the SFA measurement date.

(ii) For each plan year in the SFA coverage period: The projected amount of contributions, projected withdrawal liability payments reflecting a reasonable allowance for amounts considered uncollectible, and other payments expected to be made to the plan.

(iii) For each plan year in the SFA coverage period: Payments described in § 4262.4(b)(1) attributable to the reinstatement of benefits under § 4262.15 that were previously suspended through the SFA measurement date.

(iv) For each plan year in the SFA coverage period: Benefit payments described in § 4262.4(b)(1) (including any benefits restored under 26 CFR 1.432(e)(9)–1(e)(3) and excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), separately for current retirees and beneficiaries in pay status, current terminated participants not yet in pay status, current active participants, and new entrants; and total benefit payments paid and expected to be paid from projected SFA assets separately from total benefit payments paid and expected to be paid from non-SFA assets after the projected SFA assets are fully exhausted.

(v) For each plan year in the SFA coverage period: Administrative expenses paid and expected to be paid (excluding the amount owed PBGC under section 4261 of ERISA), separately for PBGC premiums and all other administrative expenses; and total administrative expenses paid and expected to be paid from projected SFA assets separately from total administrative expenses paid and expected to be paid from non-SFA assets after the projected SFA assets are fully exhausted.

(vi) For each plan year in the SFA coverage period: The projected total participant count at the beginning of the year.

(vii) For each plan year in the SFA coverage period: The projected investment income earned by assets not attributable to special financial assistance based on the interest rate required under § 4262.4(e)(1) and the projected fair market value of non-SFA assets at the end of each plan year.

(viii) For each plan year in the SFA coverage period: The projected investment income earned by amounts attributable to special financial assistance based on the interest rate required under § 4262.4(e)(2) (excluding investment returns for the plan year in which the sum of the annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets) and the projected fair market value of SFA assets at the end of each plan year.

(6) For MPRA plans, the amount of special financial assistance calculated under § 4262.4(a)(2)(i) and information used to determine such amount, based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under § 4262.4(a)(2)(i) determined as a lump sum as of the SFA measurement date.

(ii) All items identified in paragraphs (a)(5)(ii) through (viii) of this section that support the amount described in paragraph (a)(6)(i) of this section.

(7) For MPRA plans, if the amount calculated under § 4262.4(a)(2)(ii) is the greatest amount calculated under § 4262.4(a)(2), the amount of special financial assistance calculated under § 4262.4(a)(2)(ii) and information used to determine the amount under § 4262.4(a)(2)(ii), based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under§ 4262.4(a)(2)(ii) determined as a lump sum as of the SFA measurement date.

(ii) For each plan year in the SFA coverage period: Benefit payments described in § 4262.4(b)(1) (excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), separately for current retirees and beneficiaries in pay status, current terminated participants not yet in pay status, current active participants, and new entrants; and total benefit payments paid or expected to be paid. For each participant group except new entrants: benefit payments after reinstatement (excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), the reduced benefit payments under the approved benefit suspension, and the difference due to the reinstatement of benefits.

(iii) The present value, as of the SFA measurement date using the SFA interest rate required under § 4262.4(e)(2), of the amounts described in paragraph (a)(5)(iii) of this section.

(iv) The present value, as of the SFA measurement date using the SFA interest rate required under § 4262.4(e)(2), of the difference in benefit amounts due to the reinstatement of benefits, as described in paragraph (a)(7)(ii) of this section.

(8) Projected contributions and withdrawal liability payments, reflecting a reasonable allowance for amounts considered uncollectible, used to calculate the requested special financial assistance amount in § 4262.4,

including total contributions, contribution base units, average contribution rate(s), reciprocal contributions (if applicable), additional contributions from the rehabilitation plan, and any other contributions, and number of active participants at the beginning of each plan year. For withdrawal liability, separate projections for withdrawn employers and for future assumed withdrawals.

(9) A description of the development of the assumed future contributions (including assumed contribution rates) and future withdrawal liability payments described in paragraph (a)(8) of this section.

(10) For a plan that has 350,000 or more participants reported on line 6f of its most recently filed Form 5500 (as of the date the plan's initial application for special financial assistance is filed), the participant census data utilized by the plan actuary in developing the cash flow projections included in the application.

(11) Documentation of a death audit to identify deceased participants that was completed no earlier than 1 year before the plan's SFA measurement date, including identification of the service provider conducting the audit and a copy of the results of the audit provided to the plan administrator by the service provider.

(b) *Information required for changed assumptions in initial and revised applications.* An application for a plan that proposes to change any assumption used in the plan's most recently completed certification of plan status before January 1, 2021, must include all of the following information:

(1) A table identifying which assumptions used in demonstrating the plan's eligibility for special financial assistance or in calculating the amount of special financial assistance differ from those assumptions used in the plan's most recently completed certification of plan status before January 1, 2021, and detailed narrative explanations (with supporting rationale and information) as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov* as to why any assumption used in the certification is no longer reasonable and why the changed assumption is reasonable.

(2) Deterministic cash flow projection (''Baseline'') in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov* that shows the amount of special financial assistance that would be determined if all underlying assumptions used in the projection were the same as those used in the actuarial certification of plan status last completed before January 1, 2021 (excluding the plan's non-SFA and SFA interest rates, which must be the same as the interest rates required under § 4262.4(e)(1) and (2)). For purposes of this paragraph (b)(2), certain changes in assumptions as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov* should be reflected in the Baseline projection.

(3) In accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov,* a reconciliation of the change in the requested special financial assistance due to each changed assumption from the Baseline to the requested special financial assistance amount in § 4262.4, showing, for each assumption change from the Baseline, a deterministic projection calculated in the same manner as the requested amount in § 4262.4.

(c) *Information required for certain events.* An application for a plan with respect to which an event described in § 4262.4(f) occurs on or after July 9, 2021, must include the applicable information related to the event specified in special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

(d) *Information required for changed assumptions in supplemented applications.* Any supplemented application filed for a plan described in § 4262.4(g) must include the information specified in the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

§ 4262.9 Application for a plan with a partition.

(a) *In general.* This section applies to a plan partitioned under section 4233 of ERISA that is eligible for special financial assistance under § 4262.3(a)(2). A partitioned plan is in priority group 2 for purposes of § 4262.10(d)(2).

(b) *Filing requirements.* A plan sponsor of a partitioned plan filing an application for special financial assistance must—

(1) File one application for the original plan and the successor plan.

(2) Include in the application—

(i) A statement that the plan was partitioned under section 4233 of ERISA;

(ii) A copy of the plan document and other executed amendments required under paragraph (c)(2) of this section; and

(iii) The information required in §§ 4262.6 through 4262.8.

(3) If a plan sponsor has already filed with PBGC any of the required information described in paragraph (b)(2)(iii) of this section, the plan sponsor is not required to file that information with its application for special financial assistance. For any such information not filed with the application, the plan sponsor must note on the checklist described under § 4262.6(a) when the information was filed.

(c) *Rescission of partition order.* Effective when special financial assistance is paid under § 4262.12, and in a manner consistent with the application procedure determined under paragraph (b) of this section—

(1) PBGC will rescind the partition order; and

(2) The plan sponsor must amend the plan to remove any provisions or amendments that were required to be adopted under the partition order.

§ 4262.10 Processing applications.

(a) *In general.* Any application for special financial assistance for an eligible multiemployer plan must be filed by the plan sponsor in accordance with the provisions of this part and the special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

(b) *Method of filing.* An application filed with PBGC under this part must be made electronically in accordance with the rules in part 4000 of this chapter. The time period for filing an application under this part must be computed under the rules in subpart D of part 4000 of this chapter.

(c) *Where to file.* (1) An application filed with PBGC under this part must be filed as described in § 4000.4 of this chapter.

(2) Section 432(k)(1)(D) of the Code requires an application in a priority group under paragraph (d)(2) of this section to be submitted to the Secretary of the Treasury. If the requirement in the preceding sentence applies to an application, PBGC will transmit the application to the Department of the Treasury on behalf of the plan.

(d) *When to file.* Any initial application for special financial assistance must be filed by December 31, 2025, and any revised application or supplemented application must be filed by December 31, 2026. Any application other than a plan's initial application or a supplemented application is a revised application regardless of whether it differs from the initial application or supplemented application.

(1) *Processing system.* To accommodate expeditious processing of many special financial assistance applications in a limited time period:

(i) The number of applications accepted for filing will be limited in such manner that, in PBGC's estimation,

each application can be processed within 120 days.

(ii) Plans specified in paragraph (d)(2) of this section will be given priority to file an application before plans not specified in paragraph (d)(2) of this section. Plans not specified in paragraph (d)(2) of this section may not file an application before March 11, 2023.

(iii) Notices on PBGC's website at *www.pbgc.gov* will apprise potential filers of the current priority group(s) for which applications are being accepted and whether PBGC is accepting applications for filing as well as other information about priority groups and filing.

(2) *Priority groups.* Until not later than March 11, 2023, the plan sponsor of an eligible multiemployer plan will be given priority to file an application if the plan is in one of the priority groups in paragraphs (d)(2)(i) through (vii) of this section, listed in order of higher priority group to lower priority group. A plan may not file an application earlier than the beginning date specified for the plan's priority group. When applications for plans in a priority group are accepted for filing, PBGC will continue to accept applications for plans in a higher priority group, subject to paragraph (d)(1) of this section.

(i) *Priority group 1.* A plan is in priority group 1 if the plan is insolvent or is projected to become insolvent under section 4245 of ERISA by March 11, 2022. A plan in priority group 1 may file an application beginning on July 9, 2021.

(ii) *Priority group 2.* A plan is in priority group 2 if the plan has implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021; or the plan is expected to be insolvent under section 4245 of ERISA within 1 year of the date the plan's application was filed. A plan in priority group 2 may file an application beginning on January 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov.*

(iii) *Priority group 3.* A plan is in priority group 3 if the plan is in critical and declining status (as defined in section 305(b)(6) of ERISA) and has 350,000 or more participants. A plan in priority group 3 may file an application beginning on April 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov.*

(iv) *Priority group 4.* A plan is in priority group 4 if the plan is projected to become insolvent under section 4245 of ERISA by March 11, 2023. A plan in priority group 4 may file an application beginning on July 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov.*

(v) *Priority group 5.* A plan is in priority group 5 if the plan is projected to become insolvent under section 4245 of ERISA by March 11, 2026. The date a plan in priority group 5 may file an application will be specified on PBGC's website at *www.pbgc.gov* at least 21 days in advance of such date, and such date will be no later than February 11, 2023.

(vi) *Priority group 6.* A plan is in priority group 6 if the plan is projected by PBGC to have a present value of financial assistance payments under section 4261 of ERISA that exceeds $1,000,000,000 if special financial assistance is not ordered. PBGC will list the plans in priority group 6 on its website at *www.pbgc.gov.* The date a plan in priority group 6 may file an application will be specified on PBGC's website at *www.pbgc.gov* at least 21 days in advance of such date, and such date will be no later than February 11, 2023.

(vii) *Additional priority groups.* PBGC may add additional priority groups based on other circumstances similar to those described for the groups listed in paragraphs (d)(2)(i) through (vi) of this section. If added, additional priority groups and the date PBGC will begin accepting applications for such additional priority groups will be posted in guidance on PBGC's website at *www.pbgc.gov.*

(e) *Filing date.* An application will be considered filed on the date it is submitted to PBGC if it is signed in accordance with § 4262.6(b) and meets the applicable requirements in paragraph (d) of this section, including that it can be accommodated in accordance with the processing system described in paragraph (d)(1) of this section or the emergency filing process described in paragraph (f) of this section. Otherwise, the application will not be considered filed and PBGC will notify the applicant that the application was not properly filed, and that the application must be filed in accordance with the processing system and instructions on PBGC's website at *www.pbgc.gov.* References in this part to a plan's initial application are to the plan's first application that is considered filed.

(f) *Emergency filing.* Beginning when PBGC accepts applications in priority group 2 described in paragraph (d)(2)(ii) of this section, and notwithstanding the processing system described in paragraph (d)(1) of this section, an application may be accepted for filing if—

(1) It is an application for a plan that either—

(i) Is insolvent or expected to be insolvent under section 4245 of ERISA within 1 year of the date the plan's application was filed; or

(ii) Has suspended benefits under section 305(e)(9) of ERISA as of March 11, 2021; and

(2) The filer notifies PBGC before submitting the application that the application qualifies as an emergency filing under this paragraph (f) in accordance with instructions on PBGC's website at *www.pbgc.gov.*

(g) *Lock-in applications.* (1) A lock-in application described in this paragraph (g), clearly and prominently identified as such, may be filed for a plan as its initial application (thus establishing the plan's base data as provided under § 4262.11(c)).

(2) A lock-in application must—

(i) Except as provided in paragraph (g)(2)(ii) of this section, be filed after March 11, 2023, and on or before December 31, 2025; or

(ii) Be filed by a plan described in paragraphs (d)(2)(v) through (vii) of this section in accordance with the processing system described in paragraphs (d)(1)(ii) and (iii) and (d)(2) of this section at a time when PBGC is not accepting applications for filing under paragraph (d)(1)(i) of this section.

(3) The lock-in application must—

(i) Provide the information in § 4262.7(a)(1) through (3) and in the instructions for lock-in applications on PBGC's website at *www.pbgc.gov;*

(ii) Be signed in accordance with § 4262.6(b); and

(iii) Be filed in accordance with paragraphs (a) through (c) of this section and the instructions for lock-in applications on PBGC's website at *www.pbgc.gov.*

(4) A lock-in application for a plan that satisfies the requirements of this paragraph (g) is considered filed as the plan's initial application and denied for incompleteness under § 4262.11(a)(2)(i).

(h) *Informal consultation.* Nothing in this section prohibits a plan sponsor from contacting PBGC informally to discuss a potential application for special financial assistance.

§ 4262.11 PBGC action on applications.

(a) *In general.* Within 120 days after the date an initial, revised, or supplemented application for special financial assistance is properly and timely filed, PBGC will—

(1) Approve the application and notify the plan sponsor of the payment of special financial assistance in accordance with § 4262.12; or

(2) Deny the application because—

(i) The application is incomplete, and notify the plan sponsor of the missing information; or

(ii) An assumption is unreasonable, a proposed change in assumption is individually unreasonable, or the proposed changed assumptions are unreasonable in the aggregate, and notify the plan sponsor of the reasons for the determination; or

(iii) The plan is not an eligible multiemployer plan, and notify the plan sponsor of the reasons the plan fails to be eligible for special financial assistance; or

(3) Fail to act on the application, in which case the application is deemed approved, and notify the plan sponsor of the payment of special financial assistance in accordance with § 4262.12.

(b) *Incomplete application.* PBGC will consider an application incomplete under paragraph (a)(2)(i) of this section unless the application accurately includes the information required to be filed under this part and the special financial assistance instructions on PBGC's website at *www.pbgc.gov,* including any additional information that PBGC requires under § 4262.6(d).

(c) *Application base data.* For an eligible plan other than a plan described in § 4262.4(g)—

(1) A plan's base data are—

(i) The plan's SFA measurement date as defined under § 4262.2;

(ii) The plan's participant census data as required to be used under § 4262.4(d); and

(iii) The plan's non-SFA interest rate and SFA interest rate as determined under § 4262.4(e)(1) and (2).

(2) A plan's base data are fixed by the date the eligible plan's initial application for special financial assistance is filed and must be used for any revised application for the plan. If the plan was not eligible for special financial assistance on such date, the plan's base data will be fixed by the date the plan files a revised application and demonstrates eligibility for special financial assistance.

(d) *Withdrawn applications.* (1) A plan's application for special financial assistance may be withdrawn at any time before PBGC denies or approves the application.

(2) Any withdrawal of a plan's application must be by written notice to PBGC submitted by any person authorized to submit an application for the plan and in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov.*

(3) An application submitted for a plan after the withdrawal of an application is a revised application.

(e) *Denied applications.* If PBGC denies a plan's application, an application submitted for a plan after the denial is a revised application. Any revised application must address the reasons cited by PBGC for the denial.

(f) *Revised applications.* A plan's revised application is processed in the same way as an initial application and must comply with the requirements in this part for an initial application except that it must use the base data required in paragraph (c) of this section for the initial application.

(g) *Final agency action.* PBGC's decision on an application for special financial assistance under this section is a final agency action under § 4003.22(b) of this chapter for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 4262.12 Payment of special financial assistance.

(a) *Amount of special financial assistance under this part.* The amount of special financial assistance to be paid by PBGC to or for a plan for which either an initial or a revised application for special financial assistance is filed on or after August 8, 2022, will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance, determined under § 4262.4 as of the SFA measurement date; plus

(2) Interest on the amount in paragraph (a)(1) of this section from the SFA measurement date to the SFA payment date at a rate equal to the interest rate required under § 4262.4(e)(2); plus

(3) The amount owed to PBGC under section 4261 of ERISA determined as of the SFA payment date; minus

(4) Financial assistance payments under section 4261 of ERISA received by the plan between the SFA measurement date and the SFA payment date, with interest on each such financial assistance payment from the date thereof to the SFA payment date calculated at a rate equal to the interest rate required under § 4262.4(e)(2).

(b) *Amount of special financial assistance under the interim provisions of this part.* The amount of special financial assistance to be paid by PBGC to or for a plan for which neither an initial nor a revised application for special financial assistance is filed on or after August 8, 2022 and there has not been any previous payment of special financial assistance, and where a plan's application has not been supplemented, will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance, determined under § 4262.4 (under the terms of this part as in effect before August 8, 2022) as of the SFA measurement date; plus

(2) Interest on the amount in paragraph (b)(1) of this section from the SFA measurement date to the SFA payment date at a rate equal to the interest rate required under § 4262.4(e)(1); plus

(3) The amount owed to PBGC under section 4261 of ERISA determined as of the SFA payment date; minus

(4) Financial assistance payments under section 4261 of ERISA received by the plan between the SFA measurement date and the SFA payment date, with interest on each such financial assistance payment from the date thereof to the SFA payment date calculated at a rate equal to the interest rate required under § 4262.4(e)(1).

(c) *Amount of additional special financial assistance under supplemented application.* The amount of additional special financial assistance to be paid by PBGC to or for a plan where the plan has received a prior payment of special financial assistance under the terms of this part as in effect before August 8, 2022 will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance (including any supplemented application filed after the prior payment of special financial assistance), determined under § 4262.4 as of the SFA measurement date; minus

(2) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance, determined under § 4262.4 (under the terms of this part as in effect before August 8, 2022) as of the SFA measurement date; plus

(3) Interest on the excess of the amount in paragraph (c)(1) of this section over the amount in paragraph (c)(2) of this section from the SFA measurement date to the payment date of the additional special financial assistance at a rate equal to the interest rate required under § 4262.4(e)(2).

(d) *Payment instructions.* The plan must include in its application payment instructions in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov.* PBGC may request additional information from the plan related to PBGC's payment of special financial assistance. Payment will be considered made by PBGC when, in accordance with the payment instructions in the

application, PBGC no longer has ownership of the amount being paid. Any adjustment for delay will be borne by PBGC only to the extent that it arises while PBGC has ownership of the funds.

(e) *Repayment of traditional financial assistance.* If a plan described in paragraph (a) or (b) of this section has an obligation to repay financial assistance under section 4261 of ERISA, PBGC will—

(1) Issue a written demand for repayment of financial assistance when the application is approved; and

(2) Deduct the amount of financial assistance, including interest, that the plan owes PBGC from the special financial assistance before payment to the plan.

(f) *Date of payment of special financial assistance.* (1) Special financial assistance issued by PBGC will be paid as soon as practicable upon approval of the plan's special financial assistance application but not later than the earlier of—

(i) Ninety days after a plan's special financial assistance application is approved by PBGC or deemed approved under § 4262.11(a)(3); or

(ii) September 30, 2030.

(2) References in this section to the SFA payment date are to the date PBGC sends payment of special financial assistance, not the bank settlement date.

(g) *Manner of payment.* The payment of special financial assistance to a plan will be made by PBGC in a lump sum or substantially so and is not a loan subject to repayment obligations. Notwithstanding the preceding sentence, the following payment obligations apply:

(1) Special financial assistance is subject to recalculation or adjustment to correct a clerical or arithmetic error. PBGC will, and plans must, make payments as needed to reflect any such recalculation or adjustment in a timely manner.

(2) If PBGC determines that a payment for special financial assistance to a plan exceeded the amount to which the plan was entitled, any excess payment constitutes a debt to the Federal Government. If not paid within 90 calendar days after demand, PBGC may reduce the debt by any action permitted by Federal statute. Except where otherwise provided by statutes or regulations, PBGC will charge interest and other amounts permitted on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

§ 4262.13 Restrictions on special financial assistance.

(a) *In general.* A plan that receives special financial assistance must be administered in accordance with the restrictions in this section and in § 4262.14.

(b) *Restrictions and use of SFA.* Special financial assistance received, and any earnings thereon—

(1) May be used by the plan only to make benefit payments and pay administrative expenses;

(2) Must be segregated from other plan assets as described in § 4262.14(a);

(3) May be used before other plan assets are used to make benefit payments and pay administrative expenses; and

(4) Must be invested in investment grade bonds or other investments as permitted by PBGC in § 4262.14.

§ 4262.14 Permissible investments of special financial assistance.

(a) A plan that receives special financial assistance must segregate special financial assistance assets and earnings thereon (''amounts attributable to special financial assistance'') in an account that is separate from the plan's non-special financial assistance assets and that is invested consistent with the investment requirements of this section.

(b) Permissible investments for amounts attributable to special financial assistance are—

(1) Investments in return-seeking assets as described under paragraph (c) of this section, not to exceed 33 percent of amounts attributable to special financial assistance measured using fair market value as of—

(i) Each day the plan purchases return-seeking assets, other than through the automatic re-purchase of capital gains and reinvestment of dividends; and

(ii) At least one day during every rolling period of 12 consecutive months beginning from the date the plan receives special financial assistance.

(2) Investments in investment grade fixed income securities and cash as described in paragraph (d) of this section for all other amounts attributable to special financial assistance.

(c) For purposes of this section, *investments in return-seeking assets* are investments in—

(1) Common stock that is denominated in U.S. dollars and registered under section 12(b) of the Securities Exchange Act of 1934.

(2) Shares held in a permissible fund vehicle described in paragraph (g) of this section that abides by an investment policy that restricts investment predominantly to equity securities registered under section 12(b) of the Securities Exchange Act of 1934, U.S. Treasury securities with less than one year to maturity date, cash and cash equivalents described in paragraph (d)(5) of this section, and money market funds described in paragraph (d)(6) of this section.

(3) A debt security that has been resold in an offering pursuant to 17 CFR 230.144A (Rule 144A under the Securities Act of 1933), is investment grade as described under paragraph (f) of this section, and has not been issued by a foreign issuer as defined under 17 CFR 240.3b–4(b).

(4) A debt instrument, as described under paragraph (d) of this section, that is no longer investment grade if it was investment grade as described under paragraph (f) of this section when purchased by the plan for the portion of special financial assistance invested in investment grade fixed income securities.

(d) For purposes of this section, *investments in investment grade fixed income securities and cash* are investments in—

(1) A bond or other debt security that pays a fixed amount or fixed rate of interest, is denominated in U.S. dollars, sold in an offering registered under the Securities Act of 1933, and is investment grade as described under paragraph (f) of this section.

(2) Shares held in a permissible fund vehicle described under paragraph (g) of this section that abides by an investment policy that restricts investment predominantly to securities described in this paragraph (d) that are denominated in U.S. dollars and are investment grade as defined under paragraph (f) of this section.

(3) Securities issued, guaranteed or sponsored by the U.S. Government or its designated agencies as required to be entered as government securities on the Form 5500 Schedule H.

(4) Municipal securities defined in section 3(a)(29) of the Securities Exchange Act of 1934 that are investment grade as defined under paragraph (f) of this section.

(5) Noninterest-bearing cash and interest-bearing cash equivalents as required to be entered on the Form 5500 Schedule H.

(6) Money market funds regulated pursuant to 17 CFR 270.2a–7 (Rule 2a–7 under the Investment Company Act of 1940).

(e) Fixed income securities described under paragraph (d) of this section must be considered investment grade (as described under paragraph (f) of this section) by a fiduciary, within the

meaning of section 3(21) of ERISA, who is or seeks the advice of an experienced investor (such as an Investment Adviser registered under section 203 of the Investment Advisers Act of 1940).

(f) *Investment grade* means securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure. For purposes of this paragraph (f), *adequate capacity to meet financial commitments* means that the risk of default by the issuer (or obligor) is low and the full and timely repayment of principal and interest on the security is expected.

(g) *Permissible fund vehicle* means an investment company or collective trust, that is—

(1) An open-end investment company registered on Form N–1A under section 8 of the Investment Company Act of 1940; or

(2) A unit investment trust (as defined in section 4(2) of the Investment Company Act of 1940 and registered under section 8 of such Act) the shares of which are listed and traded on a national securities exchange, and that has been formed and operates under an exemptive order granted by the U.S. Securities and Exchange Commission; or

(3) A collective trust fund that is maintained by a bank or trust company and that has been formed and operates pursuant to an exemption under section 3(c)(11) of the Investment Company Act of 1940.

(h) Permissible investments must not be supplemented by, and permissible fund vehicles cannot include, derivatives or otherwise be leveraged in a way that could increase the risk of the permissible investment beyond the risk associated with the market value of the un-leveraged permissible investment. Any notional derivative exposure, other than exposure gained through a permissible fund vehicle described under paragraph (g) of this section, must be supported by liquid assets that are cash or cash equivalents denominated in U.S. dollars.

(i) This section is applicable to a plan that applies or has applied for special financial assistance under this part. Notwithstanding the preceding sentence, for a plan that received special financial assistance under this part in effect before August 8, 2022, this section will not apply unless and until the plan files a supplemented application under this part. Before the date that the plan files a supplemented application under this part, the rules under this section in effect before August 8, 2022 apply.

§ 4262.15 Reinstatement of benefits previously suspended.

(a) In accordance with guidance issued by the Secretary of the Treasury under section 432(k) of the Code, a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA must:

(1) Reinstate any benefits that were suspended for participants and beneficiaries effective as of the first month in which the special financial assistance is paid to the plan; and

(2) Make payments equal to the amounts of benefits previously suspended to any participants or beneficiaries who are in pay status as of the date that the special financial assistance is paid.

(b) A plan must make the payments in paragraph (a)(2) of this section either in:

(1) A single lump sum no later than 3 months after the date that the special financial assistance is paid to the plan; or

(2) Equal monthly installments over a period of 5 years, with the first installment paid no later than 3 months after the date that the special financial assistance is paid to the plan, with no installment payment adjusted for interest.

(c) The plan sponsor of a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA must issue a notice of reinstatement to participants and beneficiaries whose benefits were previously suspended and then reinstated in accordance with section 4262(k) of ERISA and section 432(k) of the Code. The requirements for the notice are in notice of reinstatement instructions available on PBGC's website at *www.pbgc.gov.*

§ 4262.16 Conditions for special financial assistance.

(a) *In general.* A plan that receives special financial assistance must be administered in accordance with the conditions in this section.

(b) *Benefit increases.* This paragraph (b) applies to benefits and benefit increases described in section 4022A(b)(1) of ERISA without regard to the time the benefit or benefit increase has been in effect. This paragraph (b) does not apply to the reinstatement of benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA (as provided under § 4262.15) or a restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3).

(1) *Retrospective.* A benefit or benefit increase must not be adopted during the SFA coverage period if it is in whole or in part attributable to service accrued or other events occurring before the adoption date of the amendment.

(2) *Prospective.* A benefit or benefit increase must not be adopted during the SFA coverage period unless—

(i) The plan actuary certifies that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to; and

(ii) Those increased contributions were not included in the determination of the special financial assistance.

(3) *Request for exception.* No earlier than 10 years after the end of the plan year in which the plan receives payment of special financial assistance under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraphs (b)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of the proposed benefit or benefit increase, the plan will avoid insolvency. A request for PBGC approval of a proposed benefit or benefit increase must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (b)(3)(ii) of this section.

(v) A copy of the proposed benefit or benefit increase amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (b)(3), and the actuarial valuation performed for each of the 2 plan years immediately

preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed benefit or benefit increase on the plan's existing benefit formula and benefit amount, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed benefit or benefit increase, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed benefit or benefit increase. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed benefit or benefit increase. The statement must also specify the amount of the change in the minimum required contribution under section 431 of the Code attributable to the proposed benefit or benefit increase for the first full plan year in which it is in effect, including the change in normal cost, the change in actuarial accrued liability and the annual amortization amount associated with the change in actuarial accrued liability.

(xi) The statement in paragraph (b)(3)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments made and expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.,* active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(c) *Allocation of plan assets.* During the SFA coverage period, plan assets, including special financial assistance, must be invested in investment grade fixed income as described in § 4262.14(d) sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses, taking into account the limitations on derivatives and leverage in § 4262.14(h).

(d) *Contribution decreases.* (1) During the SFA coverage period, the contributions to a plan that receives special financial assistance required for each contribution base unit must not be less than, and the definition of the contribution base units used must not be different from, those set forth in collective bargaining agreements or plan documents (including contribution increases to the end of the collective bargaining agreements) in effect on March 11, 2021, unless the plan sponsor determines that the change lessens the risk of loss to plan participants and beneficiaries and, if the contribution reduction affects over $10 million of annual contributions and over 10 percent of all employer contributions, PBGC also determines that the change lessens the risk of loss to plan participants and beneficiaries.

(2) A request for PBGC approval of a proposed contribution change that affects over $10 million of annual contributions and over 10 percent of all employer contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Name, address, email, and telephone number of the contributing employer for which the proposed contribution change is being submitted, and the employer's authorized representatives, if any.

(iv) Names and addresses of each controlled group member of the contributing employer identified in paragraph (d)(2)(ii) of this section, along with a chart depicting the structure of the controlled group by entity and its ownership with ownership percentage.

(v) Audited financial statements (income statement, balance sheet, cashflow statement, and notes) for the contributing employer and the controlled group including the contributing employer, if available, for the most recent 4 years, or, if audited financial statements were not prepared, unaudited financial statements, a statement explaining why audited statements are not available, and tax returns with all schedules for the most recent 4 years available. The financial statement submissions must:

(A) Identify the cash contributions to the multiemployer plan for which the contributing employer is seeking contribution relief;

(B) Identify all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments interest rate, collateral, significant covenants, and whether the loan is in default;

(C) Identify and explain any material changes in financial position since the date of the last financial statement;

(D) To the extent that the contributing employer has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 3 years covered by the financial statement for only that portion of the business that is currently expected to continue; and

(E) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

(vi) Projected financial statements (income statement, balance sheet, cash flow statement) for the current year and the following 4 years as well as the key assumptions underlying those projections and a justification for the reasonableness for each of those key

assumptions. The projections must include:

(A) All business or operating plans prepared by or for management, including all explanatory text and schedules;

(B) All financial submissions, if any, made within the prior 3 years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business;

(C) All recent financial analyses done by an outside party with a certification by the employer's chief executive officer that the information on which each analysis is based is accurate and complete; and

(D) Any other relevant information.

(vii) Description of events leading to the current financial distress.

(viii) Description of financial and operational restructuring actions taken to address financial distress, including cost cutting measures, employee count or compensation reductions, creditor concessions obtained, and any other restructuring efforts undertaken; also, indicate whether any new profit-sharing or other retirement plan has been or will be established or if benefits under any such existing plan will be increased.

(ix) Any additional information PBGC determines it needs to review a request for approval of a proposed contribution change.

(e) *Allocating contributions and other practices*—(1) *In general.* During the SFA coverage period, a decrease in the proportion of income or an increase in the proportion of expenses allocated to a plan that receives special financial assistance pursuant to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which the income or expenses are divided or to be divided between a plan that receives special financial assistance and one or more other employee benefit plans is prohibited. The prohibition in the preceding sentence does not apply to a good faith allocation of:

(i) Contributions pursuant to a reciprocity agreement;

(ii) Costs of securing shared space, goods, or services, where such allocation does not constitute a prohibited transaction under ERISA or is exempt from such prohibited transaction provisions pursuant to section 408(b)(2) or 408(c)(2) of ERISA, or pursuant to a specific prohibited transaction exemption issued by the Department of Labor under section 408(a) of ERISA;

(iii) The actual cost of services provided to the plan by an unrelated third party; or

(iv) Contributions where the contributions to a plan that receives special financial assistance required for each base unit are not reduced, except as otherwise permitted by paragraph (d) of this section.

(2) *Request for exception.* No earlier than 5 years after the end of the plan year in which the plan receives payment of special financial assistance under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraph (e) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed reallocation of contributions, the plan will avoid insolvency, that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law which goes into effect after March 11, 2021, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, that is allocable to the pension plan, and that the reallocation relating to any change in Federal law is for no more than 5 years. A continuation of the reallocation of contributions relating to any change in Federal law after the initial reallocation beyond 5 years must satisfy the requirement for a contribution decrease under paragraph (d) of this section. A subsequent change in Federal law causing a significant increase in health benefit costs is a separate event for purposes of applying this exception, except that a plan may reallocate contributions under this exception from the conditions under paragraph (e) of this section for no more than 10 years cumulatively for all reallocation requests during the SFA coverage period. A request for PBGC approval of a proposed reallocation of contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (e)(2)(ii) of this section.

(v) A copy of the proposed reallocation of contributions amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (e)(2), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed reallocation of contributions on the plan's existing contributions, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed reallocation of contributions, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed reallocation of contributions. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed reallocation of contributions.

(xi) The statement in paragraph (e)(2)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years

beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.,* active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) A demonstration that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, going to the pension plan, and that the reallocation is for no more than 5 years for a reallocation request relating to any single change in Federal law and no more than 10 years cumulatively for all reallocation requests during the plan's SFA coverage period.

(xiv) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(f) *Transfer or merger.* During the SFA coverage period, a plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval. Notwithstanding anything to the contrary in 29 CFR part 4231, the plans involved in the transaction must request approval from PBGC.

(1) *In general.* PBGC will approve a proposed transfer of assets or liabilities (including a spinoff) or merger if PBGC determines that the transaction complies with section 4231(a)–(d) of ERISA and that the transaction, or the larger transaction of which the transfer or merger is a part, does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction.

(2) *Request for approval.* A request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger must be submitted by the plan sponsor or its duly authorized representative and must contain the information that must be submitted with a notice of merger or transfer and a request for a compliance determination under subpart A of part 4231 of this chapter and all of the following information for each of the plans involved in the transaction:

(i) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(ii) A copy of the actuarial valuation performed for each of the 2 plan years before the most recent actuarial valuation filed in accordance with § 4231.9(f) of this chapter.

(iii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(iv) A detailed narrative description demonstrating that the transaction does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction. The narrative must be supported by a detailed determination certified by the enrolled actuary of the present value of financial assistance under section 4261 of ERISA which is calculated using the guaranteed benefits and administrative expenses presented in the cash flow projections under paragraph (f)(2)(v) of this section, discounted using interest rates published under section 4044 of ERISA. The certification must include supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the projected date of insolvency.

(v) The statement in paragraph (f)(2)(iv) of this section must include an exhibit showing the annual cash flow projections for each plan before and after the transaction, through the year that each plan pays its last dollar of benefit (but not to exceed 100 years). The cash flow projection should use an open group valuation until the plan reaches insolvency. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.,* active, retiree, terminated vested) for the projection period.

(D) Guaranteed benefits payable post insolvency by participant type (*e.g.,* active, retiree, terminated vested).

(E) Administrative expenses for the projection period.

(F) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(G) Fair market value of assets as of the end of the year.

(vi) If the plan requests that PBGC approve that a waiver of the conditions in paragraph (b)(1) of this section (retrospective benefits), paragraph (d) of this section (contribution decreases), and the condition in paragraph (e) of this section relating to allocating contributions and other income applies to the merged plan, a demonstration that the requirements for a waiver in paragraph (f)(4) of this section are met.

(vii) A detailed narrative description with supporting documentation demonstrating that the transaction is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction. The narrative description and supporting documentation must consider the projected month and year of plan insolvency for each of the plans before and after the transaction.

(viii) Any additional information PBGC determines it needs to review a request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger.

(3) *Application of conditions with respect to an approved transfer or merger.* If PBGC approves a transfer of assets and liabilities (that is not a merger) from a plan that receives special financial assistance to another plan (the transferee plan) under this paragraph (f), the restrictions and conditions that apply to the plan that receives special

financial assistance will also apply to the transferee plan as determined by PBGC as a condition of the approval. If PBGC approves a merger under this paragraph (f), the restrictions and conditions that apply to a plan that receives special financial assistance will apply after the merger as follows:

(i) The restrictions in §§ 4262.13(b) and 4262.14 and the conditions in this paragraph (f) (transfer or merger), paragraph (h) of this section (withdrawal liability settlement), paragraph (i) of this section (annual compliance statement), and paragraph (j) of this section (audit) apply to the merged plan.

(ii) The conditions in paragraph (b)(2) of this section (prospective benefit increase), paragraph (c) of this section (allocation of plan assets), and paragraph (e) of this section relating to allocating expenses do not apply to the merged plan.

(iii) In the absence of a waiver described in paragraph (f)(4) of this section, the condition in paragraph (b)(1) of this section (retrospective benefit increase) continues to apply to participants in the plan that received special financial assistance before the merger, the condition in paragraph (d) of this section (contribution decreases) continues to apply to employers who had an obligation to contribute to the plan that received special financial assistance before the merger, and the condition in paragraph (e) of this section relating to allocating contributions and other income continues to apply to contributions or income relative to the plan that received special financial assistance before the date of the merger.

(iv) For the condition described in paragraph (g)(1) of this section (withdrawal liability interest assumption), the merged plan must use the interest assumptions in appendix B to part 4044 of this chapter to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal liability for employers that participated in that plan.

(v) For the condition described in paragraph (g)(2) of this section (withdrawal liability amount of special financial assistance required to be phased in), the merged plan must apply the special financial assistance phase-in condition to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal liability for employers that participated in that plan.

(4) *Waiver of conditions with respect to an approved merger.* A plan may request a waiver of the condition in paragraph (b)(1) of this section (retrospective benefit increase), paragraph (d) of this section (contribution decreases), and the condition in paragraph (e) of this section relating to allocating contributions and other income for the merged plan in the plan's request for PBGC's approval of a merger pursuant to paragraph (f)(1) of this section. If any of the plans involved in the merger engage in multiple transactions in any 1-year period, the transactions will be considered in the aggregate. The plan's application must demonstrate the following requirements for a waiver—

(i) The total current value of assets of the plans that received special financial assistance before the merger must be 25 percent or less of the total current value of assets of the merged plan, calculated using the current value of assets most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(ii) The total current liability of the plans that received special financial assistance before the merger must be 25 percent or less of the total current liability of the merged plan, calculated using the current liability most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(iii) In the most recent certification of plan status for any plan that did not receive special financial assistance before the merger, the plan actuary must have certified that the plan is not in endangered or critical status (including critical and declining status) and is not projected to be in critical status within 5 years from the date of the plan's request for approval, and the plan must not be described in section 432(b)(5) of the Code.

(g) *Withdrawal liability determination*—(1) *Interest assumptions.* A plan must use the interest assumptions in appendix B to part 4044 of this chapter in determining the unfunded vested benefits of the plan under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), and in determining the amortization schedule under section 4219(c)(1)(A) of ERISA, beginning with the first plan year in which the plan receives payment of special financial assistance under § 4262.12 and until the later of—

(i) The end of the tenth plan year after the first plan year in which the plan receives payment of special financial assistance under § 4262.12; or

(ii) The end of the plan year described in paragraph (g)(1)(iii) of this section (if the special financial assistance most recently paid to the plan as of the end of that plan year is calculated under this part as in effect before August 8, 2022); otherwise the end of the plan year described in paragraph (g)(1)(iv) of this section.

(iii) The plan year described in this paragraph (g)(1)(iii) is the plan year by which the plan is projected to exhaust any SFA assets as determined under the methodology of § 4262.4(b), applying the interest rate under § 4262.4(e)(2) to the special financial assistance as determined as of the SFA measurement date as determined under this part as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment is after the plan year that includes the plan's SFA measurement date.

(iv) The end of the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under § 4262.4(b). However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date.

(2) *Phase-in of SFA*—(i) *In general.* In determining unfunded vested benefits under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), the procedures in this paragraph (g)(2) must be followed.

(ii) *Phase-in period.* The procedures in this paragraph (g)(2) apply to the determination of unfunded vested benefits as of the end of any determination year that is not earlier than the payment year or later than the exhaustion year.

(iii) *Determination year.* For purposes of this paragraph (g)(2), the determination year is the plan year as of the end of which unfunded vested benefits are being valued.

(iv) *Payment year.* For purposes of this paragraph (g)(2), the payment year is the first plan year in which the plan receives special financial assistance.

(v) *Determination of exhaustion year.* For purposes of this paragraph (g)(2), if the special financial assistance most recently paid to the plan as of the last day of the determination year is calculated under this part as amended effective August 8, 2022, then the exhaustion year is the plan year described in paragraph (g)(2)(vi) of this section; otherwise, the exhaustion year is the plan year described in paragraph (g)(2)(vii) of this section.

(vi) *Exhaustion year.* The plan year described in this paragraph (g)(2)(vi) is the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under § 4262.4(b). However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(vii) *Exhaustion year before any SFA paid under this part.* The plan year described in this paragraph (g)(2)(vii) is the plan year by which the plan is projected to exhaust any SFA assets, determined under the methodology of § 4262.4(b), applying the interest rate under § 4262.4(e)(2) to the special financial assistance as determined as of the SFA measurement date as determined under this part as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(viii) *SFA assets excluded.* The value of the plan assets taken into account as of the end of each determination year is the value of the assets that would otherwise be taken into account in the absence of this provision reduced by the amount described in paragraph (g)(2)(ix) of this section.

(ix) *Calculation of SFA assets excluded.* The amount described in this paragraph (g)(2)(ix) is the total amount of special financial assistance paid to the plan under § 4262.12 (as determined under § 4262.12(a) or (b), or under § 4262.12(b) and (c) for plans paid under a supplemented application, as applicable) as of the end of the determination year multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2)(x) of this section as of the end of the determination year and the denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

(x) *Numerator.* The number of years determined under this paragraph (g)(2)(x) is the number of plan years in the period beginning with the determination year and ending with the exhaustion year.

(xi) *Denominator.* The number of years determined under this paragraph (g)(2)(xi) is the number of plan years in the period beginning with the payment year and ending with the exhaustion year.

(xii) *Plan year.* For purposes of this paragraph (g)(2), any reference to a plan year means a complete plan year.

(xiii) *No receivable.* Special financial assistance assets must be excluded from the determination of unfunded vested benefits until the date that special financial assistance is paid to the plan under § 4262.12, and no receivable shall be set up as of any earlier date in anticipation of the plan receiving such payment.

(xiv) *Reporting.* For any withdrawal liability assessed during the phase-in period, the amount described under paragraph (g)(2)(ix) of this section must be reported in the plan's annual statement of compliance (as required under paragraph (i) of this section) for the plan year in which the liability is assessed.

(xv) *Applicability.* This paragraph (g)(2) applies to a plan in determining withdrawal liability for withdrawals occurring after the plan year in which the plan receives payment of special financial assistance under this part. Notwithstanding the preceding sentence, for a plan that received special financial assistance under this part in effect before August 8, 2022, this paragraph (g)(2) will not apply unless the plan files a supplemented application under this part. If the plan files a supplemented application, this paragraph (g)(2) applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application.

(xvi) *Examples.* The following examples illustrate the provisions of paragraph (g)(2) of this section.

(A) *Example 1.* Plan A, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2023 and received a special financial assistance payment of $1,000,000 in 2024. In the plan's application, Plan A is projected to exhaust its special financial assistance assets during plan year 2028. Accordingly, the payment year is 2024 and the exhaustion year is 2029 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer P withdraws from Plan A in 2028. For Employer P: {1} the determination year is 2027; {2} the numerator of the phase-in fraction is 3 (2027 to 2029); {3} the denominator of the phase-in fraction is 6 (2024 to 2029); and {4} the phased in amount is $500,000 ($1,000,000 × 3/6). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,500,000.

(B) *Example 2.* Plan B, a calendar-year plan, filed an application for special financial assistance under the terms of the interim provisions of this part with an SFA measurement date in plan year 2022 and received a special financial assistance payment of $1,000,000 in 2022. According to the methodology under paragraph (g)(2) of this section and the information submitted in the plan's application under the interim provisions of this part, Plan B is projected to exhaust its special financial assistance assets during plan year 2028. However, Plan B files a supplemented application under this part in 2023 and receives an additional special financial assistance payment of $100,000 in 2024. In Plan B's supplemented application, the plan is projected to exhaust its special financial assistance assets during plan year 2030. Employer R withdraws from Plan B in 2024, which is after Plan B filed a supplemented application. For Employer R: {1} the payment year is 2022; {2} the determination year is 2023; {3} the exhaustion year is 2028; {4} the numerator of the phase-in fraction is 6 (2023 to 2028); {5} the denominator of the phase-in fraction is 7 (2022 to 2028); and {6} the phased in amount is $857,143 ($1,000,000 × 6/7). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,142,857. Employer S withdraws from Plan B in 2028. For Employer S: {1} the payment year is 2022; {2} the determination year is 2027; {3} the exhaustion year is 2030; {4} the numerator of the phase-in fraction is 4 (2027 to 2030); {5} the denominator of the phase-in fraction is 9 (2022 to 2030); and {6} the phased in amount is $488,889 ($1,100,000 × 4/9). If total assets (assuming no phased recognition

of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,511,111. If, instead of withdrawing in 2024, Employer R withdrew from Plan B in 2023 before Plan B filed its supplemented application, the phase-in condition would not apply and unfunded vested benefits would be based on total assets of $100,000,000.

(C) *Example 3.* Plan C, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2024 and received a special financial assistance payment of $1,000,000 in 2025. According to the plan's application, Plan C is projected to exhaust its SFA assets during plan year 2024. Accordingly, the payment year is 2025 and the exhaustion year is 2025 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer T withdraws from Plan C in 2026. For Employer T: {1} the determination year is 2025; {2} the numerator of the phase-in fraction is 1 (2025 to 2025); {3} the denominator of the phase-in fraction is 1 (2025 to 2025); and {4} the phased in amount is $1,000,000 ($1,000,000 × 1/1). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,000,000.

(h) *Withdrawal liability settlement.* (1) During the SFA coverage period, a plan must obtain PBGC approval for a proposed settlement of withdrawal liability if the amount of the liability settled is greater than $50 million calculated as the lesser of—

(i) The allocation of unfunded vested benefits to the employer under section 4211 of ERISA; or

(ii) The present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions in appendix B to part 4044 of this chapter.

(2) PBGC will approve a proposed settlement of withdrawal liability if it determines—

(i) Implementation of the settlement is in the best interests of participants and beneficiaries; and

(ii) The settlement does not create an unreasonable risk of loss to PBGC.

(3) A request for approval of a proposed settlement of withdrawal liability must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A copy of the proposed settlement agreement.

(iv) A description of the facts leading up to the proposed settlement, including—

(A) The date the employer withdrew from the plan;

(B) The calculation of the withdrawal liability amount, including payment dates and amounts listed in the schedule for liability payments provided to the withdrawn employer in accordance with section 4291(b)(1)(A) of ERISA;

(C) The amount(s) and date(s) of withdrawal liability payments made; and

(D) How the proposed settlement amount was determined (discount rate used, financial condition of the employer, and other factors, as applicable).

(v) Most recent 3 years of audited financial statements and a 5-year cash flow projection for the employer with which the plan proposes to settle.

(vi) A copy of the most recent actuarial valuation report of the plan.

(vii) A statement certifying the trustees have determined that the proposed settlement is in the best interest of the plan and the plan's participants and beneficiaries.

(viii) Any additional information PBGC determines it needs to review a request for approval of a proposed withdrawal liability settlement.

(i) *Reporting.* In accordance with the statement of compliance instructions on PBGC's website at *www.pbgc.gov,* a plan sponsor must file with PBGC for each plan year, beginning with the plan year in which the plan received payment of special financial assistance and through the last plan year ending in 2051, a statement of compliance with the terms and conditions of the special financial assistance under this part and section 4262 of ERISA as follows—

(1) Except as provided in paragraph (i)(2) of this section, a plan's statement of compliance for each plan year must be filed no later than 90 days after the end of the plan year.

(2) If six months or fewer remain in the plan year after the month that includes the date the plan first received payment of special financial assistance, the first statement of compliance must cover the period from the date the plan received payment of special financial assistance through the last day of the plan year following the plan year in which the plan received payment of special financial assistance, and must be filed no later than 90 days after the end of such plan year.

(3) Each statement of compliance must be signed and dated by a trustee who is a current member of the board of trustees and authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor.

(j) *Audit.* As authorized under section 4003 of ERISA, PBGC may conduct periodic audits of a plan that receives special financial assistance to review compliance with the terms and conditions of the special financial assistance under this part and section 4262 of ERISA.

(k) *Filing rules.* The filing rules in this paragraph (k) apply to a request for PBGC approval under paragraph (b), (d), (f), or (h) of this section and a statement of compliance under paragraph (i) of this section.

(1) *Method of filing.* A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be made electronically in accordance with the rules in part 4000 of this chapter. The time period for filing a request or statement of compliance must be computed under the rules in subpart D of part 4000 of this chapter.

(2) *Where to file.* A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be submitted as described in § 4000.4 of this chapter.

§ 4262.17 Other provisions.

(a) Special financial assistance is not capped by the guarantee under section 4022A of ERISA.

(b) A plan that receives special financial assistance must continue to pay premiums due under section 4007 of ERISA for participants and beneficiaries in the plan.

(c) A plan that receives special financial assistance is deemed to be in critical status within the meaning of section 305(b)(2) of ERISA until the last day of the last plan year ending in 2051.

(d) A plan that receives special financial assistance and subsequently becomes insolvent under section 4245 of ERISA will be subject to the rules and guarantee for insolvent plans in effect when the plan becomes insolvent.

(e) A plan that receives special financial assistance is not eligible to apply for a suspension of benefits under section 305(e)(9) of ERISA.

(f) A plan that receives special financial assistance and meets the eligibility requirements for partition of

the plan under section 4233(b) of ERISA may apply for partition.

(g) If any provision in this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding will be one of utter invalidity or unenforceability, in which event the provision will be severable from this part.

Issued in Washington, DC, by:

Gordon Hartogensis,

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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