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The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1904]

RIN 7100–AH34

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2027. The annual indexation of these amounts is required notwithstanding the Board's action in March 2020 of setting all reserve requirement ratios to zero. The reserve requirement exemption amount for 2027 will remain $39.2 million, unchanged from 2026, consistent with the Federal Reserve Act (the ''Act''). The Board is amending Regulation D to set the amount of the low reserve tranche at $688.5 million (increased from $674.1 million in 2026). The adjustment to the low reserve tranche is derived using a statutory formula specified in the Act. The annual indexation of the reserve requirement exemption amount and low reserve tranche is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

DATES:

Effective date: December 18, 2026.

Compliance dates: The new low reserve tranche will apply beginning January 1, 2027.

FOR FURTHER INFORMATION CONTACT: Benjamin Snodgrass, Special Counsel (202/263–4877), Legal Division; Kristen Payne, Lead Financial Institution and Policy Analyst (202/306–9573), Division of Monetary Affairs; for users of TTY/TRS, please call 711 from any telephone, anywhere in the United States, or (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy. The Board's actions with respect to this provision are discussed below.

I. Reserve Requirements

Section 19(b) of the Act authorizes different ranges of reserve requirement ratios depending on the amount of transaction account balances at a depository institution. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve requirement ratio shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the percentage increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period.

Total reservable liabilities of all depository institutions decreased by 2.4 percent, from $21,103 billion to $20,588 billion, between June 30, 2025, and June 30, 2026.[1] Accordingly, the reserve requirement exemption amount for 2027 will remain at $39.2 million, unchanged from its level in 2026.[2]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, may be subject to a reserve requirement ratio of not more than 3 percent (and which may be zero). Transaction account balances over the low reserve tranche may be subject to a reserve requirement ratio of not more than 14 percent (and which may be zero). Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 2.7 percent, from $17,012 billion to $17,465 billion, between June 30, 2025, and June 30, 2026.[3] Accordingly, the Board is amending Regulation D to set the low reserve tranche for net transaction accounts for 2027 at $688.5 million, an increase of $14.4 million from 2026.

The new low reserve tranche will be effective for all depository institutions beginning January 1, 2027.

Effective March 26, 2020, the Board reduced reserve requirement ratios on all net transaction accounts to zero percent, eliminating reserve requirements for all depository institutions. The annual indexation of the reserve requirement exemption amount and the low reserve tranche for 2027 is required by statute but will not affect depository institutions' reserve requirements, which will remain zero.

II. Regulatory Analysis

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments

[1] The June 30th value for 2025 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

[2] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

[3] The June 30th value for 2025 may differ from the value used in the previous year's calculation because depository institutions may revise their deposit data to correct for inaccuracies.

prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount and the low reserve tranche serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[4] As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[5] the Board reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.4 is amended by revising paragraph (f) to read as follows:

§ 204.4 Computation of required reserves.

* * * * *

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios in table 1 to this paragraph (f) to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

TABLE 1 TO PARAGRAPH (F)

Reservable liability	Reserve requirement
Net Transaction Accounts:	
$0 to reserve requirement exemption amount ($39.2 million)	0 percent of amount.
Over reserve requirement exemption amount ($39.2 million) and up to low reserve tranche ($688.5 million)	0 percent of amount.
Over low reserve tranche ($688.5 million)	$0 plus 0 percent of amount over $688.5 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority.

Benjamin W. McDonough,

Secretary of the Board.

[FR Doc. 2026–23453 Filed 11–17–26; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. FAA–2026–6604]

Accepted Means of Compliance; Airworthiness Standards: Normal Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability (NOA).

SUMMARY: This document announces the availability of ASTM International (ASTM) consensus standards for use as an FAA-accepted means of compliance (MOC) to the applicable airworthiness standards for normal category airplanes. The FAA accepts ASTM F3264–25, ''Standard Specification for Normal Category Aeroplanes Certification,'' with changes identified in this document.

DATES: Acceptance of the means of compliance is effective on November 18, 2026.

FOR FURTHER INFORMATION CONTACT: Hieu Nguyen, AIR–690, General Aviation, VTOL & Engine Standards Branch, Certification Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1100 Main Street, Suite 800, Kansas City, MO 64105; telephone: (316) 946–4123; email: *hieu.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' effective January 27, 2016, the FAA participates in the development of consensus standards for use as a means of carrying out its policy objectives where appropriate.

Consistent with the Small Airplane Revitalization Act of 2013, the FAA has been working with industry and other stakeholders through the ASTM F44 Committee on General Aviation Aircraft to develop consensus standards as a MOC in certificating small airplanes under part 23.

In part 23, amendment 23–64 (81 FR 96572), published on December 30, 2016, the final rule stated the FAA would publish an NOA of those consensus standards in the **Federal Register** when the Administrator accepts the consensus standards as an acceptable MOC. The FAA reviewed the published ASTM consensus standards developed by the ASTM F44 Committee on General Aviation Aircraft as the basis for a MOC to 65 sections of part 23, amendments 23–64 and 23–65. In some cases, the Administrator found sections of ASTM F3264–25, without changes, are accepted as a MOC for the airworthiness requirements of part 23, amendments 23–64 and 23–65. In other cases, the MOC, while based on ASTM consensus standards, includes additional FAA provisions necessary to

[4] 5 U.S.C. 603 and 604.

[5] 44 U.S.C. 3506; 5 CFR 1320.

comply with the airworthiness requirements of part 23, amendments 23–64 and 23–65.

Part 23, amendment 23–64, established airworthiness requirements based on the safety requirements outlined in amendment 23–63, except in areas that address loss of control and icing, where the FAA increased the safety level. Depending on the details of a design, the applicant may require use of a different MOC beyond those accepted by this NOA. For example, novel airplane designs, such as unmanned airplanes, or other special class aircraft, such as powered-lift, are beyond the scope of this NOA, and applicants may need to propose an alternative MOC applicable to their designs accepted under § 23.2010.

Means of Compliance Accepted

The FAA accepts only the revisions of the standards referenced in ASTM F3264–25, ''Standard Specification for Normal Category Aeroplanes Certification,'' as a MOC for part 23, amendments 23–64 and 23–65, with the changes identified in Table 1. For ease of use, Table 2 was added to provide a side-by-side view, linking the applicable part 23 regulation to the ASTM F3264–25 section.

Guidance

This is a guidance document. Its content is not legally binding in its own right and will not be relied upon by the Department as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with the guidance document is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations.

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
F2490–20	Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis.	Replace ''should'' with ''must'' throughout document for regulatory compliance. Replace F2490–20 paragraph 2.1 with: ''2.1 FAA Aeronautics and Space Airworthiness Standards: 2. 14 CFR 23.2510 'Equipment, systems and installations'. 14 CFR 23.2525 'System power generation, storage, and distribution'. 14 CFR 23.2540 'Flight in icing conditions'. 14 CFR Appendix A of part 23 'Instructions for Continued Airworthiness'. 14 CFR 91 'General Operating and Flight Rules'. 14 CFR 135.163 'Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons on Board Such Aircraft—Equipment Requirements: Aircraft Carrying Passengers under IFR '', Replace in section 6.4.1.3 the statement ''Assume ''night'' conditions as the worst-case scenario'' with ''Assume the worst-case scenario is based on the criticality of the system safety assessment''. Add Lithium-Ion battery data to Figure 1.	
F3061/F3061M–25	Standard Specification for Systems and Equipment in Small Aircraft.	The tables defining applicability of requirements in sections 4.1.6, 4.2.3.3, 4.2.6, 4.2.8, 4.2.8.1, 4.2.8.2, 4.3.1, 4.3.2.1, 4.3.2.2, 4.4, 10.1, 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.4.2, 10.4.3, 10.4.4, 10.7.1, 10.7.2, 10.7.3, 10.7.4, 10.7.5, 10.7.6, 10.7.7, 0.7.7.1, 10.8, 13.1.1, 13.1.2, 17.1.1, 17.1.2, 17.1.3, 17.2.1, 17.2.2, 17.2.3, 17.3.1.1, 17.3.1.2, 17.3.1.3, 17.3.1.4, and 18.4 are not accepted. Applicability will be determined by the Policy and Standards DivisionReplace 17.3.1.1 with: (a) Each electrical or electronic system that performs a function, the failure of which would prevent the continued safe flight and landing of the airplane, must be designed and installed such that—(1) The function at the airplane level is not adversely affected during and after the time the airplane is exposed to lightning; and. (2) The system recovers normal operation of that function in a timely manner after the airplane is exposed to lightning unless the system's recovery conflicts with other operational or functional requirements of the system. Replace 17.3.1.2 with: (b) Each electrical and electronic system that performs a function, the failure of which would significantly reduce the capability of the airplane or the ability of the flight crew to respond to an adverse operating condition, must be designed and installed such that the system recovers normal operation of that function in a timely manner after the airplane is exposed to lightning Remove 17.3.1.3, 17.3.1.4, and 18.4.	The tables defining applicability found in F3061/F3061M–25 sections 4.1.6, 4.2.3.3, 4.2.6, 4.2.8, 4.2.8.1, 4.2.8.2, 4.3.1, 4.3.2.1, 4.3.2.2, 4.4, 10.1, 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.4.2, 10.4.3, 10.4.4, 10.7.1, 10.7.2, 10.7.3, 10.7.4, 10.7.5, 10.7.6, 10.7.7, 10.7.7.1, 10.8, 13.1.1, 13.1.2, 17.1.1, 17.1.2, 17.1.3, 17.2.1, 17.2.2, 17.2.3, 17.3.1.1, 17.3.1.2, 17.3.1.3, 17.3.1.4, and 18.4 are not accepted. Applicability will be determined by the Policy and Standards Division. Aircraft certification levels are as defined in 14 CFR 23.2005. F3061/F3061M–25 does not contain means for showing compliance to § 23.2310, *Buoyancy for seaplanes and amphibians.* If applying for certification of a seaplane or amphibian, applicants may use the provisions of §§ 23.751, 23.755, and 23.757 at amendment 23–63 as a means of complying with § 23.2310 or may obtain FAA acceptance of a different MOC in accordance with § 23.2010. For normal category airplanes with electric propulsion, the Policy and Standards Division will determine airworthiness criteria and acceptable compliance approaches.
F3062/F3062M–25	Standard Specification for Aircraft Powerplant Installation.	None.	

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
F3063/F3063M–24	Standard Specification for Aircraft Fuel and Energy Storage and Delivery.	None.	
F3064/F3064M–24	Standard Specification for Aircraft Powerplant Control, Operation, and Indication.	None.	
F3065/F3065M–21a	Standard Specification for Aircraft Propeller System Installation.	None.	
F3066/F3066M–25	Standard Specification for Aircraft Powerplant Installation Hazard Mitigation.	None.	
F3082/F3082M–23a	Standard Specification for Weights and Centers of Gravity of Aircraft.	None.	
F3083/F3083M–25	Standard Specification for Emergency Conditions, Occupant Safety and Accommodations.	Replace 4.1.6 with: Powerplant and ESS mounts and supporting structures must withstand 18.0 g forward for powerplants and ESS installed behind and above the seating compartment.	
F3093/F3093M–24e1	Standard Specification for Aeroelasticity Requirements.	None.	
F3114–21	Standard Specification for Structures.	None.	
F3115/F3115M–23e1	Standard Specification for Structural Durability for Small Aeroplanes.	Replace 4.4.3.3 with: The residual strength evaluation must show that the remaining structure is able to withstand the residual strength loads in 4.5 with the extent of detectable damage consistent with the results of the damage tolerance evaluations. The residual strength demonstrated for inspectable damage shall be sufficiently above limit loads in 4.5 and should consider variables such as the severity of damage, inspection interval, and inspection method. This level of residual strength demonstrated should also account for material variability, damage, growth rate, and environmental effects. Guidance for no growth, slow growth, or arrested growth can be found in documents X2.3 and X2.4. Replace 4.4.1.1 with: For all airplanes the methods described in 4.4.3 are applicable. Delete 4.4.1.2. Revised paragraphs as follows: 4.4.1.2 For aeroplanes evaluated to the damage tolerance criteria of 4.4.3 if it is shown that the damage tolerance is impractical for a particular structure, the structure may be evaluated in accordance with the methods described in 4.4.2.	If the applicant proposes to use F3115/F3115M–20 sections 4.3 or 6.3.2, the Policy and Standards Division will be involved as the standard is applied during projects to review the approach to determining similarity (F3115/F3115M–20 section 4.3) and criteria defining obvious damage (F3115/F3115M–20 section 6.3.2). If the applicant proposes to use F3115/F3115M–23e1 sections 4.1.3 or 4.3.3.2, the Policy and Standards Division will be involved as the standard is applied during projects to review the approach to determining similarity (F3115/F3115M–23e1 section 4.1.3) and criteria defining obvious damage (F3115/F3115M–23e1 section 4.3.3.2). Note: Composite structure needs to be damage tolerant. If impractical, safe life methods may be used. Means of compliance must reflect this. F3115–20. Replace section 7.1 with: 4.4.1.3 For all aeroplane levels, the effects of material variability and environmental conditions on the strength and durability properties of the material must be considered 4.4.1.4 For all aeroplane levels, the evaluation in either 4.4.2 or 4.4.3 must show that catastrophic failure due to fatigue, environmental effects, manufacturing defects, or accidental damage will be avoided throughout the operational life of the aircraft 7.1 Composite components must be evaluated as follows: 7.1.1 For all aeroplanes, the methods described in 7.3 are applicable. 7.1.2 For aeroplanes evaluated to the damage tolerance criteria of 7.3: if it is shown that damage tolerance is impractical for a particular structure, the structure may be evaluated in accordance with the methods described in 7.2. 7.1.3 For all aeroplane levels, the effects of material variability and environmental conditions on the strength and durability properties of the materials must be considered. 7.1.4 For all aeroplane levels, the evaluations in either 7.2 or 7.3 must show that catastrophic failure due to fatigue, environmental effects, manufacturing defects, or accidental damage will be avoided throughout the operational life of the aircraft.

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
F3116/F3116M–24	Standard Specification for Design Loads and Conditions.	Replace 4.1.4 with: Appendix X1 through Appendix X4 provides, within the limitations specified within the appendix, a simplified MOC with several of the requirements set forth in sections 4.2 to 4.26 and 7.1 to 7.9 that can be applied as one (but not the only) means to comply. If the simplified methods in Appendix X1 through X3 are used, they must be used together in their entirety. Replace X1.1.1 with: The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to Level 1 and Level 2 low speed airplanes. Replace X2.1.1 with: The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to Level 1 and Level 2 low speed airplanes. Replace X3.1.1 with: The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to Level 1 and Level 2 low speed airplanes. Replace X4.1.1 with: The methods provided in this appendix provide one possible means (but not the only possible means) of compliance and can only be applied to Level 1 low speed airplanes.	
F3117/F3117M–25a	Standard Specification for Crew Interface in Aircraft.	None.	
F3120/F3120M–24	Standard Specification for Ice Protection for General Aviation.	None.	
F3173/F3173M–24	Standard Specification for Aircraft Handling Characteristics.	None.	
F3174/F3174M–21	Standard Specification for Establishing Operating Limitations and Information for Aeroplanes.	None.	
F3179/F3179M–24a	Standard Specification for Performance of Aircraft.	None.	
F3180/F3180M–25	Standard Specification for Low-Speed Flight Characteristics of Aircraft.	Replace 4.2 with: 4.2 Single-engine aeroplanes that are not certified for aerobatics shall demonstrate Enhanced Single Engine Low-Speed Characteristics (Section 6). Replace 5.1(6)(b) with: (b) For turbine engine powered airplanes: no less than the maximum engine thrust that is continuously available. Replace 5.1(6)(c) with: (c) In all cases, to avoid extreme pitch attitudes, if the power/thrust requirements in (a) and (b), above, for a given configuration results in nose-high attitudes exceeding 30° pitch attitude prior to the stall, the thrust/power setting may be limited to one that results in not more than 30° pitch attitude but maintains greater than 25° pitch attitude until stall during a wings-level stall technique for a given configuration. That established ''Power/Thrust On'' setting shall then be used for wings-level, turning flight, and accelerated turning stalls flown under the same configuration, weight, altitude and temperature. Replace 5.2.4 with: 5.2.4 During the entry into and the recovery from stalls performed below 7620 m [25 000 ft], it shall be possible to prevent more than 20° of roll or heading change by the normal use of controls. Replace 5.3.2(3) with: (3) For both turning flight, and accelerated turning, stalls, exceeding a bank angle of 60° in the original direction of the turn or exceeding 0° (wings-level) in the opposite direction. Remove 5.3.2(4). 6.2 The FAA does not universally accept the *Departure Aversion Standard for Light Aircraft* contained in F3180/F3180M–25.	The FAA is committed to lowering the loss of control accident rate and is effecting this by ensuring that accepted standards are tailored to address the low altitude loss of control scenario that accounts for the majority of part 23 loss of control accidents. Applicants may propose elements of the *Departure Aversion for Light Aircraft* standard contained in F3180/F3180M–25, or other means, for development of their project means of compliance to 14 CFR 23.2150 in accordance with 14 CFR 23.2010. 5.3.2(3) If, in the judgement of the test pilot, the aeroplane exhibits adequate roll control to prevent large excursions past wings-level the stall characteristics may be deemed acceptable. 6.2.3 The FAA considers that the Spin Resistance MOC previously accepted does not need to be dependent on a points system and need not require additional Safety Enhancing Features nor Enhanced Stall Warning to demonstrate compliance to 14 CFR 23.2150 6.2.6.3 Descent arrest systems are not considered as a showing of compliance to 14 CFR 23.2150.

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
		Replace 6.2.3 with: 6.2.3 *Spin Resistance*—Aeroplanes may demonstrate that the aeroplane does not have a tendency to inadvertently depart controlled flight by demonstrating the following maneuvers. In all cases, maneuvers can be discontinued, and a normal recovery initiated, after a downward pitching motion of the aeroplane commences due to the activation of a stall barrier device (for example, stick pusher activation). Remove 6.2.6.3 *Descent Arrest Systems*.	
F3227/F3227M–25	Standard Specification for Environmental Systems in Small Aircraft.	None.	
F3228–21(2025)	Standard Specification for Flight Data and Voice Recording in Small Aircraft.	Remove: Table 1	Aircraft Type Code compliance matrix table found in F3228–21(2025) is not accepted. Applicability will be determined by the Policy and Standards Division.
F3229/F3229M–23a	Standard Practice for Static Pressure System Tests in Small Aircraft.	Remove: Table 1	Aircraft Type Code compliance matrix table found in F3229/F3229M–23a is not accepted. Applicability will be determined by the Policy and Standards Division.
F3230–25	Standard Practice for Safety Assessments of Systems and Equipment in Small Aircraft.	None.	
F3231/F3231M–24	Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation.	Remove: Table 1 Remove section 4.1.1.3 and 4.1.1.4 Replace 4.2.13 with: ''Electrical equipment shall be designed and installed so that in the event of a fire in the engine compartment, during which the surface of the firewall adjacent to the fire is heated to 1095 °C [2000 °F] for 15 min or follow AC 20–135 in compliance to 23.2440(c), the equipment essential to continued safe operation and located behind the firewall will function satisfactorily and will not create an additional fire hazard. For Lithium-Ion batteries, utilize the following documentation: Non-Rechargeable Lithium Battery Means of Compliance—CPP–23.2525–1, Rechargeable Lithium Battery Means of Compliance—CPP–23.2525–2, Rechargeable Lithium Battery Method of Compliance—CPP–23.2525–3, Non-Rechargeable Lithium Battery Method of Compliance—CPP–23.2525–4''.	Aircraft Type Code compliance matrix table found in F3231/F3231M–24 is not accepted. Applicability will be determined by the Policy and Standards Division.
F3232/F3232M–25a	Standard Specification for Flight Controls in Small Aircraft.	None.	
F3233/F3233M–23b	Standard Specification for Flight and Navigation Instrumentation in Aircraft.	Remove: Table 1	Aircraft Type Code compliance matrix table found in F3233/F3233M–23b is not accepted. Applicability will be determined by the Policy and Standards Division.
F3234/F3234M–21(2025)	Standard Specification for Exterior Lighting in Small Aircraft.	Remove: Table 1	Aircraft Type Code compliance matrix table found in F3234/F3234M–21(2025) is not accepted. Applicability will be determined by the Policy and Standards Division.
F3235–22	Standard Specification for Aircraft Storage Batteries.	Replace section 2 with: ''2.1 Following is a list of external standards referenced throughout this specification; the earliest revision acceptable for use is indicated. In all cases, later document revisions are acceptable if shown to be equivalent to the listed revision, or if otherwise formally accepted by the governing civil aviation authority; earlier revisions are not acceptable. 2.2 ASTM Standards:2 F3060 Terminology for Aircraft F3061/F3061M Specification for Systems and Equipment in Aircraft. 2.3 EASA Standard:3 CS–23 Normal, Utility, Aerobatic and Commuter Aeroplanes 2.4 FAA Standard:4 14 CFR Part 23 Airworthiness Standards: Normal Category Airplanes. 2.5 RTCA Standard:5 RTCA/DO–311A Minimum Operational Performance Standards for Rechargeable Lithium Batteries and Battery Systems.	If applying for certification of an airplane with installed lithium batteries, applicants may use the guidance provided by RTCA/DO–311A or may obtain FAA acceptance of a different MOC in accordance with § 23.2010. Aircraft Type Code compliance matrix table found in F3235–22 is not accepted. Applicability will be determined by the Policy and Standards Division.

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
		2.6 RTCA DO–293A: Minimum Operational Performance Standards (MOPS) for Nickel-Cadmium, Nickel Metal-Hydride and Lead-Acid Batteries''. Replace section 4.1.2 with: ''4.1.2 Nickel cadmium battery installations capable of being used to start an engine or auxiliary power unit must meet the requirements of either 4.1.2.1, 4.1.2.2, or 4.1.2.3. Follow guidance in RTCA 293A.'' Remove: Section 4.2. Remove: Table 1. Remove A1.1, A1.2, and A1.3.	
F3236–21a	Standard Specification for High Intensity Radiated Field (HIRF) Protection in Small Aircraft.	Remove: Table 1	Aircraft Type Code compliance matrix table found in F3236–21a is not accepted. Applicability will be determined by the Policy and Standards Division. For normal category airplanes with electric propulsion, fly-by-wire flight controls, or highly integrated systems, coordinate with the Policy and Standards Division to determine acceptable compliance approaches.
F3239–22a	Standard Specification for Aircraft Electric Propulsion Systems.	The FAA does not universally accept F3239–22a	Applicants may propose F3239–22a for development of their MOC for electric propulsion systems on a project-by-project basis. Any MOC proposed must receive acceptance by the FAA in accordance with § 23.2010.
F3254–22	Standard Specification for Aircraft Interaction of Systems and Structures.	Figures 2, 3, and 4 Replace: ''Remote'' with: ''10^{-5}'' Replace: ''Extremely Improbable'' with: ''10^{-8}'' for Level 1, 2, and 3 airplanes and with ''10^{-9}'' for Level 4 airplanes.	Other proposed probabilities will be considered by the FAA on a case-by-case basis.
F3309/F3309M–24a	Standard Practice for Simplified Safety Assessment of Systems and Equipment in Small Aircraft.	None.	
F3316/F3316M–19	Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion.	FAA does not universally accept F3316/F3316M–19 Remove: Table 1	Applicants may propose F3316/F3316M–19 for development of their MOC for electrical systems installed on airplanes with electric or hybrid-electric propulsion systems on a project-by-project basis. Applicants may obtain FAA acceptance of a different MOC in accordance with § 23.2010. Aircraft Type Code compliance matrix table found in F3316/F3316M–19 is not accepted. Applicability will be determined by the Policy and Standards Division.
F3331–18(2023)	Standard Practice for Aircraft Water Loads.	None.	
F3367–23	Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.	Replace 5.1.1 with: Systems that are part of the Type Certificated Engine must be installed in accordance with the engine manufacturer's requirements. The minimum HIRF and lightning qualification in accordance with sections 8 and 9 of this ASTM practice should be met at the aircraft level, except for engine control systems in Level 1 and 2 airplanes, which should meet the following: HIRF: DO–160, section 20–R for both radiated and conducted susceptibility. Lightning: Utilize guidance in AC 33.28–3. For metallic fuselage DO–160G, section 22–A3J3L3 (shielded) and A3H3L3 (unshielded). For composite fuselage DO–160G, section 22–B3K3L3 (shielded) and B3H3L3 (unshielded). Use of lower HIRF and lightning induced voltage and current levels may be acceptable for electronic engine control systems if substantiated at the airplane level (by test in the proposed installation or similar) when exposed to external HIRF environment per AC 20–158 (latest revision) and lightning per AC 20–136 (latest revision), using shielding and grounding of the electronic engine control system and accessories in the given installation. Remove 8.2.2.2, 8.2.3.3, 9.2.5.2, and 9.2.7.2.	For normal category airplanes with electric propulsion, fly-by-wire flight controls, or highly integrated systems, coordinate with the Policy and Standards Division to determine acceptable compliance approaches.
F3380–19	Standard Practice for Structural Compliance of Very Light Aeroplanes.	None.	

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
F3396/F3396M–23a	Standard Practice for Aircraft Simplified Loads.	None.	
F3397/F3397M–21	Standard Practice for Aeroplane Turbine Fuel System Hot Weather Operations.	None.	
F3408/F3408M–21	Standard Specification for Aircraft Emergency Parachute Recovery Systems.	None.	
F3432–20a	Standard Practice for Powerplant Instruments.	None.	
F3454–25	Standard Practice for Alerting Methods in Aircraft.	None.	
F3491–25	Standard Practice for Enhanced Indication Methods in Aircraft.	None.	
F3498–21	Standard Practice for Developing Simplified Fatigue Load Spectra.	None.	
F3532–25	Standard Practice for Protection of Aircraft Systems from Intentional Unauthorized Electronic Interactions.	None.	
F3601–23	Standard Practice for Structural Finite Element Model Verification and Validation.	None.	
F3643–25	Standard Practice for Pilot Compartment View in Precipitation.	None.	
F3651/F3651M–23	Standard Practice for Determining Safe-Life, Inspection Threshold and Recurring Inspection Intervals.	None.	
F3653–24	Standard Specification for Installation of Rechargeable Lithium Batteries of Aircraft.	Replace ASTM F3653–24 section 4.1.2.1 with: ''F3653–24, sections 4.1.1 and 4.1.2 can be met by showing that the battery or battery system meets the requirements in RTCA/DO–311A, 2.2, Equipment Requirements—Standard Conditions using the test procedures in RTCA/DO–311A, 2.4, Equipment Test Procedures. The applicant or the foreign civil aviation authority (FCAA) is to provide the FAA with the video of the testing conducted for RTCA/DO–311A section 2.4.5.5; and ''. Replace section 4.1.3 with: ''Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the aircraft. To determine whether an aircraft venting system is appropriate, consider the results of RTCA/DO–311A, section 2.4.5.5, and whether some cells or all cells achieved thermal runaway.''. Replace section 4.1.3.3 with: ''F3653–24, section 4.1.3 can be met by Venting Category B per RTCA/DO–311A when not completely vented overboard if explosive or toxic emissions can be shown to not accumulate in hazardous quantities within the aircraft; or an acceptable method of compliance includes using the tests results required under F3653–24, sections 4.1.2.1, 4.1.2.2 and 4.1.2.2 (a) (including RTCA/DO–311A, section 2.4.5.5 test results) to demonstrate that all emitted gases are contained or vented completely overboard (*i.e.,* vented completely outside the aircraft) through designed vent ports. If the design has ports to vent gases overboard completely, show that there are means to protect ground personnel from exposure to these gases and to prevent re-ingestion, for example through engine in-take or air conditioning in-take. Reference FAA TSO–C179b, Class A vs. Class B, as one method of classifying the results of the thermal runaway testing; or''. Replace 4.1.3.4 with:	

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
		''F3653–24, section 4.1.3 can be met by Venting Category C per RTCA/DO–311A if explosive or toxic emissions can be shown to not accumulate in hazardous quantities within the aircraft. For Category C provide the volume of gas and the constituents of the gas per the reporting criteria of RTCA/DO-311A section 2.4.5.5 and section F3653–24, section 4.1.2.1''. Replace section 4.1.4.1 with: ''F3653–24, section 4.1.4 can be met (that is, demonstrates minimizing the probability of flammable fluid and vapor release, and thus the probability of ignition) by complying with F3653–24, section 4.1.3.1 or F3653–24, section 4.1.3.2; Defining the location of where flammable fluids or vapors might escape by leakage is required by (14 CFR 23.2325(g)) and; both battery electrolyte and any coolant fluid, if present, are considered fluid systems when evaluating 14 CFR 23.2325(g) and; performing a safety assessment to identify and evaluate associated hazards and their severity, as well as mitigation and minimization of all hazards resulting from a battery failure is required. Additional requirements may be needed depending upon the safety assessment of the installation location of the battery; or''. Delete in sections 4.1.5 and 4.1.5.2 ''major or more severe''. Replace section 4.1.5.3 with: ''F3653–24, section 4.1.5 can be met by Venting Category C per RTCA/DO–311A if emitted fluids and gases can be shown to not be corrosive in such a way as to cause any failure: To support F3653–24, section 4.1.5.2 or F3653–24, section 4.1.5.3, show that if fluid escapes the battery, it is not corrosive or it is managed in a way (for example, contained, isolated, drained, or vented, etc.) that protects the surrounding structure and adjacent systems, equipment, components, and electrical wiring. To support F3653–24, section 4.1.5.2 or F3653–24, section 4.1.5.3, test results of RTCA/DO–311A, 2.4.5.5 may be useful to show substantiation, if information regarding the corrosive nature of emissions is captured. Mitigation at the aircraft level may also be applied in addition to F3653–24, sections 4.1.5.1 through 4.1.5.3 to bring the design into compliance with F3653–24, section 4.1.5. Include results of test performed during ASTM F3653–24 sections 4.1.2.1, 4.1.2.2 and 4.1.2.2(a) for section 4.1.5 substantiation''. Replace 4.1.6.1 with: ''F3653–24, section 4.1.6 can be met by showing that the heat and any related effects from a worst-case thermal runaway event do not create a hazard to the structure or systems of the aircraft, or that the hazard can be mitigated at the aircraft level. (a) The maximum external temperature of the battery from a worst-case thermal runaway event can be obtained by conducting and complying with RTCA/DO-311A, 2.4.5.5. Inclusion of results for tests performed during ASTM F3653–24 sections 4.1.2.1, 4.1.2.2, and 4.1.2.2(a), meet RTCA/DO-311A as well as the inclusion of temperature of the gases and the enclosure is required''. Replace 4.1.7 with: ''Have a failure sensing and alerting system with adequate indication to the flight crew if its failure affects safe operation of the aircraft. Ensure adequate flight crew alerting because failure effects of a battery installation to airplane level functions could result in unsafe system operating conditions. Reference RTCA/DO–311A, section 2.1.4.2, Battery Warning Features that discuss warning circuits and signals''. Replace section 4.1.7.1 with:	

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
		''Have monitoring and an alert for the flight crew when the battery power falls below acceptable levels if its function is required for safe operation of the aircraft. Have a means for the flight crew and maintenance personnel to determine the power if the battery's function is required for safe operation of the aircraft. Use a safety assessment system to determine the alert level. Reference Practice F3230 and Specification F3061/F3061M for guidance on conducting the hazard assessment of the failure. If required by the hazard assessment, incorporate alerting in accordance with Specification F3117/F3117M, 11.2, or similar.'' Replace section 4.1.8 with: ''Have a means to disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure''. Replace section 4.1.8.1 with: ''F3653–24, section 4.1.8 can be met by demonstrating that the battery or battery system is capable of automatically disconnecting from the charging source in the event of an over-temperature condition, cell failure or battery failure, or''. Remove section 4.1.8.2. Replace section 5 with: ''F3653–24, section 5.1 When preparing Instructions for Continued Airworthiness, the following shall be addressed: F3653–24, section 5.1.1 Operational requirements shall be defined that address the necessary condition of the battery for continued use on the aircraft in accordance with the battery manufacturer's requirements and recommendations and airworthiness requirements. Maintenance requirements to replace each rechargeable lithium battery within an interval that will ensure there is sufficient charge to power equipment. F3653–24, section 5.1.2 Maintenance requirements, as applicable, to define the procedure and interval necessary to avoid damage to the battery and retain its operational capability during storage or extended non-use on the aircraft in accordance with the battery manufacturer's requirements and recommendations and aircraft maintenance manual. A requirement to only replace rechargeable lithium batteries with batteries from the same manufacturer with the same part number or to obtain a new FAA approval for installing a different battery. F3653–24, section 5.1.3 Precautions to prevent mishandling of replacement rechargeable lithium batteries prior to their installation which could result in short-circuit or other unintentional damage. Procedures are in place to ensure that each rechargeable lithium battery has not: —Experienced degraded charge retention ability or other damage during storage. —Been damaged from environmental or physical impacts such as mechanical shock, vibration, heat and possible abuses encountered during storage, transportation prior to their installation or maintenance activities on or around them. Precautions to prevent mishandling of replacement rechargeable lithium batteries prior to their installation which could result in short-circuit or other unintentional damage.'' Replace section 6.1 with:	

TABLE 1—PART 23 ACCEPTED MOC BASED ON ASTM CONSENSUS STANDARDS—Continued

ASTM No. as identified in F3264–25	ASTM document title	Changes required for FAA acceptance	Additional information
		"If the battery installation falls within a rotor burst zone, an analysis shall consider the impact of uncontained high-energy fragments (ref: AC 20–128A Design Considerations for Minimizing Hazards caused by Uncontained Turbine Engine and Auxiliary Power Unit Rotor) with respect to any potential additional hazard that may result. The FAA requires the utilization of results of tests performed for ASTM F3653–24 sections 4.1.2.1, 4.1.2.2 and 4.1.2.2(a). Installation in a Designated Fire Zone (DFZ), such as an engine compartment, should be avoided, but may be acceptable, if the battery location does not create an additional hazard. Alternatively, the battery is to be located outside of the rotor burst zone. The battery must contain and/or vent any thermal runaway, and prevent introduction of additional hazards, when exposed to a 2000 °F flame for 15 minutes. Test by exposing the battery installation design (including any vents) to a 2000 °F flame for 15 minutes per AC 20–135. Ensure no additional hazards are introduced. Some examples are: a) Directing and venting (if the design includes a vent) any potential flames or flammable material from the battery out of the fire zone. Any vent system included in the design must continue to function in the event of a thermal runaway of the battery, otherwise it must not create an additional hazard from its failure. b) Using fireproof materials in the construction of the battery installation design. c) Providing adequate shielding to protect the battery and vent, if any, from direct flames to ensure the battery remains below a temperature that could compromise the thermal runaway containment integrity when exposed to a powerplant fire condition". F3653–24, section 6.1.1 Rechargeable coin or button cells with less than 2 watt-hours of energy that meet UL 1642, UL 2054, or IEC 62133 are exempt from this requirement (RTCA/DO–311A section 1.4.1). This exemption does not apply to other battery configurations".	
F3720/F3720M–24	Standard Practice for General Guidance on Damage Tolerance Evaluation of Normal Category Aeroplane.	None.	
F3789–25	Standard Guide for Endurance Testing of Aeroplane Flight Control System Actuators and Other System Elements.	None.	

[4] The MOC are intended for traditional part 23 airplanes, not for novel designs. Novel designs require evaluation and possible modification of the MOC.
[5] Wherever "shall" is used within a standard, replace with "must."
[6] You may find additional information on the FAA Small Airplane Issues List (SAIL) here: *faa.gov/aircraft/air_cert/design_approvals/small_airplanes/small_airplanes_regs*.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
Subpart B—Flight		
§ 23.2100 Weight and center of gravity ..	5.1 Weight/Mass and Center of Gravity:	5.1.1 F3082/F3082M–23a Standard Specification for Weights and Centers of Gravity of Aircraft. 5.1.2 F3114–21 Standard Specification for Structures.
§ 23.2105 Performance data	5.2 Performance Data:	5.2.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2110 Stall speed	5.3 Stall Speed:	5.3.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2115 Takeoff performance	5.4 Takeoff Performance:	5.4.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2120 Climb requirements	5.5 Climb Requirements:	5.5.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2125 Climb information	5.6 Climb Information:	5.6.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2130 Landing	5.7 Landing:	5.7.1 F3179/F3179M–24a Standard Specification for Performance of Aircraft.
§ 23.2135 Controllability	5.8 Controllability:	5.8.1 F3173/F3173M–24 Standard Specification for Aircraft Handling Characteristics.
§ 23.2140 Trim	5.9 Trim:	5.9.1 F3173/F3173M–24 Standard Specification for Aircraft Handling Characteristics.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
§ 23.2145 Stability	5.10 Stability:	5.10.1 F3173/F3173M–24 Standard Specification for Aircraft Handling Characteristics.
§ 23.2150 Stall characteristics, stall warning, and spins.	5.11 Stall Characteristics, Stall Warning, and Spins:.	5.11.1 F3180/F3180M–25 Standard Specification for Low-Speed Flight Characteristics of Aircraft. 5.11.1.1 F3454–25 Standard Practice for Alerting Methods in Aircraft. 5.11.1.2 F3491–25 Standard Practice for Enhanced Indication Methods in Aircraft.
§ 23.2155 Ground and water handling characteristics.	5.12 Ground and Water Handling Characteristics:.	5.12.1 F3173/F3173M–24 Standard Specification for Aircraft Handling Characteristics.
§ 23.2160 Vibration, buffeting, and high-speed characteristics.	5.13 Vibration, Buffeting, and High-Speed Characteristics:.	5.13.1 F3173/F3173M–24 Standard Specification for Aircraft Handling Characteristics.
§ 23.2165 Performance and flight characteristics requirements for flight in icing conditions.	5.14 Performance and Flight Characteristics Requirements for Flight in Icing Conditions:.	5.14.1 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft.
Subpart C—Structures		
§ 23.2200 Structural design envelope	6.1 Structural Design Envelope:	6.1.1 F3116/F3116M–24 Standard Specification for Design Loads and Conditions. 6.1.1.1 F3396/F3396M–23a Standard Practice for Aircraft Simplified Loads.
§ 23.2205 Interaction of systems and structures.	6.2 Interaction of Systems and Structure:.	6.2.1 F3254–22 Standard Specification for Aircraft Interaction of Systems and Structures.
§ 23.2210 Structural design loads	6.3 Structural Design Loads:	6.3.1 F3116/F3116M–24 Standard Specification for Design Loads and Conditions. 6.3.1.1 F3396/F3396M–23a Standard Practice for Aircraft Simplified Loads. 6.3.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2215 Flight load conditions	6.4 Flight Load Conditions:	6.4.1 F3116/F3116M–24 Standard Specification for Design Loads and Conditions. 6.4.1.1 F3396/F3396M–23a Standard Practice for Aircraft Simplified Loads.
§ 23.2220 Ground and water load conditions.	6.5 Ground and Water Load Conditions:	6.5.1 F3116/F3116M–24 Standard Specification for Design Loads and Conditions. 6.5.1.1 F3331–18(2023) Standard Practice for Aircraft Water Loads.
§ 23.2225 Component loading conditions	6.6 Component Loading Conditions:	6.6.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.6.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 6.6.2 F3116/F3116M–24 Standard Specification for Design Loads and Conditions. 6.6.2.1 F3396/F3396M–23a Standard Practice for Aircraft Simplified Loads.
§ 23.2230 Limit and ultimate loads	6.7 Limit and Ultimate Loads:	6.7.1 F3114–21 Standard Specification for Structures. 6.7.1.1 F3601–23 Standard Practice for Structural Finite Element Model Verification and Validation. 6.7.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2235 Structural strength	6.8 Structural Strength:	6.8.1 F3114–21 Standard Specification for Structures. 6.8.1.1 F3601–23 Standard Practice for Structural Finite Element Model Verification and Validation. 6.8.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2240 Structural durability	6.9 Structural Durability:	6.9.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.9.2 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 6.9.3 F3115/F3115M–23e1 Standard Specification for Structural Durability for Small Aeroplanes. 6.9.3.1 F3380–19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.9.3.2 F3498–21 Standard Practice for Developing Simplified Fatigue Load Spectra. 6.9.3.3 F3651/F3651M–23 Standard Practice for Determining Safe-Life, Inspection Threshold and Recurring Inspection Intervals. 6.9.3.4 F3720/F3720M–24 Standard Practice for General Guidance on Damage Tolerance Evaluation of Normal Category Aeroplane. 6.9.4 F3116/F3116M–24 Standard Specification for Design Loads and Conditions.
§ 23.2245 Aeroelasticity	6.10 Aeroelasticity:	6.10.1 F3093/F3093M–24e1 Standard Specification for Aeroelasticity Requirement. 6.10.2 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft.
§ 23.2250 Design and construction principles.	6.11 Design and Construction Principles:.	6.11.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.11.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 6.11.2 F3114–21 Standard Specification for Structures. 6.11.2.1 F3380–19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.11.3 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
§ 23.2255 Protection of structure	6.12 Protection of Structure:	6.12.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.12.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 6.12.2 F3114–21 Standard Specification for Structures. 6.12.2.1 F3380–19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.12.3 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 6.12.4 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2260 Materials and processes	6.13 Materials and Processes:	6.13.1 F3114–21 Standard Specification for Structures. 6.13.1.1 F3380–19 Standard Practice for Structural Compliance of Very Light Aeroplanes. 6.13.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2265 Special factors of safety	6.14 Special Factors of Safety:	6.14.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.14.2 F3114–21 Standard Specification for Structures. 6.14.2.1 F3380–19 Standard Practice for Structural Compliance of Very Light Aeroplanes.
§ 23.2270 Emergency conditions	6.15 Emergency Conditions:	6.15.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 6.15.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 6.15.2 F3083/F3083M–25 Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 6.15.3 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
Subpart D—Design and Construction		
§ 23.2300 Flight control systems	7.1 Flight Control Systems:	7.1.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 7.1.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 7.1.2 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.1.3 F3117/F3117M–25a Standard Specification for Crew Interface.
§ 23.2305 Landing gear systems	7.2 Landing Gear Systems:	7.2.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft.
§ 23.2310 Buoyancy for seaplanes and amphibians.	7.3 Buoyancy for Seaplanes and Amphibians:.	7.3.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft.
§ 23.2315 Means of egress and emergency exits.	7.4 Means of Egress and Emergency Exits:.	7.4.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 7.4.2 F3083/F3083M–25 Standard Specification for Emergency Conditions, Occupant Safety and Accommodations.
§ 23.2320 Occupant physical environment.	7.5 Occupant Physical Environment:	7.5.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 7.5.1.1 F3227/F3227M–25 Standard Specification for Environmental Systems in Small Aircraft. 7.5.2 F3083/F3083M–25 Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 7.5.3 F3114–21 Standard Specification for Structures. 7.5.4 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft.
§ 23.2325 Fire protection	7.6 Fire Protection:	7.6.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 7.6.1.1 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 7.6.1.2 F3234/F3234M–21(2025) Standard Specification for Exterior Lighting in Small Aircraft. 7.6.1.3 F3316/F3316M–19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 7.6.2 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.6.3 F3083/F3083M–25 Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 7.6.4 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2330 Fire protection in designated fire zones and adjacent areas.	7.7 Fire Protection in Designated Fire Zones and Adjacent Areas:.	7.7.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 7.7.1.1 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 7.7.2 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 7.7.3 F3114–21 Standard Specification for Structures.
§ 23.2335 Lightning protection	7.8 Lightning Protection:	7.8.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
Subpart E—Powerplant		
§ 23.2400 Powerplant installation	8.1 Powerplant Installation:	8.1.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.1.2 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.1.3 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.1.3.1 F3432–20a Standard Practice for Powerplant Instruments. 8.1.4 F3065/F3065M–21a Standard Specification for Aircraft Propeller System Installation. 8.1.5 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.1.6 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2405 Automatic power or thrust control systems.	8.2 Power or Thrust Control Systems: ..	8.2.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.2.2 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.2.2.1 F3432–20a Standard Practice for Powerplant Instruments. 8.2.3 F3065/F3065M–21a Standard Specification for Aircraft Propeller System Installation. 8.2.4 F3117/F3117M–25a Standard Specification for Crew Interface.
§ 23.2410 Powerplant installation hazard assessment.	8.3 Powerplant Installation Hazard Assessment:.	8.3.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 8.3.2 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.3.3 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.3.4 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.3.4.1 F3432–20a Standard Practice for Powerplant Instruments. 8.3.5 F3065/F3065M–21a Standard Specification for Aircraft Propeller System Installation. 8.3.6 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.3.7 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 8.3.8 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2415 Powerplant ice protection	8.4 Powerplant Installation Ice Protection:.	8.4.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.4.2 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.4.3 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.4.4 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2420 Reversing systems	8.5 Reversing Systems:	8.5.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.5.2 F3065/F3065M–21a Standard Specification for Aircraft Propeller System Installation. 8.5.3 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2425 Powerplant operational characteristics.	8.6 Powerplant Operational Characteristics:.	8.6.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.6.2 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.6.2.1 F3432–20a Standard Practice for Powerplant Instruments. 8.6.3 F3065/F3065M–21a Standard Specification for Aircraft Propeller System Installation. 8.6.4 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.6.5 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 8.6.6 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2430 Fuel systems	8.7 Fuel and Energy Storage and Distribution Systems:.	8.7.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.7.2 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.7.2.1 F3397/F3397M–21 Standard Practice for Aeroplane Turbine Fuel System Hot Weather Operations. 8.7.3 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.7.3.1 F3432–20a Standard Practice for Powerplant Instruments. 8.7.4 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.7.5 F3114–21 Standard Specification for Structures. 8.7.6 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
§ 23.2435 Powerplant induction and exhaust systems.	8.8 Powerplant Induction, Exhaust, and Support Systems:.	8.8.1 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.8.2 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
§ 23.2440 Powerplant fire protection	8.9 Powerplant Installation Fire Protection:.	8.9.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 8.9.2 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 8.9.3 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 8.9.4 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 8.9.4.1 F3432–20a Standard Practice for Powerplant Instruments. 8.9.5 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 8.9.6 F3239–22a Standard Specification for Aircraft Electric Propulsion Systems.
Subpart F—Equipment		
§ 23.2500 Airplane level systems requirements.	9.1 Systems and Equipment Function—Requirements:.	9.1.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.1.1.1 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.1.1.1(a) F3235–22 Standard Specification for Aircraft Storage Batteries. 9.1.1.2 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 9.1.1.3 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.1.1.3(a) F3229/F3229M–23a Standard Practice for Static Pressure System Tests in Small Aircraft. 9.1.1.4 F3316/F3316M–19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 9.1.1.5 F3789–25 Standard Guide for Endurance Testing of Aeroplane Flight Control System Actuators and Other System Elements. 9.1.2 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 9.1.2.1 F3432–20a Standard Practice for Powerplant Instruments. 9.1.3 F3066/F3066M–25 Standard Specification for Aircraft Powerplant Installation Hazard Mitigation. 9.1.4 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 9.1.5 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft. 9.1.6 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2505 Function and installation	9.2 Equipment Function and Installation Requirements:.	9.2.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.2.1.1 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.2.1.1(a) F3235–22 Standard Specification for Aircraft Storage Batteries. 9.2.1.2 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 9.2.1.3 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.2.1.4 F3316/F3316M–19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 9.2.1.4(a) F3653–24 Standard Specification for Installation of Rechargeable Lithium Batteries on Aircraft. 9.2.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems. 9.2.3 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft.
§ 23.2510 Equipment, systems, and installations.	9.3 Equipment, Systems, and Installation:.	9.3.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.3.1.1 F3230–25 Standard Practice for Safety Assessments of Systems and Equipment in Small Aircraft. 9.3.1.2 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.3.1.3 F3227/F3227M–25 Standard Specification for Environmental Systems in Small Aircraft. 9.3.1.4 F3309/F3309M–24a Standard Practice for Simplified Safety Assessment of Systems and Equipment in Small Aircraft. 9.3.1.5 F3532–25 Standard Practice for Protection of Aircraft Systems from Intentional Unauthorized Electronic Interactions. 9.3.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2515 Electrical and electronic system lightning protection.	9.4 Electrical and Electronic System Lightning Protection:.	9.4.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.4.1.1 F3367–23 Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
§ 23.2520 High-intensity Radiated Fields (HIRF) protection.	9.5 High Intensity Radiated Fields (HIRF) Protection:.	9.5.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.5.1.1 F3236–21a Standard Specification for High Intensity Radiated Field (HIRF) Protection in Small Aircraft. 9.5.1.2 F3367–23 Standard Practice for Simplified Methods for Addressing High-Intensity Radiated Fields (HIRF) and Indirect Effects of Lightning on Aircraft.
§ 23.2525 System power generation, storage, and distribution.	9.6 System Power Generation, Storage, and Distribution:.	9.6.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.6.1.1 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 9.6.1.1(a) F2490–20 Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis. 9.6.1.2 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.6.1.3 F3316/F3316M–19 Standard Specification for Electrical Systems for Aircraft with Electric or Hybrid-Electric Propulsion. 9.6.1.3(a) F2490–20 Standard Guide for Aircraft Electrical Load and Power Source Capacity Analysis. 9.6.1.3(b) F3653–24 Standard Specification for Installation of Rechargeable Lithium Batteries on Aircraft. 9.6.2 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 9.6.3 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft.
§ 23.2530 External and cockpit lighting ..	9.7 External and Cockpit Lighting:	9.7.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.7.1.1 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.7.1.2 F3234/F3234M–21(2025) Standard Specification for Exterior Lighting in Small Aircraft. 9.7.2 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 9.7.3 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft.
§ 23.2535 Safety equipment	9.8 Safety Equipment:	9.8.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.8.2 F3083/F3083M–25 Standard Specification for Emergency Conditions, Occupant Safety and Accommodations. 9.8.3 F3117/F3117M–25a Standard Specification for Crew Interface.
§ 23.2540 Flight in icing conditions	9.9 Flight in Icing Conditions:	9.9.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.9.1.1 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 9.9.2 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft.
§ 23.2545 Pressurized systems elements.	9.10 Pressurized System Elements:	9.10.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 9.10.1.1 F3229/F3229M–23a Standard Practice for Static Pressure System Tests in Small Aircraft.
§ 23.2550 Equipment containing high-energy rotors.	9.11 Equipment Containing High-Energy Rotors:.	9.11.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft.
Subpart G—Flight Crew Interface and Other Information		
§ 23.2600 Flightcrew interface	10.1 Flight crew Compartment Interface:	10.1.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 10.1.1.1 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 10.1.2 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 10.1.3 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 10.1.4 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 10.1.4.1 F3432–20a Standard Practice for Powerplant Instruments. 10.1.5 F3114–21 Standard Specification for Structures. 10.1.6 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 10.1.6.1 F3643–25 Standard Practice for Pilot Compartment View in Precipitation. 10.1.7 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.

TABLE 2—SIDE-BY-SIDE VIEW OF PART 23 REGULATIONS AND ASTM F3264–25 SECTION(S)—Continued

Part 23 amendments 23–64 and 23–65 regulation(s)	ASTM F3264–25 section(s) [7]	ASTM F3264–25 subsection(s) [8]
§ 23.2605 Installation and operation	10.2 Installation and Operation Information:.	10.2.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 10.2.1.1 F3227/F3227M–25 Standard Specification for Environmental Systems in Small Aircraft. 10.2.1.2 F3231/F3231M–24 Standard Specification for Electrical Systems for Aircraft with Combustion Engine Electrical Power Generation. 10.2.1.3 F3232/F3232M–25a Standard Specification for Flight Controls in Small Aircraft. 10.2.1.4 F3233/F3233M–23b Standard Specification for Flight and Navigation Instrumentation in Aircraft. 10.2.2 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 10.2.3 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 10.2.4 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 10.2.4.1 F3432–20a Standard Practice for Powerplant Instruments. 10.2.5 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 10.2.6 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft. 10.2.7 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2610 Instrument markings, control markings, and placards.	10.3 Instrument Markings, Control Markings, and Placards:.	10.3.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 10.3.2 F3063/F3063M–24 Standard Specification for Aircraft Fuel and Energy Storage and Delivery. 10.3.3 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 10.3.4 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft. 10.3.5 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.
§ 23.2615 Flight, navigation, and powerplant instruments.	10.4 Flight, Navigation, and Powerplant Instruments:.	10.4.1 F3061/F3061M–25 Standard Specification for Systems and Equipment in Small Aircraft. 10.4.2 F3062/F3062M–25 Standard Specification for Aircraft Powerplant Installation. 10.4.3 F3064/F3064M–24 Standard Specification for Aircraft Powerplant Control, Operation, and Indication. 10.4.3.1 F3432–20a Standard Practice for Powerplant Instruments. 10.4.4 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 10.4.4.1 F3454–25 Standard Practice for Alerting Methods in Aircraft. 10.4.4.2 F3491–25 Standard Practice for Enhanced Indication Methods in Aircraft.
§ 23.2620 Airplane flight manual	5.15 Operating Limitations: ..... 10.5 Airplane Flight Manual:	5.15.1 F3174/F3174M–21 Standard Specification for Establishing Operating Limitations and Information for Aeroplanes. 5.15.2 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems. 10.5.1 F3117/F3117M–25a Standard Specification for Crew Interface in Aircraft. 10.5.2 F3174/F3174M–21 Standard Specification for Establishing Operating Limitations and Information for Aeroplanes. 10.5.3 F3120/F3120M–24 Standard Specification for Ice Protection for General Aviation Aircraft. 10.5.4 F3408/F3408M–21 Standard Specification for Aircraft Emergency Parachute Recovery Systems.

[7] The ASTM F3264–25 section(s) provides a means of compliance intended to be used on projects for traditional part 23 airplanes, not for novel designs. Novel designs require evaluation and possible modification of the means of compliance.

[8] Changes required for FAA acceptance and additional information per Table 1 still apply to Table 2. The FAA does not accept the Aircraft Type Code compliance matrix tables included in F3228–21(2025), F3229/F3229M–23a, F3231/F3231M–24, F3233/F3233M–23b, F3234/F3234M–21(2025), F3235–22, F3236–21a, and F3316/F3316M–19. The tables defining applicability found in F3061/F3061M—25 sections 4.1.6, 4.2.3.3, 4.2.6, 4.2.8, 4.2.8.1, 4.2.8.2, 4.3.1, 4.3.2.1, 4.3.2.2, 4.4, 10.1, 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.3.3, 10.3.4, 10.3.5, 10.3.6, 10.3.7, 10.3.8, 10.3.9, 10.4.2, 10.4.3, 10.4.4, 10.7.1, 10.7.2, 10.7.3, 10.7.4, 10.7.5, 10.7.6, 10.7.7, 10.7.7.1, 10.8, 13.1.1, 13.1.2, 17.1.1, 17.1.2, 17.1.3, 17.2.1, 17.2.2, 17.2.3, 17.3.1.1, 17.3.1.2, 17.3.1.3, 17.3.1.4, and 18.4 are not accepted. Applicability will be determined by the Policy and Standards Division.

The MOC accepted by this NOA provides one means, but not the only means, of complying with part 23 regulatory requirements. Applicants who desire to use a MOC reflected by other revisions to ASTM standards not previously accepted may seek guidance and possible acceptance from the FAA for the use of those MOC on a case-by-case basis. Applicants may propose an alternative MOC for FAA review and possible acceptance.

Editorial, Reapproval, Revision, or Withdrawal

ASTM policy states that a consensus standard should be reviewed in its entirety by the responsible subcommittee and must be balloted for reapproval, revision, or withdrawal within five years of its last approval date. When an ASTM standard is reapproved, that reapproval is denoted by the year in parentheses (*e.g.,* F2427–05a (2013)). This date indicates the completion of a review cycle with no technical changes made to the standard. In addition, ASTM issues editorial changes denoted by a superscript epsilon in the standard designation (*e.g.,* F3235–17ε1). This epsilon indicates information was corrected, and it did not change the meaning or intent of a standard. Since reapprovals and editorial changes do not change the technical content of standards, any standard FAA-accepted by this NOA that is later reapproved or editorially changed by ASTM is also considered

FAA-accepted without the need for an updated NOA.

ASTM revises a standard to make changes to its technical content. Revisions are identified by a hyphen after the document number, which is followed by the last two numbers of the year of acceptance or of last revision. If the standard is revised again during the same year, this is indicated by adding an ''a'' for the second revision, ''b'' for the third revision, and so on for each revision. Since revisions change the technical content, revisions to consensus standards that are the basis for a MOC accepted by this NOA will not be automatically accepted and will require further FAA acceptance for the revisions to be an accepted MOC.

Availability

ASTM F3264–25, ''Standard Specification for Normal Category Aeroplanes Certification,'' is available online at *astm.org/readinglibrary.* ASTM copyrights these consensus standards and charges the public a fee for service. Individual downloads or reprints of a standard (single or multiple copies, special compilations, and other related technical information), as well as information regarding membership, ASTM offices abroad, or Committee F44 on General Aviation Aircraft, may be obtained online or by contacting ASTM by telephone: (610) 832–9585; facsimile: (610) 832–9555; or through email: *service@astm.org.*

Issued in Fort Worth, Texas, on November 4, 2026.

James Blyn,

Acting Manager, General Aviation, VTOL & Engine Standards Branch, Certification Standards Division, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–11820; Project Identifier MCAI–2026–00964–E; Amendment 39–23505; AD 2026–22–03]

RIN 2120–AA64

Airworthiness Directives; BRP-Rotax GmbH & Co KG (Formerly BRP–POWERTRAIN GMBH & CO KG and Bombardier-Rotax GmbH) Engines

Correction

In rule document 2026–22307 beginning on page 68882 in the issue of Monday, November 2, 2026, make the following correction:

On page 68882, in the third column, in the **DATES** section, ''November 23, 2026'' should read ''November 4, 2026''.

[FR Doc. C1–2026–22307 Filed 11–17–26; 8:45 am]

BILLING CODE 0099–10–D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1263

[Docket No. CPSC–2023–0004]

Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In September 2023, the U.S. Consumer Product Safety Commission (CPSC or Commission) issued a safety standard for button cell or coin batteries and consumer products containing such products in accordance with Reese's Law. The standard incorporated by reference ANSI/UL 4200A–2023, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries.* UL Standards and Engagement (ULSE) has now issued a revised standard, ANSI/UL 4200A–2026. Consistent with Reese's Law, this direct final rule updates the mandatory safety standard to incorporate by reference ANSI/UL 4200A–2026.

DATES: The rule is effective on February 13, 2027, unless CPSC receives a significant adverse comment by December 18, 2026. If CPSC receives such a comment, it will publish a document in the **Federal Register**, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of February 13, 2027.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0004, by any of the following methods:

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

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 441 G Street NW, Washington, DC 20548; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit through this website: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier/confidential written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2023–0004, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Carolina Abraham, Compliance Officer, U.S. Consumer Product Safety Commission, 441 G Street NW, Washington, DC 20548; telephone: (301) 504–7603; email: *cabraham@cpsc.gov;* or Daniel Taxier, Project Manager, Division of Mechanical and Combustion Engineering, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: (301) 987–2211; email: *dtaxier@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Reese's Law was enacted to protect children six years old or younger against hazards associated with the ingestion of button cell or coin batteries during reasonably foreseeable use or misuse conditions. 15 U.S.C. 2056e(a)(1). Section 5 of Reese's Law broadly defines a ''button cell or coin battery'' as ''(A) a single cell battery with a diameter greater than the height of the battery; or (B) any other battery, regardless of the technology used to produce an electrical charge, that is determined by the Commission to pose an ingestion hazard.'' Notes to 15 U.S.C. 2056e.

Section 2(a) of Reese's Law mandates that CPSC promulgate a final consumer

product safety standard for button cell or coin batteries and consumer products containing such batteries. 15 U.S.C. 2056e(a). Section 2(a)(1) of Reese's Law mandates that a rule must include performance requirements for button cell or coin battery compartments on consumer products to secure them in a manner that eliminates or adequately reduces the risk of injury from the ingestion of button cell or coin batteries by children who are six years old or younger, during reasonably foreseeable use or misuse of the product. 15 U.S.C. 2056e(a)(1). Section 2(a)(1) of Reese's Law also mandates the rule require warning labels that meet specified requirements regarding the nature of the ingestion hazard on the packaging, on the product, and in product literature. 15 U.S.C. 2056e(a)(2). However, if the Commission determines before promulgating a rule that an existing voluntary standard meets the performance and labeling requirements in section 2(a) of Reese's Law, then under section 2(d)(1) of Reese's Law the requirement for the Commission to promulgate a rule does not apply. 15 U.S.C. 2056e(d)(1). Instead, the Commission must publish such determination of a voluntary standard's sufficiency in the **Federal Register**. 15 U.S.C. 2056e(d)(2).

B. Commission Determination's Under Reese's Law

In accordance with section 2(d) of Reese's Law, the Commission determined that ANSI/UL 4200A, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries,* approved on August 30, 2023 (UL 4200A–2023), met the performance and labeling requirements in section 2(a) of Reese's Law with respect to consumer products containing button cell or coin batteries, and the voluntary standard was codified at 16 CFR part 1263, ''Safety Standard for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries.'' 88 FR 65274 (Sep. 21, 2023). Section 2(e)(1) of Reese's Law states that a voluntary standard determined by the Commission to meet the requirements of section 2(d) shall be treated as a consumer product safety rule promulgated under section 9 of the CPSA (15 U.S.C. 2058). 15 U.S.C. 2056e(e)(1).

C. Reese's Law Revisions Process

Section 2(f) of Reese's Law specifies the process for updating the Commission's rule when a voluntary standards organization revises a standard that the Commission has determined meets section 2(a) of Reese's Law. First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject or accept the revised standard. The Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard, in whole or in part, does not improve the safety of the consumer product and that it is retaining all or part of the existing standard. If the Commission does not take action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision or on a later date specified by the Commission in the **Federal Register**. 15 U.S.C. 2056e(f).

On July 22, 2026, ULSE published a revision to the voluntary standard for consumer products containing button cell or coin batteries, UL 4200A–2026. The revised voluntary standard includes performance requirements and test methods, as well as warning label requirements on the packaging of consumer products; accompanying literature; and consumer products, as practicable, to address the hazard posed by ingestion of button cell or coin batteries. On August 17, 2026, ULSE notified CPSC of the revision. On August 17, 2026, UL notified the Commission that it had approved and published a revised version of the voluntary standard, UL 4200A–2026.

On September 3, 2026, the Commission published in the **Federal Register** a notice of availability of the revised voluntary standard and sought comments on the effect of the revisions. 91 FR 56604. CPSC received 37 comments on the notice of availability. One commenter, Michael Conte, specifically supported adopting revisions to UL 4200A that make button cell and coin battery warnings clearer, more visible, and easier for consumers to understand; another commenter, Katelyn Marrs, stated the revisions should be accepted if they improve clarity, expand coverage, or improve the performance of child-resistant enclosures.

Three of the commenters, Steven Singleton, the Native Claim Firm, and Ms. Marrs, discussed issues with the process for the notice and made suggestions regarding that process. Specifically, Mr. Singleton stated that the notice did not provide an accurate date on which ULSE notified CPSC of the revision, and all three commenters discussed the various steps required to obtain a copy of the voluntary standard to review and identify the changes. The commenters requested that CPSC provide a list of the changes or take other steps to let commenters review the updated standard more easily. The Commission thanks the commenters for their input and will consider the suggestions going forward. Per some commenters' request, we note the changes to the standard are discussed below.

Finally, 33 of the comments discussed issues related to the child protective packaging requirements for button cell or coin battery packaging in section 3 of Reese's Law, especially as the requirements relate to hearing-aid batteries. These comments are out of scope of this update, which only deals with the revisions made to the voluntary standard, and thus will not be addressed here. The Commission appreciates the interest of the commenters in this matter.

Based on staff's review and assessment of the changes in UL 4200A–2026, discussed below, and the public comments received, the Commission concludes that UL 4200A–2026 increases the safety of products containing button cell or coin cell batteries, and thus is allowing the revised voluntary standard to become the mandatory standard for consumer products containing button cell or coin batteries. Pursuant to section 2(f)(2) of Reese's Law, the Commission may reject the revised voluntary standard if ''the revised voluntary standard, in whole or in part, does not improve the safety of the consumer product covered by the standard.'' 15 U.S.C. 2056e(f)(2). For the reasons discussed below, the Commission has not determined that ''the proposed revision does not improve the safety of the consumer product covered by the standard.'' Accordingly, by operation of law under section 2(f)(2) of Reese's Law, UL 4200A–2026 will become the mandatory consumer product safety standard for products containing button cell or coin batteries on February 13, 2027. 15 U.S.C. 2056e(f)(2). This direct final rule updates part 1263 to incorporate by reference the revised voluntary standard, UL 4200A–2026 as the mandatory standard.[1]

II. Revisions to UL 4200A

ULSE published the revised voluntary standard UL 4200A–2026 on July 22,

[1] The Commission voted 3–0 to publish this notice.

2026. This is the first time ULSE has revised the voluntary standard for products containing button cell or coin batteries since the adoption of UL 4200A–2023, which is the current mandatory standard. UL 4200A–2026 includes clarifications to the packaging and product marking requirements. This section describes in detail the changes to UL 4200A–2026.

Markings

UL 4200A–2026 revises the packaging and product safety warnings shown in Figures 7B.1, 7B.2, 7B.3, 7B.4, and 7C.1 to make the Safety Alert Symbol at least as tall as the signal word (''WARNING''). Previously, the Safety Alert Symbol as shown in these figures was slightly smaller than the signal word. This change aligns with the requirements in ANSI Z535.4, *American National Standard for Product Safety Signs and Labels,* section 6.3, and ensures the Safety Alert Symbol is displayed prominently on required warnings.

UL 4200A–2026 also revises the product marking requirements in section 7C.2. This section addresses usage of the alternative product marking shown in Figure 7C.2—the Safety Alert Symbol combined with a button/coin cell symbol—including that the marking must use the color shown in the figure when on a printed label using more than one color. The revision clarifies that when the alternative product marking is stamped or molded into the product, the icon may be the same color as the molded/stamped part. The current mandatory standard, UL 4200A–2023, does not directly address molded or stamped parts. However, molded or stamped warnings can be a durable means of displaying important safety information. Per section 7A.1 (unchanged from UL 4200A–2023), all warning statements or icons must be prominent, legible, easily discernable under normal lighting conditions, and permanently marked. This includes warning statements or icons that are molded or stamped in a single color.

The revisions in UL 4200A–2026 ensure that the Safety Alert Symbol is displayed prominently on required warnings, consistent with the relevant voluntary standard, and clarify that the alternative product marking can be molded or stamped in a single color as a durable means of displaying important safety information. Therefore, the revisions in UL 4200A–2026 described above increase the safety of products containing button cell or coin cell batteries.

III. Incorporation by Reference

Section 1263.3 of the direct final rule incorporates by reference UL 4200A–2026. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss in the preamble of the final rule ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section I of this preamble summarizes the material in UL 4200A–2026 that the Commission incorporates by reference into 16 CFR part 1263. The standard is reasonably available to interested parties in several ways. A read-only copy of the standard is available to view at no cost on the UL website at: *https://www.ulstandards.com/IBR/logon.aspx.* Additionally, interested parties can purchase a copy of UL 4200A–2026 from UL, 151 Eastern Avenue, Bensenville, IL 60106, phone: 1–888–853–3503 or online at: *https://shopulstandards.com/.* Finally, interested parties can schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 441 G Street NW, Washington, DC 20548; telephone: (301) 504–7479; email: *cpsc-os@cpsc.gov.*

IV. Certification

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, including importers, of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests of a sufficient number of samples by a CPSC-accepted third party conformity assessment body accredited to test according to the applicable requirements. As noted, standards determined by the Commission to meet section 2(a) of Reese's Law are consumer product safety rules. 15 U.S.C 2056e(e)(1). Thus, they are subject to the testing and certification requirements of section 14 of the CPSA. A CPSC-accepted third party conformity assessment body must test samples of consumer products containing button cell or coin batteries that are children's products.

Section 14(a) of the CPSA requires that manufacturers (including importers) of non-children's products subject to a rule issue a general certificate of conformity (GCC). GCCs certify the products as being compliant with applicable regulations and must be based on a test of each product or a reasonable testing program. Unlike children's products, products that have GCCs are not required to undergo third party testing. Section 14(g) and 16 CFR part 1110 state the requirements for GCCs. Among other requirements, each certificate must identify: the manufacturer issuing the certificate; any laboratory conducting testing on which the certificate depends; the date and place of manufacture; the date and place where the product was tested; each party's name, full mailing address, and telephone number; and contact information for the individual responsible for maintaining records of test results. The certificates must be in English and must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

Products subject to part 1263 must also comply with all other applicable CPSC requirements; for example, children's products subject to part 1263 must comply with the lead content requirements in section 101 of the CPSIA,[2] product subject to the phthalates prohibitions in section 108 of the CPSIA [3] and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,[4] and the consumer registration form requirements in 16 CFR part 1130. UL 4200A–2026 makes no changes to any of these existing requirements.

V. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA (15 U.S.C. 2063(a)(3)(B)(vi)), the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies (third party laboratories) for testing consumer products containing button cell or coin batteries. 76 FR 22030 (Sep. 21, 2023). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing consumer products containing button cell or coin batteries to 16 CFR part 1263. The NORs for all mandatory standards for children's products are listed in the Commission's rule,

[2] 15 U.S.C. 1278a.

[3] 15 U.S.C. 2057c.

[4] 15 U.S.C. 2063(a)(5).

''Requirements Pertaining to Third Party Conformity Assessment Bodies,'' codified in 16 CFR part 1112. The NOR for accreditation of third party labs for testing consumer products containing button cell or coin batteries is codified at 16 CFR 1112.15(b)(55).

UL 4200A–2026 did not change the testing requirements, testing equipment, or testing protocols for consumer products containing button cell or coin batteries. Accordingly, the revisions in UL 4200A–2026 do not change the way that third party conformity assessment bodies test these products for compliance with the safety standard for button cell or coin batteries or consumer products containing such batteries. Testing laboratories that have demonstrated competence for testing in accordance with UL 4200A–2023 will have the competence to test in accordance with the revised standard UL 4200A–2026. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to UL 4200A–2023 to be capable of testing to UL 4200A–2026 as well. Accordingly, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditations to reflect the revised standard in the normal course of renewing their accreditations.

VI. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to provide notice of a rule and an opportunity for interested parties to comment on it, section 553 of the APA provides an exception when the agency ''for good cause finds'' that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' *Id.* 553(b)(B). The Commission concludes that when it updates a reference to a voluntary standard that the Commission previously incorporated by reference under Reese's Law, notice and comment are not necessary.

The purpose of this direct final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that takes effect by statute. This rule updates the reference in the CFR, but as specified in Reese's Law, UL 4200A–2026 would take effect as the new CPSC standard for consumer products containing button cell or coin batteries in the absence of any action by the Commission. Thus, public comments would not lead to substantive changes to the standard or to the effect of the revised standard as a consumer product safety rule under section 2(f) of Reese's Law. Under these circumstances, notice and comment are unnecessary.

In Recommendation 2024–6, the Administrative Conference of the United States (ACUS) endorses direct final rulemaking as an appropriate procedure to expedite rules that are unlikely to elicit any significant adverse comments. *See* 89 FR 106406 (Dec. 30, 2024). ACUS recommends that agencies use the direct final rule process when they act under the ''unnecessary'' prong of the good cause exemption in 5 U.S.C. 553(b)(B). *Id.* at 106409. ACUS also explains that notice and comment may be ''unnecessary'' when the agency lacks discretion regarding the substance of the rule. *Id.* at 106408. As noted, this rule updates a reference in the CFR to reflect a change that occurs by operation of law. Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because CPSC does not expect any significant adverse comments.

Unless CPSC receives a significant adverse comment within 30 days of this notification, the rule will become effective on February 13, 2027. In accordance with ACUS's recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, ''including challenges to the rule's underlying premise or approach,'' or where the commenter explains why the rule would be ineffective or unacceptable without change. *Id.* at 106409. As noted, this rule updates a reference in the CFR to reflect a change that occurs by statute.

If the Commission receives a significant adverse comment, the Commission will withdraw this direct final rule. Depending on the comment and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section V of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 2 of Reese's Law.

VIII. Paperwork Reduction Act

The current mandatory standard includes requirements for marking, labeling, and instructional literature that constitute a ''collection of information,'' as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501–3521). The Commission took the steps required by the PRA for information collections when it promulgated 16 CFR part 1263, and the marking, labeling, and instructional literature for consumer products containing button cell or coin batteries are currently approved under OMB Control Number 3041–0195. While the rule clarifies language regarding warnings, the clarifications do not add to the burden hours because the products already require marking and labeling. Because the information collection burden is essentially unchanged, the revision does not affect the information collection requirements or approval related to the standard.

IX. Environmental Considerations

The Commission's regulations provide for a categorical exclusion from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

X. Preemption

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the Federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 2 of Reese's Law deems rules issued under that law to be consumer product safety rules. Therefore, once a rule issued under section 2 of Reese's Law takes effect, it

will preempt state laws in accordance with section 26(a) of the CPSA.

XI. Effective Date

Under the procedure set forth in section 2(f) of Reese's Law, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard 180 days after notification to the Commission, unless the Commission determines that the revision, in whole or in part, does not improve the safety of the product, or the Commission sets a later date in the **Federal Register**. 15 U.S.C. 2056e(f). The Commission is taking neither of those actions with respect to the revised standard for consumer products containing button cell or coin batteries. Therefore, UL 4200A–2026 automatically will take effect as the new mandatory standard for consumer products containing button cell or coin batteries on February 13, 2027, 180 days after the Commission received notice of the revision. As a direct final rule, unless the Commission receives a significant adverse comment within 30 days of this document, the rule will become effective on February 13, 2027, and will apply to products manufactured after the rule's effective date.

XII. Congressional Review Act and Executive Order 12866

Pursuant to the Congressional Review Act (CRA) and Executive Order (E.O.) 12866, the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2), and is not a significant regulatory action, as defined under section 2(f) of E.O. 12866. To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

List of Subjects in 16 CFR Part 1263

Administrative practice and procedure, Batteries, Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

PART 1263—SAFETY STANDARD FOR BUTTON CELL OR COIN BATTERIES AND CONSUMER PRODUCTS CONTAINING SUCH BATTERIES

■ 1. The authority citation for part 1263 continues to read as follows:

Authority: 15 U.S.C. 2052, 2056e.

■ 2. Revise § 1263.3 to read as follows:

§ 1263.3 Requirements for consumer products containing button cell or coin batteries.

Each consumer product containing button cell or coin batteries shall comply with ANSI/UL 4200A–2026, *Standard for Safety for Products Incorporating Button Batteries or Coin Cell Batteries,* Revised July 22, 2026. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the U.S. Consumer Product Safety Commission and at the National Archives and Records Administration (NARA). Contact the U.S. Consumer Product Safety Commission at: the Office of the Secretary, U.S. Consumer Product Safety Commission, 441 G Street NW, Washington, DC 20548; phone: (301) 504–7479; email: *cpsc-os@cpsc.gov.* For information on the availability of this material at NARA, visit *https://www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* A free, read-only copy of the standard is available for viewing on UL's website at *https://www.ulstandards.com/IBR/logon.aspx.* You may also obtain a copy from UL Standards and Engagement, 151 Eastern Avenue, Bensenville, IL 60106; phone: (888) 853–3503 website: *https://shopulstandards.com/.*

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2026–23435 Filed 11–17–26; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.0 to 1.60), revised as of April 1, 2026, in section 1.36B–2, is corrected as follows:

a. The third sentence of paragraph (c)(3)(v)(A)(*2*) is reinstated to read ''See paragraph (c)(5) of this section for rules for when an HRA or other account-based group health plan described in paragraph (c)(3)(i)(B) of this section is affordable for a related HRA individual for a month.''; and

b. The heading of (c)(3)(v)(D)(*13*) is corrected by adding ''*Example 13:*'' before ''*Wellness program incentives.*''

[FR Doc. 2026–23514 Filed 11–17–26; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 10061]

RIN 1545–BR08

Automatic Enrollment Requirements Under Section 414A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that provide guidance with respect to the automatic enrollment requirements that apply to certain retirement plans. The regulations reflect statutory changes made by the SECURE 2.0 Act of 2022 requiring that certain cash or deferred arrangements and salary reduction agreements be eligible automatic contribution arrangements that satisfy additional specified requirements. The regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans that include cash or deferred arrangements or annuity contracts purchased under salary reduction agreements and other retirement plans that include eligible automatic contribution arrangements.

DATES:

Effective date: These regulations are effective on January 19, 2027.

Applicability date: These regulations generally apply to plan years that begin after December 31, 2027. However, see § 1.414A–1(f)(2) and the Applicability Date section later in this preamble for additional details regarding applicability dates.

FOR FURTHER INFORMATION CONTACT: Jamie L. Dvoretzky at (202) 317–4102 (not a toll-free number) or Kara M. Soderstrom at (202) 317–6799 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

These regulations are promulgated under section 7805(a) of the Internal Revenue Code (Code), which provides

that ''the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.'' In addition, section 341 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), instructs the Secretaries of the Treasury and Labor (or their delegates) to adopt regulations related to the consolidation of notices required for defined contribution plans under the Code and the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829, as amended (ERISA).

Background

This document sets forth a regulation under section 414A of the Code that is added to the Income Tax Regulations (26 CFR part 1). Section 414A, which was added to the Code by section 101 of the SECURE 2.0 Act, provides that certain retirement plans must automatically enroll employees.

In addition to adding a new regulation under section 414A of the Code, this document sets forth amendments to the Income Tax Regulations under section 414(w). These amendments to § 1.414(w)–1 reflect the application of section 414A and the exception to the notice requirements for unenrolled participants set forth in section 414(bb), as added to the Code by section 320 of the SECURE 2.0 Act. The amendments to § 1.414(w)–1 also address section 402A(e)(5)(C) of the Code, which was added to the Code by section 127 of the SECURE 2.0 Act, as well as section 341 of the SECURE 2.0 Act. Section 402A(e)(5)(C) of the Code and section 341 of the SECURE 2.0 Act permit the consolidation of certain notices required under the Code and ERISA.

I. In General

A. Cash or Deferred Arrangements and Salary Reduction Agreements

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA) [1] that is a qualified CODA. Under section 401(k)(2), a CODA is a qualified CODA only if it satisfies certain requirements. These requirements include that elective contributions under the CODA are subject to the section 401(k)(2)(B) restriction on when distributions may be made, and that the arrangement satisfies the actual deferral percentage (ADP) test in section 401(k)(3)(A)(ii).[2]

Section 403(b)(1) of the Code provides for an exclusion from gross income of certain contributions that are used to purchase an annuity contract, including contributions that are made under a salary reduction agreement. Although there is no direct definition of salary reduction agreement in section 403(b), several provisions of the Code set forth rules that apply to the use of a salary reduction agreement to purchase an annuity contract described in section 403(b). For example, section 403(b)(11) provides distribution restrictions that apply to ''contributions made pursuant to a salary reduction agreement.''

B. Automatic Enrollment

Section 902 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), added sections 401(k)(13) and 414(w) to the Code to facilitate automatic contribution arrangements (also referred to as automatic enrollment) in qualified CODAs under section 401(k). Section 414(w) also applies to automatic contribution arrangements under section 403(b) plans; section 457(b) plans maintained by governmental employers described in section 457(e)(1)(A); simplified employee pensions, the terms of which provide for a salary reduction arrangement described in section 408(k)(6); and SIMPLE individual retirement accounts described in section 408(p). An automatic contribution arrangement is a CODA or other similar arrangement that includes a default election under which an eligible employee is treated as having elected to have a specified contribution made on the employee's behalf under the plan unless the employee makes an affirmative election to have contributions made in a different amount on the employee's behalf (including no contributions).[3]

1. Qualified Automatic Contribution Arrangements Under Section 401(k)(13)

Section 401(k)(13) provides a design-based safe harbor for a CODA that provides for automatic enrollment at a specified level and meets certain employer contribution, notice, and other requirements. A CODA that satisfies these requirements, referred to as a qualified automatic contribution arrangement (QACA), is treated as satisfying the ADP test.

Section 401(k)(13)(C)(ii) provides that the default election in a QACA ceases to apply to any eligible employee if the employee makes an affirmative election to not have any elective contributions made on the employee's behalf or to have elective contributions made in a specified amount or percentage of compensation on the employee's behalf. Reflecting that provision, § 1.401(k)–3(j)(1)(ii) provides that the default election ceases to apply with respect to an eligible employee for periods of time with respect to which the employee has an affirmative election that is currently in effect to have elective contributions made in a different amount on the employee's behalf (in a specified amount or percentage of compensation) or not have any elective contributions made on the employee's behalf.

Section 401(k)(13)(C)(iii) sets forth a series of minimum default contribution percentages (based on the plan year that the arrangement first applies to an employee) that an automatic contribution arrangement must satisfy to be a QACA and requires that the default contribution percentages apply uniformly. Under § 1.401(k)–3(j)(2)(iii), a plan does not fail to satisfy this uniform percentage requirement merely because: (1) the percentage varies based on the number of years or portions of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA; (2) the rate of elective contributions under a cash or deferred election that is in effect immediately prior to the effective date of the default percentage under the QACA is not reduced; (3) the rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions), and 415; or (4) the default election is not applied during the period an employee is not permitted to make elective contributions pursuant to section 414(u)(12)(B)(ii).

Section 401(k)(13)(C)(iv) provides an exception from the application of the default election under a QACA for eligible employees who were eligible to participate in the CODA (or a

[1] Under § 1.401(k)–1(a)(2)(i), a CODA generally is an arrangement providing for an election by an employee to have the employer provide either contributions to a plan described in section 401(a) or payments directly in cash.

[2] The ADP test in section 401(k)(3)(A)(ii) compares the average deferral percentage for highly compensated employees with the average deferral percentage for non-highly compensated employees. As an alternative to satisfying the annual ADP test, a plan may satisfy the provisions of section 401(k)(11), (12), (13), or (16).

[3] Section 902 of PPA '06 also added a new section 514(e) to ERISA, which broadly provides that, notwithstanding any other provision of section 514, title I of ERISA supersedes State laws that would directly or indirectly prohibit or restrict the inclusion of an automatic contribution arrangement in a plan.

predecessor CODA) immediately before the effective date of the QACA and who have an election in effect on that effective date. Reflecting that provision, § 1.401(k)–3(j)(1)(iii) provides that an automatic contribution arrangement does not fail to be a QACA merely because the default election is not applied to an employee who was eligible under the CODA (or a predecessor arrangement) immediately prior to the effective date of the QACA and on that effective date had an affirmative election in effect (that remains in effect) to have elective contributions made on the employee's behalf (in a specified amount or percentage of compensation) or not have elective contributions made on the employee's behalf.

Section 1.401(k)–3(j)(2)(iv) provides that minimum percentages in a QACA are determined without regard to whether an employee has continued to be eligible to make contributions under the plan. However, § 1.401(k)–3(j)(2)(iv) provides that a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under a QACA as if the employee also had not had such contributions for any prior plan year.

2. Eligible Automatic Contribution Arrangements Under Section 414(w)

Section 414(w) facilitates automatic enrollment by providing relief from the distribution restrictions under section 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1)(A) in the case of an eligible automatic contribution arrangement (EACA). Under this relief, a plan may permit an employee who was automatically enrolled under an EACA to take a distribution within a limited period after the initial default elective contribution with respect to the employee was made.

Under section 414(w)(1) and (2), an applicable employer plan [4] that contains an EACA is permitted to allow employees to elect to receive a distribution, called a permissible withdrawal, equal to the amount of default elective contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the EACA applies to the employee and ending with the effective date of the election. The election must be made within 90 days after the date of the first default elective contribution with respect to the employee under the arrangement.[5]

Section 414(w)(3) defines an EACA as an arrangement under which: (1) a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; (2) the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and (3) participants are provided a notice that satisfies the requirements of section 414(w)(4).

Section 414(w)(4) provides that the administrator of a plan that includes an EACA must, within a reasonable period before each plan year, provide each employee to whom the arrangement applies for the plan year written notice of the employee's rights and obligations under the arrangement that is sufficiently accurate and comprehensive to apprise the employee of the employee's rights and obligations. Section 414(w)(4)(A)(ii) requires that the notice be written in a manner calculated to be understood by the average employee to whom the arrangement applies. Section 414(w)(4)(B) provides that the notice must explain: (1) the employee's rights under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have contributions made at a different percentage), and (2) how contributions made under the arrangement will be invested in the absence of any investment decision by the employee. In addition, the employee must be given a reasonable period after receipt of the notice and before the first elective contribution is made to make an election described in the notice.

On February 24, 2009, a final regulation under section 414(w) was published in the **Federal Register** (TD 9447, 74 FR 8200). Section 1.414(w)–1(b)(2) includes rules that address the uniform percentage requirement of section 414(w)(3)(B), including rules that incorporate the exceptions to the uniform percentage requirement for a default elective contribution under a QACA set forth in § 1.401(k)–3(j)(2)(iii).

II. New Automatic Enrollment Requirements and Other Changes Regarding EACAs Under the SECURE 2.0 Act

A. Section 101 of the SECURE 2.0 Act

Section 101 of the SECURE 2.0 Act added section 414A to the Code. Under section 101(c) of the SECURE 2.0 Act, the amendments made by section 101 apply to plan years beginning after December 31, 2024.

Section 414A(a)(1) of the Code generally provides that a CODA will not be treated as a qualified CODA described in section 401(k) unless the CODA satisfies the automatic enrollment requirements of section 414A(b). Similarly, section 414A(a)(2) generally provides that an annuity contract otherwise described in section 403(b) that is purchased under a salary reduction agreement will not be treated as described in section 403(b) unless the salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b).

Under section 414A(b)(1), a CODA or salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b) if the CODA or salary reduction agreement is an EACA (as defined in section 414(w)(3)) that satisfies the additional requirements of section 414A(b)(2) through (4). Section 414A(b)(2) requires the EACA to allow employees to make permissible withdrawals (as defined in section 414(w)(2)). Under section 414A(b)(3)(A)(i), the minimum initial default contribution percentage under the EACA must be at least 3 percent (but not more than 10 percent), and under section 414A(b)(3)(A)(ii), the default contribution percentage must increase by one percentage point for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent).[6] Section 414A(b)(4) provides that amounts contributed pursuant to the EACA for which no investment is elected by a participant must be invested in accordance with the requirements of 29 CFR 2550.404c–5 [7] (or any successor regulations).

Section 414A(c) sets forth certain exceptions to the requirements of

[4] Section 414(w)(5) defines an applicable employer plan for purposes of section 414(w) as a trust described in section 401(a) that is exempt from tax under section 501(a), a plan described in section 403(b), a section 457(b) plan that is maintained by a governmental employer described in section 457(e)(1)(A), a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), or a SIMPLE individual retirement account described in section 408(p).

[5] Section 414(w)(1)(A) and (B) provides that the amount of the distribution is includible in the gross income of the employee for the taxable year in which the distribution is made but is not subject to the additional income tax on early distributions under section 72(t).

[6] Section 414A(b)(3)(B) provides a reduced maximum default contribution percentage of 10 percent for certain plans with respect to certain plan years.

[7] The requirements of 29 CFR 2550.404c–5 relate to investments in qualified default investment alternatives (QDIAs).

section 414A(a). In general, section 414A(a) does not apply to any: (1) SIMPLE 401(k) plan described in section 401(k)(11); (2) qualified CODA established before December 29, 2022 (the date of enactment of the SECURE 2.0 Act); (3) section 403(b) plan established before December 29, 2022; (4) governmental plan described in section 414(d); (5) church plan described in section 414(e); (6) plan maintained by a new business as described in section 414A(c)(4)(A); or (7) plan maintained by a small business as described in section 414A(c)(4)(B).

Certain of the exceptions in section 414A(c) include special rules for plans maintained by more than one employer. Section 414A(c)(2)(B) provides rules that apply in the case of an employer that, after December 29, 2022, adopts a plan maintained by more than one employer. Under that provision, the exception to section 414A(a) for a qualified CODA or 403(b) plan established before December 29, 2022, will not apply to that adopting employer, and the rules of section 414A(a) will apply with respect to that employer as if the plan were a single plan. In addition, under section 414A(c)(4)(C), the new business and small business exceptions to section 414A(a) are applied separately to each participating employer in a plan maintained by more than one employer, and all participating employers to which section 414A(a) applies (after the application of the new business exception in section 414A(c)(4)(A) and the small business exception in section 414A(c)(4)(B)) are treated as maintaining a separate plan for purposes of section 414A.

On December 20, 2023, the Department of the Treasury (Treasury Department) and the IRS released Notice 2024–2, 2024–2 IRB 316, which provides guidance on certain provisions of the SECURE 2.0 Act including initial guidance in the form of questions and answers regarding certain issues related to section 414A of the Code.

B. SECURE 2.0 Act Changes Regarding EACA Notices

1. Notice Requirements for Unenrolled Participants

Section 320(b) of the SECURE 2.0 Act added section 414(bb) to the Code, effective for plan years beginning after December 31, 2022. Section 414(bb)(1) provides that, with respect to any defined contribution plan, no disclosure, notice, or other plan document is required to be furnished under the Code to any unenrolled participant if the unenrolled participant is furnished: (1) an annual reminder notice (as defined in section 414(bb)(3)) of the participant's eligibility to participate in the plan and any applicable election deadlines under the plan, and (2) any document requested by the participant that the participant would be entitled to receive notwithstanding section 414(bb).

Under section 414(bb)(2), an unenrolled participant is an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished a summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor. The last sentence of section 414(bb)(2) of the Code provides that any eligibility to participate in the plan following any period for which the employee was not eligible to participate is to be treated as initial eligibility.

Section 414(bb)(3) provides that the annual reminder notice required under section 414(bb)(1) is the notice described in section 111(c) of ERISA (as added by section 320(a) of the SECURE 2.0 Act).

2. Combining EACA Notices With Other Notices

Section 127 of the SECURE 2.0 Act provides for the creation of pension-linked emergency savings accounts (PLESAs) effective for plan years beginning after December 31, 2023. Among other changes, section 127 of the SECURE 2.0 Act redesignates section 402A(e) of the Code as section 402A(f) and adds a new section 402A(e) regarding PLESAs.[8] Section 402A(e)(5)(A) requires the plan administrator of a plan with a PLESA feature to furnish initial and annual notices to participants describing certain information regarding the PLESA that meet the requirements of section 402A(e)(5)(B). Section 402A(e)(5)(C) permits the initial and annual notices required under section 402A(e)(5)(A) to be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if the other notice is provided to the participant at the time required for that notice.

The Department of Labor has provided frequently asked questions regarding PLESAs, including with respect to the permitted consolidation of notices under section 801(d)(3)(C) of ERISA (which is a parallel provision to section 402A(e)(5)(C) of the Code). *See* Q&A–18 of ''FAQs: Pension-Linked Emergency Savings Accounts,'' available at *www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/pension-linked-emergency-savings-accounts.*

Section 341 of the SECURE 2.0 Act permits a plan (as defined in section 3 of ERISA) to consolidate two or more of the notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code into a single notice, provided that the combined notice satisfies certain requirements. Section 341 of the SECURE 2.0 Act does not prevent the consolidation of any other notices required under ERISA or the Code to the extent otherwise permitted by the Secretary of Labor or the Secretary of the Treasury (or their delegates), as applicable.

On October 24, 2007, the Department of Labor published in the **Federal Register** (72 FR 60452) a final regulation, 29 CFR 2550.404c–5, providing relief from certain fiduciary responsibilities under ERISA for investments made on behalf of participants or beneficiaries who fail to direct the investment of assets in their individual accounts. The preamble to that final regulation indicates that the Department of Labor anticipates that the notice requirements of sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code could be satisfied in a single disclosure document. *See* 72 FR 60455 (regarding the notice requirements under section 404(c)(5)(B) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code) and 72 FR 60466 (regarding the notice requirements under sections 404(c)(5)(B) and 514(e)(3) of ERISA).

To aid plan sponsors for the 2008 plan year (the first plan year that a plan could have included a QACA or EACA), the IRS coordinated with the Department of Labor to post a sample ''Automatic Enrollment Notice,'' available at *www.irs.gov/pub/irs-tege/sample_notice.pdf.* This sample notice is intended to satisfy the notice requirements of sections 404(c)(5)(B)

[8] On January 12, 2024, the Treasury Department and the IRS released Notice 2024–22, 2024–6 IRB 662, which provides initial guidance regarding anti-abuse rules under section 402A(e)(12) of the Code, as added by section 127 of the SECURE 2.0 Act, and also addresses whether Rev. Rul. 74–55, 1974–1 CB 89, and Rev. Rul. 74–56, 1974–1 CB 90, are applicable to PLESAs.

and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code.

On April 29, 2008, the Department of Labor issued Field Assistance Bulletin 2008–03. Q&A–10 of Field Assistance Bulletin 2008–03 explains that the notice required under section 401(k)(12)(D) also may be combined with the notice required under section 404(c)(5)(B) of ERISA.

Q&A–18 of ''FAQs: Pension-Linked Emergency Savings Accounts'' explains that, with respect to section 341 of the SECURE 2.0 Act, the Department of Labor retains its position regarding the consolidation of notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code. Q&A–18 also explains that, under section 801(d)(3)(C) of ERISA, the initial and annual notices that must be furnished to PLESA participants may be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if such other notice is provided to the participant at the time required for such notice.

III. Proposed Regulations

On January 14, 2025, a notice of proposed rulemaking (REG–100669–24) containing a proposed regulation under section 414A and proposed amendments to the regulations under section 414(w) that would reflect section 101 of the SECURE 2.0 Act, and relevant provisions of sections 127, 320, and 341 of the SECURE 2.0 Act, was published in the **Federal Register** (90 FR 3092). Comments received in response to Notice 2024–2 were considered in the preparation of the proposed regulations. Eighteen comments were received in response to the notice of proposed rulemaking, and a public hearing was held on April 8, 2025.

After consideration of the comments received in response to the notice of proposed rulemaking and testimony at the public hearing, the proposed regulations are adopted by this Treasury decision with certain changes described in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions addresses the comments that the Treasury Department and the IRS received in response to the proposed regulations and describes the revisions included in the final regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations for which no comments were received (or for which the only comments received were in support of those provisions) are adopted without substantive change. Several comments were unrelated to tax law or otherwise outside the scope of the proposed regulations. Some comments also expressed support or disapproval for the new section 414A, rather than the regulations, and were therefore also outside the scope of the proposed regulations. Additionally, comments that merely summarize the proposed regulations, recommend statutory revisions to section 414A, or other statutes, or address issues that are outside the scope of this rulemaking (including issues addressed in other guidance, proposed changes to such guidance, and enforcement) are beyond the scope of these regulations. For example, the application of the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2021–30, 2021–31 IRB 172, is beyond the scope of these regulations. The final regulations include non-substantive modifications, including non-substantive changes in response to comments and modifications that promote consistency across rules and examples and improve the overall clarity of the guidance. Such non-substantive modifications are not addressed in this Summary of Comments and Explanation of Revisions.

I. Section 1.414A–1

A. Employees Required To Be Covered Under the Eligible Automatic Contribution Arrangement

The proposed regulation would clarify that a CODA or salary reduction agreement under a plan satisfies the automatic enrollment requirements of section 414A only if the plan provides for an EACA that covers all employees in the plan who are eligible to elect to have contributions made on their behalf under the CODA or pursuant to the salary reduction agreement. One commenter agreed with the language of the proposed regulation, but several other commenters requested that the final regulations provide that certain categories of employees need not be covered by an EACA for section 414A(b) to be satisfied. In particular, commenters requested that an EACA in a plan need not cover (1) employees who are covered by a collective bargaining agreement or (2) employees who were eligible to participate in a CODA or salary reduction agreement included in the plan before the CODA or salary reduction agreement became subject to the automatic enrollment requirements of section 414A(b). Although section 414A(c) provides several exceptions to the requirements of section 414A(a) for certain types of plans, no provision in section 414A (or in section 101(c) of the SECURE 2.0 Act) excludes any category of employee from the automatic enrollment requirements of section 414A(b) of the Code if the plan is subject to section 414A(a). Accordingly, § 1.414A–1(c)(1)(ii) retains the rule from the proposed regulation and clarifies that each employee who is eligible to elect to have contributions made on the employee's behalf under a CODA or pursuant to a salary reduction agreement must be covered by the EACA, which includes an employee who was eligible to participate in the CODA or salary reduction agreement before the CODA or salary reduction agreement became subject to the automatic enrollment requirements of section 414A(b).

B. Timing Rules for Applying the Default Election

To reflect the minimum contribution percentage requirements of section 414A(b)(3), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if the default election made on behalf of an employee under the EACA is equal to a uniform percentage of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan. A commenter requested confirmation that, after an EACA notice is distributed, a plan may begin to apply the default election after a reasonable election period. The commenter also requested flexibility on the timing for automatically enrolling long-term, part-time employees in the EACA. Another commenter noted the importance of giving employees prior notice of their right to opt out of any default contributions and automatic increases.

Section 1.414A–1(c)(1)(i), like the proposed regulation, reflects the provisions of section 414A(b)(1) by requiring that the automatic contribution arrangement under section 414A be an EACA. An EACA is subject to the requirements of § 1.414(w)–1(e)(2), which requires that the default election begin to apply no earlier than a reasonable period of time after receipt of the notice describing the EACA. The changes made by the SECURE 2.0 Act do not affect this existing rule. Thus, an EACA that is subject to section 414A must also meet this timing requirement.

Additionally, § 1.414(w)–1(b)(3)(iii) provides timing rules for giving the EACA notice, which are not affected by the SECURE 2.0 Act, and which also would apply to an EACA that is subject to section 414A. Under these timing rules, the notice generally must be provided within a reasonable period before the beginning of each plan year (generally, at least 30 days (and no more than 90 days) before the beginning of each plan year). However, in the plan year an employee is first eligible to make a cash or deferred election (or first becomes covered under the automatic contribution arrangement as a result of a change in employment status), the notice must be provided within a reasonable period before the employee becomes a covered employee (generally, no more than 90 days before the employee becomes a covered employee, and no later than the date that affords the employee a reasonable period of time after receipt of the notice to make an affirmative election). These automatic enrollment timing rules, including the time period for giving the notice, apply to each employee covered under the EACA and do not contain any special rules for long-term, part-time employees. Accordingly, no changes were made to the final regulation in response to these comments.

C. Timing and Default Percentage Rules for Applying Automatic Increases

As described in section II.A of the Background portion of this preamble, section 414A(b)(3)(A)(ii) generally requires automatic increases of one percentage point to an employee's minimum default contribution percentage for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent). The proposed regulation would provide that, for each plan year beginning after an employee's initial period, the percentage contribution under the default election must be increased by one percentage point until the percentage is at least 10 percent.

Commenters requested clarification that the one percentage point increase to the percentage contribution under the default election could occur on a day other than the first day of a plan year. With respect to the timing of automatic increases, some of those commenters requested that the minimum escalated percentage for a plan year be permitted to be applied earlier than the first day of the plan year, thus allowing the escalation to be applied earlier but not later than the first day of the plan year. Additionally, one commenter asked for clarification that an automatic increase to the percentage contribution under the default election could be greater than one percentage point.

In response to the comments, § 1.414A–1(c)(3)(ii)(B) clarifies the language of the proposed regulation by providing that, not later than the first day of each plan year beginning after an employee's initial period, the percentage contribution under the default election applicable to the employee on the first day of the prior plan year must be increased by at least one percentage point. This clarification allows for flexibility in the timing and amount of the increase. The final regulation also provides that annual increases must occur until the employee's percentage contribution is at least 10 percent. Under the final regulation, a plan may provide that the annual increases continue after the employee's percentage contribution is 10 percent but may not provide for the annual increases to continue after the employee's percentage contribution is equal to 15 percent.

D. Redetermination of the Initial Period Used To Determine an Employee's Default Contribution Percentage

The proposed regulation would provide rules, based on the rules for a QACA under § 1.401(k)–3(j)(2)(iv), that address the default percentage that would apply for an employee who did not have default elective contributions made for an entire plan year. The proposed regulation would provide different rules that could be used depending on whether the employee was not eligible to have contributions made on the employee's behalf under a CODA or salary reduction agreement or had made an affirmative election to have contributions made in a different amount (including an election not to have contributions made).

Specifically, the proposed regulation would permit a plan to provide that if, after an employee's initial period began, the employee did not have default elective contributions made on the employee's behalf for an entire plan year, then the employee's initial period is redetermined. If no default elective contributions were made solely because the employee was not eligible to elect to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement for that entire plan year, then a plan would be permitted to provide that the employee's initial period would be redetermined so that it begins on the date the employee is again eligible to elect to have contributions made on the employee's behalf under the plan. An employer would likely adopt this provision to determine the default contribution rate that applies to an employee who was rehired more than one plan year after the employee terminated employment.

However, if no default elective contributions were made solely because the employee made an affirmative election to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in a different amount (including an election not to have contributions made), then a plan would be permitted to provide that the employee's initial period would be redetermined so that it begins on any date specified under the plan that is later than the date the employee's original initial period ended. For example, a plan would be permitted to be amended to provide that, as of a specified date, the default election would apply to all employees who previously made an affirmative election that had been in effect for a period of at least one plan year to have contributions made on behalf of the employees under the plan at a rate that is below the uniform percentage that applies during an initial period (so that the uniform percentage that applies during the initial period will apply unless the employee makes a new affirmative election). An employer might adopt such an amendment to facilitate an increase in the rate of contributions made on behalf of its employees.

Commenters asked that the proposed regulation be modified to eliminate the requirement that a rehired employee must have been ineligible for at least an entire plan year before the plan can redetermine the rehired employee's initial period for purposes of implementing the default election applicable under the plan for the initial period. A commenter requested that plans be permitted to provide that employees who have made an affirmative election to contribute less than the default rate and have not had an entire plan year elapse since that election was implemented are not subject to increases based on the original initial period. Another commenter requested that the proposed regulation be modified to provide that an employee's initial period may be redetermined under the same rules currently applicable to a QACA under § 1.401(k)–3(j)(2)(iv).

Section 1.414A–1(c)(3)(iv) retains the requirement of the proposed regulation requiring an entire plan year of ineligibility or an entire plan year of

contributions made pursuant to an affirmative election, regardless of whether the affirmative election contribution percentage is less than the default percentage, before the plan can implement the initial default percentage by redetermining the rehired employee's initial period. This language is intended to parallel, not modify, the rules currently applicable to a QACA under § 1.401(k)–3(j)(2)(iv), which states that for purposes of determining the date the initial period begins, a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under the QACA as if the employee had not had such contributions made for any prior plan year as well. In addition, the final regulation balances the requirement of automatic increases at regular intervals with concerns regarding the administrative feasibility of determining an individual's default contribution percentage based on older data.

Another commenter requested clarification whether the plan document would need to be amended to reflect this rule if the plan chooses to reflect the provision in the preamble to the proposed regulation permitting the redetermination of the initial period in the case of an employee who became eligible to participate in the plan before the first day of the 2025 plan year and who did not have default elective contributions made for an entire plan year (and the plan document does not already provide for redetermination). As explained in section I.I of this Summary of Comments and Explanation of Revisions regarding applicability date issues, if a plan chooses to permit the redetermination of the initial period in this situation, plan terms would need to provide for the redetermination.

E. Investment Requirements

In accordance with the investment requirements of section 414A(b)(4), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if amounts contributed pursuant to the EACA, and for which no investment is elected by the employee, are invested in accordance with the requirements of 29 CFR 2550.404c–5 (or any successor regulations). Section 2550.404c–5 provides rules regarding the fiduciary relief afforded by section 404(c)(5) of ERISA, under which a participant who does not give investment directions will be treated as exercising control over the participant's account with respect to assets that the plan invests in a QDIA as defined in § 2550.404c–5(e).

Commenters requested clarification that section 414A(b)(4) does not apply to, or is deemed satisfied for, an EACA (subject to section 414A(b)) that is part of a plan that does not provide for participant direction of the investment of amounts contributed pursuant to the EACA. One commenter requested that, as an alternative, a plan be permitted to satisfy section 414A(b)(4) by providing participants with the option to choose between trustee-directed investments and a QDIA as described in 29 CFR 2550.404c–5, with any amounts for which no investment is elected by the participant automatically invested in the QDIA.

In response to the comments, § 1.414A–1(c)(4) provides that the requirements of 29 CFR 2550.404c–5 (or any successor regulations) apply to amounts contributed pursuant to an EACA only if the EACA is part of a plan that offers an employee the opportunity to direct the investment of all or a portion of the assets allocated to the employee's individual account under the plan. This is consistent with section 414A(b)(4), under which the requirements of 29 CFR 2550.404c–5 (or any successor regulations) apply if the employee chooses not to make an investment election. Section 1.414A–1(c)(4) also clarifies that the requirements of 29 CFR 2550.404c–5 (or any successor regulations) apply to amounts contributed pursuant to an EACA only if the EACA is part of a plan that is subject to title I of ERISA.

F. Exceptions for New and Small Businesses

Section 414A(c)(4)(A) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, while the employer maintaining the plan (and any predecessor employer) has been in existence for less than 3 years. Section 414A(c)(4)(B) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, earlier than the date that is one year after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees.

1. Predecessor Employer

The notice of proposed rulemaking requested comments on whether guidance would be needed to define the term predecessor employer as used in the new business exception under section 414A(c)(4)(A). Commenters requested guidance on the definition, mentioning, among other reasons, concerns with applying the new business exception in a merger context. One of those commenters recommended that the term predecessor employer be defined by reference to § 1.415(f)–1(c)(2), which provides rules, in the context of applying limitations on benefits and contributions, for determining a predecessor employer in a situation in which a plan is not maintained by a successor. In response to these comments, § 1.414A–1(d)(4)(i) provides that, for purposes of the new business exception, a predecessor employer is a predecessor employer within the meaning of § 1.415(f)–1(c). Thus, the final regulation includes a definition of predecessor employer in the situation in which a plan is maintained by a successor as well as a situation in which a plan is not maintained by a successor.

2. Related Employers

Commenters requested clarification as to whether, for purposes of the new and small business exceptions in proposed § 1.414A–1(d)(4), the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). Some commenters requested confirmation that the term employer would include all those members while other commenters requested that the term employer not include any of those members. In response to these comments, § 1.414A–1(d)(4)(iv) provides that, for purposes of the new and small business exceptions in the case of a plan that is not a multiple employer plan, the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). For purposes of the new and small business exceptions, in the case of a multiple employer plan, § 1.414A–1(d)(4)(iv) provides that the term employer includes all employers treated as a single employer under § 1.413–2(a)(2)(ii).

3. Eligibility for the Small Business Exception

One commenter requested confirmation that once an arrangement first becomes ineligible for the small business exception in proposed § 1.414A–1(d)(4)(ii) because the employer maintaining the plan normally employs more than 10 employees in a taxable year, then the arrangement will remain subject to the requirements of proposed § 1.414A–1(b) even if the employer normally employs 10 or fewer employees in a subsequent year.

Another commenter requested clarification regarding the application of the small business exception if an employer normally employs 10 or fewer employees in a subsequent year, particularly in the case of a corporate event that reduces the number of employees. Section 1.414A–1(d)(4)(ii) retains the language of the proposed regulation. Thus, the requirements of § 1.414A–1(b) do not apply before the first plan year that begins at least 12 months after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees. The Treasury Department and the IRS agree with the first commenter's interpretation that the requirements of § 1.414A–1(b) continue to apply for subsequent plan years even if the employer no longer normally employs more than 10 employees, including in the case of a corporate event.

4. Determining the Number of Employees for the Small Business Exception

A commenter requested that the final regulation allow an employer the flexibility to determine the number of its employees, for purposes of determining whether the employer normally employs more than 10 employees, based on either (1) the rules of Q&A–5 of § 54.4980B–2, as specified in the proposed regulations, or (2) the eligibility rules for SIMPLE IRAs and the credit for small employer pension plan startup costs under section 45E. However, because the phrase normally employed is used in section 4980B(d)(1) and Q&A–5 of § 54.4980B–2 but not in section 45E, § 1.414A–1(d)(4)(ii) retains the rule from the proposed regulation providing that the number of employees that the employer normally employs for a taxable year is determined using the rules of Q&A–5 of § 54.4980B–2 and does not permit the alternative requested by the commenter.

G. Exceptions for Plans Established Before the Enactment of Section 414A

As described in section II.A of the Background portion of this preamble, section 414A(c)(2)(A) provides an exception from the requirements of section 414A(a) in the case of a qualified CODA, or section 403(b) plan, that is established before December 29, 2022. This Summary of Comments and Explanation of Revisions uses the term pre-enactment plan to encompass both a qualified CODA and section 403(b) plan that is eligible for the exception under section 414A(c)(2)(A).

The proposed regulation would implement section 414A(c)(2)(A)(i) by generally providing that the requirements of section 414A(a) do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were adopted initially before December 29, 2022, even if the plan terms providing for the CODA become effective after that date. One commenter asked for clarification of the treatment of a multiemployer plan that existed before December 29, 2022, but did not add a CODA until after that date. Section 1.414A–1(e)(1)(i) retains the rule from the proposed regulation. This rule reflects section 414A(c)(2)(A)(i) and applies to multiemployer plans. Therefore, a multiemployer plan qualifies for the exception from the requirements of section 414A only if plan terms were adopted providing for the qualified CODA before December 29, 2022. If they were not, then the plan would not qualify for the exception.

H. Merger of a Plan Established on or After the Enactment of Section 414A With a Plan Established Before the Enactment of Section 414A

The proposed regulation generally would provide that a pre-enactment plan maintained by a single employer will not continue to be treated as a pre-enactment plan after a merger with a plan maintained by a single employer that is not a pre-enactment plan. However, the proposed regulation would provide an exception in this case if there is a transaction described in § 1.410(2)–2(f), the pre-merger pre-enactment plan is designated as the ongoing plan, and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii). Under section 410(b)(6)(C)(ii), the transition period begins on the date of the change in members of a controlled group (as described in section 414(b), (c), (m), or (o)) and ends on the last day of the first plan year beginning after the date of that change.

One commenter requested that the condition to designate the pre-merger pre-enactment plan as the ongoing plan be eliminated in the final regulation or, in the alternative, recommended that the preamble to the final regulations clarify that the designation can be accomplished in any written manner and need not necessarily be in the plan document. Section 1.414A–1(e)(3)(ii)(B) retains the condition in the proposed regulation requiring that the pre-merger pre-enactment plan be designated as the ongoing plan. However, the Treasury Department and the IRS agree with the commenter that the designation of an ongoing plan under § 1.414A–1(e)(3)(ii)(B) should be documented in writing but does not need to be in the written plan document.

Another commenter requested that the proposed regulation be modified to extend the period for a plan merger until the end of the first plan year that ends no later than eighteen months after the end of the transition period described in section 410(b)(6)(C)(ii). Section 410(b)(6)(C)(ii) provides a period for an employer to implement changes to its plans that may be needed following a transaction described in section 410(b)(6)(C). The Treasury Department and the IRS believe that this transition period is sufficient for an employer to implement a plan merger to preserve a plan's pre-enactment status under section 414A. Accordingly, § 1.414A–1(e)(3)(ii)(C) retains the condition in the proposed regulation that the plan merger occur within the transition period described in section 410(b)(6)(C)(ii).

I. Applicability Date Issues

The proposed regulations were proposed to apply to plan years that begin more than six months after the date that final regulations are published in the **Federal Register**. For earlier plan years, it was proposed that a plan be treated as having complied with section 414A if the plan complies with a reasonable, good faith interpretation of section 414A.

Commenters requested a later applicability date for the final regulation and a reasonable, good-faith standard for interpretation of the statute in advance of the applicability date of the final regulation. Some of these commenters specifically requested delayed applicability dates for multiemployer plans or other plans that are maintained pursuant to one or more collective bargaining agreements.

Section 1.414A–1(f)(2) provides that § 1.414A–1 applies to plan years beginning after December 31, 2027. The final regulation includes related clarifications to reflect this regulatory applicability date. Consistent with the proposed regulation, § 1.414A–1(f)(2) provides that, for prior plan years, a reasonable, good faith interpretation standard applies with respect to section 414A. The Treasury Department and the IRS have determined that this applicability date provides an adequate period for implementation of the provisions of the final regulation, including with respect to multiemployer plans or other plans that are maintained pursuant to one or more collective bargaining agreements.

Like the proposed regulation, the final regulation requires an EACA to cover all employees who are eligible to elect to have contributions made on their behalf for the automatic enrollment requirements to be satisfied. This requirement to cover all eligible employees includes an employee who became eligible to participate in the CODA or salary reduction agreement before the statutory applicability date. The final regulations are applicable for plan years beginning after December 31, 2027, but the statute applies to plan years beginning after December 31, 2024. For a CODA or salary reduction agreement that became subject to the automatic enrollment requirements of section 414A(b) on the statutory applicability date, employees who were eligible to participate in the CODA or to enter into a salary reduction agreement before the statutory applicability date may not have been covered by the EACA as of the first day of the plan year beginning after December 31, 2024 (the 2025 plan year). These employees who were not covered by the EACA as of the first day of the 2025 plan year are referred to in this section as pre-414A employees. Under the final regulation, the pre-414A employees must be covered by the EACA as of the first day of the plan year beginning after December 31, 2027 (the 2028 plan year) and automatically enrolled as of that date if they do not have affirmative elections in effect on that date. Under § 1.414A–1(c)(3)(ii)(A)(*2*), the initial period for the pre-414A employees begins when section 414A first applies to the plan, which is the first day of the 2025 plan year. Under § 1.414A–1(c)(3)(ii)(A)(*3*), the initial period for the pre-414A employees ends on the last day of the plan year that follows the plan year that includes the date the initial period begins, which is the last day of the 2026 plan year. Thus, the initial period for the pre-414A employees under the final regulation ends before the pre-414A employees must be covered by the EACA under the final regulation.

For a pre-414A employee who, under the final regulation, must be automatically enrolled as of the first day of the 2028 plan year, the plan terms could permit a redetermination of the initial period for the pre-414A employee. This redetermination is similar to the initial-period redetermination permitted in the final regulation for an employee who did not have default elective contributions made for an entire plan year, and it is permitted even though the pre-414A employee did not make an affirmative election. Thus, the plan is permitted to provide that the default contribution percentage that applies to the pre-414A employee is the percentage that would have applied under the EACA if the initial period for the pre-414A employee had started on the first day of the 2028 plan year. In the alternative, the plan is permitted to provide that the default contribution percentage that applies to the pre-414A employee is the percentage that would have applied under the EACA for the 2028 plan year had the pre-414A employee been covered by the EACA starting on the first day of the 2025 plan year.

J. Other Matters

1. Portability of Elections

Section 414A(b)(3)(A)(i) states that an EACA meets the requirements related to automatic contribution percentage levels if the uniform percentage of compensation contributed by the participant under the EACA during the first year of participation is not less than 3 percent and not more than 10 percent (unless the participant specifically elects not to have such contributions made or to have such contributions made at a different percentage). Proposed § 1.414A–1(c)(3)(iii) would provide exceptions to the uniformity requirement, including an exception that would apply if the rate of contributions under a CODA or salary reduction agreement that is in effect for an employee immediately prior to the date that the default election under the proposed regulation first applies to the employee is not reduced. A commenter requested that the final regulations provide for an exception to the uniformity requirement to allow for an individual's deferral election under a prior 401(k) or 403(b) plan to apply under a current plan, even if the prior and current plans are maintained by completely unrelated employers and even if the individual was not immediately eligible for the current plan after being ineligible for the prior plan (which could occur when the individual switches jobs or takes some time off between jobs). As an alternative, the commenter requested that the final regulations provide for the issuance of sub-regulatory guidance that elaborates on and further interprets the uniformity requirement. Another commenter specifically requested that the final regulations provide for portability of elections for plans sponsored by entities that are going through corporate transactions.

Section 1.414A–1(c)(3)(iii) retains the rule from the proposed regulation and does not address portability of elections in the context of (1) prior and current plans that are maintained by completely unrelated employers, including situations in which an individual was not immediately eligible for the current plan after being ineligible for the prior plan, or (2) corporate transactions. The final regulations also do not provide for the issuance of sub-regulatory guidance. The Treasury Department and the IRS have concerns about the complexity of, and disclosure concerns inherent in, allowing for elections under one plan to be taken into account under another unrelated plan without an individual providing consent.

2. PLESAs

The Department of Labor published a request for information soliciting public feedback on several sections of the SECURE 2.0 Act in the **Federal Register** (88 FR 54511). In response to comments received, the preamble to the proposed regulations addressed the interaction of the rules for a PLESA and the automatic enrollment requirements of section 414A. As stated in that preamble, if a plan with a qualified CODA includes a PLESA, then the PLESA is part of the CODA. Thus, an affirmative election to contribute to a PLESA is an affirmative election to contribute to the CODA. If the plan is subject to the automatic enrollment requirements of section 414A, then an affirmative election to contribute to a PLESA would be an affirmative election under the CODA for purposes of the proposed regulation. If an employee is automatically enrolled to contribute to a PLESA, the investment requirements of section 414A(b)(4) and proposed § 1.414A–1(c)(4) (which reference the Department of Labor's rules for QDIAs under 29 CFR 2550.404c–5) generally would not be satisfied with respect to the automatic contributions to the PLESA.[9] Thus, automatic contributions to the PLESA would not be able to be used to satisfy the automatic enrollment requirements under section 414A.

In response to the proposed regulations, commenters requested that the Treasury Department and the IRS work with the Department of Labor so that automatic contributions to a PLESA would be able to be used to satisfy the automatic enrollment requirements under section 414A. These comments

[9] The Department of Labor published frequently asked questions online providing general compliance information under ERISA regarding PLESAs providing that, generally, the investment option designated for PLESAs cannot be the same as a plan's QDIA under 29 CFR 2550.404c–5(e)(4)(i). However, Q&A–15 does indicate that a PLESA's investment option could meet the requirements for a QDIA for a short period of time.

have been shared with the Department of Labor.

3. Interaction With QACA Rules

A commenter requested confirmation that satisfaction of the requirements for a QACA found in § 1.401(k)–3(j) and (k) would constitute satisfaction of the automatic enrollment rules under section 414A. The Treasury Department and the IRS do not agree. The requirements under section 414A and the rules under section 401(k)(13) are separate, and the requirements under section 414A apply in addition to any rules under section 401(k)(13). Section 414A includes requirements that are not found in section 401(k)(13) and § 1.401(k)–3(j) and (k), including the requirement in section 414A(b)(2) that the arrangement be an eligible automatic contribution arrangement that allows employees to make permissible withdrawals (as defined in section 414(w)(2)) and the requirement in section 414A(b)(4) that certain amounts contributed pursuant to the arrangement be invested in accordance with the requirements of 29 CFR 2550.404c–5 (or any successor regulations).

The commenter also noted that the initial period under the proposed regulation begins earlier than the initial period for a QACA under § 1.401(k)–3(j)(2)(ii)(A) and that the initial period could end earlier under the proposed regulation.[10] However, an arrangement can be structured so that the initial period under the arrangement satisfies both the requirements under § 1.414A–1(c)(3)(ii)(A) and the rules for a QACA under § 1.401(k)–3(j)(2)(ii)(A). Accordingly, the final regulation retains the definition of initial period from the proposed regulation.

II. Section 1.414(w)–1 and Unenrolled Participants

As described in section II.B of the Background portion of this preamble, section 320 of the SECURE 2.0 Act adds new section 414(bb) to the Code. The notice of proposed rulemaking would reflect section 414(bb) by amending § 1.414(w)–1 to add a new paragraph under which, if the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant (as defined in section 414(bb)(2)),[11] then the requirement to give the notice described in section 414(w)(4) of an employee's rights and obligations (the annual EACA notice) does not apply to the participant. Thus, an unenrolled participant does not need to be given the annual EACA notice, provided that the participant is furnished (1) annual reminder notices under section 414(bb)(1)(A), and (2) any document requested by the participant (if the participant would be entitled to receive the document in the absence of section 414(bb) and section 111 of ERISA).

The notice of proposed rulemaking requested comments on the criteria that should apply for an individual to be an unenrolled participant under section 414(bb)(2). Additionally, on August 11, 2023, the Department of Labor published a request for information soliciting public feedback on several sections of the SECURE 2.0 Act in the **Federal Register** (88 FR 54511), including a request for information on the criteria that should be considered for determining who is an unenrolled participant.

One commenter on the proposed regulations requested further clarification on which employees would be included in the term unenrolled participant. Another commenter requested confirmation that the term unenrolled participant is defined as any employee who does not have an account balance in the plan and who has not elected to make contributions to the plan. Section 1.414(w)–1(b)(4)(i) retains the language of the proposed regulation and does not provide additional criteria for determining who is an unenrolled participant. To the extent guidance is issued under section 414(bb)(2)(D), the Treasury Department and the IRS, in consultation with the Secretary of Labor, will consider the commenters' requests and any other appropriate criteria for determining who is an unenrolled participant. These comments have been shared with the Department of Labor.

Applicability Date

Section 1.414A–1 and the amendments to § 1.414(w)–1 apply to plan years that begin after December 31, 2027. For a plan year beginning after December 31, 2024, but before the applicability date of these final regulations, a reasonable, good faith interpretation standard applies with respect to the statutory provisions reflected in the final regulations.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the OMB regarding review of tax regulations. OIRA has determined that the rulemaking is economically significant under section 3(f)(1) of Executive Order 12866 and subject to review under Executive Order 12866 and section 1(b) of the MOA. Accordingly, the regulations have been reviewed by OMB.

Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

Need for Regulation

The regulations are necessary because section 101 of the SECURE 2.0 Act sets out the broad rule that certain new 401(k) and 403(b) plans must use automatic enrollment but does not provide the required operational details. The regulations provide guidance on exactly who must be covered, how to calculate and increase default contribution rates, when an escalation schedule can be reset, how the investment default rules apply, and how statutory exceptions (such as for pre-enactment plans, plans maintained by new businesses, and plans maintained by small businesses) work.

The Statute and the Regulations

Section 101 of the SECURE 2.0 Act adds new section 414A to the Code and

[10] The initial period under § 1.401(k)–3(j)(2)(ii)(A) begins when the employee first has contributions made pursuant to a default election under an arrangement and ends on the last day of the following plan year. The initial period under § 1.414A–1(c)(3)(ii)(A)(*2*) and (*3*) begins when the employee is first eligible to elect to have contributions made on the employee's behalf under the plan (or if later, when section 414A first applies to the plan), and ends on the last day of the plan year that follows the plan year that includes the date the initial period begins.

[11] Section 414(bb)(2) defines an unenrolled participant as an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished the summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria as the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor.

makes automatic enrollment a required feature for many newly established 401(k) and 403(b) retirement plans. Under this change, a CODA or a 403(b) salary reduction agreement will not be treated as tax-favored unless it is structured as an EACA, under which eligible employees must be enrolled automatically unless they affirmatively opt out or choose a different contribution rate.

Section 101 of the SECURE 2.0 Act also sets specific minimum standards for how automatic enrollment must work. The default contribution rate must be a uniform percentage between three percent and ten percent and automatically increase by one percentage point for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least ten percent (but not more than 15 percent). Employees must be allowed to opt out or elect a different percentage. In addition, automatically contributed amounts must be eligible for a limited permissible-withdrawal period shortly after enrollment, giving employees a chance to reverse default contributions. In general, if an employee does not choose how to invest contributions, the amounts must be invested in accordance with the requirements of Department of Labor rules regarding QDIAs.

Section 101 of the SECURE 2.0 Act builds in several exceptions. The automatic enrollment requirements do not apply to 401(k) or 403(b) plans that were established before December 29, 2022, nor to SIMPLE 401(k) plans, governmental plans, or church plans. Section 101 also provides temporary relief for certain small or new employers—businesses that have been in existence for less than three years or that normally employ ten or fewer employees. Overall, section 101 amends the Code to make automatic enrollment with escalating contribution rates the default framework for many newly created defined contribution retirement plans, with the goal of increasing employee participation and retirement savings levels nationwide.

The regulations provide the operational details of how plans comply with the automatic enrollment requirement added by section 101 of the SECURE 2.0 Act. The regulations clarify that, unless a statutory exception applies, a 401(k) or 403(b) plan that is subject to new section 414A of the Code must include an EACA that covers all employees who are eligible to make deferrals and not just new hires or employees not covered by a collective bargaining agreement. Employees who already have an affirmative election in effect when section 414A first becomes applicable to the plan do not have to be defaulted; this protects existing elections. The regulations confirm that the plan must include the existing EACA permissible withdrawal feature—meaning an automatically enrolled employee must be allowed to withdraw default contributions (plus earnings) within a 90-day window after the first default contribution.

The regulations also provide detailed mechanics on how the automatic increases must operate. The regulations define an employee's initial period as beginning when the employee first becomes eligible to make deferrals (or, if later, when section 414A first applies to the plan) and ending on the last day of the plan year following the plan year in which eligibility begins. The regulations provide that after that period the plan must increase the employee's default rate by at least one percentage point each year, no later than the first day of each plan year, until the rate reaches at least ten percent, but not above 15 percent.

The regulations allow certain exceptions to the uniform percentage requirement. Employees at different stages of participation can contribute at different default percentages if the default percentages are based on how long the employees have been subject to the EACA. If an employee was already contributing at a certain rate before the automatic enrollment rules applied, the plan does not have to reduce that employee's contribution rate down to a new default percentage. If statutory contribution limits prevent an employee from contributing the full default percentage, the plan can cap the employee's contributions at the legal maximum.

The regulations also permit limited resets of the beginning of an initial period. A reset is allowed if, after an employee's original initial period begins, the employee has an entire plan year with no default contributions. For example, a rehired employee who was ineligible for a full plan year may have a new initial period starting when the employee is again eligible. Similarly, if an employee affirmatively elected a zero percent contribution rate (or another rate), the employee may have a new initial period if the employee has at least an entire year with no default contributions.

Under the regulations, if a plan is subject to title I of ERISA, and permits participant-directed investments, then any defaulted contributions for which the employee does not make an investment election must be invested in a QDIA under Department of Labor rules—typically a target-date fund, balanced fund, or managed account that satisfies the QDIA regulation. By contrast, if a plan does not permit participants to direct the investment of their accounts (for example, if all investments are selected and managed by a trustee or investment committee), then the requirements of the QDIA regulation need not be satisfied. In that case, the regulations allow plan assets to be invested without having to satisfy the requirements of the QDIA regulation.

With respect to the new business exception (for employers in existence for less than 3 years), the regulations define predecessor employer by cross-reference to existing tax rules, meaning prior businesses count for purposes of determining the three-year period. Additionally, the regulations provide that the automatic enrollment requirements apply for the next plan year immediately after the employer has been in existence for 3 years. For the small business exception, the regulations specify that the employer is considered to normally employ more than 10 employees using the employee counting method under the rules of Q&A–5 of § 54.4980B–2 (referred to as the COBRA [12] regulations). The regulations also clarify that the automatic enrollment requirements apply starting with the first plan year following the first taxable year of the employer with respect to which that employer normally employed more than 10 employees. The regulations also clarify that related employers that are treated as one employer under certain controlled group rules must be aggregated when applying the exception. The regulations clarify that in the case of a multiple employer plan, the exceptions for new and small businesses apply on an employer-by-employer basis.

Finally, the regulations provide detailed guidance on the statutory exception for plans established before December 29, 2022 (the pre-enactment exception). The regulations provide that the automatic enrollment requirements do not apply to any CODA if the plan terms providing for the CODA were adopted before that date, even if those plan terms were effective after that date, and to any 403(b) plan adopted before that date, without regard to the date of adoption of any salary reduction agreement provisions.

The regulations provide that if two pre-enactment plans merge, the post-

[12] Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, 100 Stat. 82, as amended (COBRA).

merger plan will be treated as a pre-enactment plan and clarify that, in the case of a multiple employer plan, the merger does not change the status of the plan for employers that were already participating before the merger. If a pre-enactment plan merges with a plan that is not eligible for the exception as a pre-enactment plan, the merged plan generally loses the exception, unless the merger occurs in connection with certain corporate transactions during a limited transition period and the pre-enactment plan is designated as the ongoing plan.

A multiple employer plan that is merged with another plan would be treated as a pre-enactment plan with respect to the employer that sponsored the merged-in plan if, with respect to the participating employer that engaged in the transaction, the plan was treated as a pre-enactment plan before the transaction. As is the case of any merger involving a multiple employer plan, the merger would not affect whether the multiple employer plan is treated as a pre-enactment plan with respect to any other employer. With respect to a merger of a multiple employer plan that is a pre-enactment plan with a multiple employer plan that is not a pre-enactment plan, the regulation provides that the merger will not affect whether the merged plan is treated as a pre-enactment plan with respect to any employer that maintained either multiple employer plan prior to the merger. If an employer joins a multiple employer plan after the date of enactment, the automatic enrollment rules apply as if the employer maintained its own separate plan (unless another statutory exception, such as the small business or new business exception, applies).

The regulations provide that other changes, such as changing plan design features or expanding eligibility, do not cause the plan to lose pre-enactment status.

Affected Entities and Taxpayers

While about 2.2 million taxpayers and 31,600 retirement plans are expected to benefit from the clarity provided by the regulations, approximately 1.5 million taxpayers per year on average between 2023 and 2032 (increasing at a rate of about 0.7 percent each year during this time period) and about 25,000 retirement plans per year on average will be directly affected by the regulations.[13]

Economic Effects of the Regulations

The regulations provide operational details and clarity with respect to how 401(k) and 403(b) plans comply with the automatic enrollment requirements added by section 101 of the SECURE 2.0 Act. Section 101 applies only to new 401(k) and 403(b) plans and provides limited scope for choices to be made about the conditions under which a new 401(k) or 403(b) plan satisfies or fails to satisfy the automatic enrollment requirements to qualify for tax-favored status.

The clarity provided by the regulations creates economic benefits for all affected taxpayers in terms of increased retirement savings and relatively small costs for affected CODAs in terms of additional investment expenses and administrative costs. The Treasury Department and the IRS used Investment Company Institute (ICI) studies; confidential tax data, including Form 5500 filings; and Treasury's Individual Tax Model (ITM) to estimate the costs and benefits of the regulations. Section 101 is estimated to increase retirement savings by $4.2 billion on average each year between 2023 and 2032, affecting about 2.2 million taxpayers and about 31,600 affected plans on average each year.[14] This corresponds to about a 7 percentage point[15] increase in participation each year for employees in affected plans (an increase in participation rates from 70 percent to 77 percent). Once implemented, about 50 percent of all employees in affected plans are expected to use a default contribution rate.[16] Retirement savings are expected to increase on average by $1,900 per year for the 2.2 million affected taxpayers. Moreover, over the next decade, the number of affected taxpayers is expected to increase by 0.7 percent per year, and the amount of retirement savings is expected to increase by 4.9 percent per year.

Table 1 shows, using proportions provided by Venti and Wise (1986), the estimated amount of the increase in average savings per year attributed to reduced current consumption, reduced other tax-preferred or non-tax-preferred saving, and the tax subsidy from increased tax-preferred savings.[17]

TABLE 1—SOURCE OF INCREASE IN RETIREMENT SAVINGS

Source	Average per year ($/Bn)	Average per participant per year ($)
Reduced Current Consumption	2.1	946
Reduced Other Saving	0.6	284
Tax Subsidy	1.5	662

[13] Gillette, R., Kitchen, J., Pearce, J., Prisinzano, R., & Zhang, C. (2023). *U.S. Treasury Individual Income Tax Model* (Office of Tax Analysis Technical Paper No. 12). U.S. Department of the Treasury. *https://home.treasury.gov/system/files/131/TP-12.pdf.*

[14] U.S. Department of Labor, Employee Benefits Security Administration. (2026, January). *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 annual reports* (Version 1.1). U.S. Department of Labor. *https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf;* U.S. Department of Labor, Employee Benefits Security Administration. (n.d.). *Form 5500 datasets.* U.S. Department of Labor. Retrieved July 27, 2026, from *https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/foia/form-5500-datasets.*

[15] Butrica, B. A., & Karamcheva, N. S. (2015, May). *Automatic enrollment, employer match rates, and employee compensation in 401(k) plans. Monthly Labor Review,* U.S. Bureau of Labor Statistics. *https://www.bls.gov/opub/mlr/2015/article/automatic-enrollment-employer-match-rates-and-employee-compensation-in-401k-plans.htm.*

[16] Burke, J., Hung, A. A., & Luoto, J. E. (2016). *Opting out of retirement plan default settings* (Working Paper No. 2016–01). U.S. Department of Labor, Employee Benefits Security Administration. *https://www.dol.gov/sites/dolgov/files/ebsa/researchers/analysis/retirement/opting-out-of-retirement-plan-default-settings.pdf.*

[17] Venti, S. F., & Wise, D. A. (1986). Tax-deferred accounts, constrained choice and estimation of individual saving. *The Review of Economic Studies, 53*(4), 579–601. *https://doi.org/10.2307/2297607;* Poterba, J.M., Venti, S.F., & Wise, D.A. (1995). Do 401(k) contributions crowd out other personal saving? *Journal of Public Economics, 58*(1), 1–32. *https://doi.org/10.1016/0047-2727(95)01404-3* and Poterba, J.M., Venti, S.F., & Wise, D.A. (1996). How retirement saving programs increase saving. *Journal of Economic Perspectives, 10*(4), 91–112. *https://doi.org/10.1257/jep.10.4.91.*

Covered Employees and Permissive Withdrawals

The regulations clarify that a CODA or a salary reduction agreement under a plan satisfies the automatic enrollment requirements only if the plan provides for an EACA that covers all eligible employees and that, while section 101 provides exceptions to this requirement for certain types of plans, it includes no provision that excludes any category of employees. Moreover, the regulations clarify that an EACA does not fail to satisfy section 101 if the default election does not apply to an employee who has an affirmative election, including an election not to have contributions made, that remains in place. The regulations also provide that an EACA satisfies the automatic enrollment requirements only if the plan provides for permissible withdrawals, as required by section 101. Hence, the regulations do not incorporate any choice in determining covered employees and permissible withdrawals.

Timing Rules

The regulations clarify that an employee's initial period begins when the employee is first eligible to elect to have contributions made under the plan and ends on the last day of the following plan year, as opposed to the initial period's beginning when the employee first has contributions made pursuant to a default election and ending on the last day of the following plan year. The timing difference between the two alternatives is at most two weeks and arises only because of coordination issues between employee start dates (some employees start in the middle of a pay period) and payroll system operations. The decision to use the approach in the regulation as opposed to the alternative would result in an increase of annual retirement savings for a new hire of up to 3 percent. Hence, the Treasury Department and the IRS expect that this rule will increase retirement savings by about $100 million per year on average relative to $4.2 billion baseline increase in retirement savings. About 25,000 plans are expected to be affected by this rule. Allowing for partial period contributions is expected to increase administrative costs by a negligible amount each year.

Default Percentage Rule

The regulations clarify that no later than the first day of each plan year beginning after an employee's initial period, the default election applicable to the employee on the first day of the prior plan year must be increased by at least one percentage point. This decision, which allows for flexibility in terms of timing and amounts of increases, reduces the administrative burden and would increase retirement savings. However, applying the minimum escalated percentage prior to the first day of the plan year is not expected to be common since plan years are typically calendar years and the effective date used by employers for annual salary increases is often January 1 or early in the first quarter of the year.

Additionally, applying an escalating percentage point greater than one percentage point is unlikely to occur for two reasons. First, research on salience and taxation [18] would suggest that doing so is likely to result in pushback from employees who are subject to automatic enrollment in the form of complaints and some employees' opting out of automatic enrollment completely due to the abrupt and significant decrease in their take-home pay. Second, employers have no discernible benefit from applying an escalating percentage-point increase greater than one percentage point.

The regulations also provide exceptions like those found in existing rules for a QACA to the uniform percentage requirement of section 101 to ensure that the automatic escalation of the default election percentage is administratively feasible. Examples include, allowing employees to contribute at different default percentages if the default percentages are based on how long the employees have been subject to the EACA and allowing the plan to cap contributions for an employee if statutory contribution dollar limits prevent them from contributing the full default percentage.

The regulations allow plans to reset an employee's initial period if an employee goes a full year without having default contributions. If the employee had no contributions because the employee made an affirmation election, the plan can reset their initial period to any future date after the employee's initial period ended. This rule gives employers the flexibility to restart an employee's initial period, including for an employee who previously made an affirmative election. For example, if the employee had no contributions because the employee terminated employment and was later rehired, the regulations allow a plan to restart the employee's initial period. While this rule would reduce the administrative costs, as plans would not have to keep track of the automatic escalation schedule of employees who terminated employment and increase retirement savings, the economic impact would be negligible as less than two percent of the U.S. workforce is composed of workers who terminated employment and were later rehired.[19] [20]

Investment Requirements

The regulations clarify that the investment rules in section 414A of the Code only apply to plans that allow employees to direct their investments. Given that nearly all 401(k) and 403(b) retirement plans are subject to title I of ERISA, and that Form 5500 filings indicate that only about 3.5 percent of 401(k) and 403(b) retirement plans do not allow participant-directed investments, the Treasury Department and the IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings attributable to 401(k) and 403(b) retirement plans that do not allow participant-directed investments is about $150 million. Based on Form 5500 Schedule H data, the average expense ratio is about 1.5 percent. Hence, the Treasury Department and the IRS estimate that this part of the regulations will save about $3 million in plan costs and benefit less than 80,000 taxpayers on average each year between 2023 and 2032.

Small Business and New Business Exceptions

The regulations clarify that once a business has been in existence for three years, automatic enrollment needs to begin starting the next plan year and defines a predecessor employer (which matters for determining whether a business is a new business) using existing rules under the Code. The alternative would have been to start automatic enrollment on the date of the new business's 3-year anniversary. Using US Census Bureau data on firm age,[21] US Bureau Labor Statistics data on access to retirement plans,[22] and Form 5500 filings, the Treasury and the

[18] Chetty, R., Looney, A., & Kroft, K. (2009). Salience and taxation: Theory and evidence. *American Economic Review, 99*(4), 1145–1177. *https://doi.org/10.1257/aer.99.4.1145.*

[19] Richardson, N. (2025, May 20). *Boomerang hiring makes a comeback.* ADP Research. *https://www.adpresearch.com/boomerang-hiring-makes-a-comeback/.*

[20] Fujita, S., & Moscarini, G. (2017). *Recall and Unemployment.* American Economic Review, 107(12), 3875–3916.

[21] U.S. Census Bureau. (2025). *Business Dynamics Statistics: Firm age: 1978–2023* (Table BDSFAGE). Economic Surveys, Business Dynamics Statistics. *https://data.census.gov/table/BDSTIMESERIES.BDSFAGE.*

[22] U.S. Bureau of Labor Statistics. (2023, September 21). *Employee benefits in the United States—March 2023.* U.S. Department of Labor. *https://www.bls.gov/news.release/archives/ebs2_09212023.htm.*

IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings and the 2.2 million affected taxpayers attributable to taxpayers employed in firms of age 3. Based on an average shift in retirement savings of six months, the Treasury Department and the IRS estimate that this rule, relative to the alternative, would reduce retirement savings over the 2023 to 2032 time period by less than $3 million a year and would affect about 19,000 taxpayers a year. Further Treasury and the IRS estimate that about 1,000 plans a year would experience small increases in associated administrative costs per year due to this rule relative to the alternative.

The regulations clarify that the number of employees that the employer normally employs for a taxable year is determined using the COBRA regulations. This clarification is necessary because section 101 of the SECURE 2.0 Act stipulates that businesses normally employing ten or fewer employees are not subject to the automatic enrollment requirements and the phrase normally employed is used in the COBRA regulations. Additionally, the regulations clarify that when an employer first has a year in which it normally employed more than 10 employees, the automatic enrollment rule applies starting with the next plan year that begins at least 12 months after the end of that year. Based on Form 5500 filings, the Treasury Department and the IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings and the 2.2 million affected taxpayers attributable to plans with five to nine employees. Based on the assumption that about 8 percent of such firms will increase their employment beyond the 10-person threshold in the next year and an average shift in retirement savings of eighteen months, the Treasury Department and the IRS estimate that this waiting period relative to requiring such firms to begin autoenrollment once they cross the 10-person threshold would reduce retirement savings by about $4 million and affect less than 10,000 workers. The waiting period in the regulation relative to the alternative would affect about 150 plans, but the difference in plan costs between the chosen option and the alternative is estimated to be negligible on average per year between 2023 and 2032.

Exceptions for Pre-Enactment Plans

The regulations interpret what it means to establish a CODA before December 29, 2022, for purposes of section 101 of the SECURE 2.0 Act. The regulations provide that the automatic enrollment requirements do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were adopted initially before December 29, 2022, even if the plan terms providing for the CODA are effective after that date. The regulations could have provided an alternative interpretation and provided that the automatic enrollment requirements do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were effective initially before December 29, 2022. This alternative would have made more plans subject to the automatic enrollment requirements.

Given that plan sponsors were able to anticipate the passage of the SECURE 2.0 Act of 2022 well in advance [23] but there was no certainty about the adoption of regulations that would exempt qualified CODAs that were adopted initially before the date of enactment from the automatic enrollment requirements, plan sponsors with a preference against automatic enrollment would have adopted their plan terms with effective dates prior to December 29, 2022. Hence, the regulations would have had little impact on the timing of the effective dates of plan terms. Hence, the Treasury Department and the IRS estimate that just 0.25 percent of the plan terms of qualified CODAs adopted before December 29, 2022, had plan terms effective after that date. Based on this assumption, this part of the regulations, relative to the alternative, would result in a one-time reduction in retirement savings of about $11 million, affecting less than 6,000 taxpayers, less than 100 plans, and total plan costs by a negligible amount.

Lastly, the regulations provide rules regarding the applicability of the pre-enactment exception in situations involving plan mergers. These merger rules are expected to benefit employers and employees by increasing flexibility and reducing the costs for the subset of plans affected by plan mergers.

Summary

Aspects of regulation	Benefits		Costs	
	Counts	Amounts	Counts	Amounts
a. Covered employees and permissive withdrawals.				
b. Timing rules	About 1.5 million taxpayers per year on average.	About $100 million per year on average.	About 25,000 plans per year on average.	
c. Default percentage rules	About 32,000 plans per year on average.	Greater flexibility on date, amount and reset of default election percentage escalation. Avoids administrability issues with default percentage rules.		
d. Investment Requirements	About 1,100 plans per year on average and less than 80,000 taxpayers per year on average.	About $3 million per year on average.		
e. New Business Exception	Less than 1,000 plans per year on average.	More time to implement autoenrollment.	Less than 20,000 taxpayers per year on average.	Less than $3 million per year on average
f. Small Business Exception	Less than 150 plans per year on average.	More time to implement autoenrollment.	Less 10,000 taxpayers per year on average.	Less than $4 million per year on average

[23] The earliest version of the SECURE 2.0 Act of 2022 was introduced as Securing a Strong Retirement Act of 2021 on May 2021 and the SECURE 2.0 Act of 2022 passed with clear majorities in both the House and Senate.

Aspects of regulation	Benefits		Costs	
	Counts	Amounts	Counts	Amounts
g. Exceptions for Pre-Enactment Plans.	Less than 100 plans	Facilitates a choice with respect to autoenrollment.	One-time impact on less than 6,000 taxpayers.	One-time reduction in retirement plan savings of about $11 million

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information contained in these regulations have been approved by OMB under OMB Control Number 1545–2135.

The collections of information in these regulations contain third-party disclosure requirements that are necessary to comply with the statutory requirement under section 414A of the Code (which requires certain CODAs or salary reduction agreements to be EACAs) and that are necessary if a plan applies section 414(bb) (which eliminates certain disclosure and notice requirements for unenrolled participants if an annual notice is provided to the unenrolled participants). These collections of information generally will be provided by businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments that sponsor retirement plans that include EACAs to individuals in order to meet the statutory notice requirements for EACAs under section 414(w)(4).

The collections of information in these regulations contain third-party disclosure requirements that are necessary to comply with the statutory rule under section 414A, which requires certain CODAs and salary reduction agreements to be EACAs (as defined in section 414(w)(3)). Under § 1.414(w)–1(b)(3), initial and annual written notices must be given to each employee to whom the EACA applies of the employee's rights and obligations under the EACA. Section 1.414A–1 does not change the notice requirements for an EACA under § 1.414(w)–1 but does subject certain CODAs and salary reduction agreements to the notice requirements for an EACA by requiring those CODAs and salary reduction agreements to be EACAs (as required by section 414A). This requirement to be an EACA will not affect pre-enactment plans.

The collection of information under § 1.414(w)–1(b)(4) related to unenrolled participants is required in order for a plan to apply section 414(bb). Section 414(bb) provides that no disclosure, notice, or other plan document is required to be furnished under the Code to an unenrolled participant if the unenrolled participant is furnished an annual reminder notice of the unenrolled participant's eligibility to participate in the plan and any applicable election deadlines under the plan. In accordance with section 414(bb), the regulation will allow unenrolled participants to be furnished an annual reminder notice instead of the annual notice required for EACAs under section 414(w)(4) and § 1.414(w)–1(b)(3).

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Within the proposed rulemaking published at 90 FR 3092, the IRS solicited feedback on the collection requirements described above. No public comments were received by the IRS directed specifically on the PRA or on the collection requirements.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although section 414A provides an exception from the automatic enrollment requirements for some small entities, other small entities that sponsor section 401(k) or 403(b) plans that are established on or after December 29, 2022, may need to provide for automatic enrollment in the plans and default cash or deferred or salary reduction elections for employees who are otherwise eligible to participate in the plans. Automatic enrollment and default elections, and the resulting additional contributions to a plan, apply to compensation that employees would have otherwise received and do not require additional amounts to be paid. Section 414A does not require plans to provide for nonelective contributions or matching contributions. Before the enactment of section 101 of the SECURE 2.0 Act, plans were permitted, but not required, to provide for automatic enrollment. Accordingly, any additional recordkeeping or administrative costs resulting from the automatic enrollment requirements that apply to certain section 401(k) and 403(b) plans sponsored by small entities are not expected to be significant. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

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

414A, by its terms, does not apply to governmental plans.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal authors of these regulations are Jamie L. Dvoretzky and Kara M. Soderstrom, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 602 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.414(w)–1 is amended by:
■ a. Revising the second sentence of paragraph (b)(1); and
■ b. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 1.414(w)–1 Permissible withdrawals from eligible automatic contribution arrangements.

* * * * *

(b) * * *

(1) * * * Except to the extent required under section 414A (which applies to plan years beginning after December 31, 2024), an eligible automatic contribution arrangement need not cover all employees who are eligible to elect to have contributions made on their behalf under the applicable employer plan.

* * * * *

(4) *Special rules*—(i) *No requirement to provide notice to unenrolled participant.* If the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant described in section 414(bb)(2), then the requirement to give the notice of an employee's rights and obligations set forth in paragraph (b)(3) of this section does not apply to the participant.

(ii) *Consolidation of notices.* The notice described in paragraph (b)(3) of this section may be combined with one or more of the notices required under section 404(c)(5)(B), 514(e)(3), or 801(d)(3)(A) of the Employee Retirement Income Security Act of 1974 (Public Law 93–406, 88 Stat. 829), as amended, and any notice required under section 401(k)(12)(D) or (13)(E), provided that the combined notice—

(A) Includes the required content,

(B) Clearly identifies the issues addressed therein,

(C) Is furnished at the time and with the frequency required for each notice,

(D) Is presented in a manner that is reasonably calculated to be understood by the average plan participant, and

(E) Does not obscure or fail to highlight the primary information required for each notice.

* * * * *

■ **Par. 3.** Section 1.414A–1 is added to read as follows:

§ 1.414A–1 Automatic enrollment requirements under section 414A.

(a) *Overview.* This section provides rules regarding the automatic enrollment requirements under section 414A. Paragraph (b) of this section provides that a plan that includes a qualified cash or deferred arrangement under section 401(k) or a salary reduction agreement under section 403(b) is required to satisfy the automatic enrollment requirements of paragraph (c) of this section unless an exception described in paragraph (d) of this section (for certain types of plans and businesses) or paragraph (e) of this section (for a cash or deferred arrangement or section 403(b) plan established before December 29, 2022) applies to the plan. The applicability date of section 414A and the applicability date of this section are set forth in paragraph (f) of this section.

(b) *General rule*—(1) *Qualified cash or deferred arrangements.* Except as provided in paragraph (d) or (e) of this section, a cash or deferred arrangement will not be treated as a qualified cash or deferred arrangement described in § 1.401(k)–1(a)(4)(i) for a plan year unless the plan that includes the arrangement provides that any cash or deferred election under the arrangement must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(2) *Section 403(b) plans with salary reduction agreements.* Except as provided in paragraph (d) or (e) of this section, an annuity contract described in section 403(b) that is purchased pursuant to a salary reduction agreement described in § 31.3121(a)(5)–2(a)(1) (that is, an election to reduce compensation pursuant to a cash or deferred election as defined in § 1.401(k)–1(a)(3)) will not be treated as purchased under a section 403(b) plan for a plan year unless the plan provides that any salary reduction agreement under the plan must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(c) *Automatic enrollment requirements*—(1) *In general*—(i) *Arrangement must be an eligible automatic contribution arrangement.* A cash or deferred arrangement or salary reduction agreement under a plan satisfies the automatic enrollment requirements of this paragraph (c) only if the plan provides for an eligible automatic contribution arrangement (as defined in section 414(w)(3)) that—

(A) Covers the employees described in paragraph (c)(1)(ii) of this section, and

(B) Satisfies the additional requirements of paragraphs (c)(2) through (4) of this section.

(ii) *Employees required to be covered under the eligible automatic contribution arrangement.* Each employee who is eligible to elect to have contributions made on the employee's behalf under a cash or deferred arrangement or pursuant to a salary reduction agreement must be covered by the eligible automatic contribution arrangement.

(iii) *Exception to default election for employees with an affirmative election.* An eligible automatic contribution arrangement will not fail to satisfy the requirements of this paragraph (c) merely because the default election under the arrangement does not apply to an employee who, on the date paragraph (b) of this section first applies to the plan that includes the cash or deferred arrangement or salary reduction agreement, had an affirmative election in effect (that remains in effect) to—

(A) Have contributions made on the employee's behalf under a cash or

deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(2) *Arrangement must permit permissible withdrawals.* An eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(2) only if the plan that includes the arrangement provides that any employee who has default elective contributions made under the arrangement may elect to make a permissible withdrawal (as defined in section 414(w)(2) and described in § 1.414(w)–1(c)).

(3) *Contribution requirements*—(i) *Default election.* An eligible automatic contribution arrangement under a plan satisfies the requirements of this paragraph (c)(3) only if, under the arrangement, the default election made on behalf of an employee is equal to a uniform percentage, as described in paragraph (c)(3)(ii) of this section, of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan, unless the employee affirmatively elects to—

(A) Have contributions made in a different amount on the employee's behalf under a cash or deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(ii) *Uniform percentage*—(A) *Initial period*—(*1*) *Initial percentage.* The contribution percentage under the default election for each employee's initial period must be a uniform percentage that is not less than 3 percent and not more than 10 percent.

(*2*) *Beginning of initial period.* An employee's initial period begins when the employee is first eligible to elect to have contributions made on the employee's behalf under the plan (or if later, when section 414A first applies to the plan).

(*3*) *End of initial period.* The employee's initial period ends on the last day of the plan year that follows the plan year that includes the date the initial period begins.

(B) *Subsequent plan years.* Not later than the first day of each plan year beginning after an employee's initial period under the arrangement, the percentage contribution under the default election applicable to the employee on the first day of the prior plan year must be increased by at least 1 percentage point. Annual increases must occur until the employee's percentage contribution is at least 10 percent. A plan may provide that the annual increases continue after the employee's percentage contribution is 10 percent but may not provide for the annual increases to continue after the employee's percentage contribution is equal to 15 percent.

(iii) *Exception to uniform percentage requirement.* An eligible automatic contribution arrangement does not fail to satisfy the uniform percentage requirement of paragraph (c)(3)(ii) of this section merely because—

(A) The percentage used for the default election varies based on the number of years (or portions of years) since the beginning of the initial period for an employee;

(B) The rate of contributions under a cash or deferred election or salary reduction agreement that is in effect for an employee immediately prior to the date that the default election under this paragraph (c) first applies to the employee is not reduced;

(C) The rate of contributions under a cash or deferred election or salary reduction agreement is limited so as not to exceed the applicable limits of sections 401(a)(17), 401(k)(16), 402(g) (determined with or without catch-up contributions), 403(b)(16), and 415; or

(D) The default election provided under paragraph (c)(3)(i) of this section is not applied during the period an employee is not permitted to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in order for the plan to satisfy the requirements of section 414(u)(12)(B)(ii).

(iv) *Treatment of periods without default contributions*—(A) *Permissive redetermination of initial period in certain situations.* The uniform percentages described in paragraph (c)(3)(ii) of this section are based on the date an employee's initial period begins. However, if, after the employee's initial period began, the employee did not have default elective contributions made for an entire plan year, then the plan is permitted to provide that the employee's initial period is redetermined as described in paragraph (c)(3)(iv)(B) or (C) of this section.

(B) *Redetermination for employee who became ineligible.* If, for an entire plan year, no default elective contributions were made solely because the employee was not eligible to elect to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement for that plan year, then the plan is permitted to provide that the employee's initial period is redetermined so that it begins on the date the employee is again eligible to elect to have contributions made on the employee's behalf under the plan.

(C) *Redetermination for employee who remained eligible and made an affirmative election.* If, for an entire plan year, no default elective contributions were made solely because the employee made an affirmative election to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in a different amount (including an election not to have contributions made), then the plan is permitted to provide that the initial period is redetermined so that it begins on any date specified under the plan that is later than the date specified in paragraph (c)(3)(ii)(A)(*3*) of this section.

(4) *Investment requirements.* If an eligible automatic contribution arrangement is included in a plan subject to title I of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829, as amended, and the plan offers an employee the opportunity to direct the investment of all or a portion of the assets allocated to the employee's individual account under the plan, the eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(4) only if amounts contributed pursuant to the arrangement, and for which no investment is elected by the employee, are invested in accordance with the requirements of 29 CFR 2550.404c–5 (or any successor regulations).

(d) *Exceptions for certain types of plans and businesses*—(1) *SIMPLE 401(k) plans.* Paragraph (b) of this section does not apply to any SIMPLE 401(k) plan (as described in section 401(k)(11) and § 1.401(k)–4).

(2) *Governmental plans.* Paragraph (b) of this section does not apply to any governmental plan (within the meaning of section 414(d)).

(3) *Church plans.* Paragraph (b) of this section does not apply to any church plan (within the meaning of section 414(e)).

(4) *New and small businesses*—(i) *New businesses.* Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, for a plan year if, as of the beginning of the plan year, the employer maintaining the plan (aggregated with any predecessor employer) has been in existence for less than 3 years. For purposes of this paragraph (d)(4)(i), the term predecessor

employer means a predecessor employer within the meaning of § 1.415(f)–1(c).

(ii) *Small businesses.* Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, before the first plan year that begins at least 12 months after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees. For this purpose, the number of employees that the employer normally employs for a taxable year is determined using the rules of Q&A–5 of § 54.4980B–2 of this chapter.

(iii) *Applicability to multiple employer plans.* In the case of a multiple employer plan, the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section apply on an employer-by-employer basis.

(iv) *Related employers.* For purposes of the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section, in the case of a plan that is not a multiple employer plan, the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). For purposes of the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section, in the case of a multiple employer plan, the term employer includes all employers treated as a single employer under § 1.413–2(a)(2)(ii).

(v) *Example*—(A) *Facts.* Employer Q has been in existence since July 1, 2027, and does not have a predecessor employer. Employer Q maintains Plan X, which has a plan year that is the calendar year and includes a cash or deferred arrangement. Plan X is effective on January 1, 2028, and provides that a cash or deferred election must be an affirmative election. Employee M, who becomes eligible to elect to have contributions made on Employee M's behalf under Plan X on January 1, 2028, makes an affirmative election not to have elective contributions made on Employee M's behalf and that affirmative election is still in effect on January 1, 2031. Employee N, who also becomes eligible to elect to have contributions made on Employee N's behalf under Plan X on January 1, 2028, does not make any election to have (or not have) contributions made on Employee N's behalf under Plan X. Effective January 1, 2031, Plan X is amended to include an eligible automatic contribution arrangement that satisfies the requirements of paragraphs (c)(2) through (4) of this section. The amendment provides that an employee who has a cash or deferred election that is an affirmative election and is in effect on January 1, 2031, is not subject to the default election under the eligible automatic contribution arrangement that is included in Plan X.

(B) *Analysis and conclusion.* Because the exception for new businesses set forth in paragraph (d)(4)(i) of this section ceases to apply to Plan X for plan years beginning on or after January 1, 2031, paragraph (b) of this section first applies to Plan X as of that date. Pursuant to paragraph (c)(1)(iii) of this section, the eligible automatic contribution arrangement required to be included in Plan X for plan years beginning on January 1, 2031, does not fail to satisfy the requirements of paragraph (c) of this section merely because the default election under the arrangement does not apply to Employee M as a result of Employee M's affirmative election. However, Plan X does not satisfy the requirements of section 414A unless the default election in paragraph (c)(3) of this section applies to Employee N because of the absence of an affirmative election made by Employee N to have elective contributions made on Employee N's behalf in a different amount (or to not have elective contributions made on Employee N's behalf).

(e) *Exception for plans established before the enactment of section 414A*—(1) *In general.* Subject to the rules of application in paragraphs (e)(2) through (6) of this section, paragraph (b) of this section does not apply to—

(i) Any plan that includes a qualified cash or deferred arrangement if the plan terms providing for the qualified cash or deferred arrangement were adopted initially before December 29, 2022 (the date of the enactment of section 414A), even if the plan terms providing for the cash or deferred arrangement are effective after that date, or

(ii) Any section 403(b) plan adopted initially before December 29, 2022, without regard to the date of adoption of plan terms providing for salary reduction agreements.

(2) *Merger of plans established before the enactment of section 414A*—(i) *General rule.* If two plans described in paragraph (e)(1)(i) of this section are merged, then the merged plan will be treated as a plan described in paragraph (e)(1)(i) of this section. Similarly, if two section 403(b) plans described in paragraph (e)(1)(ii) of this section are merged, then the merged plan will be treated as a section 403(b) plan described in paragraph (e)(1)(ii) of this section.

(ii) *Effect of merger of multiple employer plans on participating employers.* If either of the plans described in paragraph (e)(2)(i) of this section are multiple employer plans, then the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained the multiple employer plan prior to the merger.

(3) *Merger of a plan established on or after the enactment of section 414A with a plan established before the enactment of section 414A*—(i) *General rule*—(A) *Section 401(k) plans.* Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a plan that includes a cash or deferred arrangement and that is not described in paragraph (e)(1)(i) of this section is merged with a plan described in paragraph (e)(1)(i) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(i) of this section.

(B) *Section 403(b) plans.* Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a section 403(b) plan that is not described in paragraph (e)(1)(ii) of this section is merged with a plan described in paragraph (e)(1)(ii) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(ii) of this section.

(ii) *Exception for certain transactions.* A plan that is maintained by a single employer and described in paragraph (e)(1) of this section will continue to be treated as described in paragraph (e)(1) of this section after a merger described in paragraph (e)(3)(i) of this section, if—

(A) There is a transaction described in § 1.410(b)–2(f),

(B) The plan described in paragraph (e)(1) of this section is designated as the ongoing plan, and

(C) The plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(iii) *Applicability to multiple employer plans*—(A) *Applicability of exception for certain transactions involving a merger into a multiple employer plan.* In the case of a merger of a plan that is not a multiple employer plan and not described in paragraph (e)(1) of this section into a multiple employer plan that is designated as the ongoing plan, paragraph (e)(3)(ii) of this section applies even though the ongoing plan is a multiple employer plan and without regard to whether that plan is a plan described in paragraph (e)(1) of this section, provided that, prior to the transaction described in paragraph (e)(3)(ii)(A) of this section, the multiple employer plan was treated as a plan described in paragraph (e)(1) of this section with respect to the employer

that maintained the multiple employer plan and engaged in the transaction.

(B) *Merger of multiple employer plans.* If both of the plans described in paragraph (e)(3)(i) of this section are multiple employer plans, then the exception in paragraph (e)(3)(ii) of this section does not apply. In such a case, the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained either multiple employer plan prior to the merger.

(4) *Treatment of adoption of, or merger with, a multiple employer plan*—(i) *In general.* If, after December 29, 2022, an employer adopts a multiple employer plan, then, with respect to that employer, the multiple employer plan will not be treated as a plan described in paragraph (e)(1) of this section. The same treatment will apply if the employer maintains a plan other than a multiple employer plan that is merged with a multiple employer plan after December 29, 2022, unless the merger is described in paragraph (e)(3)(iii)(A) of this section.

(ii) *Exception for mergers involving plans established before the enactment of section 414A.* Paragraph (e)(4)(i) of this section does not apply if the plan that is merged into the multiple employer plan is a plan described in paragraph (e)(1) of this section. Thus, if the employer maintains a plan described in paragraph (e)(1) of this section that is merged into the multiple employer plan after December 29, 2022, then the multiple employer plan will be treated as a plan described in paragraph (e)(1) of this section with respect to that employer.

(iii) *Effect on other participating employers.* Neither an adoption nor a merger described in paragraph (e)(4)(i) or (ii) of this section affects whether the multiple employer plan is treated as a plan described in paragraph (e)(1) of this section with respect to any other employer maintaining the plan.

(5) *Plan spin-off.* If a portion of a plan described in paragraph (e)(1) of this section is spun off from that plan, the resulting spun-off plan will be treated as a plan described in paragraph (e)(1) of this section if either—

(i) The plan from which the spin-off occurred was not a multiple employer plan, or

(ii) The plan from which the spin-off occurred was a multiple employer plan that was treated as described in paragraph (e)(1) of this section with respect to the employer maintaining the spun-off plan.

(6) *Other plan amendments*—(i) *Treatment of amendments to a plan established before the enactment of section 414A.* A plan described in paragraph (e)(1) of this section will not fail to be described in paragraph (e)(1) of this section merely because the plan is amended, provided that the amendment is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section. The preceding sentence applies even if the amendment expands eligibility to participate in the cash or deferred arrangement, or to enter into a salary reduction agreement, to other employees of the employer that maintains the plan or to employees of another employer that is aggregated with the employer that maintains the plan under section 414(b), (c), (m), or (o).

(ii) *Mergers with plans that do not include cash or deferred arrangements or salary reduction agreements.* If an employer maintains a plan that is described in paragraph (e)(1) of this section and that plan is merged with a plan that does not include a cash or deferred arrangement or permit a salary reduction agreement, then the merged plan will continue to be a plan described in paragraph (e)(1) of this section after the merger.

(7) *Examples.* The following examples illustrate the application of this paragraph (e). For purposes of the examples, each plan is maintained on a calendar-year basis, includes a cash or deferred arrangement that was adopted on the same date that the plan was adopted, and is not a SIMPLE 401(k) plan, governmental plan, or church plan. These examples assume that this section applies for plan years beginning on or after January 1, 2028, and, unless otherwise specifically provided, any plan merger does not occur in connection with a transaction described in § 1.410(b)–2(f).

(i) *Example 1*—(A) *Facts.* Plan A, which is maintained by a single employer, Employer R, was adopted on January 1, 2021. Plan B, which is maintained by a single employer, Employer S, was adopted on January 1, 2025. On July 1, 2028, Plan A is merged with Plan B, and Plan A is the surviving plan in the merger.

(B) *Analysis and conclusion.* The merger is a merger of a plan described in paragraph (e)(1)(i) of this section with a plan that is not described in paragraph (e)(1)(i) of this section and is not a merger described in paragraph (e)(3)(ii) or (4) of this section. Under paragraph (e)(3)(i)(A) of this section, Plan A will no longer be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, applies to Employer R).

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (e)(7)(i) of this section (*Example 1*), except that there is an acquisition described in § 1.410(b)–2(f), and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(B) *Analysis and conclusion.* The merger satisfies the requirements of paragraph (e)(3)(ii) of this section. Accordingly, Plan A will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger.

(iii) *Example 3*—(A) *Facts.* Plan C, a multiple employer plan, was established on January 1, 2021. Plan D, a plan maintained by Employer T that is not a multiple employer plan, was adopted on January 1, 2024. Plan D merges with Plan C on December 31, 2028, and Plan C is the surviving plan after the merger.

(B) *Analysis and conclusion.* The merger is described in paragraph (e)(4)(i) of this section, and, because Plan D is not a plan described in paragraph (e)(1)(i) of this section, the merger is not excepted under paragraph (e)(4)(ii) of this section. Similarly, because there was no transaction described in § 1.410(b)–2(f), the merger is not described in paragraph (e)(3)(iii) of this section. Accordingly, with respect to Employer T, Plan C will not be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, continues to apply to Employer T). However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan C is treated as a plan described in paragraph (e)(1)(i) of this section with respect to any other employers.

(iv) *Example 4*—(A) *Facts.* Plan E, a plan maintained by Employer U that is not a multiple employer plan, was adopted on January 1, 2021. Plan F, a multiple employer plan, was established on January 1, 2024. Plan E merges with Plan F on December 31, 2028, and Plan F is the surviving plan after the merger.

(B) *Analysis and conclusion.* Under paragraph (e)(4)(ii) of this section, the portion of Plan F that applies with respect to Employer U will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger. However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan F is treated as a plan described in paragraph (e)(1)(i) of this

section with respect to any other employers.

(v) *Example 5*—(A) *Facts.* Plan G, a plan maintained by Employer V that is not a multiple employer plan, was adopted on January 1, 2021. Plan G is amended, effective January 1, 2028, to add an additional participating employer, a subsidiary that is 100 percent owned by Employer V.

(B) *Analysis and conclusion.* Because the expansion of eligibility is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section, Plan G will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the amendment pursuant to paragraph (e)(6)(i) of this section.

(vi) *Example 6*—(A) *Facts.* Plan J, a multiple employer plan, was established on January 1, 2021. Employer W adopts Plan J on January 1, 2022. Effective January 1, 2028, the assets and account balances attributable to the employees of Employer W are spun off to form a new plan, Plan K, maintained solely by Employer W.

(B) *Analysis and conclusion.* Under paragraph (e)(5)(ii) of this section, Plan K will be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section.

(f) *Applicability dates*—(1) *Statutory applicability date.* Section 414A applies to plan years beginning after December 31, 2024.

(2) *Regulatory applicability date.* This section applies to plan years beginning after December 31, 2027. For prior plan years, a reasonable, good faith interpretation standard applies with respect to section 414A.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.414(w)–1	1545–2135
* * * * *	
1.414A–1	1545–2135
* * * * *	

Frank J. Bisignano,

Chief Executive Officer.

Approved: June 17, 2026.

Kevin M. Salinger,

Assistant Secretary of the Treasury (Tax Policy).

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BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–0466]

RIN 1625–AA00

Safety Zone; Mississippi River, New Orleans, LA

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Mississippi River near New Orleans, LA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the response to a vessel collision and sinking. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector New Orleans, or their designated representative.

DATES: This rule is effective without actual notice from November 18, 2026 through December 11, 2026. For the purposes of enforcement, actual notice will be used from November 13, 2026, until November 18, 2026.

ADDRESSES: To view available documents go to *https://www.regulations.gov* and search for USCG–2026–0466.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact LCDR Jacob S. Gamble at Sector New Orleans Waterways Management Division, U.S. Coast Guard; telephone 504–269–7251 or email *Jacob.S.Gamble@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
§ Section
U.S.C. United States Code

II. Background and Authority

The Coast Guard received notification that the M/V ATLANTIC ASPHALT allided with the M/V AMERICAN HERITAGE in the vicinity of Mile Marker 96 on the Mississippi River, New Orleans, LA. The collision resulted in the sinking of the M/V AMERICAN HERITAGE at the pier on the Left Descending Bank of the River. Hazards associated with this incident include potential debris in the water, and the presence of persons, vessels, and heavy equipment engaged in salvage operations. Salvage operations are anticipated to last for several weeks. The COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect persons, vessels, and the marine environment in the navigable waters within the safety zone.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 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. The Coast Guard was notified of this event on November 13, 2026, and we must establish this safety zone immediately to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reason, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes a safety zone from November 13, 2026, through December 11, 2026, unless cancelled earlier by the COTP. The safety zone will cover all navigable waters of the Lower Mississippi River extending 500 feet from the Left Descending Bank, from Mile Marker 95.5 to 96.5 Above Head of Passes. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the Captain of the Port.

IV. 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.

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The National Ombudsman resolves concerns of uneven or excessive federal regulatory enforcement. Reviews are confidential and do not waive the right to pursue administrative appeals or any other legal action. Contact 1–888–REG–FAIR (1–888–734–3247) or *Ombudsman@SBA.gov.*

B. 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).

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

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.

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of $100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. 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 *et seq.*), 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 is a safety zone. It is categorically excluded from further review under paragraph L60(c) 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.

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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Add § 165.T08–0466 to read as follows:

§ 165.T08–0466 Safety Zone; Mississippi River, New Orleans, LA.

(a) *Location.* The following area is a safety zone: all waters of the Lower Mississippi River extending 500 feet from the Left Descending Bank, from Mile Marker 95.5 to 96.5 Above Head of Passes.

(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 Sector New Orleans (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) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (251) 266–1234. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from November 13, 2026 through December 11, 2026, unless cancelled earlier by the COTP.

Melanie A. Burham,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2026–23452 Filed 11–17–26; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 203

[Docket No. 2026–2]

Copyright Office Fees

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is publishing a final rule establishing adjusted fees for registration, recordation, record retrieval, search and certification, the Licensing Section services, and other services. The Office last adjusted fees in 2020, based on a study of our fiscal 2016 and 2017 costs. Since that time, the costs of providing Office services have risen substantially due to inflation and other increases. The adjusted fees are intended to enable recovery of a percentage of the Office's costs, closer to historical levels, without imposing undue barriers to access its services. This rule will take effect January 5, 2027.

DATES: Effective January 5, 2027.

FOR FURTHER INFORMATION CONTACT: Rhea Efthimiadis, Assistant to the General Counsel, by email at *USCOGeneralCounsel@copyright.gov,* or by telephone at (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule adjusts Copyright Office fees in accordance with section 708 of title 17, United States Code (the ''Copyright Act'' or ''Act''). The Copyright Act requires that the Office charge fees for certain services.[1]

[1] *See* 17 U.S.C. 708. The Office also provides other services free to the public, such as access to the online public record, educational materials, and

Pursuant to the Act, the Register of Copyrights (the ''Register'') may adjust fees based on a study of its costs for administering the registration of claims, the recordation of documents, and the provision of other services.[2] Since 1997, the Office has undertaken a series of studies to determine what fees to charge for specific services.[3] We typically revisit our schedule approximately every three to five years, and adjust fees to take into account changing costs and work processes. During this process, we seek and consider public comment before finalizing a schedule of adjusted fees.[4] The Office last adjusted its fees in 2020.[5]

Section 708(a) of the Act specifies that ''[f]ees shall be paid to the Register'' for the following services:

(1) Filing an application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;

(2) Filing an application for registration of a claim for renewal of a subsisting copyright, including the issuance of a certificate of registration if registration is made;

(3) Issuing a receipt for a deposit under section 407;

(4) Recording a transfer of copyright ownership or other document;

(5) Filing a notice of intention to obtain a compulsory license under section 115(b);

(6) Recording a statement revealing the identity of an author of an anonymous or pseudonymous work, or recording a statement relating to the death of an author;

(7) Issuing an additional certificate of registration;

(8) Issuing any other certification;

(9) Making and reporting on a search, and any related services;

(10) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to sections 119 and 122; and

(11) Filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.

Section 708(a) also authorizes the Register to fix fees for other services, such as the cost of preparing copies of Office records.

The statute contemplates two different mechanisms for setting the above fees. Fees for the services described in section 708(a)(1) through (9)—which include the Office's registration and recordation functions—must be outlined in a proposed schedule that is sent to Congress 120 days before the adjusted fees can take effect.[6] Other fees, including those for filing cable and satellite statements of account under sections 708(a)(10) and (11), are not submitted to Congress but instead are established by the Register based on the Office's costs, following a notice-and-comment rulemaking process.[7]

Before proposing adjusted fees for the services enumerated in sections 708(a)(1) through (9), the Register is to conduct a study of the Office's costs for registering claims, recording documents, and providing other services, and to consider the timing of any fee adjustments consistent with the Office's budget.[8] Section 708(b) further provides that the Register may adjust these fees to ''not more than necessary to cover the reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs.'' [9] Finally, this section requires the ''[f]ees established . . . [to] be fair and equitable and give due consideration to the objectives of the copyright system.'' [10]

The Office initiated this fee study in 2023 by contracting with the Library of Congress's (''Library'') Federal Research Division (''FRD'') to analyze our current and expected future costs.[11] The resulting study (the ''FRD Report'') estimated the costs of the Office's fee-based services—incorporating both direct and indirect costs, including IT modernization costs, based on government-identified best practices from the Office of Management and Budget, the U.S. Government Accountability Office, and the Federal Accounting Standards Advisory Board.[12] The FRD Report relied on quantitative data gathered from time-use surveys, personnel cost records, non-personnel financial records, licensing fiduciary statements, annual report data, transaction costs for receiving and shipping materials, and Electronic Copyright Office database records from fiscal years 2020 through 2024, as well as qualitative interviews.[13] With this data, FRD created a model calculating the Office's fee-based services to cost an estimated $15.6 million in annual direct costs and $81.8 million in annual indirect costs.[14]

After independently evaluating the FRD Report,[15] the Office published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on March 20, 2026, seeking comments on a proposed schedule of fee adjustments.[16] As we noted in the NPRM, fees have historically comprised a substantial portion of the Office's operating budget.[17] Approximately 60% of our actual expenses were covered by fees from 2009 to 2018, with Congress appropriating the remainder [18]—a balance reflecting the benefits the Office provides to copyright owners and users of copyrighted works as well as the broader public interests we serve. In

authoritative guidance on the Office's practices through the *Compendium of U.S. Copyright Office Practices. See* U.S. Copyright Office, Compendium of Copyright Office Practices (3d. ed. 2021).

[2] *See* 17 U.S.C. 708(b).

[3] In 1997, Congress created a new fee system allowing the Office to set all of its fees by regulation. An Act to make technical amendments to certain provisions of Title 17, Public Law 105–80, 111 Stat. 1529 (1997). Before then, Congress itself set the fees for certain basic copyright services, including registration and recordation (often referred to as ''statutory fees'') and the Register set the fees for other special services by regulation. In enacting statutory copyright fees, Congress considered a number of criteria, including the cost of providing the service, the value of the service to the Library of Congress, and the benefit of the service to the general public.

[4] *See* 17 U.S.C. 708 (establishing Register's authority to set fees, as well as fee setting standards).

[5] *See* 85 FR 9374 (Feb. 19, 2020).

[6] 17 U.S.C. 708(b)(5). The Register submitted the proposed schedule and analysis to Congress on July 14, 2026. U.S. Copyright Office, *Proposed Schedule and Analysis of Copyright Fees to Go into Effect in Fall 2026* (2026) (''Fee Study''), *https://www.copyright.gov/rulemaking/feestudy2026/proposed-fee-schedule.pdf.* If Congress does not enact a law disapproving the proposed schedule, the Register may institute the proposed fees. 17 U.S.C. 708(b)(5).

[7] 17 U.S.C. 708(a).

[8] *Id.* at 708(b)(1).

[9] *Id.* at 708(b)(2).

[10] *Id.* at 708(b)(4).

[11] *Id.* at 708(b)(1)–(2); *see* Federal Research Division, *U.S. Copyright Office FY2024 Fee Study: Cost Assessment Report 3* (2025) (''FRD Report''), *http://copyright.gov/rulemaking/feestudy2026/CostAssessmentReport.pdf.*

[12] *See* FRD Report at 8, 10–11; *id.* at 16–17.

[13] *See id.* at 10; *id.* at 41–42.

[14] *See id.* at 1–2.

[15] The Office focused its evaluation on fairness, equity, the objectives of the Copyright Act, the Office's policy goals, and general guidance from the Government Accountability Office and the Office of Management and Budget's *Circular No. A–25 Revised: User Charges. See* U.S. Gov't Accountability Office, *Federal User Fees: A Design Guide* (May 2008), *https://www.gao.gov/assets/210/203357.pdf; see also* Office of Mgmt. and Budget, *Circular No. A–25 Revised* (2017), *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf.* Among other things, *Circular No. A–25 Revised* provides that services with a broad-reaching benefit generally need not recover their full costs, whereas special services that provide a particular benefit to a particular customer may recover more than their full cost. The excess revenue collected from special services fees can offset losses from other fees that may not recover their full cost.

[16] 91 FR 13529 (Mar. 20, 2026).

[17] *Id.* at 13532.

[18] *Id.* In the study of the Office's costs for the last fee adjustment, the external consultant also recommended that the Office target a 60% cost recovery from fees. Booz Allen Hamilton, *2017 Fee Study Report* 2 (2017), *https://www.copyright.gov/rulemaking/feestudy2018/fee_study_report.pdf.*

recent years, the percentage of actual costs recovered from fees has decreased sharply, with the Office recovering only 41% of its actual expenses from fees in fiscal year 2024.[19]

The NPRM provided an analysis of the proposed fee changes and explained the Office's conclusion that they were ''fair and equitable and g[a]ve due consideration to the objectives of the copyright system,'' as required by the statute.[20] It also explained that the proposed fee schedule would ''ensure[ ] that the Office continues to be a prudent fiduciary of public funds while supporting the policy goals of promoting creativity and enabling the effective exercise of rights.'' [21]

In the NPRM, the Office proposed an average fee increase of 43% to account for increases in the cost of providing services.[22] This reflects both historic inflation since the last fee study and anticipated inflation over the next three years.[23] We generally apportioned more cost recovery to services primarily used by larger commercial entities and less to services primarily used by individual creators.[24] Where appropriate, we also set identical fees for analogous services, such as certain group registration options.[25] Finally, we assessed each adjustment's impact on projected revenue. For some low-volume services, we proposed only slight increases because more significant ones would not result in much additional revenue.[26] For others, higher costs supported larger increases to bring fees in line with the costs of providing those services.[27]

The NPRM proposed the following fees for basic registration claims: $85 for electronic claims submitted using the Standard Application (up from $65); and $185 for claims submitted using paper applications (up from $125).[28] The proposed fee increase for electronic claims would bring the cost recovery for this service up from 47% to an average 62% in the first year of the new fee term, in line with the historical cost recovery of approximately 60% for most services.[29] The proposed fee increase for paper applications was assessed to approximate the actual cost of the service.[30] In addition, we proposed eliminating the Single Application registration option, which carried a fee of $45, reasoning that eliminating this relatively inefficient option would allow us to process the more widely used options more efficiently.[31]

For most group registration options, the Office proposed a fee of $130 up from approximately $65 to $95 per group in order to account for their often high processing costs and relatively low cost recovery.[32] We proposed more substantial fees for three group options: $700 for group registrations of non-photographic databases (up from $500) and group registrations of updates and revisions to photographic databases (up from $250), and $350 for group registrations of updates to a news website (up from $95).[33] We reasoned that these options primarily serve commercial applicants with relatively inelastic demand, and more substantial increases here could subsidize other group registration options more commonly used by individual applicants.[34] The Office also proposed a fee of $85 for two group options: group registrations of unpublished photographs, and group registrations of published photographs (both up from $55).[35] We reasoned that these modest increases would achieve greater cost recovery while maintaining low per-work registration fees.[36] In recognition of the particular cost barriers faced by photographers, the proposed fees would represent a 35% discount compared to those for other group registration options listed above.[37]

The Office also proposed fee increases for less commonly used registration and related services. These included a proposed fee of $320 for preregistration of certain unpublished works (up from $200), and a fee of $650 for registration of a mask work or vessel design (up from $150 and $500, respectively).[38] Similarly, we proposed a special handling surcharge for expedited application processing of $1,100 (up from $800).[39] Given the high costs of providing these services, we proposed raising these fees to achieve a cost recovery more in line with their full cost.[40] We reasoned that increasing fees for services with relatively inelastic demand would allow for greater overall cost recovery and would offset the cost of other, more commonly used registration services.[41]

Finally, the Office proposed fee increases above the historical and projected rate of inflation for several recordation services. These included a proposed base recordation fee of $215 for electronic submissions (up from $95) and $320 for paper submissions (up from $125), as well as increases for the recordation of additional works and alternate identifiers, correction of online Public Catalog data, designation of an agent to receive notification of claimed infringement, schedule of pre-1972 sound recordings, removal of pre-1972 sound recordings from the Office's database of indexed schedules, and notices of noncommercial uses of pre-1972 sound recordings.[42] We reasoned that larger fee increases for these services, which are most commonly used by commercial entities, would enable greater cost recovery and offset costs of other services.

The Office received 81 comments from a variety of interested parties in response to the NPRM, raising a range of issues that are discussed further below.[43] After carefully considering each comment, on July 14, 2026, we submitted a proposed fee schedule to Congress (''Fee Study''), concerning those fees authorized by section 708(a)(1)–(9), including registration and recordation.[44] The Office adopts the Fee Study's analysis and conclusions as part of the basis for this final rule, as supplemented by the discussion below.

For the reasons explained in the Fee Study, also noted below, the Office made several adjustments to the fees proposed in the NPRM to reasonably take into account the range of public comments received. This final rule also sets forth fees for other Office services that the Register is authorized to establish through her rulemaking

[19] 91 FR 13529, 13532.

[20] *Id.*

[21] *Id.* at 13532–33.

[22] *Id.* at 13533.

[23] *Id.*

[24] *Id.* The Office has long recognized that different services may reasonably recover a different portion of their costs. *See* U.S. Copyright Office, *Proposed Schedule and Analysis of Copyright Fees To Go into Effect In Spring 2020* 13 n.66 (2019) (''2020 Fee Study''), *https://www.copyright.gov/rulemaking/feestudy2018/proposed-fee-schedule.pdf;* U.S. Copyright Office, *Proposed Schedule and Analysis of Fees To Go into Effect On Or About April 1, 2014* 10 n.60, 21 (2013) (''2014 Fee Study''), *https://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf;* U.S. Gov't Accountability Office, *Federal User Fees: A Design Guide* (May 2008), *https://www.gao.gov/assets/210/203357.pdf;* Office of Mgmt. and Budget, *Circular No. A–25 Revised* (2017), *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf.*

[25] 91 FR 13529, 13533.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.* at 13533–13534.

[32] *Id.* at 13534–35.

[33] *Id.*

[34] *Id.* at 13534.

[35] *Id.* at 13534–35.

[36] *Id.* at 13534.

[37] *Id.* This proposed fee is equal to the proposed fee for registering one work with the Standard Application.

[38] *Id.* at 13535–36.

[39] *Id.* at 13535.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 13537–38.

[43] The comments can be viewed through the Copyright Office website at *https://www.copyright.gov/rulemaking/feestudy2026/.*

[44] Fee Study at 19–23.

authority without the need to submit them to Congress.[45]

II. Adjustments to Proposed Fees

Having carefully considered the public comments in light of our statutory duty to establish fees that are fair, equitable, and serve the objectives of the overall copyright system, the Office has adjusted certain fees to address concerns raised by commenters.

A. Consideration of Public Comments

While a few commenters supported the Office's overall proposal,[46] many expressed concerns that the proposed fee increases would impede access to the copyright system and deter registration.[47] For example, the Songwriters Guild of America (''SGA'') and the Society of Composers & Lyricists (''SCL'') contended that ''registration decisions are often made incrementally and under financial constraint. A fee increase of the magnitude proposed is therefore not merely additive; it is likely to be determinative in whether works are registered at all.'' [48]

Some of these commenters focused on the impacts on individual creators, but others specifically challenged the Office's characterization of organizational registrants as able to bear increased costs compared to individuals.[49] Several also highlighted the relatively substantial fee increases for group registration options.[50] For instance, in objecting to the proposed increase to the group registration option for updates to a news website, the News Media Alliance contended that the increase ''would disproportionately depress registrations for this core copyright sector,'' placing an ''excessive burden . . . on local journalism.'' [51]

Commenters expressed mixed views on the proposed elimination of the Single Application. Many individuals opposed this proposal, stating that the Single Application's relatively low fee has been an important cost-saving measure for independent creators.[52] Organizational views were split, with a few commenters supporting elimination.[53] For instance, the United States Internet Preservation Society agreed that the option ''attracted a disproportionate number of unqualified submissions, wasting both applicant and Office resources.'' [54] Several others, however, described the Single Application as an important option for individual authors and encouraged the Office not to eliminate it altogether.[55] As the National Music Publishers' Association put it, ''eliminating the Single Application, and thereby removing an affordable option which self-published songwriters and their administrators rely on for crucial cost-savings, could price some creators out of registration altogether.'' [56]

The Office also received a few comments expressing concern about the fee increases for other services, focusing on recordation services, requests for reconsideration of denials of registration, and the surcharge for expedited services.[57]

Finally, several commenters challenged the methodology of the FRD Report, particularly in comparison to cost analyses from past fee cycles. As noted in the Fee Study, those objections primarily centered around two themes. First, commenters questioned the scope of the indirect costs incorporated into FRD's cost calculations. Specifically, several commenters contested the inclusion of costs associated with divisions of the Office that serve functions beyond the Office's fee-based services.[58] Others echoed comments from past cycles by questioning the inclusion of modernization costs in these calculations, arguing that such costs should not be passed to registrants until the benefits of modernization have been realized.[59] Second, several

[45] 17 U.S.C. 708(a).

[46] *See, e.g.,* American Intellectual Property Law Association (''AIPLA''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 2 (May 1, 2026) (''AIPLA Comments'') (noting that the proposed fee schedule ''largely advances [section 708's] objectives''); United States internet Preservation Society (''USIPS''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 3 (Mar. 20, 2026) (''USIPS Comments'') (''We urge the Office to finalize these fee adjustments promptly and to consider whether additional upward adjustments are warranted given the accelerating costs of digital infrastructure.'').

[47] *See, e.g.,* Olu AnuKin, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 15, 2026) (''Do not raise prices for copyright registration nor legalize any factor that will make it more expensive or difficult for us creators and artists to try and protect ourselves.''); Annie Brule, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 7, 2026) (''If the proposed fee hikes were to take effect, I would likely cease registering my works at all, simply because the process would be too expensive. This would leave me and thousands of other professional creatives without the protections that should be in place.''); Aaron Graves, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 9, 2026) (''If you raise the price, you raise the barrier to entry that much higher, and you make my own cost for protection that much greater.''); Northwestern University Press, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Mar. 31, 2026) (''Such an increase will only reduce the number of people registering copyright and increase the burden on small publishers.''); National Music Publishers' Association (''NMPA''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 5 (May 4, 2026) (''NMPA Comments'') (''Music publishers have already had to make difficult decisions around when to delay or forego registering works due to prohibitive costs. The current proposal would exacerbate these problems and undermine creators' ability to protect their works.'').

[48] Songwriters Guild of America and the Society of Composers & Lyricists, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (May 4, 2026) (''SGA–SCL Joint Comments'').

[49] *See, e.g.,* Copyright Alliance, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 19–22 (May 4, 2026) (''Copyright Alliance Comments''); National Association of REALTORS (''NAR''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 2–3 (May 4, 2026); News/Media Alliance, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 6–8 (May 4, 2026) (''NMA Comments'').

[50] *See* Copyright Alliance Comments at 19–22; Authors Guild, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 5–6 (May 4, 2026) (''Authors Guild Comments''); NMPA Comments at 2–3; National Press Photographers Association, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 4–5 (May 4, 2026).

[51] NMA Comments at 2.

[52] *See, e.g.,* Lora Doncea, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 25, 2026); Jennifer Fischetto, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 28, 2026) (''Jennifer Fischetto Comments''); Katherine Flanagan, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 1 (Apr. 15, 2026).

[53] *See, e.g.,* AIPLA Comments at 3; USIPS Comments at 2.

[54] USIPS Comments at 2.

[55] *See, e.g.,* Copyright Alliance Comments at 22–24; NMPA Comments at 3–4; Authors Guild Comments at 3–4; Association of Medical Illustrators (''AMI''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 3 (May 4, 2026) (''AMI Comments'').

[56] NMPA Comments at 1. In their view, the Office should explore cost-reduction measures rather than eliminate the application option. *Id.* at 4.

[57] *See, e.g.,* Authors Alliance, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 3 (May 3, 2026) (''Authors Alliance Comments'') (questioning the increase for filing notices of termination); NMA Comments at 15 (urging the Office to limit increases for requests for reconsideration); AIPLA Comments at 3 (encouraging the Office to reconsider the proposed increases for special handling and expedited services).

[58] *See, e.g.,* Association of American Publishers, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 5 (May 4, 2026) (''AAP Comments''); Copyright Alliance Comments at 11–13; NMA Comments at 17–18; Recording Industry Association of America, Inc. (''RIAA''), Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 5–6 (May 4, 2026) (''RIAA Comments'').

[59] *See, e.g.,* ImageRights International, Inc., Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed

Continued

commenters pointed to the FRD Study's lack of elasticity analysis, asserting that the Office failed to adequately analyze the proposed fee schedule's effects on demand.[60]

B. The Fee Study's Updates to Proposed Fees

As documented in the Fee Study and in this final rule, the Office carefully reviewed the comments received in response to the NPRM to ensure that adjustments to the fee schedule would be fair, equitable, and duly considerate of the objectives of the copyright system.

In making our adjustments, the Office considered the appropriate balance between recouping a reasonable portion of overall costs, encouraging continued participation in the copyright system, and maintaining a robust and accurate system of copyright records. Specifically, we took note of commenters' views regarding the impact of changes to registration options and of fee increases for certain registration and recordation services and have therefore adjusted those proposals. As explained in the Fee Study, however, we confirm the validity of the methodology used to prepare FRD's cost assessment—including the scope of the indirect costs considered and the use of previous demand elasticity analyses.[61]

With respect to the scope of indirect costs, FRD's incorporation of costs that are related to various Office divisions and that are connected with IT development is consistent with broader federal guidance that advises agencies to incorporate all direct and indirect costs when determining the full cost of a service.[62] FRD's indirect cost allocations likewise align with government approaches and best practices on what indirect costs should be included.[63]

With respect to elasticity of demand, the Office conducted a provisional analysis based on available data for the standard registration application. The results were consistent with the assumptions used by external consultant Booz Allen Hamilton in the prior fee study. However, because this analysis could not disentangle the effects of the prior fee change from the simultaneous effects of the COVID–19 pandemic or estimate elasticity beyond the standard application, the Office considered it provisional and confirmatory rather than evidence that should be relied upon in a substantive way. For that reason, FRD and the Office determined that the most reliable course was to use the elasticity assumptions developed by Booz Allen Hamilton. While the Office did not receive evidence factually supporting alternative elasticity assumptions, some commenters expressed concerns that certain types of claimants may be more sensitive to price changes than others and thus the Office should reconsider its elasticity assumptions. To address this, the Office tested the sensitivity of FRD's model output to alternative elasticity assumptions and found that cost and revenue estimates changed little in response to plausible changes in those assumptions. In some cases, assuming greater elasticity, as advocated for by commenters, implied that a slightly higher fee would be required for cost recovery, and in some cases it implied a slightly lower fee. However, the difference in model outcomes on elasticity was not large enough to materially affect the Office's fee determination.

In sum, we are revising our initial proposal in two areas in response to commenters' concerns. First, with respect to registration services, we are lowering the proposed increase for two fees. The fee for group registration of updates to a news website is increasing to $275 instead of $350, and the fee for group registration of musical works on the same album is increasing to $85 instead of $130. Furthermore, we are maintaining the Single Application and implementing a modest fee increase from $45 to $55, reflecting an inflationary adjustment.

Second, for services other than registration, the Office is lowering the increase to the base fee for filing a notice of termination on paper—increasing the fee to $275 instead of $320. This adjustment responds to commenters' points about the use of this service by individual authors or their heirs. We are instead raising the base fee for all other recordations filed on paper, increasing it to $350 instead of $320. As discussed in the Fee Study and NPRM, this $30 increase above the NPRM proposal will further incentivize online filing where available and serve to accommodate the downward adjustment of the other fees. These complementary adjustments further the overall aims of achieving greater cost recovery from services that are used primarily by larger commercial entities and encouraging users to submit electronically.

Overall, this fee schedule is projected to achieve 53% cost recovery during the first year of implementation. As explained in the Fee Study, this falls short of achieving the Office's historical and recommended cost recovery of approximately 60%, but narrows the substantial gap between that goal and the 41% cost recovery under which we currently operate.[64] We acknowledge that setting fees at the significantly higher levels needed to achieve the recommended (or full) cost recovery could substantially decrease use of the Office's services, to the copyright system's detriment.

III. Final Regulation

Based on the required cost study, and after careful consideration of public comments, the Office has determined most fees should increase to achieve a more sustainable level of cost recovery. These adjustments will support timely processing and the continued enhancement of Office services. We estimate that revenues generated by these proposed fees and the other fees under the Office's basic budget will be roughly $51 million, bringing cost recovery closer to historic levels.

A. Registration, Recordation, and Related Services

1. Basic and Group Registrations

Rulemaking at 4–5 (May 4, 2026) (''ImageRights Comments''); American Association of Independent Music et al., Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking at 5 (May 4, 2026); Copyright Alliance Comments at 24–26.

[60] *See, e.g.,* NMA Comments at 12; RIAA Comments at 6–7; Copyright Alliance Comments at 7–9.

[61] Fee Study at 15–16.

[62] *Id.* at 8, 16.

[63] *Id.*

[64] *Id.* at 17–18.

While voluntary, registration offers substantial benefits to the registrant and to the public.[65] As the United States Government has explained to the Supreme Court, ''[r]egistration . . . enables the Copyright Office to compile a public record of copyright claims, and the deposited copies provide definitive evidence of what the work was at the time of registration,'' [66] including key facts relating to the authorship and ownership of a registered work such as title, year of creation, date of publication, and type of authorship. This record ''serves as a valuable resource for those seeking to use copyrighted works lawfully.'' [67] Registration confers valuable enforcement benefits to copyright owners fighting infringement. It also ''gives courts the benefit of the Register's expertise on issues of registrability, and serves judicial economy by narrowing the issues that must be litigated.'' [68] Finally, it ''serves as a major source of the Library's acquisitions,'' since deposit copies can be transferred into the Library's collections.[69] It is therefore important for the Office to maintain efficient and effective service. To support these benefits, fees should provide an appropriate share of the costs associated with administering the registration system.

In reviewing registration fees, the Office carefully considered comments submitted in response to the NPRM and made adjustments to address three principal concerns. First, we sought to address the challenges faced by individual authors who may not produce enough works at one time to benefit from group registration options. Commenters opposing the proposal to eliminate the Single Application underscored those challenges, citing economic hardship and stating that the inability to register would make it more difficult for individual authors to protect and enforce their rights.[70] Second, the Office considered the concerns of songwriters who release musical works independently, without the support of a major label. These commenters stated that the proposed fee increase for the group option to register music on an album would leave more creators unprotected ''not because they don't value their rights, but because the cost of protecting them becomes harder to justify or sustain.'' [71] Third, small news publishers predicted economic challenges from the proposed fee increase for the group option to register updates to news websites.[72]

The Office recognizes the potential effect of the proposed increases on creators with few resources.[73] Accordingly, the final rule retains the Single Application with a modest fee increase to account for inflation and adopts smaller increases than originally proposed for the group options to register musical works and updates to news websites. These adjustments appropriately balance affordable access to registration with our duty to administer the services in a fiscally responsible manner.

i. Basic Registrations

The Office adopts the following registration fees:

Registration, recordation, and related services	Current fees ($)	New fees ($)
Registration of a claim in an original work of authorship:		
(i) Electronic filing:		
(A) Single author, same claimant, one work, not for hire	45	55
(B) All other filings	65	85
(ii) Paper Filing (Forms PA, SR, TX, VA, SE)	125	185

The most commonly utilized registration options, termed the Standard Application and the Paper Application, may be used to register any work that is eligible for registration under sections 408(a) and 409 of the Copyright Act, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. The Standard Application is filed electronically through the eCO system. The Paper Application must be mailed to the Office for examination. Currently, the vast majority of applicants, approximately 99%, use the electronic filing option. Electronic filings cost less to process than paper applications, and, on average, require less time to complete.

In reviewing the basic registration fees, the Office closely examined the costs of providing the associated services and the extent to which those costs are recovered under the existing fee schedule. Using a volume-weighted average, we currently recover approximately 50.6% of our costs for claims submitted on the Standard Application and approximately 72% of our costs for processing paper applications. Under fees adopted in this final rule, the Office expects to recover approximately 66% of the costs associated with processing Standard Applications and substantially all costs associated with processing paper applications.[74]

A number of commenters opposed increasing the registration fee for Standard Applications from $65 to $85, asserting that a higher fee could discourage registration.[75] One argued that although ''[t]he costs associated with examination, recordkeeping, and database maintenance largely support institutional objectives and third-party use,'' the proposed fee structure places the ''primary financial burden'' on individual creators.[76] After considering these comments, the Office has determined that the increase is nevertheless warranted. The existing $65 fee was established using cost data

[65] Br. for the United States as Amicus Curiae Supporting Vacatur and Remand at 4, *Reed Elsevier, Inc.* v. *Muchnick,* 559 U.S. 154 (2010) (No. 08–103).

[66] *Id.* at 5.

[67] *Id.* at 22.

[68] *Id.* at 11.

[69] *Id.* at 4.

[70] *See* Authors Guild Comments at 3–4; Copyright Alliance Comments at 22–24; NMPA Comments at 3–4.

[71] Shelby Scott, Comments Submitted in Response to U.S. Copyright Office's March 20, 2026 Notice of Proposed Rulemaking, at 1 (Apr. 14, 2026) (''Shelby Scott Comments'').

[72] NMA Comments app.

[73] *See* Association of American Literary Agents, Comments Submitted in Response to U.S. Copyright Office's March 20, 2026 Notice of Proposed Rulemaking, at 1 (May 1, 2026); AAP Comments at 3; PMP, Comments Submitted in Response to U.S. Copyright Office's March 20, 2026 Notice of Proposed Rulemaking, at 1 (Apr. 23, 2026); Sierra Lewis, Comments Submitted in Response to U.S. Copyright Office's March 20, 2026 Notice of Proposed Rulemaking, at 2 (Mar. 22, 2026).

[74] *See* U.S. Copyright Office, Proposed Schedule and Analysis of Copyright Fees to Go into Effect in Fall 2026 at app. b (2026), *https://www.copyright.gov/rulemaking/feestudy2026/proposed-fee-schedule.pdf.*

[75] *E.g.,* Authors Guild Comments at 3–5; RIAA Comments at 3.

[76] AMI Comments at 3.

that is now a decade old.[77] Since that time, inflation and other cost increases have substantially increased the cost of examining claims and maintaining registration services. Consequently, the current fee recovers only approximately half of the Office's costs to process Standard Applications. Maintaining it would further diminish cost recovery and impair the provision of efficient and timely service. The final rule therefore increases the fee for the Standard Application by $20, still leaving it approximately 34% below the full cost of providing the service.

In adopting this increase, the Office also considered the availability of lower-cost group registration options. Since the existing schedule was adopted in 2020, we have implemented several additional options that permit applicants to register multiple works with one application and filing fee.[78] These options cover a wide variety of works, including short online literary works, musical works and sound recordings (including associated literary, pictorial, and graphic works) contained on an album, frequently updated news websites, and two-dimensional artwork. They supplemented existing group registration options for photographs, unpublished works, serials, newspapers, newsletters, and contributions to periodicals. Under the fee schedule adopted in this final rule, many of these options will continue to provide registration at a fee of only a few dollars per work, in many cases $13 or less. The continued availability of these lower-cost options mitigates the fee increase for the Standard Application and helps preserve access to an efficient registration system.

As noted in the prior fee studies,[79] the substantially higher costs of processing paper applications as compared to the more efficient electronic process justifies a higher fee. Accordingly, the final rule increases the existing $125 fee for paper applications to $185. This fee will recover the entire processing cost and incentivize use of the electronic system.[80]

The Office has reached a different conclusion with respect to the Single Application. The Single Application was established in 2013 as a streamlined registration option for a narrow category of claims involving one work by one author who is also the sole copyright claimant.[81] The lower fee was intended to reflect the relative simplicity of these claims and to ''encourage more individuals creators to register their works.'' [82]

The Office initially proposed eliminating the Single Application due to its administrative complexities and the additional costs imposed on the many applicants who misunderstand its eligibility requirements.[83] While a number of commenters supported the elimination of the Single Application,[84] others opposed it,[85] asserting that doing so would increase registration costs for ''independent authors, who make up a large and growing portion of the publishing landscape.'' [86]

After considering the comments, the Office has decided to retain the Single Application for now. The final rule retains the Single Application and increases its fee by $10 to account for inflation, leaving it 30% lower than the fee for the Standard Application. Given the administrative challenges associated with this option, however, the Office does not expect to incorporate it into the new Enterprise Copyright System (''ECS'') [87] Registration system currently in development. We will instead continue to explore alternative approaches to improve access for individual creators.

The Office also recognizes that some applicants choose to use third-party registration services,[88] which may increase their overall costs to register their works. Applicants are not required to use these services, however, and we provide a variety of educational materials to assist applicants in completing registration applications independently.[89] We also offer assistance via registration ''walk throughs,'' during which a trained Office representative guides an applicant through each screen of the application.[90]

ii. Group Registration

The Office adopts the following group registration fees:

Registration, recordation, and related services	Current fees ($)	New fees ($)
Registration of a claim in a group of contributions to periodicals	85	130
Registration of a claim in a group of updates or revisions to a database that predominantly consists of non-photographic works	500	700
Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs	55	85
Registration of a claim in a group of updates or revisions to a database that predominantly consists of photographs and updates thereto:		
(i) Electronic filing	250	700
(ii) Paper filing	250	700

[77] *See* 85 FR 9374, 9374, 9378 (establishing $65 fee based on data from fiscal years 2016 and 2017).

[78] 85 FR 31981, 31982 (May 28, 2020); 85 FR 37341, 37346 (June 22, 2020) (creating the group registration option for short online literary works); 86 FR 10820, 10825 (Feb. 23, 2021) (creating the group registration option for musical works, sound recordings, and certain other works contained on an album); 89 FR 58991, 58999 (July 22, 2024) (creating the group registration option for frequently updated news websites), *revised by* 91 FR 52239, 52241 (Aug. 13, 2026); 90 FR 59383, 59389 (Dec. 19, 2025) (creating the group registration option for two-dimensional artwork).

[79] *See* 2020 Fee Study at 24; 2014 Fee Study at 16.

[80] *See* FRD Study at 19.

[81] 78 FR 38843, 38843–45 (June 28, 2013).

[82] *Id.* at 38844.

[83] 91 FR 13529, 13533–34.

[84] *See* AIPLA Comments at 3 (noting that the Office persuasively demonstrated ''high error rates, increased refusals, and inefficiencies'' of Single Application); USIPS Comments at 2 (''The Office's own data demonstrates that low-cost application options, such as the Single Application, attracted a disproportionate number of unqualified submissions, wasting both applicant and Office resources.'').

[85] *See* Authors Guild Comments at 3–4; Copyright Alliance Comments at 22–24; NMPA Comments at 3–4.

[86] Jennifer Fischetto Comments at 1.

[87] We are building ECS to make all of the Office's services digitized, interconnected, searchable, and easy to navigate. ECS integrates and updates all of the Office's technology-based services, including (1) building a redesigned and easier to use registration system that will replace the current Electronic Copyright Office (eCO) system; (2) developing an online recordation system that is more efficient than the paper-based recordation process; (3) deploying a new Copyright Public Records System with improved functionality over the previous system, which was decommissioned in June 2025; and (4) implementing new tools to streamline our review of licensing statements of account.

[88] When a third-party service files a Single Application on behalf of a claimant, the service must identify itself as a correspondence in the registration application. 37 CFR 202.3(c)(1).

[89] For example, the Office created the Copyright Registration Toolkit to help creators, small business owners, advisors, and others navigate the copyright system. U.S. Copyright Office, *Copyright Registration Toolkit* (2026), *https://copyright.gov/intellectual-property-toolkits/copyright-registration-toolkit.pdf.*

[90] *See Application Assistance: Walk Through Request Form,* U.S. Copyright Office, *https://help.copyright.gov/contact/s/walkthrough-form* (last visited Nov. 6, 2026).

Registration, recordation, and related services	Current fees ($)	New fees ($)
Registration of a claim in a group of serials (per issue, minimum two issues)	35	50
Registration of a claim in a group of newspapers or a group of newsletters	95	130
Registration of a claim in a group of works on an album:		
(i) Musical works	65	85
(ii) Sound recordings, photographs, artwork, and liner notes	65	130
Registration of a claim in a group of two-dimensional artwork	85	130
Registration of a claim in a group of unpublished works	85	130
Registration of a claim in a group of short online literary works	65	130
Registration of a claim in a group of updates to a news website	95	275

Congress authorized the Register to permit registration of groups of related works with one application and filing fee.[91] Pursuant to that authority, the Register has issued regulations permitting group registration for certain limited categories of works.[92] Although these options facilitate registration, particularly for applicants who create or publish large volumes of works, they generally require more resources to administer than applications covering a single work.[93] It can be more difficult to adequately capture information about each work, particularly within the technological constraints of the current electronic registration system, and examination is more time-consuming, as information relating to each work must be evaluated individually. Additionally, group registration options necessarily have eligibility restrictions that may lead to increased correspondence. Thus, these options cost more to process than claims involving one work.

Numerous commenters opposed the proposed fee increases for group registration options.[94] After careful consideration of those comments, however, the Office has determined that the increases are appropriate, subject to the modifications discussed below. The fees adopted in this final rule reflect the reasonable costs of processing these claims, the benefits conferred to registrants, and the objectives of the copyright system.

For most group registration options, the final rule establishes a common fee of $130. Although these options apply to different categories of works,[95] they provide comparable benefits by allowing applicants to register multiple works with one application and filing fee, thereby reducing the burden of obtaining multiple individual registrations. Establishing a common fee promotes consistency and predictability while modestly improving cost recovery across services. Even with the increases adopted here, the fees remain substantially below the costs of providing these services, with cost recovery rates ranging from 7.1% to 64.4%.

The group options also continue to provide significant value compared to registering works separately. Applicants who submit the maximum number of works permitted under an option subject to the $130 fee will pay no more than $13 per work, and in many cases, substantially less.

The Office has adopted a different fee for the group registration option for musical works published on the same album. During this proceeding, songwriters raised concern that the proposed increase would ''create[ ] a meaningful barrier to access.'' [96] The Songwriters Guild of America (''SGA'') and the Society of Composers & Lyricists (''SCL'') urged the Office to implement ''a framework that distinguishes between individual creators registering their own works and corporate or high-volume registrants.'' [97] In light of these comments, the final rule sets the fee for the group option to register musical works published on the same album at $85 rather than the proposed $130. This adopted fee is the same as the fee for registering one work with the Standard Application ($85) and is intended to preserve an affordable registration option for independent songwriters and other individual creators.

The final rule retains the proposed $130 fee for the group registration option for sound recordings published on the same album because these options provide different benefits and impose different processing requirements. The musical works option is limited to twenty musical works, while the option for registering sound recordings on an album may cover up to twenty sound recordings, together with any associated photographs, artwork, or liner notes that were first published with the same album. Additionally, while electronic deposits are always permitted for the option for musical works, if an album was published in physical or both physical and electronic format, a physical deposit may be required for the option to register sound recordings,[98] which increases processing costs. These differences support the distinct fees adopted here.

The final rule also adopts a more modest increase for the group options to register published and unpublished photographs (''GRPPH'' and ''GRUPH,'' respectively).[99] Photographers frequently produce large numbers of works in a short period of time, and have consistently raised concern about the costs associated with protecting those works. The final fee of $85 takes those concerns into account. Even at this fee, an applicant registering the maximum number of photographs permitted (750) would pay an approximate $0.11 per photograph. The Office has also planned improvements in the new ECS registration system that will allow published and unpublished photographs to be included in the same submission, and permit larger numbers of photographs to be submitted with

[91] *See* 17 U.S.C. 408(c)(1).

[92] *See generally* 37 CFR 202.3(b)(5), 202.4.

[93] *See* 55 FR 50556, 50556 (Dec. 7, 1990) (explaining that the Copyright Office had previously declined to establish a group option ''due to concerns about the administrative burden associated with processing several works on a single application'' and ''[b]ased on the Office's experience with statutory group registration of contributions to periodicals, the Office [found] that, unless appropriate restrictions limit the availability of group registration, the administrative costs and burden on the Office escalate'').

[94] ImageRights Comments at 3–4; Larson Skinner PLLC (''Larson Skinner''), Comments Submitted in Response to U.S. Copyright Office's March 20, 2026 Notice of Proposed Rulemaking, at 1–6 (May 4, 2026); *see also* AMI Comments at 3.

[95] These group options include registration of contributions to periodicals, unpublished works, newspapers, newsletters, short online literary works, sound recordings, and associated literary, pictorial, and graphic works contained on an album, and two-dimensional artwork.

[96] Shelby Scott Comments at 1.

[97] SGA & SCL Joint Comments at 1. The Office appreciates this suggestion and, as indicated above, will consider this type of framework as part of its separate proceeding concerning alternative fee structures for registration. *See* 91 FR 14724, 14725 (Mar. 26, 2026).

[98] 37 CFR 202.4(k)(3) (requiring the applicant to submit ''two complete phonorecords containing the best edition of each recording'').

[99] The current fee for GRPPH and GRUPH is $55, which is less than the fee of registering one work on the Standard Application. This fee has remained unchanged since 2014.

each application, further reducing the effective per-work fee.[100] These fees still remain below the cost of providing the services, achieving a 56% cost recovery rate for GRUPH and an 80% rate for GRPPH.[101]

Several commenters also objected to the proposed increases for group registrations of updates to news websites (''GRNW''). The News/Media Alliance reported that shifts in ''digital advertising markets, inflation, and other economic volatility'' have placed increased financial pressure on many news publishers.[102] They asserted that ''[t]he vast majority of publishers simply are not large corporations that can subsidize other registrants and users of Copyright Office services.'' [103]

The Office appreciates these economic pressures, as well as the critical role news organizations play in disseminating information to the public. Therefore, the final rule sets the fee for GRNW at $275 rather than the proposed $350. GRNW was specifically developed to address the unique vulnerabilities news publishers face and reflects the Office's longstanding effort to provide efficient registration options for high-volume creators. This option provides significant value to publishers by permitting the registration of a month's worth of updates to a news website with one application and filing fee. Registering such volume of updates would be considerably more burdensome and expensive if each website update were submitted individually. The value of this option extends beyond administrative convenience. By permitting registration of a month's worth of updates to news websites, GRNW allows publishers to secure the benefits associated with registration for a large volume of material.

Furthermore, the Office has separately taken steps to make GRNW available to a broader range of news publishers.[104] In a final rule effective August 13, 2026, we adjusted the option's eligibility requirements and expanded the types of news websites that qualify.[105] Together, that expansion and the more modest increase adopted here appropriately balance the benefits of this option with our obligation to administer registration services responsibly, recovering an appropriate portion of the costs associated with providing them.

The estimated cost of processing the GRNW application is $516.94, of which the fee would recover approximately 53% of the cost of providing the service. Section 708 authorizes the Register to ''adjust fees to not more than that necessary to cover the reasonable costs incurred.'' Thus, contrary to one commenter's assertion,[106] proposing a fee that covers just over half of costs does not exceed the Register's authority.

The Office has also considered the National Association of REALTORS' concern that the increase to the fee to register a group of updates to a database from $500 to $700 will disproportionately affect multiple listing services (''MLSs''), driving down this sector's participation in the copyright system.[107] While we understand the increase is unwelcome to the MLSs, the Office does not find this concern to be supported by the available data. The previous increase,[108] although substantial, was not followed by a decline in participation. Registrations per MLS remained essentially unchanged: there were approximately 0.427 registrations per existing MLS in both 2019 (the last full year before the fee increase) and 2022 (the first full year after the industry-disrupting effects of the pandemic had largely subsided).[109]

The Office also considered the scope of this service. Applicants may register all updates and revisions over a three-month period by submitting one application and paying one filing fee, meaning a database provider can register all of its content by filing four applications per year. While this option facilitates registration, especially for large-volume creators, it also imposes higher costs on the Office. Although the fee exceeds the current cost of $506.58 for this service, as noted above, our fee-setting methodology also accounts for inflation and anticipated increases in the costs of providing services. The 40% increase is below the approximately 43% average proposed increase, which is needed to account for historic inflation since our last study and anticipated inflation over the next three years. Because this option primarily serves applicants with relatively inelastic demand, increasing the fees for these services would help the Office maintain lower pricing for other registration options more commonly used by individual authors.[110]

Finally, the Office appreciates commenters' calls to modernize the paper-based database registration process.[111] As part of ECS Registration, we are in the process of gathering requirements and exploring design options for all of our group registration options—including database claims.

2. Other Registration Fees

The Office provides other less commonly used registration services, as authorized by various provisions of the Copyright Act. We adopt the following schedule of fees for such services:

Registration, recordation, and related services	Current fees ($)	New fees ($)
Registration of a renewal claim (Form RE):		
(i) Claim without addendum	125	165
(ii) Addendum (in addition to the fee for the claim)	100	135

[100] Lib. of Cong., *Copyright Public Modernization Committee Public Meeting February 25, 2026* (2026), *https://www.loc.gov/item/video-11705/*.

[101] The Copyright Alliance observed that the estimated costs for these services differ despite their similar structures and requirements. Copyright Alliance Comments at 9. The Office acknowledges that observation, but notes that claims for unpublished photographs are typically submitted by applicants who have limited familiarity with the Office's registration requirements. As a result, these applications can require additional correspondence to address errors, which may contribute to the difference in the estimated costs.

[102] NMA Comments at 7.

[103] *Id.* at 6.

[104] 91 FR 52239.

[105] *Id.*

[106] *See* NMA Comments at 8–9.

[107] NAR Comments at 3; *see* NAR *Ex Parte* Letter (Aug. 10, 2026), *https://www.copyright.gov/rulemaking/feestudy2026/nars-1-aug-10-2026.pdf*.

[108] Six years ago when the Office implemented its last fee updates, the group registration fee for databases increased from $85 to $500. 85 FR 9374, 9379.

[109] Copyright Office registration records show 241 MLS registrations in 2019 and 223 in 2022. T3 Sixty data indicate that there were 565 MLS organizations at the end of 2019 and 522 at the end of 2022. *See* T3 Sixty, *Extreme Contrast Revealed in Real Estate MLS Study Released Today,* PRWEB (Feb. 20, 2020), *https://www.prweb.com/releases/extreme-contrast-revealed-in-real-estate-mls-study-released-today-854754740.html* (reporting 565 MLS organizations and subscriber counts as of December 31, 2019); *Pennsylvania Broker-Owner: Small MLS ''Fiefdoms'' Hurt Agents and Clients,* REAL ESTATE NEWS (July 15, 2023), *https://www.realestatenews.com/2023/07/15/pennsylvania-broker-owner-small-mls-fiefdoms-hurt-agents-and-clients* (reporting, based on T3 Sixty data, 522 MLS organizations at the end of 2022). Registrations per MLS are therefore 241 ÷ 565 = 0.4265 in 2019 and 223 ÷ 522 = 0.4272 in 2022.

[110] *See* Fee Study at 11.

[111] Larson Skinner Comments at 2–5; NAR *Ex Parte Letter* at 2.

Registration, recordation, and related services	Current fees ($)	New fees ($)
Registration of a claim in a restored copyright (Form GATT)	100	165
Preregistration of certain unpublished works	200	320
Registration of a correction or amplification to a claim:		
(i) Supplementary registration:		
(A) Electronic filing	100	85
(B) Paper Filing for correction or amplification of renewal registrations, GATT registrations, and group registrations for non-photographic databases (Form CA)	150	185
(ii) Correction of a design registration (Form DC)	100	185
Registration of a claim in a mask work (Form MW)	150	650
Registration of a claim in a vessel design (Form D/VH)	500	650

Special services: other registration services	Current fees ($)	New fees ($)
Appeals:		
(i) First appeal (per claim)	350	535
(ii) Second appeal (per claim)	700	1,200
Secure test examining fee (per staff member per hour)	250	375
Special handling fee for a claim	800	1,100
Handling fee for each non-special handling claim using the same deposit	50	60
Full-term retention of a published deposit:		
(i) Physical deposit	540	640
(ii) Electronic deposit	220	320
Voluntary cancellation of registration	150	320
Matching unidentified deposit to deposit ticket claim (per hour, one hour minimum)	40	50

After considering our costs and the comments submitted in response to the NPRM, the Office concludes that the current fees do not offset a sufficient percentage of the costs of processing paper-based applications, which include registration applications for restored copyrights (Form GATT) and renewal claims (Forms RE and RE/Addendum).[112] Paper-based processes are considerably less efficient than electronic registration. The issues involved with restored copyrights and renewal claims can be difficult and complex, requiring the work of higher-paid senior staff as well as multiple rounds of correspondence. While these services are low volume, they carry a high cost per transaction. For example, the renewal application and the renewal addendum carry total costs per transaction of $1,537.49 and $1,163.24, respectively. Accordingly, having received no comments in opposition, the final rule adopts increases to recover a greater portion of the costs of providing the services.

The Office is also implementing increases above historical and projected inflation rates to several low-volume services with high costs per transaction. For example, the cost per transaction for preregistration of certain unpublished works is about $794, and thus, the final rule increases the fee from $200 to $320.

The final rule also adopts increases to recover more than the estimated cost per transaction for certain services for which demand is relatively inelastic because they are either compulsory or in strong demand among certain customer segments and typically serve commercial organizations. Unlike copyright registration, which is voluntary, registration is a mandatory condition for securing legal protection in a vessel design or a mask work.[113] As discussed in the NPRM, the costs per transaction for vessel design and mask work registrations are about $261 and $217 respectively, and the final rule increases each fee to $650. Similarly, the cost per transaction for the special handling surcharge,[114] which expedites the examination of claims in circumstances such as pending litigation, is about $659. The final rule increases this fee from $800 to $1,100 to help offset the cost of other registration services used by individual creators for which full cost recovery is impracticable.

The final rule aligns the fee for supplementary applications with those for basic registration applications. Specifically, it decreases the fee for supplementary registration applications submitted online from $100 to $85 to match the fee for the Standard Application, and increases the fee for the paper supplementary registration form to $185 to match the fee for the paper registration applications. Aligning these fees encourages applicants seeking to correct or amplify information in an existing registration to use the supplementary registration application rather than submit a duplicate registration application. Submitting a supplementary registration is preferable because it will be cross-referenced in the basic registration and vice versa.

The Office also increases the fees for registration appeals. As explained in the NPRM, applicants have two opportunities to appeal the denial of a registration claim within the Office, both of which require intensive legal analysis at costs that considerably exceed the existing fees. Review of a first appeal by the attorneys in the Office of Registration Policy and Practice costs the Office approximately $3,244. Thus, the final rule increases the fee for this service from $350 to $535 per claim. A second request involves substantial work by senior attorneys, including the Register of Copyrights, the General Counsel and Associate Register of Copyrights, or their respective designees,[115] resulting in a cost to the Office of approximately $9,471 per appeal. The final rule increases the fee for this service from $700 to $1,200 per claim, still a small percentage of the actual cost.

Finally, the final rule adopts inflation-based increases to several other services, including the full-term retention of

[112] The current cost per transaction is $520.14 for the paper Form GATT, $1,537.49 for the paper Form RE, and $1,163.24 for the paper Addendum to Form RE.

[113] 17 U.S.C. 1310(a).

[114] Special handling fees are charged in addition to the otherwise applicable processing fees.

[115] *See* 37 CFR 202.5(f).

published copyright deposits. To account for projected storage costs for the entire retention period, the Office is increasing the fee from $540 to $640 for physical deposits, and from $220 to $320 for electronic deposits.

While commenters generally did not oppose the proposed fee adjustments for these miscellaneous registration services, three urged the Office to reconsider proposed increases to the fees for special handling and the full-term retention of published electronic deposits. Specifically, acknowledging the value of expedited examination, AIPLA, AMI, and News/Media Alliance expressed concern that the increased surcharge would make the service inaccessible to rightsholders seeking to ''preserve enforcement rights or comply with statutory deadlines.'' [116] AMI proposed a reduced special handling fee for claims submitted by ''single author[s].'' [117] Separately, AMI also encouraged the Office to eliminate the fee for full-term retention of published electronic deposits, arguing that the fee to retain the file should be included in the initial registration fee.[118]

The Office appreciates these concerns and suggestions, but has determined that the fees are nonetheless reasonable in light of the nature of the services provided. Special handling prompts the Office to give an application priority over earlier-submitted claims in the examination queue and devote resources to completing the review on an expedited basis (in five days or less). Full-term retention involves costs to preserve an electronic deposit copy for an extended period, which are not de minimis. Additionally, we do not find it appropriate to pass these costs on to all registration applicants, as many may not intend to seek full-term retention. Therefore, the final rule adopts these fees without further adjustment.

3. Recordation Fees

The Office is adopting the following fees for recordation services:

Registration, recordation, and related services: recordation services	Current fees ($)	New fees ($)
Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright:		
Base fee (includes 1 work identified by 1 title and/or registration number):		
Paper filing for notices of termination (Form TCS)	125	275
Paper filing for all other recordations	125	350
Electronic	95	215
Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	95	215
Additional works and alternate identifiers:		
Paper (per group of 10 or fewer additional works and alternate identifiers)	60	215
Electronic:		
1 to 50 additional works and alternate identifiers	60	215
51 to 500 additional works and alternate identifiers	225	300
501 to 1,000 additional works and alternate identifiers	390	520
1,001 to 10,000 additional works and alternate identifiers	555	745
Per group of 10,000 above 10,000 additional works and alternate identifiers	[119] +5,500	745
Correction of online Public Catalog data due to erroneous electronic title submission (per title)	7	10
Schedule of pre-1972 sound recordings, or supplemental schedule of pre-1972 sound recordings (single sound recording)	75	160
Additional sound recordings (per group of 1 to 100 sound recordings)	10	80
Removal of pre-1972 sound recording from Office's database of indexed schedules (single sound recording)	75	160
Notice of noncommercial use of pre-1972 sound recording	50	160
Opt-out notice of noncommercial use of pre-1972 sound recording	50	160

Special services: recordation services	Current fees ($)	New fees ($)
Special handling fee for recordation of a document	550	1,100

As discussed in the Fee Study and NPRM, the Office is increasing recordation fees to better recover costs for these services, which are largely used by commercial entities.[120]

The Office records three primary types of documents: transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. Recordation submissions include the document subject to recordation and a title list identifying the relevant works, which can number in the hundreds or thousands. The Office examines documents for completeness and accuracy, indexes documents into public records, and may also correspond with a remitter to clarify any inconsistencies. Approximately 90% of all recordations are submitted through the Office's online recordation system.

[116] AIPLA Comments at 3; *see* AMI Comments at 4; NMA Comments at 15–16.

[117] AMI Comments at 4.

[118] *Id.*

[119] Under the current fee schedule, this tier covers 10,001 or more additional works and alternate identifiers.

[120] Fee Study at 36; 91 FR 13529, 13537.

A few commenters expressed concerns with the proposed increases to the primary recordation fees, calling the size of some increases ''staggering'' [121] and noting their potential to ''undermin[e] the public notice function that recordation is intended to serve.'' [122] With respect to notices of termination specifically, some commenters likewise expressed concerns about the impact higher fees could have on the exercise of the right.[123] As explained in the Fee Study, while the online system has reduced processing times, the current base recordation fee for electronic filing recovers less than half of the costs of providing the service.[124] Thus, the base fee for recording a document with an electronic filing is increasing from $95 to $215 to better recover costs.[125] Similarly, the Office is increasing the per-transfer fee for additional transfers—which applies when a single document involves multiple transfers or other transactions—from $95 to $215, resulting in a cost recovery of 51%.

Some recordation types cannot yet be handled electronically. For instance, remitters must use the Office's mail-based paper submission process for notices of termination and for documents relating to more than 10,000 works and alternate identifiers. Paper submissions can be significantly more resource-intensive to process. For paper submissions with paper title lists, staff must manually transcribe information to index into the public record. Costs also include the processing of incoming submissions and sending recordation certificates to remitters.

The Office is raising the base fee for recording notices of termination with a paper filing from $125 to $275, which would recover 24% of costs. This is lower than the $320 fee that we proposed in the NPRM. As we explained in the Fee Study, although notices of termination are costly to provide (approximately $1,131.50 in total costs), this adjustment takes into account that the service is primarily used by individual authors and their heirs.[126]

To accommodate the downward adjustment for notices of termination, the Office is increasing the base fee for recording a transfer of ownership or other document pertaining to a copyright with a paper filing from $125 to $350—slightly higher than the $320 fee we proposed in the NPRM. We are also increasing the fee for each ten additional works submitted with a paper title list from $60 to $215, allowing for 88% cost recovery for these more resource-intensive filings.

The Office is also adjusting the fees for submitting additional works and alternate identifiers on electronic title lists. This applies to title lists submitted through the online recordation system and to electronic title lists submitted on portable storage media with a paper submission. The Office will continue to offer a five-tiered reduced fee system for identifying additional works with an electronic title list, which is unchanged from the NPRM: (1) the fee for 1 to 50 additional works and alternate identifiers is increasing from $60 to $215; (2) the fee for 51 to 500 additional works and alternate identifiers is increasing from $225 to $300; (3) the fee for 501 to 1,000 additional works and alternate identifiers is increasing from $390 to $520; (4) the fee for 1,001 to 10,000 additional works and alternate identifiers is increasing from $555 to $745; and (5) the fee for more than 10,000 additional works and alternate identifiers is switching from a flat fee of $5,500 to $745 per group of 10,000 additional works and alternate identifiers.[127]

As described in the NPRM, the increased fee for up to 50 additional works under the first tier mirrors the fee for up to 10 additional works submitted on a paper title list.[128] The incremental fee increases provide reduced fees when using an electronic format for documents relating to more than 11 works. This incentivizes the use of an electronic title list and the online recordation system, while also achieving greater cost recovery. Under the fifth tier for more than 10,000 additional works, the shift from a $5,500 flat fee to $745 per group of 10,000 additional works reduces costs for remitters on the lower end of that scale. For substantially larger numbers of works, the fee increases will better offset the additional costs.[129]

The Office believes that these increases are necessary to avoid exacerbating the cost-recovery shortfall for these services. While these increases may appear large in relative terms, the new fees would not recover the full cost of even the simplest recordation and remain modest when considered on a per-work basis. And although remitters vary in size, the Office's current system cannot draw these distinctions, and we therefore consider the predominant type of remitter. Further, the comparison with the USPTO is not apt, given that they are entirely fee-funded and operate under a different fee structure.[130]

The Office is also increasing the fees for recordation services related to title II of the Music Modernization Act for sound recordings fixed before February 15, 1972 (''pre-1972 sound recordings'').[131] The fee for the filing and removal of schedules of pre-1972 sound recordings (''pre-1972 schedules'') is increasing from $75 to $160 for a single sound recording, while the fee for additional pre-1972 sound recordings (per group of 1 to 100) is increasing from $10 to $80. These new fees are far below the costs for providing these services, which are $1,027.22 for the filing of pre-1972 schedules and $454.23 for a group of additional sound recordings. The Office is also raising fees related to the noncommercial use exception to unauthorized uses of pre-1972 sound recordings.[132] The fees for submitting a notice of noncommercial use and for submitting a notice opting out of a proposed noncommercial use are increasing from $50 to $160, likewise remaining far below estimated costs ($741.02).

The Recording Industry Association of America (''RIAA'') opposed the increases for pre-1972 schedules. They noted that the higher fees ''would be absorbed in its entirety by owners of

[120] Fee Study at 36; 91 FR 13529, 13537.

[121] NMPA Comments at 5.

[122] AIPLA Comments at 2; *see also id.* (''AIPLA would therefore encourage the Office to assess whether these increases may disproportionately affect compliance-oriented filers, rather than strategic or high-volume users, in a manner inconsistent with the statutory objective of maintaining an accurate and accessible public record.''); Anonymous 12, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking (May 4, 2026) (noting that ''[a]n inexpensive recordation system reduces barriers to recordation'').

[123] *See* Authors Alliance Comments at 2 (noting that the increase could ''diminish an author's willingness to exercise this right''); Rights Recapture LLC, Comments Submitted in Response to U.S. Copyright Office's Mar. 20, 2026, Notice of Proposed Rulemaking, at 2 (Apr. 28, 2026) (stating that ''[a]uthors or statutory heirs should not bear outsized expense as an entry fee to exercise their rights'').

[124] Fee Study at 37.

[125] Cost recovery will range between 53–87%, depending on the type of document.

[126] Fee Study at 38.

[127] If after the new schedule has gone into effect, a filing under examination requires corrections that result in a change to the number of transfers or the fee tier for additional works and alternate identifiers, the Office will refund that portion of the fee and charge a fee based upon the new schedule. The new fee schedule will also apply to corrections made after a document is recorded that result in a change to the number of transfers or fee tier.

[129] To allow simple comparison between titles provided on electronic or paper title lists, FRD calculated the cost of processing groups of ten additional titles. The total cost per group of ten titles provided electronically is $88.31. FRD Report at 28.

[130] *See* U.S. Pat. & Trademark Off., *FY 2025 Agency Financial Report* 121 (2025), *https://www.uspto.gov/sites/default/files/documents/USPTOFY2025AFR.pdf.*

[131] *See* 17 U.S.C. 1401.

[132] *See id.* at 1401(c).

pre-72 sound recordings, many of whom are record companies but some of whom are presumably pre-72 artists themselves.'' [133] RIAA also highlighted the increase for a group of additional sound recordings, noting that ''a 700% increase . . . is simply too large to be absorbed as a one-time increase, especially when considering the large number of pre-72 recordings that need to be included on schedules filed with the Office.'' [134] The Office believes that these increases reflect an appropriate balance that modestly narrows what is a substantial gap between the services' costs and fees. Under the new fees, the cost recovery for filing pre-1972 schedules increases from 7.3% to 15.6%, with cost recovery increasing from 2.2% to 17.6% for groups of additional sound recordings.

The special handling surcharge for the expedited recordation of documents is increasing from $550 to $1,100, consistent with the special handling fees the Office is charging for other expedited services. As we explained in the NPRM, given the strikingly decreased processing times through the online recordation system, we also expect a decrease in demand for expedited recordation.[135]

Finally, the fee for correcting online public catalog data due to erroneous electronic title submission is increasing from $7 to $10 per title, which reflects an inflationary increase.

B. Record Retrieval, Search, and Certification Services

The Office's Records Research and Certification Section (RRC) provides copies of completed and in-process registration and recordation records, search reports, and registration deposit materials. The Office is adopting the following fee schedule for records retrieval, search, and certification services:

Registration, recordation, and related services: record retrieval, search, and certification services	Current fees ($)	New fees ($)
Provision of an additional certificate of registration	55	80
Certification of other Copyright Office records, including search reports (per certification)	200	300
Search report prepared from official records other than Licensing Division records (per hour, 2 hour minimum)	200	300
Estimate of retrieval or search fee (credited to retrieval or search fee)	200	300
Retrieval of in-process or completed Copyright Office records or other Copyright Office materials:		
Retrieval of paper records (per hour, 1 hour minimum)	200	300
Retrieval of digital records (per hour, half hour minimum, quarter hour increments)	200	300

Special services: record retrieval, search, and certification services	Current fees ($)	New fees ($)
Copying of Copyright Office records by staff	12 (all formats)	
Photocopy		20
Audiocassette		105
Videocassette		105
CD or DVD		55
Flash drive		55
Unsupported formats and other copying of materials by outside providers		Varied
Special handling fee for records retrieval, search, and certification services (per hour, 1 hour minimum)	500	1,100
Litigation statement (Form LS)	100	320

The new fees for search and retrieval services reflect an increase slightly above historical and projected inflation. These services can be time consuming and often require specialized knowledge, and the increases modestly address the associated cost recovery shortfall. For copying records, the Office is reverting to its past practice by changing the fee of $12 per copy regardless of format to a variable fee based on the type of media being copied. This change will better account for the varying complexity of copying different media types and enable greater cost recovery. The Office is also increasing the fee for litigation statements from $100 to $320. Demand for this service is relatively inelastic, and this increase will help offset the cost of services for which greater cost recovery is unattainable. Finally, the increase from $500 to $1,100 for the special handling fee for records retrieval, search, and certification services is consistent with the special handling fees proposed for other expedited services.

The Office did not receive any comments on its proposed adjusted fees for record retrieval, search, and certification services.

C. Miscellaneous Fees

The Office is adopting the following miscellaneous fees, as authorized by 17 U.S.C. 708 and other provisions of the Copyright Act:

Registration, recordation, and related services: miscellaneous services	Current fees ($)	New fees ($)
Designation of agent under 17 U.S.C. 512(c)(2) to receive notification of claimed infringement, or amendment or resubmission of designation	6	25
Issuance of a receipt for a section 407 deposit	30	30
Removal of PII from registration records:		
Initial request, per registration record	100	100
Reconsideration of denied requests, flat fee	60	135

[133] RIAA Comments at 3–4.

[134] RIAA Comments at 4.

[135] 91 FR 13529, 13537.

Special services: miscellaneous services	Current fees ($)	New fees ($)
Service charge for deposit account overdraft	285	305
Service charge for dishonored deposit account replenishment check	500	535
Service charge for an uncollectible or non-negotiable payment	115	125
Notice to libraries and archives	50	55
Each additional title	20	20
Service charge for express mailing	45	105
Service charge for delivery of documents via facsimile (per page, 7 page maximum)	1	10

The Office is raising the fee for online service providers to designate an agent to receive notices of claimed copyright infringement under 17 U.S.C. 512(c)(2) from $6 to $25. As detailed in the NPRM, the cost of providing this service ($741.02) is largely attributable to the amount of time needed to review service providers' requests to use a post office box address in lieu of a street address. Although the new fee recovers only 3% of the cost of providing the service, maintaining a modest fee increase preserves accessibility for service providers of all sizes.

As detailed in the NPRM, the Office had insufficient volume to calculate the costs for providing the following services, and therefore is implementing only a modest fee increase to account for inflation or no increase: the fee for overdraft of a deposit account is increasing from $285 to $305; the fee for dishonored replenishment checks for deposit accounts is increasing from $500 to $535; the fee for uncollectible or non-negotiable payment is increasing from $115 to $125; and the fee for recording a notice to libraries and archives under 17 U.S.C. 108(h) is increasing from $50 to $55. The fee for recording each additional title under 17 U.S.C. 108(h) will remain unchanged.

Two additional miscellaneous fees are unchanged: the fee for obtaining a receipt for depositing copies of works with the Office under 17 U.S.C. 407 will remain at $30, and the fee for an initial request to remove personally identifiable information (''PII'') from our public catalog will remain at $100. The fee for reconsideration of a denial of the request to remove PII is increasing from $60 to $135 to better reflect, but remain below, the cost of providing that service ($2,696.67).

Finally, as proposed in the NPRM, the fee to deliver documents by Federal Express mailing is increasing from $45 to $105, and the fee to deliver documents by fax is increasing from $1 to $10, requiring payment in advance. These increases are in line with the Office's estimate of the costs for providing those services. Advance payments that are greater than the service provider's costs will be reimbursed to the customer.

D. Licensing Section and Related Fees

The Office is adopting the following Licensing Section fees:

Licensing Section services	Current fees ($)	New fees ($)
(1)(i) Recordation of a notice of intention to make and distribute phonorecords (17 U.S.C. 115)	75	100
(ii) Additional titles (per group of 1 to 10 titles) (paper filing)	20	25
(iii) Additional titles (per group of 1 to 100 titles) (online filing)	10	15
(2) Statement of account amendment (cable television systems and satellite carriers, 17 U.S.C. 111 and 119; digital audio recording devices or media, 17 U.S.C. 1003)	50	70
(3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states	50	70
(4) Initial or amended notice of digital transmission of sound recording (17 U.S.C. 112, 114)	50	70
(5) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 111:	.....	.....
(i) Form SA1	15	20
(ii) Form SA2	20	25
(iii) Form SA3	725	960
(6) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 119 or 122	725	960
(7) Search report prepared from Licensing Section records (per hour, 2 hour minimum)	200	300

As proposed in the NPRM, the final rule adopts small increases to all Licensing Section fees to account for inflation.[136] Fees associated with section 111, 119, and 122 licenses will remain, in the aggregate over the next five year period, below 50% of the Office's reasonable expenses to administer the cable and satellite licensing programs, as is required by statute.[137] We will continue to monitor costs and filing volume to ensure compliance with the statutory limit.

E. Freedom of Information Act Requests

The Freedom of Information Act (''FOIA'') permits the Office to charge an hourly rate for the search and review of requested records by administrative or professional staff, unless a fee waiver or reduction applies.[138] Under the current regulations, requesters must pay fees by check or money order. As part of broader efforts to make our services digitized, interconnected, and easier to navigate, the final rule allows requesters to make their payments via any of the methods prescribed in 37 CFR 201.6(a), including through *pay.gov*. This amendment ensures consistency in payment methods across the Office's services.

F. Technical Amendments

The final rule adopts technical amendments to correct typographical errors and to conform existing regulations to changes to the fee schedule.

[136] The Office has taken into account that the volume of cable statements of account is projected to continue to decrease, as it has done for a number of years.

[137] 17 U.S.C. 708(a)(11).

[138] 37 CFR 203.11(a)(1), (2).

G. Effective Date

As noted above, on July 14, 2026, the Register submitted the Fee Study to Congress pursuant to 17 U.S.C. 708(b)(5). The statutory 120-day review period ended November 11, 2026. The adjusted fees described herein will take effect on January 5, 2027.

List of Subjects in 37 CFR Parts 201 and 203

Copyright, General provisions.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. In § 201.3, revise paragraphs (c), (d), and (e) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) *Registration, recordation, and related service fees.* The Copyright Office has established fees for these services. To calculate the fee specified by paragraph (c)(23) of this section, for each work identified in a document: The first title and/or first registration number provided for that particular work constitutes a work; and each additional title and registration number provided for that particular work beyond the first constitutes an alternate identifier. The fees are as follows:

TABLE 1 TO PARAGRAPH (c)

Registration, recordation, and related services	Fees ($)
(1) Registration of a claim in an original work of authorship:	.....
(i) Electronic filing:	.....
(A) Single author, same claimant, one work, not for hire	55
(B) All other filings	85
(ii) Paper Filing (Forms PA, SR, TX, VA, SE)	185
(2) Registration of a claim in a group of contributions to periodicals	130
(3) Registration of a claim in a group of updates or revisions to a database that predominantly consists of non-photographic works	700
(4) Registration of a claim in a group of published photographs or a claim in a group of unpublished photographs	85
(5) Registration of a claim in a group of updates or revisions to a database that predominantly consists of photographs and updates thereto:	.....
(i) Electronic filing	700
(ii) Paper filing	700
(6) Registration of a renewal claim (Form RE):	.....
(i) Claim without addendum	165
(ii) Addendum (in addition to the fee for the claim)	135
(7) Registration of a claim in a group of serials (per issue, minimum two issues)	50
(8) Registration of a claim in a group of newspapers or a group of newsletters	130
(9) Registration of a claim in a group of works on an album:	.....
(i) Musical works	85
(ii) Sound recordings, photographs, artwork, and liner notes	130
(10) Registration of a claim in a group of two-dimensional artwork	130
(11) Registration of a claim in a group of unpublished works	130
(12) Registration of a claim in a group of short online literary works	130
(13) Registration of a claim in a group of updates to a news website	275
(14) Registration of a claim in a restored copyright (Form GATT)	165
(15) Preregistration of certain unpublished works	320
(16) Registration of a correction or amplification to a claim:	.....
(i) Supplementary registration:	.....
(A) Electronic filing	85
(B) Paper filing for correction or amplification of renewal registrations, GATT registrations, and group registrations for non-photographic databases (Form CA)	185
(ii) Correction of a design registration: Form DC	185
(17) Registration of a claim in a mask work (Form MW)	650
(18) Registration of a claim in a vessel design (Form D/VH)	650
(19) Provision of an additional certificate of registration	80
(20) Certification of other Copyright Office records, including search reports (per certification)	300
(21) Search report prepared from official records other than Licensing Section records (per hour, 2 hour minimum)	300
(22) Estimate of retrieval or search fee (credited to retrieval or search fee)	300
(23) Retrieval of in-process or completed Copyright Office records or other Copyright Office materials:	.....
(i) Retrieval of paper records (per hour, 1 hour minimum)	300
(ii) Retrieval of digital records (per hour, half hour minimum, quarter hour increments)	300
(24) Recordation of a document, including a notice of termination and a notice of intention to enforce a restored copyright:	.....
(i) Base fee (includes 1 work identified by 1 title and/or registration number):	.....
(A) Paper filing for notices of termination (Form TCS)	275
(B) Paper filing for all other recordations	350
(C) Electronic	215
(ii) Additional transfer (per transfer) (for documents recorded under 17 U.S.C. 205)	215
(iii) Additional works and alternate identifiers:	.....
(A) Paper (per group of 10 or fewer additional works and alternate identifiers)	215
(B) Electronic:	.....
(1) 1 to 50 additional works and alternate identifiers	215
(2) 51 to 500 additional works and alternate identifiers	300

TABLE 1 TO PARAGRAPH (c)—Continued

Registration, recordation, and related services	Fees ($)
(3) 501 to 1,000 additional works and alternate identifiers	520
(4) 1,001 to 10,000 additional works and alternate identifiers	745
(5) Per group of 10,000 above 10,000 additional works and alternate identifiers	745
(iv) Correction of online Public Catalog data due to erroneous electronic title submission (per title)	10
(25) Designation of agent under 17 U.S.C. 512(c)(2) to receive notification of claimed infringement, or amendment or resubmission of designation	25
(26)(i) Schedule of pre-1972 sound recordings, or supplemental schedule of pre-1972 sound recordings (single sound recording)	160
(ii) Additional sound recordings (per group of 1 to 100 sound recordings)	80
(27) Removal of pre-1972 sound recording from Office's database of indexed schedules (single sound recording)	160
(28) Notice of noncommercial use of pre-1972 sound recording	160
(29) Opt-out notice of noncommercial use of pre-1972 sound recording	160
(30) Issuance of a receipt for a section 407 deposit	30
(31) Removal of PII from Registration Records:	.....
(i) Initial request, per registration record	100
(ii) Reconsideration of denied requests, flat fee	135

(d) *Special service fees.* The Copyright Office has established the following fees for special services of the Office:

TABLE 1 TO PARAGRAPH (d)

Special services	Fees ($)
(1) Service charge for deposit account overdraft	305
(2) Service charge for dishonored deposit account replenishment check	535
(3) Service charge for an uncollectible or non-negotiable payment	125
(4) Appeals:	.....
(i) First appeal (per claim)	535
(ii) Second appeal (per claim)	1,200
(5) Secure test examining fee (per staff member per hour)	375
(6) Copying of Copyright Office records by staff:	.....
(i) Photocopy	20
(ii) Audiocassette	105
(iii) Videocassette	105
(iv) CD or DVD	55
(v) Flash drive	55
(vi) Unsupported formats and other copying of materials by outside providers, at cost of provider	Varied
(7)(i) Special handling fee for a claim	1,100
(ii) Handling fee for each non-special handling claim using the same deposit	60
(8) Small claims expedited registration fee per registration application request	55
(9) Special handling fee for recordation of a document	1,100
(10) Handling fee for extra deposit copy for certification	55
(11) Full-term retention of a published deposit:	.....
(i) Physical deposit	640
(ii) Electronic deposit	320
(12) Voluntary cancellation of registration	320
(13) Matching unidentified deposit to deposit ticket claim (per hour, one hour minimum)	50
(14) Special handling fee for records retrieval, search, and certification services (per hour, 1 hour minimum)	1,100
(15) Litigation statement (Form LS)	320
(16)(i) Notice to libraries and archives	55
(ii) Each additional title	20
(17) Service charge for Federal Express mailing	105
(18) Service charge for delivery of documents via facsimile (per page, 7 page maximum)	10

(e) *Licensing Division service fees.* The Copyright Office has established the following fees for specific services of the Licensing Division:

TABLE 1 TO PARAGRAPH (e)

Licensing Section services	Fees ($)
(1)(i) Recordation of a notice of intention to make and distribute phonorecords (17 U.S.C. 115)	100
(ii) Additional titles (per group of 1 to 10 titles) (paper filing)	25
(iii) Additional titles (per group of 1 to 100 titles) (online filing)	15

TABLE 1 TO PARAGRAPH (e)—Continued

Licensing Section services	Fees ($)
(2) Statement of account amendment (cable television systems and satellite carriers, 17 U.S.C. 111 and 119; digital audio recording devices or media, 17 U.S.C. 1003)	70
(3) Recordation of certain contracts by cable TV systems located outside the 48 contiguous states	70
(4) Initial or amended notice of digital transmission of sound recording (17 U.S.C. 112, 114)	70
(5) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 111:	
(i) Form SA1	20
(ii) Form SA2	25
(iii) Form SA3	960
(6) Processing of a statement of account based on secondary transmissions of primary transmissions pursuant to 17 U.S.C. 119 or 122	960
(7) Search report prepared from Licensing Section records (per hour, 2 hour minimum)	300

* * * * *

PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES

■ 5. The authority citation for part 203 continues to read as follows:

Authority: 5 U.S.C. 552.

■ 6. In § 203.11, amend paragraph (a)(2) by revising the last sentence to read as follows:

§ 203.11 Fees.

(a) * * *

(2) Payment of the applicable fees under this paragraph shall be made by the methods established under § 201.6(a) of this chapter.

* * * * *

Dated: November 13, 2026.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Robert R. Newlen,

Acting Librarian of Congress.

[FR Doc. 2026–23415 Filed 11–17–26; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 21–341; FCC 23–95; FR ID 378222]

Protecting Consumers From SIM-Swap and Port-Out Fraud

AGENCY: Federal Communications Commission

ACTION: Final rule; announcement of compliance date.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with Telephone Number Portability. This document is consistent with the *SIM Swap and Port-Out Fraud Order,* which directed the Wireline Competition Bureau to publish a document in the **Federal Register** announcing a compliance date of the rules.

DATES:

Effective date: Amendatory instruction 2 (47 CFR 52.37), published at 88 FR 85794, December 8, 2023, is effective on November 18, 2026. The amendments in this final rule are effective November 18, 2026.

Compliance date: Compliance with the amendments to 47 CFR 52.37, published at 88 FR 85794, December 8, 2023, for commercial mobile radio service providers is required as of December 18, 2026.

ADDRESSES: Federal Communications Commission, 45 L Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information, contact Melissa Kirkel, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7958 or *Melissa.Kirkel@fcc.gov.*

SUPPLEMENTARY INFORMATION: On November 16, 2023, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking* (88 FR 85794 (Dec. 8, 2023)) (*SIM Swap and Port-Out Fraud Order*), which adds new information collection requirements. The *SIM Swap and Port-Out Fraud Order* adopted baseline measures to increase protections for customers against fraudulent port-outs by adding new § 52.37 in Part 52, and adds new information collection requirements in paragraphs (c), (d), (e), and (g) of that rule. Port-out fraud occurs where a bad actor impersonates a customers of a wireless provider and convinces the provider to port the real customer's telephone number to a new wireless provider and a device that the bad actor controls, allowing a bad actor to control the victim's mobile account and receive text messages and phone calls intended for the victim. The new rules establish a uniform framework that gives wireless providers flexibility to implement customer authentication and security methods to address port-out fraud. The *SIM Swap and Port-Out Fraud Order* modifies the existing Local Number Portability collection requirements to require wireless providers to: (1) immediately notify customers of any requests for a port-out request associated with the customer's account before effectuating the request; (2) provide customers with advance notice of any account protection measures offered; (3) offer all customers, at no cost, the option to lock or freeze their account to stop SIM change requests; and (4) maintain a clear process for customers to report fraudulent number ports, and promptly provide customers with documentation of fraudulent ports involving their accounts. Wireless providers are required to comply with the new or modified rules except where the Safe Connections Act requires alternate procedures to be used. The Commission required covered providers to comply with the rules adopted therein within six months after the effective date of the *Order,* or after review of the rules by the Office of Management and Budget (OMB) is completed, whichever is later.

On January 15, 2025, OMB completed its review of the Commission's rules implementing the *SIM Swap and Port-Out Fraud Order.* Accordingly, compliance with the rules adopted by the Commission in that *Order,* 47 CFR 52.37, is required by December 18, 2026.

The Commission publishes this document as an announcement of the compliance date of 47 CFR 52.37 and to modify the text of this rule previously published at 88 FR 85794 (December 8, 2023), to incorporate this date and eliminate text referring to pending

approval of information collection requirements by OMB.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–0742, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on January 15, 2025 for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR 52.37. These actions allow the Wireline Competition Bureau to set the compliance dates for these rules and for the conforming changes to 47 CFR 52.37(h). It is therefore modifying the language of 47 CFR 52.37(h) to incorporate compliance dates and eliminate text referring to pending approval by OMB.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0742.

The foregoing is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13) October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0742.

OMB Approval Date: January 15, 2025.

OMB Expiration Date: January 31, 2028.

Title: Sections 52.21 through 52.37, Telephone Number Portability (47 CFR part 52, subpart C) and CC Docket No. 95–116.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,626 respondents; 13,672,650 responses.

Estimated Time per Response: 0.067 hour–100 hours (on average).

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2) and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 840,235 hours.

Total Annual Cost: $15,000,000.

Needs and Uses: Section 251(b)(2) of the Communications Act of 1934, as amended, requires LECs to ''provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Through the LNP process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. In the Porting Interval Order and Further Notice, the Commission mandated a one business day porting interval for simple wireline-to-wireline and intermodal port requests. The information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission and will be used to comply with Section 251 of the Telecommunications Act of 1996.

On November 16, 2023, the FCC released a *Report and Order and Further Notice of Proposed Rulemaking* (88 FR 85794 (Dec. 8, 2023)) (*SIM Swap and Port-Out Fraud Order*), which adds new information collection requirements. The *SIM Swap and Port-Out Fraud Order* adopted baseline measures to increase protections for customers against fraudulent port-outs by adding new section 52.37 in Part 52, and adds new information collection requirements in paragraphs (c), (d), (e), and (g) of that rule. Port-out fraud occurs where a bad actor impersonates a customers of a wireless provider and convinces the provider to port the real customer's telephone number to a new wireless provider and a device that the bad actor controls, allowing a bad actor to control the victim's mobile account and receive text messages and phone calls intended for the victim. The new rules establish a uniform framework that gives wireless providers flexibility to implement customer authentication and security methods to address port-out fraud. The *SIM Swap and Port-Out Fraud Order* modifies the existing Local Number Portability collection requirements to require wireless providers to: (1) immediately notify customers of any requests for a port-out request associated with the customer's account before effectuating the request; (2) provide customers with advance notice of any account protection measures offered; (3) offer all customers, at no cost, the option to lock or freeze their account to stop SIM change requests; and (4) maintain a clear process for customers to report fraudulent number ports, and promptly provide customers with documentation of fraudulent ports involving their accounts. Wireless providers are required to comply with the new or modified rules except where the Safe Connections Act requires alternate procedures to be used.

List of Subjects in 47 CFR Part 52

Communications, Communications common carriers, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 227b–1, 251–252, 271, 303, 332, unless otherwise noted.

■ 2. Amend § 52.37 by revising paragraph (h) to read as follows:

§ 52.37 Number Portability Requirements for Wireless Providers.

* * * * *

(h) Compliance with this section is required by December 18, 2026.

[FR Doc. 2026–23522 Filed 11–17–26; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 260813–0186; RTID 0648–XG170]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category December Quota Transfer

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

ACTION: Temporary rule; quota transfer and adjustment.

SUMMARY: NMFS is adjusting the Atlantic bluefin tuna (BFT) General category December 2026 time period subquota by transferring 26 metric tons (mt) of quota from the Reserve category. This action results in a total adjusted General category December time period subquota of 42.4 mt and an adjusted Reserve category of 1 mt. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: The quota transfer is effective December 1, 2026, through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Becky Curtis, *becky.curtis@noaa.gov,* or Larry Redd, Jr., *larry.redd@noaa.gov,* by email or phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.27(a) divides the U.S. BFT quota, established by the International Commission for the Conservation of Atlantic Tunas (ICCAT), and as implemented by the United States among the various domestic fishing categories, per the allocations established in the HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

NMFS recently published a final rule to implement the 2025 ICCAT Recommendation 25–05 (91 FR 53526, August 19, 2026). As described in § 635.27(a), the current baseline U.S. BFT quota is 1,509.98 mt (not including the 62.5 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the vicinity of the management area boundary and adjacent areas per § 635.27(a)(3)). The baseline quotas for the General and Reserve categories are 815.4 mt and 43.8 mt, respectively. The General category baseline quota is suballocated to different time periods. Specific to this action, the baseline subquota for the December time period is 42.4 mt. To date, NMFS has published one action that have adjusted the December time period quota (91 FR 1094, January 12, 2026) and several actions that adjusted the Reserve category quota (91 FR 5855, February 10, 2026; 91 FR 43571, July 16, 2026; 91 FR 53526, August 19, 2026; 91 FR 64302, October 8, 2026). As a result of these adjustments, the adjusted General category December subquota and Reserve category quota are 16.4 mt and 27 mt, respectively.

Quota Transfer

Additionally, under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(7). This section focuses on the calculations involved in transferring quota from the Reserve category to the General category December subquota time period. The consideration of the determination criteria can be found below after this section.

As stated above, the adjusted December subquota and adjusted Reserve category quotas are 16.4 mt and 27 mt, respectively. Transferring 26 mt from the Reserve category to the General category would result in an adjusted December subquota and Reserve category quotas of 42.4 mt (16.4 mt + 26 mt = 42.4 mt) and 1 mt (27 mt − 26 mt = 1 mt), respectively. The General category quota is available for use by Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

In summary, these actions result in an adjusted General category December time period subquota of 42.4 mt and an adjusted Reserve quota of 1 mt. The General category fishery will remain open until December 31, 2026, or until the adjusted General category December subquota is reached, whichever comes first.

Consideration of the Relevant Determination Criteria

NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer (§ 635.27(a)(7)). These criteria include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(7)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers continue provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(7)(ii) and (ix)). Without taking action at this time, the General category would very likely reach the available subquota well before the end of the December time period and NMFS would have to stop BFT fishing activities even though commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer at this time provides limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. By allowing for the current quota transfer, NMFS anticipates that the General category quota would be used before the end of the fishing year. Additionally this quota transfer and would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable

opportunity to harvest available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2026 landings and dead discards (§ 635.27(a)(7)(xii) and (a)(7)(xi)). In most of the past several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. When total U.S. BFT landings are above the available U.S. quota, the United States reduces the next year's quota by the overharvest amount (including reducing the various fishing category quotas and subquotas by their respective overharvest amounts), as was necessary in 2025 to account for the 2024 adjusted U.S. quota, consistent with ICCAT recommendations. NMFS will need to account for 2026 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do so.

NMFS also considered the effects of the transfer and quota adjustment on the BFT stock and on accomplishing the objectives of the HMS FMP (§ 635.27(a)(7)(v) and (vi)). This action would be consistent with ICCAT Recommendations, ATCA, and the objectives of the HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This action is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota. This consideration is based on the objectives of the HMS FMP and its amendments, and it includes achieving optimum yield on a continuing basis and optimizing the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(7)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods. Finally, we note that the amount remaining in the Reserve category is sufficient for anticipated needs.

In summary, this action adjusts the General category December subquota and Reserve category quota to 42.4 mt and 1 mt, respectively. This action provides additional fishing opportunities to harvest the General category quota and subquotas, without exceeding them, while maintaining equitable fishing opportunities for General category fishermen.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required per § 635.5(a)(4) to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *https://hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m. E.T.).

Depending on catch rates of BFT and any updated landings information at that time, and after consideration of all the criteria specified at § 635.27(a)(7), NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access *https://hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635, and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 533(b)(B), there is good cause to waive prior notice of, and opportunity for public comment on, this action because it is impracticable and contrary to the public interest for the following reasons. Specifically, the regulations implementing the HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Based on the most recent landings information, and historical landings trends, NMFS anticipates that the 2026 General category December subquota would likely be reached very soon after the time period opens. For instance, in 2025, NMFS closed the General category December time period on December 5, 2025, as the subquota of 16.5 mt was reached and exceeded (90 FR 56695). Similar to 2025, delaying this action could also result in BFT landings that exceed the General category December subquota shortly after the fishery opened. Additionally, a delay in implementing this action would preclude the fishery from harvesting BFT that are currently available on the fishing grounds and that might otherwise become unavailable. This action does not raise conservation and management concerns and would support effective management of the BFT fishery. This action does not affect the overall ICCAT-allocated U.S. BFT quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d)(3), there is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 16, 2026.

Shannon Bettridge,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–23477 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 260910–0004]

RTID 0648–XG151

Pacific Island Fisheries; Longline Retention Prohibition; Striped Marlin in the Western and Central Pacific Ocean North of the Equator

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

ACTION: Temporary rule; retention prohibition.

SUMMARY: NMFS is prohibiting retention of Western and Central North Pacific Ocean (WCNPO) striped marlin (*Kajikia audax*) by vessels registered for use under a Hawaii longline limited access permit for the remainder of 2026 because the longline fishery has reached the 2026 longline retention limit. WCNPO stiped marlin are those caught in the Pacific Ocean north of the Equator (0° latitude) and west of 150° W longitude. This prohibition is intended to prevent the U.S. catch limit for WCNPO striped marlin from being exceeded and ensure compliance with NMFS regulations that implement decisions of the Western and Central Pacific Fisheries Commission (WCPFC).

DATES: The non-retention date is November 23, 2026. The retention prohibition begins 12:01 a.m. local time November 23, 2026 and will extend through December 31, 2026.

ADDRESSES: Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, telephone 808–522–8220, fax 808–522–8226, or *https://www.wpcouncil.org.* Copies of the final rule, environmental analyses, and other supporting documents for this action are available from *https://www.regulations.gov/docket/NOAA-NMFS-2025-0045,* or from Sarah J. Malloy, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

FOR FURTHER INFORMATION CONTACT: David O'Brien, NMFS PIRO Sustainable Fisheries, 808–725–5038.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage fishing for Western Pacific pelagic management unit species, including striped marlin, under the FEP and implementing Federal regulations (50 CFR 665 subpart F). The WCPFC is the regional fisheries management organization that manages WCNPO striped marlin internationally. In December 2024, the WCPFC adopted a Conservation and Management Measure (CMM) for WCNPO striped marlin (CMM 2024–06) (available at *https://cmm.wcpfc.int/measure/cmm-2024-06*) that includes a catch limit for the United States.

NMFS established a calendar year 2026 limit of 393.4 metric tons (mt) (867,300 pounds (lb)) of striped marlin that may be caught and retained in the Pacific Ocean north of 0° latitude and west of 150° W longitude (91 FR 58382, September 15, 2026).

Hawaii-based longline fisheries catch approximately 97 percent or more of the total U.S. striped marlin catch annually and report catch to NMFS daily. U.S. troll and handline fisheries account for the remaining catch and report catch monthly. Therefore, near-real-time catch monitoring in the troll and handline sector is not possible. To ensure that the catch limit is not exceeded, the Council recommended, and NMFS implemented a retention limit of 97 percent of the catch limit, for any U.S. fishing vessel registered for use under a Hawaii longline limited access permit issued under 50 CFR 665.801(b). This longline retention limit, set at 381.6 mt (841,300 lb), ensures that when troll and handline catches are determined after the season ends, the total U.S. catch of WCNPO striped marlin will not exceed the catch limit.

NMFS monitored the retained catches of WCNPO striped marlin using logbook data submitted by vessel captains and other available information, and determined that the longline retention limit will be reached on or about November 17, 2026. In accordance with 50 CFR 665.813(l)(4), this temporary rule serves as notification to fishermen, the fishing industry, and the public that the retention of WCNPO striped marlin caught by vessels registered for use under a Hawaii longline limited access permit is prohibited during the dates provided in the **DATES** heading. This retention prohibition applies to striped marlin alive or dead when fishing gear is recovered.

All striped marlin captured by longline gear in the Pacific Ocean north of 0° latitude and west of 150° W longitude on or after the non-retention date shall be immediately released.

Any striped marlin captured by longline gear in the Pacific Ocean north of 0° latitude and west of 150° W longitude already on board a fishing vessel registered for use with a Hawaii longline limited access permit before the non-retention date may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that the striped marlin is landed within 14 days after the non-retention date.

You may find additional background information on this action in the preamble to the proposed rule (91 FR 23387, May 1, 2026).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 665.318(l), which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable or unnecessary because the public had prior notice and comment on this management approach when the proposed rule associated with this action was published in the **Federal Register** (91 FR 23387, May 1, 2026); and delaying this retention prohibition would likely result in exceedance of the 2026 U.S. catch limit for WCNPO striped marlin resulting in noncompliance with federal regulations and CMM 2024–06.

Dated: November 16, 2026.

Shannon Bettridge,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–23475 Filed 11–16–26; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 91, No. 221
Wednesday, November 18, 2026

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–13869; Airspace Docket No. 26–ASO–18]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Naples, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D surface airspace in Naples, FL, to properly contain instrument flight rule procedures. It also proposes to remove the Class E transition airspace extensions, as they are no longer necessary. Additionally, it proposes to reduce the Class E airspace extending upward from 700 feet above the surface, as updated instrument approach procedures have lessened the need for additional airspace. Finally, it proposes administrative updates to the airspace legal description.

DATES: Comments must be received on or before January 4, 2027.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–13869 and Airspace Docket No. 26–ASO–18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11M Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Airspace Regulation Group, Operational Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rachel Cruz, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5571.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class and E airspace in Naples, FL.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edits, 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 *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in Paragraph 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated

by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

This action proposes an amendment to 14 CFR part 71 to modify Class D and Class E airspace at Naples Municipal Airport, Naples, FL. This action would increase the Class D airspace radius from 3.9 miles to 4.1 miles, extending from the surface up to and including 2,500 feet MSL, while continuing to exclude the airspace within a 1-mile radius of Wing South Airpark. This 0.2-mile expansion is necessary to ensure adequate containment of instrument flight rules (IFR) departure procedures and circling operations within the Class D surface area.

Additionally, this action would revoke the Class E airspace extensions designated as extensions to the Class D surface area. These extensions are no longer necessary following the cancellation of the Very High Frequency Omnidirectional Range (VOR) Runway (RWY) 5 and VOR RWY 23 instrument approach procedures and the subsequent discontinuance of the Cypress VOR.

This action would also reduce the Class E airspace extending upward from 700 feet above the surface by decreasing its radius from 7 miles to 6.6 miles. This 0.4-mile reduction reflects current instrument flight procedures and provides sufficient controlled airspace to accommodate IFR departures transitioning from the terminal environment to the surrounding en route airspace.

Finally, this action would update the geographic coordinates for Naples Municipal Airport and Wing South Airpark to align with the FAA's aeronautical database. Additional administrative amendments would remove the obsolete Collier County VOR/DME reference, replace outdated Airport/Facility Directory terminology with Chart Supplement, and revise the airspace description to conform with FAA Order JO 7400.2. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations that require frequent, routine amendments to remain operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Order 2100.6B, ''Rulemaking and Guidance Procedure'' (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these proposed amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, ''FAA National Environmental Policy Act Implementing Procedures,'' prior to any final regulatory action by the FAA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Naples, FL [Amended]

Naples Municipal Airport, FL
(Lat. 26°09′09″ N, long. 81°46′32″ W)
Wing South Airpark
(Lat. 26°07′00″ N, long. 81°42′08″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Naples Municipal Airport, excluding that airspace within a 1-mile radius of Wing South Airpark. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASO FL E4 Naples, FL [Removed]

* * * * *

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

* * * * *

ASO FL E5 Naples, FL [Amended]

Naples Municipal Airport, FL
(Lat. 26°09′09″ N, long. 81°46′32″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Naples Municipal Airport.

* * * * *

Issued in College Park, Georgia, on November 9, 2026.

Andreese C. Davis,

Manager, Airspace and Procedures South Team, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2026–23437 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119986–25]

RIN 1545–BS05

Racial Nondiscrimination in Private Schools; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of additional date for public hearing.

SUMMARY: This document provides a notice of an additional date for the public hearing on the notice of proposed rulemaking (REG–119986–25) published in the **Federal Register** on Friday, September 4, 2026. The proposed regulations would provide that a private school is not described as an organization exempt from Federal

income tax if it discriminates on the basis of race, color, or national or ethnic origin in administration of its educational, admissions, scholarship, athletic, or other policies, based on the fundamental public policy of the United States against such practices.

DATES: The telephonic hearing is scheduled to be held on Wednesday, December 2, 2026, at 10:00 a.m. ET and Thursday, December 3, 2026, at 10:00 a.m. ET.

ADDRESSES: On Wednesday, December 2, 2026, and Thursday, December 3, 2026, the public hearing is being held telephonically. The hearing will include only those speakers that submitted requests to speak on or before the November 3, 2026 deadline. Comments and requests to speak were collected via the Federal eRulemaking Portal at *https://www.regulations.gov* (at IRS and REG–119986–25) and paper submissions were received at: CC:PA:01:PR (REG–119986–25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–6000 (not a toll-free number); concerning comments or the hearing, the Publications and Regulations Section at (202) 317–6901 (not a tollfree number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: The subject of the hearing is the notice of proposed rulemaking (REG–119986–25) published in the **Federal Register** on September 4, 2026 (91 FR 56811). To accommodate all persons who wished to present oral comments at the public hearing, the public hearing scheduled Wednesday, December 2, 2026, has been extended an additional day to be Wednesday, December 2, and Thursday, December 3. The start time of the telephonic hearing both days is 10:00 a.m. ET.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wished to present oral comments at the public hearing were required to submit an outline of the topics to be discussed as well as the time to be devoted to each topic by November 3, 2026. The due date for requests to testify has not been extended. Persons who made timely requests to testify will receive the telephone number and access codes for the public hearing. A period of 10 minutes will be allotted to each person testifying.

An agenda showing the scheduling of the speakers will be prepared prior to the hearing. Copies of the agenda will be emailed to those who requested to speak or attend the hearing and available via *www.regulations.gov* under the title of Supporting & Related Material.

Individuals who wish to attend the public hearing without testifying must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG–119986–25) and the language ''ATTEND Hearing Telephonically.'' For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–119986–25. Requests to attend the hearing must be received by November 30, 2026.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by November 27, 2026. Any additional questions regarding the hearing may also be emailed to *publichearings@irs.gov.*

Kalle L. Wardlow,

Federal Register Liaison, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2026–23533 Filed 11–17–26; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2026–0661; FRL–10281–01–R3]

Air Plan Approval; Virginia; Interstate Transport Requirements for the 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the U.S. Environmental Protection Agency (EPA) is proposing to approve a State implementation plan (SIP) revision submitted by the Commonwealth of Virginia demonstrating that Virginia satisfies the interstate transport requirements of the CAA, for the 2010 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS). Specifically, the EPA proposes to find that the Virginia SIP contains adequate provisions prohibiting emissions from Commonwealth sources from contributing significantly to nonattainment or interfering with maintenance of the 2010 SO_2 NAAQS in any other State, consistent with the good neighbor provision of the CAA.

DATES: Written comments must be received on or before December 18, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2026–0661 at *www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5787. Ms. Schmitt can also be reached via electronic mail at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA—Clean Air Act

CBI—confidential business information
CEDS—Virginia's Comprehensive Environmental Data system
CFR—Code of Federal Regulations
DRR—Data Requirements Rule
DV—design value
EIS—Emissions Inventory System
EPA—U.S. Environmental Protection Agency
km—kilometer
NAAQS—national ambient air quality standards
NEI—National Emissions Inventory
NPRM—notice of proposed rulemaking
NSR—new source review
Pb—lead
$PM_{2.5}$—fine particulate matter
ppb—parts per billion
PSD—prevention of significant deterioration
SIP—State implementation plan
SO_2—sulfur dioxide
tpy—tons per year
TSD—technical support document
U.S.C—United States Code
WOE—weight of evidence

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I. Background

A. Infrastructure SIPs

On June 2, 2010, the EPA established a revised primary 1-hour SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations.[1] CAA section 110(a)(1) requires all States to submit, within three years after promulgation of a new or revised NAAQS, SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS.[2] The EPA has historically referred to these SIPs as ''infrastructure SIPs.'' Specifically, CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions. CAA section 110(a)(2) lists specific elements that all States must meet related to a newly established or revised NAAQS, such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i) of the CAA requires SIPs to contain provisions to prohibit emissions that have certain adverse air quality effects on other States due to interstate transport of pollution. Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), require SIPs to contain adequate provisions that prohibit any source or other type of emissions activity in one State from contributing significantly to nonattainment of the NAAQS in any other State (Prong 1) and from interfering with maintenance of the NAAQS in any other State (Prong 2). These first two prongs are often referred to as the good neighbor provision. The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), require SIPs to contain adequate provisions that prohibit emissions activity in one State from interfering with measures required to prevent significant deterioration of air quality in another State (Prong 3) and from interfering with measures to protect visibility in another State (Prong 4). This submittal and action only address CAA section 110(a)(2)(D)(i)(I). The EPA has long interpreted this language to enact a ''functional prohibition'' on certain emissions from upwind States, necessitating the EPA's independent assessment whether those emissions will occur or have been adequately controlled in the State where they originate.[3]

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this proposed action, the EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, as discussed in more detail in section III.C of this publication. For this reason, a brief summary of the EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[4]

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable'' pursuant to CAA section 107(d)(1) and (2). The process for designating areas following promulgation of a new or revised NAAQS is contained in CAA section 107(d). The EPA promulgated the 2010 1-hour SO_2 NAAQS on June 22, 2010.[5] The EPA Administrator promulgated the first round of designations for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 States as nonattainment for the 2010 1-hour SO_2 NAAQS.[6] The **Federal Register** publications for Round 2 designations published on July 12, 2016 and on December 13, 2016.[7] Round 3 designations were published on January 9, 2018 and April 5, 2018.[8] Round 4 designations were published on March 26, 2021 and April 14, 2021.[9] [10] [11]

[1] *See* 75 FR 35520 (June 22, 2010).

[2] In 2012, the EPA retained the current secondary NAAQS for SO_2. Thus, the CAA section 110(a)(1) requirement to submit an infrastructure SIP for this secondary standard was not triggered. *See* 77 FR 20218 (Apr. 3, 2012).

[3] *See Genon Rema LLC* v. *EPA,* 722 F.3d 513, 520–24 (3d Cir. 2013); *Appalachian Power Co.* v. *EPA,* 249 F.2d 1032, 1045–47 (D.C. Cir. 2001); *see also* 71 FR 25328, 25335 (Apr. 28, 2006) (explaining that the SIP/FIP process under CAA section 110 and the petitioning process for direct Federal regulation CAA under section 126 provide independent means of effectuating the same ''functional prohibition'' found in CAA section 110(a)(2)(D)(i)(I)).

[4] While designations may provide useful information for purposes of analyzing transport, the EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. The EPA has consistently taken the position that CAA section 110(a)(2)(D)(i)(I) requires elimination of significant contribution and interference with maintenance in other states, and this analysis is not limited to designated nonattainment areas. Nor must designations for nonattainment areas have first occurred before states or the EPA can act under section 110(a)(2)(D)(i)(I). *See, e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[5] *See* 75 FR 35520 (June 22, 2010).

[6] *See* 78 FR 47191 (Aug. 5, 2013). The term ''round'' in this instance refers to which ''round of designations.''

[7] *See* 81 FR 45039 (Jul. 12, 2016) and 81 FR 89870 (Dec. 13, 2016).

[8] *See* 83 FR 1098 (Jan. 9, 2018) and 83 FR 14597 (Apr. 5, 2018).

[9] *See* 86 FR 16055 (Mar. 26, 2021) and 86 FR 19576 (Apr. 14, 2021).

[10] The Round 4 2010 1-hour SO_2 NAAQS designations action was signed by former EPA Administrator Andrew Wheeler on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, former Acting Administrator Jane Nishida re-signed the same action on March 10, 2021, for publication in the **Federal Register**.

[11] On August 21, 2015 (80 FR 51052), the EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted in 2014 2,000 tons per year (tpy) or more of SO_2, or that had otherwise been listed under the DRR by the EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose Federally enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources had been shut down. The EPA used the information generated by implementation of the DRR to help inform Round 4 designations for the 2010 1-hour SO_2 NAAQS.

On August 21, 2015, the EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR).[12] The DRR required state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted in 2014 2,000 tons per year (tpy) or more of SO_2, or that had otherwise been listed under the DRR by the EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose Federally enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources had been shut down. The EPA used the information generated by implementation of the DRR to help inform Round 4 designations for the 2010 1-hour SO_2 NAAQS.

For Virginia, under the DRR, the EPA identified 11 sources for which the Commonwealth was required to characterize air quality through modeling or monitoring or impose Federally enforceable controls. The EPA designated part of Giles County as nonattainment and the remainder of the County as attainment/unclassifiable in Round 4.[13] [14] For the ''Giles County (part)'' nonattainment area, 40 Code of Federal Regulations (CFR) 81.347 sets forth the geographic coordinates, specifying the nonattainment area boundary. This is the only nonattainment area in Virginia for the 2010 1-hour SO_2 NAAQS following the EPA's fourth and final round of the designations process. All other areas in the Commonwealth were designated as attainment/unclassifiable or unclassifiable (Buchanan County) during Round 3 or Round 4.[15] While in-state designations themselves are not sufficient on their own for the EPA to draw conclusions about potential out-of-state impacts, the EPA draws upon information generated under the DRR and as part of the SO_2 designations process, as well as other available relevant information, that is useful in assessing whether Virginia's SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I).

II. Relevant Factors Used To Evaluate 2010 1-Hour SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources as is directly emitted fine particulate matter ($PM_{2.5}$) and the precursors to ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone, which disperse over a wide area and can contribute to nonattainment or maintenance issues hundreds of miles from precursor-emitting sources or activities. SO_2 emissions usually do not undergo long-range transport in the atmosphere. The transport of SO_2, relative to the 2010 1-hour SO_2 NAAQS, is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of greatest concern near the source of emissions. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles. Emitted SO_2 has wider-ranging impacts than emitted Pb, but it does not have such wide-ranging (far downwind) impacts that treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, the approaches that the EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused, and the approach for Pb transport is too tightly circumscribed to the source, to be appropriate for assessing SO_2 transport. SO_2 transport is therefore a unique case and necessitates an approach that lies between these other approaches to assessing pollutant transport.

In this proposed rulemaking, and consistent with prior SO_2 transport analyses, the EPA focused on a 50 kilometer (km)-wide zone around sources of interest because the physical properties of SO_2 result in relatively localized pollutant impacts near an emission source that drop off with distance. Given the properties of SO_2, the EPA believes that significant impacts in a downwind State are unlikely at distances greater than 50 km from a source and thus, we are focusing our review on areas within 50 km of the State lines. This scale of analysis is consistent with the ''urban scale'' which is the largest appropriate spatial scale for SO_2 monitors and is useful for assessing SO_2 transport and trends in area-wide air quality.[16]

The EPA reviewed Virginia's interstate transport SIP revision pertaining to the 2010 SO_2 NAAQS, submitted on September 13, 2022. The Agency discusses the submission in section III of this document, and in further detail in the technical support document (TSD) for this action. We also have elected to review and assess other available information regarding SO_2 emissions and air quality for sources in the Commonwealth to assist in our own evaluation, including more recent air quality, emissions, and wind rose data, when available. We independently analyzed all information to determine whether the Commonwealth meets the interstate transport requirements described in the CAA.[17]

Consistent with our prior evaluations of other State's SO_2 interstate transport obligations, the EPA conducted a weight of evidence (WOE) analysis evaluating several sources of information, including current air quality data from monitors and available emissions and/or source modeling for sources in Virginia and in neighboring States within 50 km of the Commonwealth's border. A WOE approach can be appropriate in instances, such as here, to determine whether or not SO_2 emissions from Virginia contribute to nonattainment or maintenance issues in adjoining States. A WOE analysis that is based strictly on available data may not be sufficient in all instances for evaluating interstate SO_2 transport, and additional analysis may be necessary. Further, the term ''WOE'' does not establish the legal or technical meaning for what constitutes significant contribution to nonattainment or interference with maintenance for the 2010 SO_2 NAAQS. Rather, the term refers to the gathering and consideration of a wide range of information, on a case-by-case basis, to make a determination regarding whether a statutory or regulatory standard is met.

In other SO_2 interstate transport SIP actions, the EPA has generally been able to use a WOE analysis of available information to reach a conclusion that there are no SO_2 nonattainment or

[12] *See* 80 FR 51052.

[13] *See* 80 FR 51052 (Aug. 21, 2015).

[14] Round 4 designations became effective on April 30, 2021.

[15] Allegheny County, Botetourt County and Giles County (both part and remainder) were the only areas designated under Round 4. All other areas in Virginia were designated under Round 3 for the 2010 SO_2 NAAQS. Round 3 designations became effective on April 9, 2018.

[16] For the definition of spatial scales for SO_2, see 40 CFR part 58, appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how the EPA applies these definitions with respect to interstate transport of SO_2, see the EPA's proposed rulemaking on Connecticut's SO_2 transport SIP. *See* 82 FR 21351, 21352, 21354 (May 8, 2017).

[17] This proposed action is based on the information contained in the administrative record for this action and does not prejudge any future EPA action that may make other determinations regarding the air quality status in Virginia and downwind states. Any such future action, such as area designations under any NAAQS, would be based on separate administrative records and the EPA's analyses of information that become available at that time. Future available information may include monitoring data and modeling analyses conducted by states, air agencies, and third-party stakeholders.

maintenance issues in the relevant areas of other States, or that no sources in the upwind State are contributing to those issues. If the available evidence indicated, however, that an upwind source, sources, or emissions activities were contributing to an out-of-state SO_2 nonattainment or maintenance problem, then further analysis and a regulatory determination would be necessary concerning what amount of those emissions, if any, constituted ''significant contribution'' under Prong 1 or Prong 2 of the good neighbor provision.

We find that there is sufficient information to allow the EPA to make a determination that under baseline conditions and likely future emissions scenarios no Virginia sources are contributing or will contribute to any out-of-state SO_2 nonattainment or maintenance problems. Accordingly, it is not necessary here to render a determination concerning what amount of emissions would be ''significant'' and therefore subject to prohibition under the good neighbor provision.[18]

III. Summary of SIP Revision and the EPA's Analysis

A. State Submission

On September 13, 2022, the Commonwealth of Virginia submitted to the EPA a SIP revision concerning the interstate pollution transport requirements under CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS. The September 2022 SIP submittal and this action only address CAA section 110(a)(2)(D)(i)(I), or Prongs 1 and 2, of the good neighbor provision. The Commonwealth of Virginia separately submitted, and the EPA took separate action on all the infrastructure elements outlined in CAA sections 110(a)(1) and 110(a)(2) except for the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.[19]

In Virginia's September 13, 2022 interstate transport SIP submittal, the Virginia Department of Environmental Quality (VADEQ) includes a source evaluation for Virginia SO_2 emissions to demonstrate that the majority of SO_2 emissions in Virginia originate from point source fuel combustion and certain specific industrial facilities. Virginia's analysis also identifies in-state sources (emitting 50 tons per year (tpy) or more of SO_2) within 50 kilometers of any State boundary to determine if emissions from that point source may impact nonattainment and maintenance areas in other States. Large sources (emitting 100 tpy or more of SO_2) within 50 km of Virginia's boundaries and located in other States, or ''cross-state sources,'' were also identified. These individual cross-state sources were evaluated to determine if their SO_2 emissions may combine with SO_2 emissions from Virginia sources in a manner that could create attainment or maintenance issues for the 2010 SO_2 standard. Virginia's SIP revision also included monitoring data within the Commonwealth and in other States within 50 km of the Virginia border, as well as emissions trends in Virginia and nearby States.

B. The EPA's Evaluation Methodology

For this CAA section 110(a)(2)(D)(i)(I) evaluation of the 2010 SO_2 NAAQS, the EPA conducted a WOE analysis for Prong 1 and Prong 2 separately, evaluating available information such as air quality, emission sources, modeling and emission trends in Virginia, and the States that border the Commonwealth.[20] To identify which sources and emissions activities in Virginia could potentially impact downwind air quality in other States with respect to the 2010 1-hour SO_2 NAAQS, the EPA used information from the EPA's National Emissions Inventory (NEI) and Emissions Inventory System (EIS).[21] [22] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources, updated every three years using information provided by the States and other information available to the EPA. For the EPA's analyses, we largely relied on data from the 2020 NEI, because it is the most recently available, complete, and quality assured dataset.[23] However, in evaluating emissions trends, both State-wide and at the facility level, the EPA also considered data from prior NEI reports and more recent EIS queries, as part of the overall WOE analysis.

As shown in table 1, in this document, in 2020 the majority of SO_2 emissions in Virginia originate from point sources. This was also noted by VADEQ in their September 2022 SIP revision, after reviewing the 2014 and 2017 NEIs. In 2020, total SO_2 emissions from point sources in Virginia comprised approximately 78 percent of the total SO_2 emissions in the Commonwealth. Non-point sources, on road and non-road emissions sources are individually much smaller and more dispersed throughout Virginia and are therefore unlikely to contribute to high ambient concentrations when compared to point source contributions. Further analysis shows that facilities with reported emissions greater than 100 tpy represent approximately seven percent of the total number of Virginia SO_2 point sources but are responsible for 89 percent (12,312 tons of SO_2) of the total 2020 SO_2 point source emissions in the Commonwealth.[24] [25] Accordingly, the EPA focused our WOE analysis on SO_2 emissions from Virginia's larger point sources (*i.e.,* point sources emitting over 100 tpy of SO_2) that are located within 50 km of one or more of Virginia's borders.

TABLE 1—SUMMARY OF 2020 SO_2 EMISSIONS IN VIRGINIA BY SOURCE CATEGORY

Category	2020 emissions (tpy)	Percent of total SO_2 emissions
Point	13,803	78

[18] *Cf. Genon Rema* v. *EPA,* 722 F.3d 513 (3d Cir. 2013) (upholding the EPA grant of CAA section 126(b) petition and establishment of direct Federal emissions control requirements on SO_2 source in Pennsylvania found to be significantly contributing to nonattainment and interfering with maintenance of the 2010 SO_2 NAAQS in New Jersey).

[19] *See* 80 FR 11557 (Mar. 4, 2015), 80 FR 17695 (Apr. 2, 2015), and 83 FR 42219 (Aug. 21, 2018).

[20] In *North Carolina* v. *EPA,* 531 F.3d at 910–911 (D.C. Cir. 2008), the D.C. Circuit explained that the regulating authority must give Prong 2 ''independent significance'' from Prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment.

[21] EPA's NEI is available and accessible to the public at *www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[22] The EIS is the EPA database used to receive and store emissions data and generate emissions inventories. The EIS Gateway is a web-based tool developed to provide only registered EPA, State, local and Tribal users with access to emission inventory data for sources in their jurisdiction.

[23] For the September 13, 2022, SIP revision, VADEQ reviewed both the 2014 and 2017 NEI. The 2020 NEI was not yet available. VADEQ also reviewed the Virginia's Comprehensive Environmental Data system (CEDS) from 2010–2020.

[24] *See* The EPA's TSD in the docket for this rulemaking for a more detailed discussion.

[25] *See* Table 9 in the EPA's TSD.

TABLE 1—SUMMARY OF 2020 SO_2 EMISSIONS IN VIRGINIA BY SOURCE CATEGORY—Continued

Category	2020 emissions (tpy)	Percent of total SO_2 emissions
Nonpoint	3,653	21
On road	238	1
Nonroad	20	<1
SO_2 Emissions Total	17,696	100

The EPA proposes that an assessment of Virginia's fulfilment of the Prong 1 and 2 requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS may be reasonably based upon several factors. These factors include the evaluation of the predicted downwind impacts in previous relevant modeling studies for a source and nearby areas, assessment of Virginia's SO_2 point source emissions from facilities that emit more than 100 tpy of SO_2 and are located within approximately 50 km of another State, assessment of other States' point sources emitting more than 100 tpy of SO_2 located within approximately 50 km of Virginia, and assessment of Federal regulations and permits affecting Virginia's SO_2 sources.[26] The EPA's evaluation is informed by all available data at the time of this rulemaking.[27]

The EPA notes that if this information were insufficient to draw a reasonable conclusion concerning whether Virginia is ''significantly contributing'' or not, then it would not be possible to propose approval based only on this information. In other words, the absence of information concerning whether interstate transport is occurring is generally not in itself sufficient justification for approving a good neighbor SIP submission. For example, if there were inadequate monitoring or modeling information to characterize the effects of a large, near-border source of SO_2 emissions, it may be appropriate to conduct, or ask the State to conduct, further analysis to better characterize that source and its effects, in order to reach a determination concerning whether the good neighbor provision is being met.[28] In this case, the information available to the EPA, as analyzed in the accompanying TSD and summarized below, is fully sufficient to conclude that Virginia is not and will not emit SO_2 pollution in violation of the good neighbor provision for the 2010 SO_2 NAAQS.

1. The EPA's Prong 1 Evaluation—Contribute Significantly to Nonattainment

Prong 1 of the good neighbor provision requires States' plans to prohibit emissions that will contribute significantly to nonattainment of the NAAQS in another State. The EPA's evaluation of whether Virginia has met its Prong 1 transport obligations was completed by considering all available information, including the following: SO_2 ambient air quality in Virginia and neighboring States; SO_2 emissions trends for Virginia; potential ambient impacts of SO_2 emissions from certain facilities in Virginia on neighboring States; potential interaction with emissions from cross-state sources; and permit requirements which may reduce SO_2 emissions either directly or indirectly.[29] [30] Based on the EPA's analysis, we propose to determine that Virginia's SIP satisfies the requirements of Prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations:

- No SO_2 monitors located in Virginia, or within 50 km of its border, recorded above the 2010 SO_2 NAAQS of 75 ppb for the 2023 or 2024 design values (DVs).[31] With the exception of the source-specific monitor in Giles County, the DVs at Virginia's SO_2 monitors have remained below the 2010 1-hour SO_2 NAAQS from 2015–2024;[32]
- Downward SO_2 emissions trends in Virginia, its surrounding States (Kentucky, Maryland, North Carolina, Tennessee, and West Virginia) and the District of Columbia, when considered together with the other factors discussed as part of the EPA's WOE analysis, further support that the Commonwealth's sources will not significantly contribute to any other States' nonattainment of the 2010 1-hour SO_2 NAAQS;
- Source-specific analyses of every Virginia SO_2 source emitting over 100 tpy and located within 50 km of the Commonwealth's border indicate that the sources do not contribute to nonattainment in other States. These analyses draw upon available emissions data, monitoring data, air quality modeling, controls, wind rose data, and other relevant information to assess the likelihood of air quality impacts from these sources on areas in surrounding States. A detailed discussion of each source-specific analysis is contained in section IV.B.1 of the TSD accompanying this action. Below we cover some of the principal evidence that confirms that emissions from Virginia do not contribute to nonattainment in other States.
  - Jewell Coke Company, Virginia's one applicable southwest facility, has stacks of relatively short heights and sits at an elevation well below surrounding significant terrain features, which act as barriers to emissions reaching to and beyond neighboring State lines.
  - Several facilities have closed (Wheelabrator Portsmouth) or have been emitting less than 100 tpy of SO_2 in more recent years (King George Landfill Inc and Perdue Foods LLC—Accomac Complex).
  - There are generally very few cross-State facilities emitting more than 100 tpy of SO_2 within 50 km of the

[26] While VADEQ assessed point source emissions of SO_2 greater than 50 tpy, the EPA narrowed its analysis to only those point sources emitting 100 tpy or more of SO_2 per facility.

[27] The EPA notes that the evaluation of other States' satisfaction of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Virginia, depending on available information and State-specific circumstances.

[28] *See, e.g.,* 88 FR 41344 (June 26, 2023) (proposing approval of Tennessee's SO_2 transport SIP submission based on updated modeling conducted to better characterize emissions from the Eastman Chemical facility).

[29] The physical properties of SO_2 result in relatively localized pollutant impacts near the emissions source. Therefore, the EPA selected a spatial scale with dimensions up to 50 km from point sources.

[30] A detailed review of the EPA's evaluation of emissions, air monitoring data, other technical information, and rationale for proposed approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS may be found in the TSD.

[31] The design value is the 3-year average of the 99th percentile 1-hour daily maximums at a monitor.

[32] The Giles County monitor was sited for the Lhoist North America—Kimballton facility under the DRR and has attained the 3-year design values for 2023 and 2024.

individual large point sources in Virginia.

○ Modeling projections indicated that it was unlikely that certain Virginia facilities (Lhoist North American—Kimballton Plant, Roanoke Cement Company, WestRock—Covington, and Dominion/ODEC Clover Power Station) would impact another State through interstate transport of the 2010 SO_2 NAAQS.

○ Certain Virgina facilities (Lhoist North American—Kimballton Plant and WestRock—Covington) took facility-wide SO_2 emission limits to ensure compliance with the 2010 SO_2 NAAQS.

○ Two Virginia facilities (Roanoke Cement Company in Botetourt County and WestRock in the City of Covington) were able to remove their DRR source-specific monitors as they were measuring less than 50% of the 2010 SO_2 NAAQS.

○ Further, Virginia's SIP-approved permit programs will continue to ensure that SO_2 emissions in the Commonwealth will be effectively controlled for existing and new sources or modifications.

Based on this evaluation, and as more thoroughly discussed in our TSD for this action, the EPA proposes to find that sources within Virginia will not significantly contribute to nonattainment of the 2010 1-hour SO_2 NAAQS in any other State.

2. The EPA's Prong 2 Evaluation—Interference With Maintenance

Prong 2 of the good neighbor provision requires State plans to prohibit emissions that will interfere with maintenance of a NAAQS in another State. The EPA's evaluation of whether Virginia has met its Prong 2 transport obligations was accomplished by considering all available information, with a focus on current regional air quality data (including Virginia and its neighboring States), SO_2 emissions trends for the Commonwealth and neighboring States, and how existing and future sources of SO_2 are addressed through existing regulations and permits. This evaluation builds upon the analysis conducted for significant contribution to nonattainment (Prong 1), which evaluated SO_2 ambient air quality in Virginia and neighboring States and potential ambient impacts of SO_2 emissions from certain facilities in the Commonwealth on neighboring States.

Based on the EPA's analysis, we propose to find that SO_2 levels in neighboring States near the Virginia border indicate an ability to maintain the SO_2 NAAQS, and as such the EPA proposes to determine that Virginia's SIP satisfies the requirements of Prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations:

- 2023 and 2024 DVs for SO_2 monitors in Virginia within 50 km of another State's border and in neighboring States (Kentucky, Maryland, North Carolina, Tennessee, and West Virginia) and the District of Columbia within 50 km of Virginia's border are well below the standard, indicating that these areas are all currently in attainment of the 2010 1-hour SO_2 NAAQS;
- State-wide emissions trends in Virginia and surrounding States indicate generally declining SO_2 emissions and consequently declining ambient air concentrations in the relevant areas;
- Source-specific analyses show that facility-level emissions are decreasing as a result of emissions unit shutdowns (Wheelabrator Portsmouth) and fuel changes (International Paper Company—Franklin Mill), indicating that emissions are not anticipated to increase relative to baseline emissions;
- Current emissions control programs and permits control SO_2 emissions from certain sources within Virginia (Lhoist North American—Kimballton Plant, Roanoke Cement Company, WestRock—Covington, Covanta Fairfax, King George Landfill, Dominion/ODEC Clover Power Station, and Owens-Brockway Glass Container Inc.—Ringgold).
- Virginia's prevention of significant deterioration (PSD), major new source review (NSR) regulations and minor source NSR permit programs address future new and modified SO_2 sources above major and minor permitting thresholds with the intent of ensuring that the SO_2 NAAQS will not be exceeded as a result of new facility construction or existing facility modification within the State or in surrounding States.[33]

[33] EPA notes that in the context of evaluating transport for other NAAQS pollutants, such as ozone, the effects of existing emissions control measures are taken into account in Step 1 and Step 2 of its 4-step framework through its nationwide analytical methodology that relies on photochemical grid modeling and source attribution techniques. Thus, in that context, once a state is identified as ''linked'' at Step 2, reliance on existing control measures is considered insufficient, since such measures have already been taken into account in the modeling. Here, without the benefit of such modeling, a state's existing control programs that have been approved into its SIP can have some relevance insofar as they provide confidence that sources subject to such requirements are not authorized to emit in excess of such requirements. However, without further, more detailed information concerning how these requirements function to constrain emissions at the particular existing (or potential new) sources of relevance to an SO_2 transport analysis, the EPA considers general information concerning a state's approved programs to be of only minimal relevance or utility.

Based on this evaluation, as more thoroughly discussed in our TSD for this action, the EPA proposes to find that sources within Virginia will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other State.

IV. Proposed Action

The EPA is proposing to approve the interstate transport SIP revision submitted by the Commonwealth of Virginia on September 13, 2022, addressing the Prong 1 and Prong 2 requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. Based on VADEQ's interstate transport analysis and the EPA's WOE analysis, as more thoroughly discussed in the TSD, the EPA proposes to determine that emissions from Virginia will not contribute significantly to nonattainment in, or interfere with maintenance of, any other State with respect to the 2010 SO_2 NAAQS. We therefore propose to find that Virginia's SIP contains adequate provisions consistent with CAA section 110(a)(2)(D)(i)(I).

The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, Feb. 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
• Is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997) because it approves a State program;
• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Amy Van Blarcom-Lackey,

Regional Administrator, Region III.

[FR Doc. 2026–23517 Filed 11–17–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2025–2301; FRL–13623–01–R6]

Air Plan Approval; Texas; Collin County Second 10-Year Maintenance Plan for the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the U.S. Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) containing the State's plan for maintaining the 2008 Lead (Pb) National Ambient Air Quality Standard (NAAQS or standard) through 2037 for the Collin County area, submitted by the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) on September 25, 2025.

DATES: Written comments must be received on or before December 18, 2026.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2025–2301, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Nia Riddick by telephone at 214–665–7256, or by email at: *riddick.nia@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Nia Riddick, EPA Region 6 Office, Infrastructure and Ozone Section; telephone number: 214–665–7256; email address: *riddick.nia@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this proposed rule, the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
FR Federal Register
NAAQS National Ambient Air Quality Standard
Pb The chemical symbol for lead
SIP State Implementation Plan
TCEQ Texas Commission on Environmental Quality
TPY Tons per year
μg/m^3 Micrograms per cubic meter

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I. Executive Summary

A. What action is the EPA taking?

The EPA is proposing to approve the Collin County maintenance plan for the 2008 Pb NAAQS, adopted by TCEQ on September 10, 2025, and submitted by TCEQ as a revision to the Texas SIP on September 25, 2025.[1] This second maintenance plan demonstrates maintenance of the 2008 Pb NAAQS through the end of the second 10-year portion of the maintenance period beyond redesignation (through 2037).

B. What is the legal authority and what are the requirements?

In accordance with the Federal Clean Air Act, 42 U.S.C. 7401, the EPA is proposing to approve the Collin County second 10-year maintenance plan as it meets all applicable requirements under CAA sections 110 and 175A.

II. Background

On November 12, 2008, the EPA promulgated a revised Pb NAAQS of 0.15 micrograms per cubic meter (μg/m^3).[2] Upon promulgation of a new or revised NAAQS, CAA section 107 requires the EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS for the pollutant. This is based on the three most recent years of complete, quality assured, and certified ambient data at the conclusion of the designation process. On November 22, 2010, EPA published its initial air quality designations for the 2008 Pb NAAQS based upon air quality

[1] The September 25, 2025, SIP submission is included in the docket for this action.

[2] *See* 73 FR 66964 (November 12, 2008).

monitoring data for calendar years 2007 through 2009.[3] Effective December 30, 2010, the EPA designated a portion of Collin County, defined as the part of Collin County bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the West by longitude 96.837 West, which surrounds the Exide Technologies (Exide) facility property, as nonattainment for the 2008 Pb NAAQS.[4]

Following the approval of a sale of undeveloped land surrounding Exide's plant to the City of Frisco on June 4, 2012, Exide chose to close the plant and cease all production activities. All recycling activities ceased operation on November 30, 2012, and decontamination and demolition of the Pb recycling facility was completed by August 15, 2013. As the smelting operation's Pb emissions were the principal cause of the area's nonattainment of the 2008 Pb NAAQS, the destruction of the facility eliminated stationary source emissions in the area. Any future point source of Pb emissions in the area would be required to obtain a new source review permit. Therefore, stationary source operations involving Pb emissions could not resume without Exide, or any other company, becoming a new source and being subject to new source review permitting requirements. In order to obtain a new source review permit, a new facility would be required to install best available control technology to limit Pb emissions and demonstrate that a violation of the 2008 Pb NAAQS would not result from construction or operation.

Under EPA's regulations at 40 CFR part 50, the 2008 Pb NAAQS is attained when the area has a 3-month rolling average below the NAAQS evaluated over a 3-year period.[5] Following the closure of the Exide facility, the area attained the standard, and on November 2, 2016, TCEQ submitted a redesignation request and the first 10-year maintenance plan for the Collin County Area. In 2017, the Collin County area was redesignated to attainment for the 2008 Pb NAAQS, and the 10-year maintenance plan was approved, effective September 27, 2017.[6]

The primary EPA guidance on maintenance plans and redesignation requests is the September 4, 1992, memorandum from John Calcagni, titled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (the ''Calcagni Memorandum'').[7] The Calcagni Memorandum outlines the key elements of a maintenance plan, which include the following: attainment emissions inventory, maintenance demonstration, monitoring network requirements, verification of continued attainment, and contingency plan elements.

Eight years after redesignation of any area as an attainment area, CAA section 175A(b) requires the State to submit an additional revision of the applicable SIP for maintaining the NAAQS for 10 years after the expiration of the first 10-year period. Accordingly, on September 25, 2025, Texas submitted the second maintenance plan for the Collin County area showing that the area is expected to remain in attainment of the 2008 Pb NAAQS through 2037.

III. EPA's Evaluation of Texas' SIP Submittal

As previously noted, on September 25, 2025, TCEQ submitted the Collin County area's maintenance plan to the EPA as a revision to the Texas SIP. The submission includes the maintenance plan, air quality data and emissions inventory information.

The EPA has reviewed the Collin County area's maintenance plan, which demonstrates maintenance of the 2008 Pb NAAQS in the Collin County area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). As a general matter, the following is a summary of CAA section 175A requirements[8] and the EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a State should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A State should develop this inventory consistent with the EPA's most recent guidance on emissions inventory development. For Pb, the point source inventory should contain all sources that emit 0.5 or more tons of Pb per year.[9] As previously noted, the EPA determined that the Collin County area had attained the 2008 Pb NAAQS at the time that it redesignated the area to attainment.[10] The Collin County area continues to attain the 2008 Pb NAAQS, as shown in Table 3 below. Texas selected 2015 as the base year (*i.e.,* attainment emissions inventory year) for developing an emissions inventory for Pb, for which projected emissions could be developed for 2026, and 2037. The attainment inventory identifies a level of emissions in the area that is sufficient to attain the 2008 Pb standard. In addition to comparing the final year of the plan (2037) to the base year (2015), Texas compared interim years (2029, 2032, and 2035) to the baseline to demonstrate that the years in between are also expected to show continued maintenance of the 2008 Pb standard. The emissions inventory consisted of a review of the stationary source emissions from the facilities located within the former nonattainment area.

TABLE 1—COLLIN COUNTY Pb NONATTAINMENT EMISSIONS INVENTORY FOR BASELINE YEAR 2010

[Tons per year (tpy)][11]

Source	2010 base year	201 attainment year[12]	2017	2020	2023
Exide	1.06	0	0	0	0

[3] *See* 75 FR 71033 (November 22, 2010).

[4] *See* 40 CFR 81.344.

[5] *See* 40 CFR 50.16.

[6] *See* 82 FR 29426 (June 29, 2017).

[7] ''Procedures for Processing Requests to Redesignate Areas to Attainment'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the ''Calcagni Memorandum''), available at *https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment.*

[8] *See* Calcagni Memorandum (September 4, 1992).

[9] *See* 40 CFR 51.117(e)(1).

[10] *See* 82 FR 29426 (June 29, 2017).

[11] Interim years included in this table align with the triennial data years of the full National Emissions Inventory (NEI).

[12] All recycling activities at Exide ceased operation on November 30, 2012, and decontamination and demolition of the facility was completed by August 15, 2013, falling between the 2010 base year and the 2015 attainment year.

B. Maintenance Demonstration

EPA guidance recommends that a State may demonstrate maintenance of the NAAQS by either showing that future emissions of Pb will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.[13] In either case, to satisfy the demonstration requirement, the State should project emissions for the 10-year period following redesignation. The State's maintenance plan submission expressly documents that the area's emissions inventories will remain below the attainment year inventories through 2037. Texas's plan demonstrates maintenance of the 2008 Pb NAAQS through 2037 by showing that current and future emissions of Pb for the area remain at or below attainment year emission levels. When the Exide facility was operating, as shown above in Table 1 as the 2010 baseline, the emissions of Pb were 1.06 tons per year (tpy). Due to the permanent shutdown of Exide on November 30, 2012, and complete decontamination and demolition of the facility by August 15, 2013, Pb emissions inventories in the area have been zero tpy since 2013 and are projected to remain at zero tpy in the horizon year of 2037. Following Exide's shutdown, no other permitted Pb sources are currently located within the Collin County area and no new permitted Pb sources are projected. The EPA, therefore, is proposing to find that the State's 10-year maintenance demonstration requirement is met for the Collin County Area.

The maintenance plan includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 Pb NAAQS by providing information to support the demonstration that current and future emissions of Pb remain at or below 2015 emissions levels.

(ii) Uses 2015 as the attainment year and includes future emissions inventory projections for 2026, 2029, 2032, 2035 and 2037.

(iii) Provides actual (2015) and projected emissions inventories in tpy, for the Collin County area, as shown in Table 2 below.

TABLE 2—COLLIN COUNTY PROJECTED FUTURE EMISSIONS INVENTORY FROM ATTAINMENT YEAR 2015 THROUGH 2037

[Tpy]

Source	2015 attainment year	2026	2029	2032	2035	2037 horizon year
Exide	0	0	0	0	0	0

C. Monitoring Network

There are two regulatory ambient air Pb monitors in the Collin County area, Frisco Eubanks (480850009) and Frisco Stonebrook (480850029).[14] [15]

TABLE 3—Pb DESIGN VALUES (μ/m^3) FOR MONITORS IN THE COLLIN COUNTY AREA FROM 2012 TO 2024 [16]

Site name	AQS site ID	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020	2019–2021	2020–2022	2021–2023	2022–2024
Frisco 5th Street	48085003	.37	.19	.12	.05	.01	.01	.01	.01	.00	.....	.....	.....	.....
Frisco 7	480850007	.20	.19	.07	.02	.02	.01	.01	.01	.00	.....	.....	.....	.....
Frisco Eubanks	480850009	.76	.52	.31	.08	.02	.01	.01	.01	.01	.00	.00	.00	.01
Frisco Stonebrook	480850029	.18	.18	.07	.07	.01	.01	.01	.02	.02	.02	.02	.07	.08

As shown in Table 3, the design values derived from the monitors in the Collin County area have been below the level of the 2008 Pb NAAQS since redesignation. Additionally, the design value in the attainment year (2015) was 0.08 μ/m^3 and this value has not been surpassed at any monitor in recent years. As the Pb levels have dropped and remain relatively stable, it is reasonable to conclude that the Collin County area will not exceed the 2008 Pb NAAQS during the second 10-year maintenance period. TCEQ has committed to maintaining an air monitoring network in accordance with the requirements of 40 CFR part 58 to verify the area's continued attainment status and meet EPA regulatory requirements in the Collin County Pb maintenance area. TCEQ continues to work with the Agency through the air monitoring network review process to determine the adequacy of the Federal air monitoring network, additional monitoring needs, and recommended monitor decommissions. For further details on monitoring, *see* the 2025–2026 Texas Annual Monitoring Network Plan [17] as well as the EPA's approval letter for the 2025–2026 Annual Network Plan, which can be found in the docket for this proposed action.

D. Verification of Continued Attainment

The State of Texas, through TCEQ, has the legal authority to enforce and implement the requirements of the Collin County area Pb maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future Pb attainment problems.

Verification of continued attainment is accomplished through operation of

[13] *See* Calcagni Memorandum (September 4, 1992).

[14] Previously, the Collin County Pb monitoring network included four regulatory Pb ambient air quality monitors: Frisco 5th Street (480850003), Frisco 7 (480850007), Frisco Eubanks (480850009), Frisco Stonebrook (480850029). The TCEQ recommended decommissioning the Frisco 5th Street and Frisco 7 monitors in the 2018 Annual Monitoring Network Plan (AMNP). EPA approved this recommendation, and the Frisco 5th Street and Frisco 7 monitors were decommissioned on December 31, 2018. *See* docket for EPA's approval letter for the 2018–2019 AMNP.

[15] These two air monitors are located near the former Exide Technologies facility, which was a lead battery recycler until shutdown in 2012. Closure of the former Exide Technologies site is ongoing under a state-issued RCRA permit, and associated remediation at and around the facility is occurring under other State authorities.

[16] Table 3 data were obtained from EPA's Air Quality System (AQS) via report type AMP480, on April 6, 2026. *See* docket for AQS report AMP 480_2369520.

[17] *See* docket for the 2025 through 2026 Annual Network Plan and EPA's approval letter for the 2024 through 2025 Annual Network Plan.

the ambient Pb monitoring network and the periodic update of the Collin County area's emission inventories. TCEQ will continue to conduct proactive efforts including reviewing monitoring data and evaluating trends in an effort to identify possible violations as early as possible. In addition, TCEQ will continue to develop and submit to the EPA updated emission inventories for all point source categories at least once every three years consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.117.

E. Contingency Plan

CAA section 175A requires that a maintenance plan contain such contingency provisions as the EPA deems necessary to assure that the State will promptly correct a violation of the standard that occurs after the redesignation of the area as an attainment area.[18] The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with CAA section 175A(d).

In the September 25, 2025, maintenance plan, TCEQ commits to adopt and implement necessary corrective actions in circumstances that would trigger a warning or action level response. As noted previously, decontamination and demolition of the Exide Pb recycling facility was completed by August 15, 2013, eliminating stationary source emissions in the area. As no future Pb emissions are anticipated, efforts to design detailed contingency provisions for these areas based on the potential for future new sources is not feasible. If plans were to develop for new sources to be sited in or near these areas that could result in violations of the NAAQS, they would be subject to the administrative and legal processes required by State and Federal law. The contingency plan included in the submittal includes a two-stage triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures.

A warning level response will be triggered whenever a three-month rolling average concentration of 0.135 μg/m^3 of Pb, (90% of the 2008 Pb NAAQS) occurs at any of the ambient monitoring sites in the Collin County Pb attainment area monitoring network. If a warning level response is activated, TCEQ will conduct a study to determine whether the Pb design value indicates a trend toward higher design values. The study will evaluate whether the trend, if any, is likely to continue and, if so, determine the measures necessary to reverse the trend taking into consideration ease and timing for implementation as well as economic and social considerations. Implementation of necessary measures in response to a warning level will take place no later than 12 months from the conclusion of the most recent calendar year. If the warning level study should determine that action is necessary to reverse the noted trend, the action level response will be triggered and procedures for measure selection and implementation outlined in the contingency plan will be implemented.

An action level response will be triggered whenever a two-year average of the three-month rolling average concentration of 0.143 μg/m^3 (95% of the 2008 Pb NAAQS) or greater occurs at any of the ambient monitoring sites in the Collin County Pb attainment area monitoring network. A violation of the 2008 Pb NAAQS (any three-month rolling average that exceeds 0.15 μg/m^3) will also prompt an action level response. In the event that the action level is triggered and is not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition (if a permit exists), or rule requirement, TCEQ, in conjunction with the entity/entities believed to be responsible for the exceedance, will evaluate additional measures needed to assure future attainment of the 2008 Pb NAAQS. Once additional measures have been evaluated, measures that can be implemented in a short time will be selected and made effective within 18 months from the close of the calendar year that prompted the action level.

Currently, no new sources of Pb are projected for the Collin County area, and any changes to control measures would be subject to the administrative and legal processes required by State and Federal law, including publication of notices, an opportunity for public hearing, and other measures required by Texas law for rulemaking or permitting. EPA proposes to find that the contingency provisions in Texas' second maintenance plan for the Collin County area for the 2008 Pb NAAQS meet the requirements of the CAA section 175A(d).

IV. Proposed Action

The EPA is proposing to approve the second 10-year maintenance plan for the 2008 Pb NAAQS for the Collin County area into the Texas SIP under CAA section 175A. The maintenance plan meets all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, including a demonstration that the Collin County area will continue to maintain the 2008 Pb NAAQS until September 27, 2037, the end of the 20-year maintenance period.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

[18] *See* CAA section 175A(d).

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

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

Dated: November 9, 2026.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2026–23519 Filed 11–17–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2026–2878; FRL–13563–01–R6]

Air Plan Approval; Texas; Revisions to Concrete Batch Plant Standard Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on April 2, 2026, to update the provisions for standard permits (SP) for concrete batch plants (CBP) that perform wet batching, dry batching, or central mixing.

DATES: Written comments must be received on or before December 18, 2026.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2026–2878, at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley; telephone number: (214) 665–2115; email address: *wiley.adina@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *https://www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley; EPA Region 6 Office; Air Permits Section (ARPE); telephone number: (214) 665–2115; email address: *wiley.adina@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this proposed rule, the use of ''we,'' ''us,'' or ''our'' is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

CAA—Clean Air Act
CBP—Concrete batch plant
NNSR—Nonattainment New Source Review
NSR—New Source Review
PSD—Prevention of Significant Deterioration
SIP—State Implementation Plan
SP—Standard Permit
TAC—Texas Administrative Code
TCEQ—Texas Commission on Environmental Quality
TSD—Technical Support Document

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I. Executive Summary

A. What action is the EPA taking?

The EPA is proposing to approve revisions to the Texas SIP air permitting requirements at 30 Texas Administrative Code (TAC) Section 116.605 submitted by the TCEQ on April 2, 2026.

B. What is the legal authority and what are the requirements?

The EPA is proposing this action in accordance with CAA section 110 and the Agency's implementing regulations regarding SIP submission and NSR permitting at 40 CFR part 51, subpart F and I, respectively.

II. Background

CAA section 110 requires States to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act, and they address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The State's air regulations are contained in its SIP, the State's clean air plan. Each State is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval and any changes a State makes to the approved SIP also must be submitted to the EPA for approval. When reviewing SIP submissions, the EPA's role is to approve State choices provided they meet the criteria of the CAA, and the applicable Federal regulations pertaining to the specific submitted revision(s) being acted on.

Section 110(a)(2)(C) of the CAA requires States to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD),

Nonattainment New Source Review (NNSR), and minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS, ''attainment areas,'' as well as areas where there is insufficient information to determine if the area meets the NAAQS, ''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, ''nonattainment areas.'' The minor NSR program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. The EPA regulations governing criteria that States must satisfy for EPA approval of their NSR programs as part of the SIP are contained in 40 CFR 51.160 through 51.166. The requirements at 40 CFR 51.160 through 51.164 apply generally to all preconstruction permitting programs and establish the minimum requirements for minor NSR programs that cover the construction and modification of minor sources and minor modifications to existing major stationary sources. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. The EPA approved the Texas Standard Permit program on November 14, 2003, as a component of the Texas minor NSR program.[1]

III. Summary of Texas's April 2, 2026, SIP Submittal

On April 2, 2026, the TCEQ submitted revisions to the Texas SIP to update the requirements of the Texas CBP SP to implement the requirements of Texas Senate Bills 763 and 2351, adopted in the 89th Regular Texas Legislature, 2025. New requirements at 30 TAC Section 116.605(d)(4) require the TCEQ to conduct a protectiveness review of the CBP SP at least once every eight years. New requirements at 30 TAC Sections 116.605(f)(1) and 116.605(f)(2) provide criteria of how the TCEQ may require facility operators to comply with the requirements of an amended CBP SP if the facility operator did not begin construction before the adoption of the amended SP or file a request for extension to begin construction.

IV. The EPA's Evaluation of Texas's April 2, 2026, SIP Submittal

The accompanying technical support document (TSD) for this action includes a detailed analysis of the submitted revisions to the Texas SIP which are the subject of this proposed rulemaking. Our analysis indicates that the April 2, 2026, SIP revision was developed in accordance with the CAA and the State provided reasonable notice and public hearing.

The submitted new requirements at 30 TAC Section 116.605(d)(4) expand the existing SIP-approved requirements for amendments to Standard Permits. New 30 TAC Section 116.605(d)(4) requires the TCEQ to conduct a protectiveness review of the SP for permanent concrete batch plants that perform wet batching, dry batching, or central mixing. The addition of the protectiveness review ensures that the Texas SP program continues to protect the NAAQS through updated control technology and emission limitations as appropriate.

The submitted new provisions at 30 TAC Sections 116.605(f)(1) and 116.605(f)(2) provide that the TCEQ may require facility operators authorized to begin new construction of permanent concrete batch plants that perform wet batching, dry batching, or mixing to comply with the amended SP for concrete batch plants if the facility operator did not begin construction before the adoption of the amended SP and has filed an extension to begin construction before the effective date of the amended SP for concrete batch plants. This new requirement ensures that facility operators will apply the most recent control technology consistent with the protectiveness review.

The April 2, 2026, submittal also included renumbering without change of existing SIP-approved requirements at 30 TAC Sections 116.605(f) and 116.605(g) to 30 TAC Sections 116.605(g) and (h), respectively, to provide for the addition of new 30 TAC Section 116.605(f) as described in the preceding paragraph.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in section III. of this preamble; ''Summary of Texas's April 2, 2026, SIP Submittal''. We have made, and will continue to make, these documents generally available electronically through *https://www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not proposed to apply on any Indian reservation land or in any other area where the EPA or an

[1] *See* 68 FR 64548 (Nov. 14, 2003).

Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 9, 2026.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2026–23521 Filed 11–17–26; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 91, No. 221
Wednesday, November 18, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Wilderness and Wild and Scenic Rivers Program Administration

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Wilderness and Wild and Scenic Rivers Program Administration.

DATES: Comments must be received in writing on or before January 19, 2027 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Josh Nadas, Deputy Chief of Staff (a), Public Benefits, USDA Forest Service, 201 14th Street SW, Washington, DC 20250. Comments also may be submitted via email at *joshua.nadas@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Josh Nadas, Deputy Chief of Staff (a), Public Benefits, *joshua.nadas@usda.gov,* 202–948–3053. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service and provide the phone number of the person named as a point of contact for further information.

SUPPLEMENTARY INFORMATION:

Title: Wilderness and Wild and Scenic Rivers Program Administration.

OMB Number: 0596–0106.

Expiration Date of Approval: April 30, 2027.

Type of Request: Extension with no revision of a currently approved information collection.

Abstract: Visitor Permits and Visitor Registration Cards may be required as a means to disperse use, protect natural and cultural resources, provide for the health and safety of visitors, allocate capacity, provide special restrictions or important information the visitor should know, and address overuse and site deterioration in environmentally sensitive areas.

The Forest Service has decided to offer an electronic submission option for these forms. Respondents may complete and submit the forms in paper format or electronically through a digital portal that the Forest Service is developing and plans to make available on a public website. The electronic forms and associated content may also be made available through other government websites or portals configured to transmit information to the Forest Service. This electronic content may be mirrored or otherwise displayed on other government portals configured to transmit information to the Forest Service or other agencies that use these forms.

Form FS–2300–30, Visitor's Permit. Information collected includes the visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that is, the number of animals either carrying people or their gear), the number of dogs, and the number of watercraft and/or vehicles (where allowed).

The Forest Service employee who completes the Visitor's Permit will note on the permit any special restrictions or important information the visitor should know. The visitor receives a copy of the permit and instructions to keep the permit with them for the duration of the visit.

Form FS–2300–32, *Visitor Registration Card.* Information collected includes the visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, the number of dogs, and the number of watercraft and/or vehicles (where allowed).

Estimate of Annual Burden: 3 minutes per application.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 552,000.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 27,600 hours.

Public Comment: Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including 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 summarized and included in the request for Office of Management and Budget approval of the information collection.

Gordon Blum,

Associate Deputy Chief, National Forest System.

[FR Doc. 2026–23406 Filed 11–17–26; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Generic Clearance Improving Customer Experience: OMB Circular A–11, Section 280 Implementation

The Department of Commerce will submit 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, on or after the date of publication

of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 23, 2026 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Office of the Secretary, Commerce.

Title: Generic Clearance Improving Customer Experience: OMB Circular A–11, Section 280 Implementation.

OMB Control Number: 0690–0035.

Form Number(s): None.

Type of Request: Regular submission, extension without change of a currently approved collection.

Number of Respondents: 100,000.

Average Hours Per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview or focus group.

Burden Hours: 13,863.

Affected Public: Collections will be targeted at the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Frequency: Varies, on occasion.

Respondent's Obligation: Voluntary.

Legal Authority: The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0690–0035.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2026–23473 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Pacific Halibut Fisheries; Subsistence

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 19, 2027.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0512 in the subject line of your comments. All comments received are part of the public record and will generally be posted on *https://www.regulations.gov* without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Lis Henderson, Sustainable Fisheries Division, Alaska Program Office Juneau, AK 99801, 907–586–7228, *lis.henderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for renewal of an approved information collection by the National Marine Fisheries Service (NMFS), Alaska Regional Office.

The International Pacific Halibut Commission (IPHC) promulgates regulations governing the North Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). The Northern Pacific Halibut Act of 1982 (Halibut Act; 16 U.S.C. 773c(a)–(c)), provides the Secretary of Commerce with general responsibility for carrying out the Convention and the Halibut Act, including the authority to adopt regulations necessary to carry out the purposes and objectives of the Convention. The Halibut Act (16 U.S.C. 773(c)) also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, IPHC regulations.

Regulations the Council recommends may be implemented by NMFS only after approval by the Secretary. The Council has exercised this authority in the development of subsistence halibut fishery management measures. NMFS has responsibility for managing the subsistence halibut fishery according to regulations approved by the Secretary. Regulations governing the subsistence halibut fishery are at 50 CFR 300.2, § 300.4, and subpart E, and in the annual management measures published in the **Federal Register** pursuant to § 300.62.

This information collection is necessary for NMFS to manage the Alaska Subsistence Halibut Program. Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade. The Alaska Subsistence Halibut Program is intended to allow eligible persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This program provides NMFS with the opportunity to enhance estimates of subsistence removals for stock assessment purposes.

Before fishing under subsistence halibut regulations, a Subsistence Halibut Registration Certificate (SHARC)

must be obtained. This information collection contains the forms used by participants in the subsistence halibut fishery to apply for SHARCs, apply for special use permits, and submit harvest information for special use permits. This information collection also contains two collections for which no forms are used: the appeals process for denied permits and marking subsistence setline fishing gear with identifiable information.

Information collected by the permit applications includes applicant information and depending on the permit type may include information on the educational program or a description of the cultural or ceremonial occasion the permit will be used for. NMFS uses this information to determine the eligibility of applicants to receive or renew permits.

The permit coordinators submit the harvest logs for Community Harvest Permits, Ceremonial Permits, and Educational Permits. Harvest logs collect identification information and harvest information for the subsistence fishermen fishing under that permit.

An appeals process is provided for an applicant who receives an adverse initial administrative determination related to their permit application.

Subsistence setline gear buoys must be marked with identification information that consists of the participant's name and address and an ''S'' to indicate subsistence halibut gear. This information is used by NMFS to link fishing gear to the vessel owner or operator and facilitate enforcement of regulations

II. Method of Collection

Information is collected primarily by mail, fax, and delivery. SHARC renewals may be submitted electronically through the NMFS Alaska Region online Fisheries Information System (eFISH), or through email or fax. The applications and harvest logs are available as fillable pdfs on the NMFS Alaska Region website and may be downloaded, completed, and printed out prior to submission. The fishing gear identification information is painted on marker buoys and is not submitted to NMFS.

III. Data

OMB Control Number: 0648–0512.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; State, Local, or Tribal government.

Estimated Number of Respondents: 4,785.

Estimated Time per Response: Application for SHARC Rural Resident: 10 minutes; Application for SHARC Alaska Native Tribal Member: 10 minutes; Application for SHARC Alaska Native Tribe: 30 minutes; Subsistence Halibut Special Permits Application: 30 minutes; Harvest logs: 30 minutes; Appeal for permit denial: 4 hours; Gear marking: 30 minutes.

Estimated Total Annual Burden Hours: 1,673 hours.

Estimated Total Annual Cost to Public: $37,782 in recordkeeping and reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Halibut Act (16 U.S.C. 773c).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. 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 may 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.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23432 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NOAA Teacher at Sea Program

The Department of Commerce will submit 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, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 11, 2026, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: NOAA Teacher at Sea Program.

OMB Control Number: 0648–0283.

Form Number(s): None.

Type of Request: Regular submission [Revision and extension of a current information collection].

Number of Respondents: 825.

Average Hours per Response: Application: 1 hr. 15 min; Recommendations: 15 minutes.

Total Annual Burden Hours: 482 hours.

Needs and Uses: This is a request for revision and extension of an approved information collection. This collection is sponsored by NOAA Fisheries' Office of Communications on behalf of NOAA's Teacher at Sea Program, through which NOAA provides educators an opportunity to gain first-hand experience with field research activities aboard ocean-going research vessels. Selected educators spend 2–4 weeks at sea working alongside NOAA scientists to conduct ongoing research projects.

NOAA is explicitly directed to support educational programs such as this one under Section 4002 of the America COMPETES Act (as amended in 2022) ''to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders.'' The

opportunity to join NOAA scientists for a research experience at sea doubles as both highly valuable professional development for the educators (see Section 4002(b)(5)), increasing their own marine science literacy and skills, and as an avenue to increase their students' interest and participation in STEM (Science, Technology, Engineering, and Math) (see Section 4002(b)(1)).

This collection covers the Teacher at Sea Program application. The online application solicits information from interested educators, including basic personal information, information about the educator's school or institution, teaching experience, lesson development experience, and ideas for applying program experience in their classrooms. The application also requires recommendations (in the form of questionnaires) from two professional references nominated by each applicant. This collection enables NOAA to select suitable participants for a limited number of opportunities.

Selected educators write a blog documenting the events and scientific work of their cruise. Upon return, they develop ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience without actually going to sea themselves.

NOAA does not collect information from this universe of respondents for any other purpose than to determine which educators will participate in the NOAA Teacher at Sea Program.

This submission revises the previous collection to remove redundant instruments. The NOAA Health Services Questionnaire, which selected educators must complete in order to participate in the program, is covered under its own OMB Control Number (0648–0824) and need not be included in this collection. Additionally, participating educators are no longer required to submit a final report.

Affected Public: Individuals.

Frequency: Once.

Respondent's Obligation: Voluntary.

Legal Authority: America COMPETES Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0283.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23430 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Processed Products Family of Forms

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 19, 2027.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0018 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Veronica Pereira, NOAA Fisheries Office of Science and Technology, 1315 East West Highway, Silver Spring, MD 20910, (301)-427–8117, *Veronica.Pereira@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of the current information collection. The National Oceanic and Atmospheric Administration (NOAA) Fisheries Service annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. NOAA also collects monthly production volume of fish meal, oil, and soluble. The information gathered is used by NOAA in the economic and social analyses developed when proposing and evaluating fishery management actions. The data are also used in annual reports such as Fisheries of the United States and are provided to other agencies, academia, and industry members as needed and allowed through the Magnuson Stevens Act.

II. Method of Collection

Responses are submitted by mail, via postage-paid envelopes provided by NOAA Fisheries. If preferred by the processor, an electronically fillable pdf can also be provided and transmitted via encrypted messaging. Lastly, as an alternative option, interested processors report online through our Fisheries One Stop Shop (FOSS) portal and enter and submit data electronically.

III. Data

OMB Control Number: 0648–0018.

Form Number(s): NOAA Forms 88–13, 88–13C.

Type of Review: Regular submission [extension of a current information collection].

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 620.

Estimated Time per Response: Annual Survey of Seafood Processors: 30 minutes and Monthly Meal and Oil Report: 15 minutes.

Estimated Total Annual Burden Hours: 310 hours.

Estimated Total Annual Cost to Public: $0.

Respondents' Obligation: Required to obtain benefits.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (MSA).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the

accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23433 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Type-Approval Requirements for Vessel Monitoring Systems (VMS)

The Department of Commerce will submit 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, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 29, 2026, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Type-Approval Requirements for Vessel Monitoring Systems (VMS).

OMB Control Number: 0648–0789.

Form Number(s): None.

Type of Request: Regular submission (extension of currently approved collection).

Number of Respondents: 10.

Average Hours per Response: Initial Application: 80 hours; Changes to Type-Approval: 24 hours; Revocation Response: 24 hours; Maintenance/Diagnostic and Troubleshooting Support: 1,076 hours.

Total Annual Burden Hours: 6,608 hours.

Needs and Uses: This request is for extension of a currently approved information collection. The current Code of Federal Regulations (CFR) at Title 50, part 600, subpart Q, sets forth the requirements for Enhanced Mobile Transceiver Units (EMTUs) to be type-approved by NMFS for use in federal fisheries programs. These EMTUs can either be satellite-linked systems or cellular-based hardware and software. Respondents for type-approval of vessel monitoring system (VMS) satellite- or cellular-based systems must submit a written type-approval request and electronic copies of supporting materials that include certain required information. The National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) uses the information submitted to assess whether an EMTU or EMTU–C meets minimum technical specifications and can be approved for use in the NMFS VMS program. The information currently required to accompany an application for type-approval of VMS satellite-based systems is set forth at 50 CFR 600.1502 through 600.1507. The information required for type-approval of VMS cellular-based systems will be substantially similar and identical except where specifically indicated (*e.g.,* EMTU-Cs will not be required to report the at-sea loss of communications signals, as proposed in 50 CFR 600.1503(e)(5)).

Information requested in the type-approval application for EMTU-Cs and EMTUs includes the information identified in 50 CFR 600, subpart Q, more specifically, 50 CFR 600.1501 through 600.1509. This identified information is also embodied in the Type-Approval Matrix form (available from NMFS OLE) that can be used by a respondent to more easily organize and submit the required information in their type-approval request to NMFS. The information will include information regarding: Characteristics of the EMTU–C or EMTU, Associated entities including manufacturer and sellers, Communication functionalities, Data formats, Data transmission details, Latency requirements, Messaging formats and transmission details, electronic forms, Data security, Customer service, Durability, and Applicant's data handling requirements.

Affected Public: Business or other for-profit organizations.

Frequency: Variable. Estimated at once every 3 years.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the National Marine Fisheries Service (NMFS) and regional fishery management councils prevent overfishing and requires the collection of reliable data essential to the effective conservation, management, and scientific understanding of the nation's fishery resources, including vessel monitoring systems.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collection currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering either the title of the collection or the OMB Control Number 0648–0789.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–23434 Filed 11–17–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2026–OS–1916]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), Department of Defense (DoD).

ACTION: 30-Day Information Collection Notice.

SUMMARY: The Department of Defense (referred to herein as ''the Department'',

''Department of War'' or ''DoW'') has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 18, 2026.

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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Freedom of Information/Privacy Act Records Request for Background Investigations; INV 100; OMB Control Number 0705–0001.

Type of Request: Revision.

Number of Respondents: 6,800.

Responses per Respondent: 1.

Annual Responses: 6,800.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 567.

Needs and Uses: The purpose of the collection is to enable the DCSA, Freedom of Information and Privacy (FOI/P) Office for Investigations, to locate applicable records and provide the requester responsive records pursuant to the Freedom of Information Act (FOIA) 5 United States Code (U.S.C.) 552, and/or the Privacy Act of 1974 5 U.S.C. 552a. It may also be used for the submission of a Privacy Act Amendment request, and in any FOIA or Privacy Act appeals or related litigation. The Law Enforcement, Congressional Inquiries, Department of Justice for Litigation, National Archives and Records Administration, and Data Breach Remediation, and Routine Uses found at *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.* The Freedom of Information/Privacy Act Records Request for Background Investigations form will also be used to refer records under the release authority of another Federal Agency.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: November 16, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–23479 Filed 11–17–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2026–HA–0959]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as ''the Department'', ''Department of War'' or ''DoW'') has submitted to the Office of Management abd Budget (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 December 18, 2026.

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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* Third Party Collection Program (Insurance Information); DD Form 2569; OMB Control Number 0720–0055.

Type of Request: Extension.

Number of Respondents: 3,512,507.

Responses per Respondent: 1.5.

Annual Responses: 5,268,761.

Average Burden per Response: 4 minutes.

Annual Burden Hours: 351,250.7.

Needs and Uses: The DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and outpatient services rendered at military treatment facilities (MTFs) to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. The DoD may also collect the cost of trauma or other medical care provided from civilians (or their insurers), and/or the average cost of health care provided to beneficiaries at DoD MTFs from other federal agencies. For DoD to perform such collections, eligible beneficiaries may elect to provide DoD with other health insurance information. For civilian nonbeneficiary and interagency patients, DD Form 2569 is necessary and serves as an assignment of benefits, approval to submit claims to payers on behalf of the patient and authorizes the release of medical information. This form is available to third-party payers upon request. The collection of personal information from individuals of the public for use in medical services is authorized by title 10 United States Code (U.S.C.) 1095, ''Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-Party Payers''; Title 32 Code of Federal Regulations (CFR) part 220, ''Collection From Third Party Payers of Reasonable Charges for Healthcare Services''; Title 10 U.S.C. 1079b(a), ''Procedures for Charging Fees for Care Provided to Civilians; Retention and Use of Fees Collected''; and Title 10 U.S.C. 1085, ''Medical and Dental Care from Another Executive Department: Reimbursement.''

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: November 16, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–23480 Filed 11–17–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2026–OS–1057]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as ''the Department'', ''Department of War'' or ''DoW'') has submitted to the Office of Management and Budget (OMB) for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 18, 2026.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: MilGears Platform; OMB Control 0704–MILG.

Type of Request: New.

Number of Respondents: 50,000.

Responses per Respondent: 1.

Annual Responses: 50,000.

Average Burden per Response: .5 hours.

Annual Burden Hours: 25,000 hours.

Needs and Uses: The DoW developed the MilGears platform to support service members, veterans, and other users in identifying career pathways. This information collection has been expanded to support the management of educational and transitional benefits, including Tuition Assistance, credentialing, apprenticeships, and SkillBridge opportunities. The data collected is necessary to provide personalized recommendations, manage enrollments, process benefit applications, and facilitate a seamless user experience. The collection is essential for the platform's algorithms, improves user features, and advances DoW-wide workforce development initiatives in alignment with federal mandates for military-to-civilian transition and career readiness.

Respondents for this information collection include service members, veterans, and members of the general public who are interested in exploring customized careers and credentialing pathways. The goal is to support informed decision-making as individuals navigate their unique career trajectories.

Respondents voluntarily provide personal and professional information as part of the process to establish a user account within the MilGears platform. These accounts are designed to support data continuity and a more tailored user experience as individuals explore career and credentialing opportunities aligned with their goals, experiences, and interests. All data is collected online via the MilGears platform.

Users may learn about MilGears and this data collection through a variety of channels, including the Transition Assistance Program (TAP), Credentialing Assistance (CA) application forms, career counselors, or through online search. Once aware of the platform, users can access it at: *https://milgears.osd.mil/.* Upon visiting the platform, users can explore a suite of tools and resources that support career exploration and planning.

The data collected through the MilGears platform will be used to generate personalized recommendations for careers, credentials, and training opportunities; link military occupations to civilian career pathways and industry-recognized competencies; evaluate user engagement and satisfaction to guide ongoing platform improvements; support the development of Learning and Employment Records (LERs); provide DoW leadership with actionable insights on user trends to inform workforce planning; enable users to create persistent accounts for storing information and building individualized career pathways; and promote interoperability across DoW human resource systems and data sources.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

DoW Clearance Officer: Mr. Reginald Lucas.

Dated: November 16, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–23478 Filed 11–17–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2547–095]

Village of Swanton, Vermont; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Highgate Falls Hydroelectric Project No. 2547 (project), located on the Missisquoi River in the Town of Highgate, Franklin County, Vermont, and prepared an Environmental Assessment (EA) for the project.[1]

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA 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. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll-free), or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed by 5:00 p.m. Eastern Time on December 14, 2026.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2547–095.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

[1] For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1760606606.

For further information, contact Arash Barsari by email at *Arash.JalaliBarsari@ferc.gov* or by telephone at (202) 502–6207.

(Authority: 18 CFR 2.1)

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23447 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF26–15–000]

Northwest Pipeline, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Silver Spur Project and Notice of Public Scoping Sessions

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Silver Spur Project involving construction and operation of facilities by Northwest Pipeline, LLC (Northwest) in Twin Falls County, Idaho and Elko County, Nevada. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on December 14, 2026. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on September 1, 2026, you will need to file those comments in Docket No. PF26–15–000 to ensure they are considered.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (PF26–15–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

(4) In lieu of sending written comments, the Commission invites you to attend the public scoping sessions its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Tuesday, December 8, 2026, 5:00–8:00 p.m	Wells Combined School Cafeteria, 1378 Lake Avenue, Wells, Nevada 89835; 775–752–3477.
Wednesday, December 9, 2026, 5:00–8:00 p.m.	Mountain Valley High School, 512 Main Avenue North, Twin Falls, Idaho; 208–732–7520.

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of oral comments in a convenient way during the timeframe allotted.

Each scoping session is scheduled from 5:00 p.m. to 8:00 p.m. Pacific Standard Time for Wells, Nevada and 5:00 p.m. to 8:00 p.m. Mountain Standard Time for Twin Falls, Idaho. You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 8:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 7:30 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from Northwest will also be present to answer project-specific questions.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

Additionally, the Commission offers a free service called eSubscription, which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Summary of the Planned Project

The Silver Spur Project would provide about 275,000 dekatherms of incremental firm capacity to access supply in Opal, Wyoming with delivery points in Idaho.

The Silver Spur Project would consist of the following facilities:

- About 88 miles of new 24-inch diameter pipeline originating in at the existing Ruby Pipeline in Elko County, Nevada to Twin Falls County, Idaho;
- One new gas-fired, turbine-driven compressor unit with 15,900 nominal horsepower (hp) restaging of two existing gas-fired, turbine-driven compressors, and miscellaneous pipeline modifications at the existing Buhl Compressor Station;
- Two new gas-fired, turbine-driven compressor units with 23,600 hp at the existing Mountain Home Compressor Station in Elmore County, Idaho to replace three existing Ingersoll Rand gas-fired internal combustion engine-driven compressor units with 6,000 hp and increase the certificated station compressor by 17,600 hp;
- One new gas-fired, turbine-driven compressor station named Jackpot Compressor Station with 4,700 hp in Twin Falls County, Idaho;
- A new delivery regulator station for over pressure protection at the tie-in to the existing Northwest Pipeline in Twin Falls County, Idaho;
- A new receipt meter station at the connection to the existing Ruby Pipeline in Elko County, Nevada; and
- Additional ancillary facilities such as mainline valves, system crossovers connecting the Silver Spur pipeline to the Northwest Pipeline, cathodic protection, and communication facilities in Idaho and Nevada.

The general location of the project facilities is shown in appendix 2.

Land Requirements for Construction

The Project acreage (permanent and temporary impacts) is unknown because project boundaries, route variations, and environmental impacts are still actively being evaluated and refined. Following construction, Northwest would maintain property for permanent operation of the project's facilities, while the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by Commission staff will discuss impacts that could occur as a result of the construction and operation of the planned project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- Socioeconomics;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the environmental document.

If a formal application is filed, Commission staff will then determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the environmental issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an*

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

Environmental Assessment will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its determination on the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued once an application is filed, which will open an additional public comment period. Staff will then prepare a draft EIS that will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS, and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice. Currently, the Bureau of Land Management has expressed its intention to participate as a cooperating agency in the preparation of the environmental document to satisfy its NEPA responsibilities related to this project.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number PF26–15–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. *OR*

(2) Return the attached ''Mailing List Update Form'' (appendix 3).

Becoming an Intervenor

Once Northwest files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/how-intervene.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

(Authority: 18 CFR 2.1)

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23441 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S. Code § 4336(a)(3)).

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER25–1720–008; ER26–2788–002; ER10–1838–019; ER17–1609–010; ER19–2231–017; ER19–2232–017; ER18–552–015; ER18–1183–017; ER18–1184–017; ER24–762–011; ER26–2960–002; ER11–3731–011; ER10–1967–020; ER10–1968–019; ER22–2188–011; ER18–1150–017; ER17–2558–006; ER22–1402–015; ER22–1404–015; ER22–2713–013; ER10–1990–020; ER20–2667–005; ER18–1821–019; ER10–1993–019.

Applicants: Waymart Wind Farm, L.P., Walleye Power, LLC, South Field Energy LLC, Somerset Windpower, LLC, Parkway Generation Sewaren Urban Renewal Entity LLC, Parkway Generation Operating LLC, Parkway Generation Keys Energy Center LLC, NTE Ohio, LLC, Trishe Wind Ohio, LLC, Northwest Ohio IA, LLC, Mill Run Windpower, LLC, Meyersdale Windpower LLC, LWP Lessee, LLC, Lighthouse Prospect Power, LLC, Elevate Renewables F7, LLC, Delta Solar Power II, LLC, Delta Solar Power I, LLC, Clean Energy Future-Lordstown, LLC, Chief Keystone Power II, LLC, Chief Conemaugh Power II, LLC, Carroll County Energy LLC, Backbone Mountain Windpower, LLC, Alpha Generation Brandywine, LLC, Alpha Generation, LLC.

Description: Notice of Non-Material Change in Status of Alpha Generation, LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5427.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER27–463–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4668; Queue No. AA1–038 to be effective 1/11/2027.

Filed Date: 11/12/26.

Accession Number: 20261112–5001.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–464–000.

Applicants: Hanwha Energy USA Holdings Corporation.

Description: Tariff Amendment: Hanwha Energy USA Holdings Corporation Notice of Cancellation of MBR Tariff to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5004.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–465–000.

Applicants: Energy Prepay XXI, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5010.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–466–000.

Applicants: Energy Prepay XXII, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5011.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–467–000.

Applicants: Energy Prepay 23,LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5012.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–468–000.

Applicants: Energy Prepay 24, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5013.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–469–000.

Applicants: Energy Prepay 25, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5014.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–470–000.

Applicants: Energy Prepay 26, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5015.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–471–000.

Applicants: Energy Prepay 27, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5016.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–472–000.

Applicants: Energy Prepay 28, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5017.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–473–000.

Applicants: Energy Prepay 29, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5019.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–474–000.

Applicants: Energy Prepay 30, LLC.

Description: Initial Rate Filing: Baseline new to be effective 11/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5020.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–475–000.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3980 Panhandle Solar GIA Cancellation to be effective 10/9/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5033.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–476–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: TOCE GA Solar 5 (Blue Robbin Solar) LGIA Filing to be effective 10/30/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5079.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–477–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: TOCE GA BESS 5 (Blue Robbin BESS) LGIA Filing to be effective 10/29/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5080.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–478–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Cooperative Energy NITSA Amendment Filing (adding Firetower Road DP) to be effective 10/13/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5083.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–480–000.

Applicants: CPV Energy & Marketing Services, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 1/12/2027.

Filed Date: 11/12/26.

Accession Number: 20261112–5157.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–481–000.

Applicants: FirstEnergy Service Company.

Description: § 205(d) Rate Filing: FirstEnergy's Request for Order Authorizing Abandoned Plant Incentive to be effective 1/12/2027.

Filed Date: 11/12/26.

Accession Number: 20261112–5197.

Comment Date: 5 p.m. ET 12/3/26.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23439 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC26–42–000]

Commission Information Collection Activities (FERC–510); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection, FERC–510 Application for Surrender of Hydropower License (OMB No 1902–0068), to the Office of Management and Budget (OMB) for review of the information collection requirements. There are no proposed changes to the reporting requirements.

DATES: Comments on the collections of information are due December 18, 2026.

ADDRESSES: Send written comments on FERC–510 to OMB through *https://www.reginfo.gov/public/do/PRA/icrPublicCommentRequest?ref_nbr=202609-1902-001.* You can also visit *https://www.reginfo.gov/public/do/PRAMain* and use the drop-down under ''Currently under Review'' to select the ''Federal Energy Regulatory Commission'' where you can see the open opportunities to provide comments. Comments should be sent within 30 days of publication of this notice.

- Please submit a copy of your comments to the Commission via email to *DataClearance@FERC.gov.* You must specify the Docket No. (IC26–42–000) and the FERC Information Collection number (FERC–510) in your email. If you are unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
- Mail via U.S. Postal Service Only: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
- All other delivery methods: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Docket: To view comments and issuances in this docket, please visit *https://elibrary.ferc.gov/eLibrary/search.*

FOR FURTHER INFORMATION CONTACT: Kayla Williams, (202) 502–6468. *DataClearance@FERC.gov.*

SUPPLEMENTARY INFORMATION:

Title: FERC–510, Application for Surrender of a Hydropower License.

OMB Control No.: 1902–0068.

Type of Request: Three-year extension of the FERC–510 information collection requirements with no changes to the current reporting requirements.

Abstract: FERC–510 includes the information collection burden pursuant to sections 4(e), 6, and 13 of the Federal Power Act (FPA) (16 U.S.C. 797(e), 799 and 806). Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other power project works necessary or convenient for developing and improving navigation, transmission and utilization of power using bodies of water over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed, natural catastrophes have damaged or destroyed the project facilities, or a licensee otherwise no longer wishes to hold a license.

FERC–510 is the application for the surrender of a hydropower license.[1] The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a review of the application before issuing an order for surrender of a license. The order is the result of an analysis of the information produced (*i.e.,* dam safety, public safety, and environmental concerns, etc.), which is examined to determine whether any conditions must be satisfied before granting the surrender. The order implements the existing regulations and applies to surrender of any type of hydropower authorization issued by FERC and its predecessor, the Federal Power Commission.

Type of Respondents: Non-Federal (Private or Municipal) Hydropower Licensees.

Estimate of Annual Burden:[2] The Commission estimates the total annual burden and cost[3] for this information collection as follows:

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost ($) per response	Total annual burden hrs. & total annual cost ($)	Cost per respondent ($)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
10	1	10	80 hrs.; $8,160	800 hrs.; $81,600	$8,160

[1] 18 CFR 6.1–6.4.

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 CFR 1320.3.

[3] FERC estimates that industry hourly costs are similar to the Commission FY 2026 average salary plus benefits of $213,003 per year (or $102/hour).

Comment Received on 60 Day Comment Period

The Commission received one comment from American Whitewater with suggestions for expanding the information required as part of the surrender application process.[4] The information requirements related to the FERC–510 are governed by the regulations at 18 CFR 6.1 which describe the content and scope of the collection. In this information collection renewal proceeding, the Commission is not currently proposing changes to these regulations. Because American Whitewater's comment proposes changes to the information collection requirements, its comments are outside of the scope of this information collection renewal process.

30 Day Notice Comments

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23443 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–564–000]

Natural Gas Pipeline of America, LLC; Horizon Pipeline Company, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the North Extension Project

On August 12, 2026, Natural Gas Pipeline Company of America, LLC (Natural) and Horizon Pipeline Company, LLC (Horizon) filed an application in Docket No. CP26–564–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act (NGA) to construct and operate certain natural gas pipeline facilities. The proposed project is known as the North Extension Project (Project) and would provide up to 185,000 dekatherms per day of incremental firm natural gas transportation service to Wisconsin Electric Power Company in Kenosha County, Wisconsin.

On August 19, 2026, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1] The EA will be issued for a 30-day comment period.

Schedule for Environmental Review

Issuance of EA	March 26, 2027
90-day Federal Authorization Decision Deadline[2]	June 24, 2027

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Natural and Horizon propose the construction and operation of: (i) a new 11,107 horsepower (HP) compressor station (CS), CS 119, in Lake County, Illinois; (ii) addition of a new 31,900 HP compression unit and re-wheeling of the existing compressor unit 1 at the existing CS 312 in Livington County, Illinois; (iii) addition of a new 11,107 HP compressor unit at the existing CS 113 in Will County, Illinois; (iv) a new pipeline lateral consisting of approximately 11.5 miles of pipeline starting in Lake County, Illinois and ending in Kenosha County, Wisconsin; and (v) a new meter station at the terminus of the lateral, and various appurtenant and auxiliary facilities.

Background

On September 22, 2026, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed North Extension Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. One comment was received in response to the Notice of Scoping. The primary issues raised by the commenters are effects and mitigation regarding birds, bats and sensitive or rare habitats and cumulative effects given nearby land use. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP26–564), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission,

[4] This comment is available to the public through FERC's eLibrary system by searching for the docket ID IC26–42–000.

[1] For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1789542616.

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

such as orders, notices, and rule makings.

(Authority: 18 CFR 2.1)

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23442 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No(s). CP27–11–000, PF26–7–000]

Algonquin Gas Transmission, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 30, 2026, Algonquin Gas Transmission, LLC (AGT), 915 N. Eldridge Pkwy, Suite 1100, Houston, Texas 77079, filed an application under sections 7(b), and 7(c), of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization for its Algonquin Reliable Affordable Resilient Enhancement Project (Project). The Project consists of (i) constructing approximately 8.7 miles of new 36-inch-diameter pipeline to replace approximately 8.3 miles of existing 16-inch-diameter pipeline on the G–1 segment of Algonquin's existing G System in Worcester and Norfolk Counties, Massachusetts, and Providence County, Rhode Island; (ii) construct approximately 2.2 miles of new 12-inch-diameter pipeline to replace approximately 2.2 miles of existing 6-inch-diameter pipeline in Newport County, Rhode Island; (iii) install approximately 3.1 miles of 36-inch-diameter pipeline loop adjacent to Algonquin's existing 24-inch-diameter Mainline pipeline and 30-inch-diameter Line 30B pipeline in Providence County, Rhode Island; (iv) modify the Cromwell Compressor Station in Middlesex County, Connecticut, through software modifications that will enable the existing Taurus 60 and Centaur 50 turbines to operate at their full rated capacities of 7,700 horsepower (hp) and 6,130 hp. The Project is designed to provide up to 73,500 dekatherms per day of incremental firm transportation service for five local distribution companies and two municipal customers in Connecticut, Massachusetts, and Rhode Island. AGT estimates the total cost of the Project to be $299,679,058 and proposes to charge initial incremental recourse rates and an incremental fuel percentage for firm transportation service on the AGT Enhancement facilities, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

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://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions regarding the proposed project should be directed to Arthur Diestel, Director, Regulatory, AGT, P.O. Box 1642, Houston, Texas 77251–1642, by phone at (713) 627–5116, or by email at *Arthur.diestel@enbridge.com.*

On March 6, 2026, the Commission granted the Applicant's request to utilize the National Environmental Policy Act Pre-Filing Process and assigned Docket No. PF26–7–000 to staff activities involved in the Project. Now, as of the filing of the October 30, 2026 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP27–11–000 as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

AGT stated that a water quality certificate under section 401 of the Clean Water Act is required for the project from Massachusetts Department of Environmental Protection, and Rhode Island Department of Environmental Management. When available, AGT should submit to the Commission a copy of the request for certification for the Commission authorization, including the date the request was submitted to the certifying agency, and either (1) a copy of the certifying agency's decision or (2) evidence of waiver of water quality certification.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on December 4, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502–6595 or *OPP@ferc.gov.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section

[1] 18 CFR 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

385.2001 [5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on December 4, 2026.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP27–11–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP27–11–000).

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

[5] 18 CFR 385.2001.

The Commission considers all comments received about the project in determining the appropriate action to be taken. *However, the filing of a comment alone will not serve to make the filer a party to the proceeding.* To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on December 4, 2026. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP27–11–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP27–11–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Arthur Diestel, Director, Regulatory, AGT, P.O. Box 1642, Houston, Texas 77251–1642 or by email (with a link to the document) at *Arthur.diestel@enbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502–6595 or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on December 4, 2026.

(Authority: 18 CFR 2.1)

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23446 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER18–1534–020; ER24–26–008; ER22–2706–011; ER25–2292–003; ER25–3122–003; ER10–1852–129; ER24–1816–007; ER22–1454–006; ER18–1535–019; ER11–4462–123; ER16–1509–012; ER17–838–096; ER10–1951–100; ER20–2012–015; ER25–3123–003.

Applicants: Trelina Solar Energy Center, LLC, Orbit Bloom Energy, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC, New Wave Energy Corp, NEp.m. II, LLC, Montauk Energy Storage Center, LLC, LI Solar Generation, LLC, High River Energy Center, LLC, Florida Power & Light Company, Garnet Energy Center, LLC, Excelsior Energy Center, LLC, Eight Point Wind, LLC, East Point Energy Center, LLC, East Hampton Energy Storage Center, LLC.

Description: Notice of Change in Status of East Hampton Energy Storage Center, LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5429.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER25–151–003.

Applicants: Duff Solar Park LLC.

Description: Notice of Non-Material Change in Status of Duff Solar Park LLC.

Filed Date: 11/2/26.

Accession Number: 20261102–5426.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER25–561–003; ER21–2445–007; ER16–2226–008; ER23–2716–005; ER25–562–003; ER15–1019–017; ER22–2703–013.

Applicants: Pattern Energy Management Services LLC, Fowler Ridge IV Wind Farm LLC, Winfield Solar I, LLC, Moraine Sands Wind Power, LLC, McHenry Battery Storage, LLC, Glacier Sands Wind Power, LLC, Crossover Wind LLC.

Description: Supplement to 07/24/2026, Notice of Non-Material Change in Status of Crossover Wind LLC, et al.

Filed Date: 11/10/26.

Accession Number: 20261110–5231.

Comment Date: 5 p.m. ET 12/1/26.

Docket Numbers: ER25–2447–003; ER25–2449–003; ER26–2292–001; ER10–2895–030; ER13–2143–027; ER10–3167–027; ER13–203–026; ER12–2068–027; ER13–1613–027; ER11–2201–033; ER10–2921–030; ER10–2966–030; ER12–1311–027; ER10–2466–028; ER11–4029–027; ER14–1964–030; ER17–482–024; ER19–1074–034; ER10–1427–027; ER20–1447–020; ER19–1075–034; ER19–529–034; ER22–192–023; ER24–2580–008.

Applicants: White Pine Hydro, LLC, Evolugen Trading and Marketing LP, Brookfield Renewable Trading and Marketing LP, Brookfield Renewable Energy Marketing US LLC, Brookfield Energy Marketing US LLC, Brookfield Energy Marketing LP, Brookfield Energy Marketing Inc., BREG Aggregator LLC, LSP Safe Harbor Holdings, LLC, Vermont Wind, LLC, Stetson Wind II, LLC, Stetson Holdings, LLC, Rumford Falls Hydro LLC, Great Lakes Hydro America, LLC, Evergreen Wind Power III, LLC, Brookfield White Pine Hydro LLC, Blue Sky East, LLC, Black Bear SO, LLC, Black Bear Hydro Partners, LLC, Black Bear Develop.m.ent Holdings, LLC, Bear Swamp Power Company LLC, E South Hero Co. LLC, ER South Street Storage, LLC, ER Nava Storage, LLC.

Description: Notice of Non-Material Change in Status of ER Nava Storage, LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5428.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER26–787–003; ER10–2435–027; ER10–2440–018; ER12–1359–002; ER10–2962–003; ER10–2447–003; ER15–1348–006; ER10–2967–002.

Applicants: Seneca Power Partners, L.P., Roseton Generating LLC, Power City Partners, L.P., Sterling Power Partners, L.P., Alliance NYGT, LLC, Dartmouth Power Associates Limited Partnership, Camden Plant Holdings, L.L.C., PowerTransitions Marketing LLC.

Description: Notice of Non-Material Change in Status of PowerTransitions Marketing LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5430.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER26–3675–001.

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: Response to Deficiency Letter to be effective 11/1/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5080.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER26–3677–001.

Applicants: Midcontinent Independent System Operator, Inc., Jefferson Davis Electric Cooperative, Inc.

Description: Tariff Amendment: Jefferson Davis Electric Cooperative, Inc submits tariff filing per 35.17(b): 2026–11–13_JDEC New TO Integration Amendment to be effective 12/31/9998.

Filed Date: 11/13/26.

Accession Number: 20261113–5063.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–479–000.

Applicants: Arizona Public Service Company.

Description: Notice of Late System Impact Studies of Arizona Public Service Company.

Filed Date: 10/23/26.

Accession Number: 20261023–5234.

Comment Date: 5 p.m. ET 11/13/26.

Docket Numbers: ER27–482–000.

Applicants: Silver Run Electric, LLC.

Description: § 205(d) Rate Filing: Silver Run Electric Request to Recover Prudently-Incurred Costs to be effective 1/12/2027.

Filed Date: 11/12/26.

Accession Number: 20261112–5267.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–483–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 6915; Queue No. AF2–039/AF2–088 to be effective 1/12/2027.

Filed Date: 11/12/26.

Accession Number: 20261112–5288.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: ER27–484–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions Related to the Integration of Large Loads to the Transmission System to be effective 11/14/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5007.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–487–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of GIA, SA No.

7403 Project Identifier No. AF2–229 to be effective 11/15/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5041.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–489–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Brush Creek Renewables LGIA Amendment Filing to be effective 10/23/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5050.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–490–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NMPC 205: Revisions re: SPC Project Costs Allocation to be effective 1/13/2027.

Filed Date: 11/13/26.

Accession Number: 20261113–5070.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–492–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to NUCRA, SA No. 7828; Network Upgrade(s) n8492.1 to be effective 1/13/2027.

Filed Date: 11/13/26.

Accession Number: 20261113–5111.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–493–000.

Applicants: Midcontinent Independent System Operator, Inc., GridLiance Heartland LLC.

Description: § 205(d) Rate Filing: GridLiance Heartland LLC submits tariff filing per 35.13(a)(2)(iii: 2026–11–13_ GridLiance Heartland Request for Incentives RE EASL Project to be effective 1/13/2027.

Filed Date: 11/13/26.

Accession Number: 20261113–5124.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–494–000.

Applicants: Midcontinent Independent System Operator, Inc., Otter Tail Power Company.

Description: § 205(d) Rate Filing: Otter Tail Power Company submits tariff filing per 35.13(a)(2)(iii: 2026–11–13_ SA 4917 OTP-Minnkota Power FCA (Tokio) to be effective 11/12/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5127.

Comment Date: 5 p.m. ET 12/4/26.

Docket Numbers: ER27–495–000.

Applicants: Valley Link Transmission Virginia, LLC.

Description: § 205(d) Rate Filing: Notice of Succession of Valley Link Transmission Virginia, Inc. to be effective 5/14/2025.

Filed Date: 11/13/26.

Accession Number: 20261113–5132.

Comment Date: 5 p.m. ET 12/4/26.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23436 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR27–14–000.

Applicants: Black Hills Energy Arkansas, Inc.

Description: § 284.123 Rate Filing: BHEA Revised Baseline SOC Filing to be effective 10/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5164.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: PR27–15–000.

Applicants: Hope Gas, Inc.

Description: § 284.123(g) Rate Filing: Hope Gas, Inc. submits tariff filing per 284.123(b),(e)+: HGI—November 1 2026 Rate Change to be effective 11/1/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5165.

Comment Date: 5 p.m. ET 12/3/26.

§ 284.123(g) Protest: 5 p.m. ET 1/11/27.

Docket Numbers: PR27–16–000.

Applicants: Columbia Gas of Virginia Inc.

Description: § 284.123 Rate Filing: Revisions to SOC per VA SCC 10–2026 Order to be effective 10/12/2026.

Filed Date: 11/12/26.

Accession Number: 20261112–5199.

Comment Date: 5 p.m. ET 12/3/26.

Docket Numbers: RP27–165–000.

Applicants: UGI Mt. Bethel Pipeline, LLC.

Description: Annual Report of Operational Purchases and Sales of UGI Mt. Bethel Pipeline, LLC.

Filed Date: 11/12/26.

Accession Number: 20261112–5353.

Comment Date: 5 p.m. ET 11/24/26.

Docket Numbers: RP27–166–000.

Applicants: UGI Sunbury, LLC.

Description: Annual Report of Operational Purchases and Sales of UGI Sunbury, LLC.

Filed Date: 11/12/26.

Accession Number: 20261112–5354.

Comment Date: 5 p.m. ET 11/24/26.

Docket Numbers: RP27–167–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2026–11–13 Negotiated Rate Agreement to be effective 11/13/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5065.

Comment Date: 5 p.m. ET 11/25/26.

Docket Numbers: RP27–168–000.

Applicants: PPG Shawville Pipeline, LLC.

Description: § 4(d) Rate Filing: Normal filing change in Form of Transportation Agreement to be effective 12/1/2026.

Filed Date: 11/13/26.

Accession Number: 20261113–5068.

Comment Date: 5 p.m. ET 11/25/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) 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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 13, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23440 Filed 11–17–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0312; FRL–7887–06–OAR]

Release of Draft Policy Assessment in the Review of the Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making available for public review the draft document titled, *Policy Assessment for the Review of the National Ambient Air Quality Standards for Lead, External Review Draft* (draft PA) on or about November 18, 2026. This document is part of the current review of the national ambient air quality standards (NAAQS) for lead (Pb).

DATES: Comments must be received on or before December 18, 2026.

ADDRESSES: You may send comments on this document, identified by Docket ID No. EPA–HQ–OAR–2020–0312, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2020–0312 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the **SUPPLEMENTARY INFORMATION** section of this document. The document described here will be available on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards.* The document will be accessible under ''Policy Assessments'' for the current review.

FOR FURTHER INFORMATION CONTACT: For information about this notice of availability, contact Dr. Deirdre L. Murphy, Office of Clean Air Programs, Mail Code: C504–06, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, NC 27711; telephone number: 919–541–0729; email address: *murphy.deirdre@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–0312, at *https://www.regulations.gov* (our preferred method), or the other methods identified above in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), 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). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. Information About the Draft Document

Clean Air Act (CAA) sections 108 and 109 govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under CAA section 109, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The CAA additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).[1]

Presently the EPA is reviewing the NAAQS for Pb.[2] The EPA's overall plan for this review is presented in the Integrated Review Plan for the NAAQS for Pb (IRP).[3] As described in the IRP, Volumes 2 and 3, and following consideration of comments from the CASAC and the public, the EPA has prepared an Integrated Science Assessment for Pb,[4] a draft human exposure and health risk assessment (REA) and a draft PA. The EPA

[1] Information about the CASAC, including a list of the current members, is available on the EPA's website (*https://casac.epa.gov*).

[2] The EPA's call for information for this review was issued in 2020 (85 FR 40641, July 7, 2020).

[3] Volumes 1, 2 and 3 of the IRP are available on the EPA's website (*https://www.epa.gov/naaqs/lead-pb-standards-planning-documents-current-review*).

[4] The *Integrated Science Assessment for Lead (Final Report)* was released in January 2024 (89 FR 8425, February 7, 2024).

development of the analytical approach for the REA also takes into account public comments and discussion at a CASAC consultation on a supplement to the IRP, Volume 3.[5]

The PA, when final, serves to ''bridge the gap'' between the scientific and technical information in the final ISA and the air quality, exposure and risk analyses available in the review, and the judgments required of the Administrator in determining whether to retain or revise the existing NAAQS for Pb. The draft PA builds upon information presented in the final ISA and the draft exposure and risk analyses (details of which are presented in an appendix to the draft PA). The draft PA will be available on or about November 18, 2026, on the EPA's website at *https://www.epa.gov/naaqs/lead-pb-air-quality-standards,* accessible under ''Policy Assessments'' for the current Pb NAAQS review. Comments on the draft PA should be submitted to the docket, as described above, by December 18, 2026. The EPA will consider comments submitted in response to this notice when revising the document.

The EPA is also soliciting advice and recommendations from the CASAC by means of a review of this draft document at an upcoming public meeting of the CASAC. Information about this public meeting, including the dates and location, will be published as a separate notice in the **Federal Register**. Following the CASAC meeting, the EPA will consider comments received from the CASAC and the public in preparation of the final PA.

The draft document briefly described in this notice does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Erika N. Sasser,

Director, Impacts and Ambient Standards Division, Office of Clean Air Programs, Office of Air and Radiation.

[FR Doc. 2026–23463 Filed 11–17–26; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Commission Meeting—Sunshine Act Notice

TIME AND DATE: Monday, November 23, 2026, 10:00 a.m. Eastern Time.

PLACE: The meeting will be held virtually. The public may observe the meeting online, via an audio-only link. Instructions for the public to observe the meeting via audio online will be posted on *www.eeoc.gov* at least 24 hours before the meeting. ASL services will be available for those attending the meeting online and a closed captioning link will be posted on our website prior to the meeting.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

The following item will be considered at the meeting:

- Management Directive 716

Note: In accordance with the Sunshine Act, the public will be able to observe the Commission's deliberations and voting. (In addition to publishing notices on Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its website, *www.eeoc.gov* and provides a recorded announcement one week in advance of future Commission meetings.) Public observation does not include participation.

Please telephone (202) 921–2705, or email *commissionmeetingcomments@eeoc.gov* at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Raymond Windmiller, Executive Officer, (202) 921–2705.

Dated: November 16, 2026.

Raymond D. Windmiller,

Executive Officer, Executive Secretariat.

[FR Doc. 2026–23457 Filed 11–16–26; 11:15 am]

BILLING CODE 6570–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Annual Report for Fiscal Year 2026 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its *Annual Report for Fiscal Year 2026 and Three-Year Plan.* Respondents are encouraged to comment on the content of the annual report and FASAB's project priorities for the next three years.

DATES: Written comments are requested by January 18, 2027.

ADDRESSES: The *Annual Report for Fiscal Year 2026 and Three-Year Plan* is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350. Comments should be sent to *fasab@fasab.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: November 16, 2026.

Monica R. Valentine,

Executive Director.

[FR Doc. 2026–23472 Filed 11–17–26; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 378431]

Sunshine Act; Open Commission Meeting Thursday, November 19, 2026

November 12, 2026.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 19, 2026, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

[5] The document provided to the CASAC Panel for this consultation, *Health Risk and Exposure Analyses in Support of the Review of the National Ambient Air Quality Standards for Lead, Update on Two Aspects of the Analytical Approach,* is available on the EPA's website (*https://www.epa.gov/naaqs/lead-pb-standards-planning-documents-current-review*) and in the docket for this review (*https://www.regulations.gov*).

Item No.	Bureau	Subject
1	Wireless Telecommunications	*Title*: Combatting Contraband Wireless Device Use in Correctional Facilities (GN Docket No. 13–111). *Summary*: The Commission will consider a Report and Order that would authorize non-federal operation of radio frequency jamming solutions in the limited context of correctional facilities, in compliance with applicable congressional statutes. It will also consider a Further Notice that would seek comment on a proposed framework to authorize jamming solutions on unlicensed spectrum, the application of jamming solutions to satellite communications, and potential additional safeguards.
2	Wireless Telecommunications	*Title:* Unleashing American Drone Dominance (GN Docket No. 26–74) and Facilitating Opportunities for Advanced Air Mobility (WT Docket No. 24–629). *Summary:* The Commission will consider a Report and Order that would amend the rules governing three bands, the 450 MHz band, the 24.45–24.65 GHz band, and the 849–851 MHz/894–896 MHz band, to support the deployment of Unmanned Aircraft Systems (UAS), counter-UAS technologies, and expanded aviation broadband connectivity.
3	Wireline Competition	*Title:* Numbering Policies for Modern Communications (WC Docket No. 13–97); Telephone Number Requirements for IP-Enabled Service Providers (WC Docket No. 07–243); and Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources (WC Docket No. 20–67). *Summary:* The Commission will consider a Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking as an important next step in furthering the Commission's efforts to protect national security interests and to secure the nation's numbering resources against bad actors.
4	Wireline Competition	*Title:* Reforming the High-Cost Program for an All-IP Future (WC Docket No. 26–96) and Connect America Fund: A National Broadband Plan for our Future High-Cost Universal Support (WC Docket No. 10–90). *Summary:* The Commission will consider a Report and Order that would adopt a limited two-year extension of Alternative Connect America Cost Model (A–CAM I) support through December 31, 2028. A–CAM I currently provides predictable, model-based support to rural rate-of-return carriers in exchange for defined broadband deployment obligations, and this extension would prevent a loss of support for nine carriers while the Commission considers broader reforms to its high-cost support mechanisms.
5	Consumer And Governmental Affairs	*Title*: Modernizing TRS Compensation (CG Docket No. 03–123). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that takes first principles approach to compensation for Telecommunications Relay Services to ensure TRS remains available and aligned with user expectations in the rapidly changing communications landscape.
6	Space	*Title:* Amendments of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations Frequency Bands Allocated to the Fixed Satellite Service (IB Docket No. 17–95); Facilitating the Communications of Earth Stations in Motion with Non-Geostationary Orbit Space Stations (IB Docket No. 18–315). *Summary:* The Commission will consider a Third Report and Order that would expand non-geostationary orbit Earth Stations in Motion operations in the fixed-satellite service across the entire 28.35–28.6 GHz band, thereby supporting the deployment of mobile broadband services to remote and rural locations on land, as well as providing ubiquitous connectivity to ships, planes, drones, blimps, cars, and other critical on-the-go devices, thereby furthering U.S. leadership and expansion in the growing space economy.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairman may hold a news conference in which he will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Authority: This meeting is held, in accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–23467 Filed 11–16–26; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1280; FR ID 378381]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 18, 2026.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission 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.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1280.

Title: E911 Compliance for Fixed Telephony and Multi-line Telephone Systems.

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, and tribal governments.

Number of Respondents and Responses: 1,423,960 respondents; 47,526,905 responses.

Estimated Time per Response: 0.016 hours (one minute).

Frequency of Response: One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a-1, 616, 620, 621, 623, 623 note, 721, and 1471.

Total Annual Burden: 792,576 hours.

Total Annual Cost: $2,057,691.

Needs and Uses: The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911.

Efforts by federal, state, and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

Section 506 of RAY BAUM'S Act requires the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.'' RAY BAUM'S Act also states that, ''[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call . . . .'' RAY BAUM'S Act defines a ''9–1–1 call'' as a voice call that is placed, or a message that is sent by other means of communication, to a Public Safety Answering Point (PSAP) for the purpose of requesting emergency services.

As part of implementing Section 506 of RAY BAUM'S Act, on August 1, 2019, the Commission adopted a *Report and Order* (*2019 Order*) that set forth rules requiring Fixed Telephony providers and MLTS providers to ensure that dispatchable location is conveyed with 911 calls.

The Commission's *2019 Order* adopted §§ 9.8(a) and 9.16(b)(3)(i), (ii), and (iii) to facilitate the provision of automated dispatchable location. For Fixed Telephony and in fixed Multi-line

Telephone Systems (MLTS) environments, providers must provide automated dispatchable location with 911 calls. For on-premises, non-fixed devices associated with an MLTS, the MLTS operator or manager must provide automated dispatchable location to the appropriate PSAP when technically feasible; otherwise they must provide either dispatchable location based on end-user manual update, or alternative location information. For off-premises MLTS calls to 911, the MLTS operator or manager must provide automatic dispatchable location if it is technically feasible to do so. If this is not technically feasible, the MLTS operator or manager must provide either dispatchable location based on end user manual update or enhanced location information. Enhanced location information may be coordinate-based and shall consist of the best available location that can be obtained from any available technology or combination of technologies at reasonable cost. The requirements adopted in the *2019 Order* account for variance in the feasibility of providing dispatchable location for non-fixed MLTS 911 calls and the means available to provide it.

The information collection requirements associated with these rules will ensure that Fixed Telephony and MLTS providers have the means to provide 91l callers' locations to PSAPs, thus reducing response times for emergency services.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–23481 Filed 11–17–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 26–15]

TD Logistics, Inc., Complainant v. Zim American Integrated Shipping Services Co., LLC and Zim Integrated Shipping Services Ltd., Respondents; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by TD Logistics, Inc. (the ''Complainant'') against Zim American Integrated Shipping Services Co., LLC and Zim Integrated Shipping Services Ltd. (collectively, the ''Respondents''). Complainant states that the Commission has subject-matter jurisdiction over this complaint pursuant to the Shipping Act of 1984 and personal jurisdiction over Respondents as a ''common carrier'' or ''ocean common carrier,'' as those terms are defined in 46 U.S.C. 40102(7) and (18), respectively.

Complainant is a corporation organized under the laws of the state of California, with a principal place of business in Hacienda Heights, California.

Complainant identifies respondent ZIM Integrated Shipping Service Ltd. an ocean carrier with its corporate office in Haifa, Israel, whose agent in the United States is respondent Zim American Integrated Shipping Services Co. LLC, a vessel operating ocean common carrier, with its principal place of business located in Norfolk, Virginia.

Complainant alleges that Respondents violated 46 U.S.C. 41102(d)(2)(B); 41104(a)(14), (c), (d)(1); and 46 CFR 541.7(c), (d). Complainant alleges these violations arose from Respondents incorrectly invoicing Complainant for demurrage and detention charges, filing retaliatory legal action in a United States district court, refusing to meaningfully engage in dispute resolution efforts, and other acts and omissions of Respondents.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/26-15/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by November 15, 2027, and the final decision of the Commission shall be issued by May 30, 2028.

(Authority: 46 U.S.C. 41301; 46 CFR 502.61(c))

Served: November 13, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026–23411 Filed 11–17–26; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1880]

Proposed Third-Party Risk Management Guide for Traditional Community Banking Organizations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed guidance and request for comment; extension of comment period.

SUMMARY: On September 15, 2026, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** a proposed guide for traditional community banking organizations on managing risks associated with third-party relationships. The proposal provided for a comment period ending on November 16, 2026. The Board is extending the comment period for 30 days, until December 16, 2026.

DATES: The comment period for the proposed guidance published on September 15, 2026 (91 FR 58438) is extended. Comments must be received by December 16, 2026.

ADDRESSES: You may submit comments by any of the methods identified in the proposal.

FOR FURTHER INFORMATION CONTACT: Juan Climent, Deputy Associate Director, (202) 460–2180, Jeff Ernst, Manager, (202) 369–9439, Allison Boller, Lead Financial Institution Policy Analyst, (202) 253–4686, Joseph Vall-Llobera, Director of Examinations, (470) 733–1198, Division of Supervision and Regulation; or Claudia Von Pervieux, Special Counsel, (202) 469–1020, Benjamin Nuyens, Senior Counsel, (202) 909–7574, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On September 15, 2026, the Board published in the **Federal Register** a proposed guide for traditional community banking organizations on managing risks associated with third-party relationships. The proposed guide would reflect the Board's supervisory experience and lessons learned through examining community banking organizations' third-party risk management practices. In particular, the proposed guide would discuss the key risks faced by traditional community banking organizations in their third-party relationships in general and in relation to particular categories of third-party relationships most common to traditional community banking organizations.

The proposal provided for a comment period ending on November 16, 2026. Since the publication of the proposal, commenters have requested that the Board extend the comment period. An extension of the comment period will provide an additional opportunity for interested parties to consider the proposal and prepare comments. Therefore, the Board is extending the end of the comment period for the proposal from November 16, 2026, to December 16, 2026.

By order of the Board of Governors of the Federal Reserve System, acting

through the Secretary of the Board under delegated authority.

Benjamin W. McDonough,

Secretary of the Board.

[FR Doc. 2026–23417 Filed 11–17–26; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 18, 2026.

A. Federal Reserve Bank of Chicago (Christopher Koopmans, Senior Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *First Mid Bancshares, Inc., Mattoon, Illinois;* to merge with Evergreen Bancshares, Inc., St. Louis, Missouri, and thereby indirectly acquire American Bank of Freedom, Wellsville, Missouri.

B. Federal Reserve Bank of St. Louis (Winchell S. Carroll, Jr., Assistant Vice President) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *First National Bancorp, Inc., Green Forest, Arkansas;* to acquire additional voting shares, up to 8.1 percent, of Legacy Bancshares, Inc., and thereby indirectly acquire additional voting shares of Legacy Bank, both of Springdale, Arkansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–23458 Filed 11–17–26; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue, NW, Washington DC 20551–0001, not later than December 3, 2026.

A. Federal Reserve Bank of Minneapolis (Mark Nagle, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *Hugh Welle, individually and as trustee, of the Eugene Joseph Welle Irrevocable HJW Trust under agreement dated June 30, 2009, both of Bemidji, Minnesota;* to retain voting shares of First Bemidji Holding Company, and thereby indirectly retain voting shares of First National Bank of Bemidji, both of Bemidji, Minnesota. Additionally, *Hugh Welle and Paul Welle, Bemidji, Minnesot;,* to acquire voting shares of the First National Bank of Bemidji Employee Stock Ownership Plan, Bemidji, Minnesota (ESOP) by becoming co-trustees.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–23459 Filed 11–17–26; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0163; Docket No. 2026–0529; Sequence No. 1]

Information Collection; General Services Administration Acquisition Regulation; Contract Solicitation Information

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, GSA is extending a previously approved information collection regarding OMB Control Number 3090–0163 Contract Solicitation Information, without changes except for updated wage rates, until the information collection can be assessed and revised after the completion of the rulemaking related to the Revolutionary GSA Regulation (GSAR) Overhaul (RGO).

DATES: GSA will consider all comments received by January 19, 2027.

ADDRESSES: GSA invites 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 *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 3090–0163, Contract Solicitation Information. 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: Bryon Boyer, Procurement Analyst, at telephone 817–850–5580, or *GSARPolicy@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control No. 3090–0163, Contract Solicitation Information.

B. Need and Uses

GSA requires organizations desiring to do business with GSA for various supplies and services to provide procurement-related information through solicitations issued in accordance with the Federal Acquisition Regulation (FAR) Part 12, 14, 15 and 16 procedures. Using solicitation methods such as Requests for Proposals (RFP), Requests for Information (RFI), and Broad Agency Announcements (BAA), GSA requests information from prospective offerors such as pricing information, delivery schedule compliance, and evidence that the offeror has the resources (both human and financial) to accomplish requirements. Much of the solicitation information collected is covered by FAR clauses and the separate information collection approvals associated with them. Other GSA solicitation requirements call for more detailed or technical information to be provided, such as project management or sustainability plans, and drive the need for this information collection.

C. Public Comments

GSA invites the public to comment on an extension concerning contract solicitation information. GSA invites comments on: whether the proposed collection of information is necessary, 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 March 31, 2027. GSA proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

D. Annual Burden

Respondents: 338,465.
Responses per Respondent: 1.
Total Responses: 338,465.
Hours per Response: 2.
Total Burden Hours: 676,930.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division, at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0163, Contract Solicitation Information, in all correspondence.

Richard Speidel,

Deputy Chief Data Officer, General Services Administration.

[FR Doc. 2026–23428 Filed 11–17–26; 8:45 am]

BILLING CODE 6820–61–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 111162026–1111–04]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes notice of a proposed subaward from the Texas Commission on Environmental Quality (TCEQ) to Ducks Unlimited, a nonprofit organization, for the purpose of constructing a breakwater along the Gulf Intracoastal Waterway at McFaddin National Wildlife Refuge in order to prevent wetland loss, and constructing interior ditches and levees at J.D. Murphee Wildlife Management Area in order to enhance wetlands, in accordance with the FY26 RESTORE CHENIER BKT2 Award as approved in the Council's Funded Priorities List 3b (FPL).

FOR FURTHER INFORMATION CONTACT: Please send questions by email to Bridget Zachary at *bridget.zachary@restorethegulf.gov* or (504) 232–3750

SUPPLEMENTARY INFORMATION: Section 1321(t)(2)(E)(ii)(III) of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies Act of 2012* (33 U.S.C. 1321(t) and *note*) (RESTORE Act) and the Department of the Treasury's implementing regulation at 31 CFR 34.401(b) set forth certain notice and publication requirements. They require that for purposes of awards made under the Comprehensive Plan Component of the RESTORE Act, a State or Federal award recipient may make a subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds 10 percent of the total amount of the award only if at least 30 days before the State or Federal award recipient enters into such an agreement, the Council publishes in the **Federal Register** and delivers to specified Congressional committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice accomplishes the **Federal Register** publication requirement.

Description of Proposed Action

As specified in FPL 3b, which is available on the Council's website at *https://www.restorethegulf.gov/our-work/fpl/fpl-3/,* RESTORE Act funds in the amount of $15,889,993 will support the FY26 RESTORE CHENIER BKT2 Award to TCEQ. TCEQ will provide a subaward in the amount of $9,245,570 to Ducks Unlimited to construct a breakwater along the Gulf Intracoastal Waterway at McFaddin National Wildlife Refuge in order to prevent wetland loss, and construct interior ditches and levees at J.D. Murphee Wildlife Management Area in order to enhance wetlands.

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2026–23464 Filed 11–17–26; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970–0155]

Proposed Information Collection Activity; Community-Based Child Abuse Prevention Program

AGENCY: Children's Bureau, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for Public Comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the Program Instruction (PI) for the Community-Based Child Abuse Prevention (CBCAP) program (Office of Management and Budget #: 0970–0155, expiration March 31, 2027), which outlines information collection requirements pursuant to receiving a grant award. There are no changes requested to the information collection process.

DATES: Comments due January 19, 2027.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The PI, prepared in response to the enactment of CBCAP program, as set forth in Title II of the Child Abuse Prevention and Treatment Reauthorization Act of 2010 (Pub. L. 111–320) or CAPTA, provides direction to the states and territories to accomplish the purposes of the program, which includes, ''to support community-based efforts to develop, operate, expand, enhance, and coordinate initiatives, programs, and activities to prevent child abuse and neglect and to support the coordination of resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect'' and ''to foster understanding, appreciation, and knowledge'' of certain populations ''in order to be effective in preventing and treating child abuse and neglect'' (section 201(a) of CAPTA). This PI contains information collection requirements that are found in Public Law. 115–271 in sections 202, 204, and 206. The information being collected is required by statute to be submitted pursuant to receiving a grant award. There are no changes to the requirements, but the instructions have been streamlined to reduce burden, provide clarification, and improve data collection. The information submitted will be used by the agency to ensure grant recipient compliance with the statutory requirements; to monitor, evaluate, and measure grant recipients' achievements in implementing effective community-based child abuse prevention programs; and gather required data reported by the agency in compliance with the Government Performance and Results Act.

Respondents: State governments, quasi-public entities, and non-profit private agencies.

ANNUAL BURDEN ESTIMATES

Information collection	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
CBCAP Application	52	1	27	1,404
CBCAP Program Report	52	1	16	832

Estimated Total Annual Burden Hours: 2,236.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: CAPTA Reauthorization Act of 2010; Title II of CAPTA, Pub. L. 115–271 (42 U.S.C. 5116 *et seq.*).

Samantha L. Illangasekare,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–23454 Filed 11–17–26; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970–0564]

Submission for Office of Management and Budget Review; Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on the proposed information collection, including proposed changes. The request consists of several forms that will allow the Unaccompanied Alien Children Bureau (UACB) to monitor its care provider facilities for compliance with Federal and State laws and regulations, licensing and accreditation standards, ORR policies and procedures, and child welfare standards.

DATES: Comments due December 18, 2026.

ADDRESSES: The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202611-0970-005.* You can also obtain copies of the proposed collection

of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This request is for revisions to 20 existing forms in this collection, adding 14 new forms, discontinuing 34 forms, and removing two forms from the information collection.

Proposed Form Revisions

Global Revisions (Made Where Applicable)

- Change ''unaccompanied child (UC)'' to ''unaccompanied alien child (UAC)''

Executive Order 14168 Compliance

Executive Order 14168 requires agencies to use the term ''sex'' in applicable federal documents and to list male or female on forms that require an individual's sex. The following forms were updated to comply with the order:

- Incident Review Forms (Forms M–5A to M–5B)
- Home Study and Post-Release Services (HSPRS) Site Visit Guide (Form M–7E)
- Prevention of Sexual Abuse (PSA) Compliance Manager Staff Questionnaire (Form M–11K)
- UAC Questionnaire—Ages 6–12 Years Old (Form M–12A)
- UAC Questionnaire—Ages 13 and Older (Form M–12B)
- Secure Client Questionnaire (Form M–12D)
- UAC Questionnaire—Ages 5 and Under (Form M–12E)
- Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)
- Interview Guide: Random Sample of Staff Interview (Form M–17C)
- Interview Guide: Program Director (Form M–17D)
- Interview Guide: PSA Compliance Manager (Form M–17E)
- Interview Guide: Specialized Staff (Form M–17F)
- Interview Guide: Unaccompanied Alien Child (Form M–17G)

Incident Review Forms (Forms M–5A to M–5B)

- Revise instructions at beginning of the forms for clarity
- Reword several headings and questions for clarity
- Add several questions to ensure that the information the care provider submits to ORR provides a clear and complete picture of the incident

Checklist for a Child-Friendly Environment—Residential Care Provider Facility (Form M–4A)

- Reframe the checklist around applicable requirements and risk-based assessment, with clearer purpose, scope, instructions, and Yes/No/N/A response options
- Consolidate and modernize physical environment and safety requirements, reducing highly prescriptive facility features in favor of broader standards for safety, supervision, emergency preparedness, and age-appropriate environments
- Expand protections related to privacy, communication, accessibility, and individual needs, including accommodations for disabilities and more flexible approaches to residential living spaces
- Update health, hygiene, food service, recreation, transportation, and personal property provisions to reflect broader safety, sanitation, and individualized care considerations

Checklist for a Child-Friendly Environment—Non-Residential Foster Care Provider Facility (Form M–4B)

- Fundamentally change the scope of the form from an individual foster home checklist to a checklist for non-residential foster care agency service sites
- Replace home-based residential requirements with service site requirements, focusing on facility safety, supervision, emergency preparedness, accessibility, and age-appropriate service environments
- Add stronger emphasis on privacy, rights, communication, and prevention of sexual abuse, including grievance access, reporting methods, confidentiality, interpretation/translation, and accessible information
- Add or revise requirements for education/waiting areas, bathrooms, food/snacks, and transportation to reflect the functions of a non-residential service facility rather than a foster home

HSPRS Site Visit Guide (Form M–7E)

- Revise the form for clarity, consistency, and alignment with current ORR monitoring expectations
- Reorganize and expand key sections to collect more specific information about program operations, service delivery, safety practices, documentation, and compliance
- Add new content areas on program capacity, personnel onboarding and training, finance, language access, Notifications of Concern, sponsor/address flagging, subrecipient oversight, and background-check compliance
- Update the pre-site visit materials request to include more detailed documentation on policies, staff background checks, training, post-release services tools, and subrecipient monitoring

ORR-Funded Program Leadership Interview Tool (Form M–13A) and HSPRS Caseworker Interview Tool (Form M–13B)

- Update the tool titles from ''Home Study and Post-Release Services Director Questionnaire'' to ''ORR-Funded Program Leadership Interview Tool'' and from ''Home Study and Post-Release Services Caseworker Questionnaire'' to ''Home Study and Post-Release Services Caseworker Interview Tool''
- Add more structured fields for program, monitoring visit, interview, interpreter, and timing information
- Add standardized interviewer guidance for preparation, virtual interviews, interpreter use, trauma-informed practices, mandated reporting, confidentiality, and close-out
- Reorganize and clarify the questions into consistent topic areas covering role responsibilities, training, child safety, service quality, role-specific duties, and conclusion questions
- Expand child safety and incident-response questions, including abuse, maltreatment, sexual abuse/harassment, runaway incidents, trafficking, exploitation, unsafe environments, and other safety concerns
- Revise service delivery, documentation, and role-specific questions to better assess program oversight, subrecipient monitoring, case management, referrals, psychoeducation, documentation accuracy, and safeguarding information
- Fold several older broad prompts into more targeted questions on program effectiveness, service delivery, safety, compliance, and improvement opportunities

Unaccompanied Child Questionnaire—Ages 13 and Older (Form M–12B)

- Remove question asking ''Do you go on outings to parks, museums, or other places in the community? How often?'' Because this information is already asked in the broader, preceding question asking what activities the child does outside of school

Supplemental Personnel and Volunteer List (Form M–7A)

- Add the following new columns:
  - Sex Offender Registry Check (SORC) via U.S. Department of Justice National Sex Offender Public website Clearance/Passed Date
  - Background Check Issues

Supplement to Personnel File Checklist (Form M–10B)

- Add ''Name of Reviewer'' field
- Add the following new columns:
  - Date passed/cleared SORC via US DOJ National Sex Offender Public website
  - Notes

New Forms

- *PSA Quarterly Report (Form M–18):* This instrument is used by care providers to share with ORR quarterly PSA data on incidents and allegations of sexual abuse and sexual harassment as required under 45 CFR 411.102(c).
- *Business Owner Site Visit Report (Form M–19):* This instrument is used by contract business owners to conduct quarterly site visits for care provider facilities funded under a contract and document their observations and child interview responses.
- *HSPRS Interview Tools:* These tools will allow ORR to conduct interviews that are tailored specifically for monitoring HSPRS providers.
  - HSPRS Supervisory Caseworker Interview Tool (Form M–13F)
  - HSPRS Discharged Child-Sponsor Interview Tool (Form M–13G)
  - HSPRS Quality Assurance Staff Interview Tool (Form M–13H)
  - HSPRS Subrecipient Staff Interview Tool (Form M–13I)
- *Advisory Terminations List (Form M–24):* This tool will be used to collect information from ORR-funded care providers and HSPRS providers about current and former staff, subrecipients, contractors, and volunteers who were terminated, or who resigned when they otherwise would have been terminated, in connection with substantiated child-safety, conduct, or investigation-related allegations. Covered offenses include physical abuse, verbal or emotional abuse, neglect, medical neglect, sexual abuse, sexual harassment, staff code of conduct or boundary violations, inappropriate sexual behavior, retaliation, and interference with an investigation into any of those matters. ORR will use this information to promote safe care settings by helping ORR-funded providers make informed hiring decisions about individuals who have engaged in child abuse, neglect, or related misconduct involving children in ORR care. ORR will provide individual notice before using a person's placement on the list for provider vetting, and that notice will explain the process for challenging placement.
- *Child-Friendly Question Guides:* These tools are used by ORR Federal Field Specialists (FFS) to document site visit observations and interview responses.
  - Child-Friendly Question Guide—Ages 4 to 6 (Form M–25A)
  - Child-Friendly Question Guide—Ages 7 to 12 (Form M–25B)
  - Child-Friendly Question Guide—Ages 13 to 17 (Form M–25C)

  The Monitoring and Compliance Bureau (MCB) plans to move all their forms into a single web-based application (Monitoring & Compliance App). The forms will also be revised to use focused, compliance-based questions and document requests that will align with ORR's new monitoring standards.

  Forms with multiple versions will be consolidated into a single tool. Each tool will populate relevant fields based on program type, level of care, and interviewee role, as applicable.

  Thus far, four tools have been developed for the web-based application for programs with the following levels of care: shelter, transitional foster care, long-term foster care (LTFC), and group home. Word/Excel versions of these four tools will continue to be used for other levels of care until they can be incorporated into the web-based versions in the app. As more tools are developed, ORR will submit additional requests for approval.
- *Monitoring & Compliance Core Application Elements (Form M–20):* This web-based tool is used by ORR federal and contractor monitors during monitoring visits to document site visit information, including but not limited to visit dates, participants, and findings.
- *Monitoring Site Assessment (Form M–21):* This web-based tool is used by ORR federal and contractor monitors during monitoring visits to document observations from the onsite portion of the review, including facility walk-throughs and assessment of whether observed conditions comply with ORR's monitoring measures. The site assessment supports standardized documentation of onsite monitoring findings and helps align monitoring observations with ORR's newly developed compliance-based monitoring measures.
- *Monitoring File Checklists (Form M–22):* This web-based tool is used by ORR federal and contractor monitors during monitoring visits to document review of required program files. The tool consolidates multiple Word and Excel file checklist instruments into one web-based tool. The tool includes three sub-tools: the Child File Checklist, Staff File Checklist, and Foster Parent File Checklist.
- *Monitoring Interviews (Form M–23):* This web-based tool is used by ORR federal and contractor monitors to conduct and document interviews during monitoring visits. The tool consolidates the previously approved program staff questionnaires, child questionnaires, foster parent questionnaire, and stakeholder/service provider questionnaires into one web-based interview tool. The tool includes four sub-tools: Child Interview, Staff Interview, Foster Parent Interview, and Stakeholder Interview. The staff interview sub-tool includes interview types such as case manager, clinician, educator, independent living skills coordinator, medical staff, ORR-funded leadership, PSA compliance manager, youth care worker, and interpreter; the stakeholder interview sub-tool includes case coordinator, child advocate, legal service provider, and state licensing representative.

Discontinued Forms

- *FFS Compliance and Safety Site Visit Report (Form M–3A):* ORR proposes discontinuing this instrument. ORR plans to replace this site visit report with the new set of Child-Friendly Question Guides (Forms M–25A to M–25C).
- *Out-of-Network Site Visit Report (Form M–3B):* ORR proposes discontinuing this instrument. Form M–3B was developed for the UAC Path system, which was never implemented, and Form M–3B was never used.
- *Remote Site Visit Guides:* ORR proposes discontinuing two versions of the Site Visit Guide that were created for remote monitoring visits. These versions were created in response to the COVID–19 pandemic and are no longer used.
  - Remote Monitoring Site Visit Guide (Form M–7B)
  - LTFC Remote Site Visit Guide (Form M–7D)
- *Foster Care Program Checklist and Questionnaires:* ORR proposes discontinuing the following monitoring tools that were used for foster care programs. These tools have been replaced by the new web-based Monitoring File Checklists (Form M–22) and Monitoring Interviews (Form M–23) tools.

- Foster Parent Checklist (Form M–10D)
- Foster Care Program Director Questionnaire (Form M–11B)
- Foster Care Case Manager Questionnaire (Form M–11F)
- Foster Care Clinician Questionnaire (Form M–11D)
- Foster Care Education Questionnaire (Form M–11H)
- Foster Care Home Finder Questionnaire (Form M–11M)
- Foster Care Independent Living Life Skills Staff Questionnaire (Form M–11N)
- Foster Care Foster Parent Questionnaire (Form M–11O)
- LTFC Client (Child) Questionnaire (Form M–12C)
- Foster Care Legal Service Provider Questionnaire (Form M–13D)

• *Unlicensed Facility Tools:* ORR proposes discontinuing the following monitoring tools developed for monitoring unlicensed (also known as delicensed) facilities. These tools are no longer used.

- Unlicensed Facility Monitoring Notes (Form M–6A–UF)
- Unlicensed Facility LTFC Monitoring Notes (Form M–6C–UF)
- Unlicensed Facility Site Visit Guide (Form M–7A–UF)
- Unlicensed Facility Unaccompanied Child Case File Checklist (Form M–8A–UF)
- Unlicensed Facility Foster Care Unaccompanied Child Case File Checklist (Form M–8B–UF)
- Unlicensed Facility Staff Secure Addendum to Case File Checklist (Form M–8D–UF)
- Unlicensed Facility Personnel File Checklist (Form M–10A–UF)
- Unlicensed Facility Program Director Questionnaire (Form M–11A–UF)
- Unlicensed Facility Clinician Questionnaire (Form M–11C–UF)
- Unlicensed Facility Case Manager (Form M–11E–UF)
- Unlicensed Facility Education Staff Questionnaire (Form M–11G–UF)
- Unlicensed Facility Medical Coordinator Questionnaire (Form M–11I–UF)
- Unlicensed Facility Youth Care Worker (Form M–11J–UF)
- Unlicensed Facility PSA Compliance Manager Staff Questionnaire (Form M–11K–UF)
- Unlicensed Facility Interpreter Questionnaire (Form M–11P–UF)
- Unaccompanied Child Questionnaire—Ages 6–12 Years Old—Unlicensed Facility Quarterly Health and Safety Visit (Form M–12A–UF and M–12As-UF)
- Unaccompanied Child Questionnaire—Ages 13 and Older—Unlicensed Facility Quarterly Health and Safety Visit (Form M–12B–UF and M–12Bs-UF)
- Unaccompanied Child Questionnaire—Ages 5 and Under—Unlicensed Facility Quarterly Health and Safety Visit (Form M–12E–UF and M–12Es-UF)
- Legal Service Provider Questionnaire—Unlicensed Facility Quarterly Health and Safety Visit (Form M–13C–UF)
- Case Coordinator Questionnaire—Unlicensed Facility Quarterly Health and Safety Visit (Form M–13E–UF)

Forms Removed From Information Collection

ORR proposes removing the following forms from this information collection. Contractor monitors no longer complete these checklists; only Federal monitoring staff do. ORR is already approved to collect the personnel files that Federal staff review when completing the checklists through its Site Visit Guide forms (Forms M–7A through M–7G). Therefore, these checklists no longer require Paperwork Reduction Act (PRA) clearance.

- HSPRS Personnel File Checklist (Form M–10C)
- Influx Care Facility Personnel File Checklist (Form M–10E)

Respondents: ORR-funded grantees and contractors, foster parents, and unaccompanied alien children

Annual Burden Estimates:

The proposed revisions result in a 44.95 percent decrease in burden compared to the currently approved information collection.

The revised burden estimate reflects the following changes:

- A decrease in the number of care provider facilities;
- A four-hour reduction in the time it takes to complete Site Assessment (also known as Monitoring Notes);
- Removal of several forms, including:
  - Word/Excel monitoring tools that are no longer used or have been consolidated into the web-based monitoring and compliance app
  - Remote visits versions of the Site Visit Guide monitoring tool
  - An out-of-network site visit report that was developed for another system and never used
  - Checklists that no longer require PRA clearance because they are completed by Federal staff only
- Changes in site visit frequency, including:
  - Increasing the frequency of comprehensive site visits to licensed care providers from biennially to annually
  - Decreasing the frequency of comprehensive and follow-up site visits to delicensed care providers from biennially with quarterly follow-up visits to annually with a six-month follow-up visit (visits may temporarily revert to quarterly during an influx)
  - Introducing additional quarterly site visits for care provider facilities funded under a contract
- The addition of new forms, including:
  - HSPRS interview tools
  - PSA Quarterly Report
  - Business Owner Site Visit Report
  - Advisory Terminations List
  - Child-Friendly Question Guides
  - Monitoring & Compliance Application tools

Respondents: Respondents include unaccompanied alien children, ORR care provider affiliated foster parents, care provider facilities, HSPRS providers, legal service providers, child advocates, case coordinators, and state licensing representatives.

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Corrective Action Report (Form M–1)—Licensed Facility and Ad Hoc Visits	120	1.00	5.00	600.00
Corrective Action Report (Form M–1)—Delicensed Facility Visits	90	2.00	5.00	900.00
Corrective Action Report (Form M–1)—Emergency Influx Facility (EIF) Visits	8	4.00	5.00	160.00
Checklists for a Child-Friendly Environment (Forms M–4A to M–4B)	155	6.00	0.25	232.50
Incident Reviews (Forms M–5A to M–5B)	155	0.73	2.00	226.30
Site Visit Guide (Form M–7A)—Licensed Facility & Ad Hoc Visits	45	1.00	13.00	585.00
Site Visit Guide (Form M–7A)—Delicensed Facility Visits	37	2.00	13.00	962.00

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Foster Care Site Visit Guide (Form M–7C)—Licensed Facility	75	1.00	6.00	450.00
Foster Care Site Visit Guide (Form M–7C)—Delicensed Facility Visits	8	2.00	6.00	96.00
HSPRS Site Visit Guide (Form M–7E)	25	1.00	6.00	150.00
Influx Care Facility Site Visit Guide (Form M–7G)	2	4.00	15.00	120.00
Program Staff Questionnaires (Forms M–11A to M–11K)—Licensed Facility	14	1.00	1.00	14.00
Program Staff Questionnaires (Forms M–11A to M–11K)—Delicensed Facility Visits	14	2.00	1.00	28.00
Program Staff Questionnaires (Forms M–11A to M–11K)—EIF Visits	14	4.00	1.00	56.00
Secure Detention Officer Questionnaire (Form M–11L)	1	1.00	1.00	1.00
Interpreter Questionnaire (Form M–11P)—Licensed Facility	2	1.00	0.50	1.00
Interpreter Questionnaire (Form M–11P)—Delicensed Facility Visits	2	2.00	0.50	2.00
Interpreter Questionnaire (Form M–11P)—EIF Visits	2	4.00	0.50	4.00
Unaccompanied Child Questionnaires (Forms M–12A to M–12B & M–12E)—Licensed Facility Visits	10	1.00	0.50	5.00
Unaccompanied Child Questionnaires (Forms M–12A to M–12B & M–12E)—Delicensed Facility Visits	10	2.00	0.50	10.00
Unaccompanied Child Questionnaires (Forms M–12A to M–12B & M–12E)—EIF Visits	10	4.00	0.50	20.00
Secure Client Questionnaire (Form M–12D)	5	1.00	0.50	2.50
ORR-Funded Program Leadership Interview Tool (Form M–13A)	25	1.00	1.00	25.00
HSPRS Caseworker Interview Tool (Form M–13B)	25	1.00	1.00	25.00
HSPRS Supervisory Caseworker Interview (Form M–13F)	25	1.00	1.00	25.00
HSPRS Discharged Child-Sponsor Interview (Form M–13G)—Sponsor	75	1.00	1.00	75.00
HSPRS Discharged Child-Sponsor Interview (Form M–13G)—Child	75	1.00	1.00	75.00
HSPRS Quality Assurance Staff Interview (Form M–13H)	25	1.00	1.00	25.00
HSPRS Subrecipient Staff Interview (Form M–13I)	75	1.00	1.00	75.00
Legal Service Provider Questionnaire (Form M–13C)—Licensed Facility	2	1.00	1.00	2.00
Legal Service Provider Questionnaire (Form M–13C)—Delicensed Facility Visits	2	2.00	1.00	4.00
Legal Service Provider Questionnaire (Form M–13C)—EIF Visits	2	4.00	1.00	8.00
Case Coordinator Questionnaire (Form M–13E)—Licensed Facility	2	1.00	1.00	2.00
Case Coordinator Questionnaire (Form M–13E)—Delicensed Facility Visits	2	2.00	1.00	4.00
Case Coordinator Questionnaire (Form M–13E)—EIF Visits	2	4.00	1.00	8.00
Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)	60	1.00	4.00	240.00
Instructions for Site Visit and Facility Tour (Form M–17B)	60	1.00	2.00	120.00
Interview Guide: Random Sample of Staff Interview (Form M–17C)	240	1.00	1.00	240.00
Interview Guide: Program Director (Form M–17D)	60	1.00	1.00	60.00
Interview Guide: PSA Compliance Manager (Form M–17E)	60	1.00	1.00	60.00
Interview Guide: Specialized Staff (Form M–17F)	120	1.00	1.00	120.00
Interview Guide: Unaccompanied Alien Child (Form M–17G)	600	1.00	0.50	300.00
PSA Audit Corrective Action Report (Form M–17H)	60	1.00	1.00	60.00
PSA Quarterly Report (Form M–18)	155	4.00	1.50	930.00
Business Owner Site Visit Report (Form M–19)	60	1.00	0.75	45.00
Advisory Terminations List (Form M–24)	180	2.00	0.50	180.00
Child-Friendly Question Guides (Forms M–25A to M–25C)	3,720	1	1	3,720.00
Monitoring Interview (Form M–23)—Child—Licensed Facility & Ad Hoc Visits	590	1.00	1.00	590.00
Monitoring Interview (Form M–23)—Child—Delicensed Facility Visits	265	2.00	1.00	530.00
Monitoring Interview (Form M–23)—Staff—Licensed Facility & Ad Hoc Visits	1,062	1.00	1.00	1,062.00
Monitoring Interview (Form M–23)—Staff—Delicensed Facility Visits	477	2.00	1.00	954.00
Monitoring Interview (Form M–23)—Foster Parent—Licensed Facility & Ad Hoc Visits	176	1.00	1.00	176.00
Monitoring Interview (Form M–23)—Foster Parent—Delicensed Facility Visits	38	2.00	1.00	76.00
Monitoring Interview (Form M–23)—Stakeholder—Licensed Facility & Ad Hoc Visits	472	1.00	0.75	354.00
Monitoring Interview (Form M–23)—Stakeholder—Delicensed Facility Visits	212	2.00	0.75	318.00
Estimated Annual Burden Hours Total	.....	.....	.....	15,113.30

PSA AUDITOR CONTRACTORS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)	8	7.50	3.00	180.00
Instructions for Site Visit and Facility Tour (Form M–17B)	8	7.50	1.00	60.00
Interview Guide: Random Sample of Staff Interview (Form M–17C)	8	30.00	1.00	240.00
Interview Guide: Program Director (Form M–17D)	8	7.50	1.00	60.00
Interview Guide: PSA Compliance Manager (Form M–17E)	8	7.50	1.00	60.00
Interview Guide: Specialized Staff (Form M–17F)	8	15.00	1.00	120.00
Interview Guide: Unaccompanied Alien Child (Form M–17G)	8	75.00	0.50	300.00
PSA Audit Corrective Action Report (Form M–17H)	8	7.50	2.00	120.00
Estimated Annual Burden Hours Total				1,140.00

DELICENSED FACILITY MONITOR CONTRACTORS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Corrective Action Report (Form M–1)	19	9.47	5.00	899.65
Site Visit Guide Tool (Form M–7A)	19	3.89	29.00	2,143.39
Foster Care Site Visit Guide (Form M–7C)	19	0.84	21.00	335.16
Personnel File Checklist (Form M–10A)	19	0.63	1.00	11.97
Supplement to Personnel File Checklist (Form M–10B)	19	0.63	1.00	11.97
Program Staff Questionnaires (Forms M–11A to M–11K)	19	1.47	1.00	27.93
Interpreter Questionnaire (Form M–11P)	19	0.21	0.50	2.00
Unaccompanied Child Questionnaires (Forms M–12A to M–12B & M–12E)	19	1.05	0.50	9.98
Legal Service Provider Questionnaire (Form M–13C)	19	0.21	1.00	3.99
Case Coordinator Questionnaire (Form M–13E)	19	0.21	1.00	3.99
Monitoring & Compliance Core Application Elements (Form M–20)	19	4.74	0.75	67.55
Monitoring Site Assessment (Form M–21)	19	2.26	8.00	343.52
Monitoring Interview (Form M–23)—Child	19	27.89	1.00	529.91
Monitoring Interview (Form M–23)—Staff	19	50.21	1.00	953.99
Monitoring Interview (Form M–23)—Foster Parent	19	4.00	1.00	76.00
Monitoring Interview (Form M–23)—Stakeholder	19	22.32	0.75	318.06
Monitoring File Checklist (Form M–22)—Child	19	13.58	6.00	1,548.00
Monitoring File Checklist (Form M–22)—Staff	19	13.58	1.00	258.00
Monitoring File Checklist (Form M–22)—Foster Parent	19	2.84	1.00	54.00
Estimated Annual Burden Hours Total				7,599.06

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; 45 CFR part 410; 45 CFR part 411; *Flores* v. *Reno Settlement Agreement,* No. CV85–4544–RJK (C.D. Cal. 1996)

Samantha L. Illangasekare,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–23460 Filed 11–17–26; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–P–3202]

Determination That BROMFED–DM (Brompheniramine Maleate; Dextromethorphan Hydrobromide; Pseudoephedrine Hydrochloride) Syrup, 2 Milligrams/5 Milliliters; 10 Milligrams/5 Milliliters; 30 Milligrams/5 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 milligrams (mg)/5 milliliters (mL); 10 mg/5 mL; 30 mg/5 mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, *Stacy.Kane@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and

Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, is the subject of ANDA 088811, held by Pharmobedient Consulting LLC, and initially approved on June 07, 1985. BROMFED–DM is indicated for relief of coughs and upper respiratory symptoms, including nasal congestion, associated with allergy or the common cold.

In a letter dated January 8, 2026, Pharmobedient Consulting LLC notified FDA that BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book.

Steranco Healthcare Pvt. Ltd. submitted a citizen petition dated March 26, 2026 (Docket No. FDA–2026–P–3202), under 21 CFR 10.30, requesting that the Agency determine whether BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list BROMFED–DM (brompheniramine maleate; dextromethorphan hydrobromide; pseudoephedrine hydrochloride) syrup, 2 mg/5 mL; 10 mg/5 mL; 30 mg/5 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–23414 Filed 11–17–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA–2026–N–9703]

Salerno Pharmaceuticals; Proposal To Withdraw Approval of a New Drug Application for Flolipid Suspension, 20 Milligrams/5 Milliliters and 40 Milligrams/5 Milliliters; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency) Center for Drug Evaluation and Research (CDER) is proposing to withdraw approval of new drug application (NDA) 206679 for Flolipid suspension, 20 milligrams (mg)/5 milliliters (mL) and 40 mg/5 mL and is announcing an opportunity for the NDA holder, Salerno Pharmaceuticals, 2431 East 61st St., Suite 300, Tulsa, OK 74136, to request a hearing on this proposal. The basis for the proposal is that Salerno Pharmaceuticals has repeatedly failed to file required annual reports for NDA 206679.

DATES: The NDA holder may submit a request for a hearing by December 18, 2026. Submit all data, information, and analyses upon which the request for a hearing relies by January 19, 2027. Submit electronic or written comments by January 19, 2027.

ADDRESSES: The request for a hearing may be submitted by the NDA holder by either of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to submit your request for a hearing. Comments submitted electronically to *https://www.regulations.gov,* including any attachments to the request for a hearing, will be posted to the docket unchanged.

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.
- Because your request for a hearing will be made public, you are solely responsible for ensuring that your request 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. The request for a hearing must include the Docket No FDA–2026–N–9703 for ''Salerno Pharmaceuticals; Proposal To Withdraw Approval of a New Drug Application for Flolipid Suspension, 20 Milligrams/5 Milliliters and 40 Milligrams/5 Milliliters; Opportunity for a Hearing.'' The request for a hearing will be placed in the docket and publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

The NDA holder may submit all data and analyses upon which the request for a hearing relies in the same manner as the request for a hearing except as follows:

- Confidential Submissions—To submit any data analyses with confidential information that you do not wish to be made publicly available, submit your data and analyses only as a written/paper submission. You should submit two copies total of all data and analyses. 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 any decisions on this matter. 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* or available at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday. Submit both copies to the Dockets Management Staff. Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law.

Comments Submitted by Other Interested Parties: For all comments submitted by other interested parties, submit comments 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–2026–N–9703 for ''Salerno Pharmaceuticals; Proposal To Withdraw Approval of a New Drug Application for Flolipid Suspension, 20 Milligrams/5 Milliliters and 40 Milligrams/5 Milliliters; Opportunity for a Hearing.'' 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 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: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The holder of an approved NDA to market a new drug for human use is required to submit annual reports to FDA concerning its approved NDA under § 314.81 (21 CFR 314.81). Salerno Pharmaceuticals has repeatedly failed to submit the required annual reports and has not responded to the Agency's request for submission of the reports.

Therefore, notice is given to Salerno Pharmaceuticals, 2431 East 61st St., Suite 300, Tulsa, OK 74136, the holder of the approved NDA 206679 for Flolipid suspension, 20 mg/5 mL and 40 mg/5 mL, and to all other interested persons that the Director of CDER

proposes to issue an order, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)), withdrawing approval of this NDA and all amendments and supplements thereto on the grounds that the NDA holder has failed to submit reports required under § 314.81.

In accordance with section 505 of the FD&C Act and part 314 (21 CFR part 314), the NDA holder is hereby provided an opportunity for a hearing to show why the approval of the NDA listed previously should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by this NDA.

An NDA holder who decides to seek a hearing must file the following: (1) a written notice of participation and request for a hearing (see **DATES** and **ADDRESSES**) and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see **DATES** and **ADDRESSES**). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, the information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an NDA holder to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that NDA holder not to avail itself of the opportunity for a hearing concerning CDER's proposal to withdraw approval of the NDA and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the NDA, and the drug products may not thereafter be lawfully introduced or delivered for introduction into interstate commerce. Any new drug product introduced or delivered for introduction into interstate commerce without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If a request for a hearing is not complete or is not supported, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in two copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https://www.regulations.gov*.

This notice is issued under section 505(e) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs.

Michael Davis,

Director Center for Drug Evaluation and Research.

[FR Doc. 2026–23413 Filed 11–17–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Catastrophic Health Emergency Fund (CHEF) Fiscal Year 2027 Threshold

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the Catastrophic Health Emergency Fund (CHEF) threshold established at $20,258 for Fiscal Year 2027 CHEF requests.

SUPPLEMENTARY INFORMATION: The Indian Health Service (IHS) administers the CHEF pursuant to section 202 of the Indian Health Care Improvement Act (IHCIA). The purpose of the CHEF is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service. The CHEF was established by section 202 of the IHCIA, Public Law 94–437 (25 U.S.C. § 1621a). The Patient Protection and Affordable Care Act, Public Law 111–148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152 (collectively, the Affordable Care Act or ''the ACA''), reauthorized the IHCIA and amended the CHEF, directing the Secretary to promulgate regulations governing the administration of the CHEF. The final CHEF regulation (2024–19421 (89 FR 70527)) was published on August 30, 2024, in the **Federal Register**, establishing the threshold cost of $19,000 for Fiscal Year (FY) 2024. See 42 CFR § 136.503(a). The threshold amount in subsequent years is calculated from the threshold amount of the previous year, and increased by the percentage increase in the medical care expenditure category of the Consumer Price Index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year. See 42 CFR 136.503(b). The Consumer Price Index is released monthly. For FY 2027, ''December of the previous year'' is December 2025, because December 2026 is part of FY 2027. The ''12-month period ending with December of the previous year'' is therefore December 2024 to December 2025. The medical care expenditure category for this 12-month period was 3.2%, thereby increasing the threshold from $19,630 for FY 2026 to $20,258 for FY 2027 CHEF requests. See *https://www.federalregister.gov/documents/2026/03/12/2026-04827/catastrophic-health-emergency-fund-chef-fiscal-year-2026-threshold* for the FY 2026 CHEF Threshold Notice.

Mark Cruz,

Director, Indian Health Service.

[FR Doc. 2026–23466 Filed 11–17–26; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

30-Day Proposed Information Collection: Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on a new information collection titled, ''Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions,'' Office of Management and Budget (OMB), Control Number 0917–0028. The purpose of this notice is to announce the IHS's intent to submit this information collection to OMB and to allow 30 days for public comment to be sent directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS_FRDOC_0001-0293).

DATES: December 18, 2026. Any comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Randolph Beasley, Director, Division of Personnel Security and Eligibility, by one of the following methods:

- *Mail:* Indian Health Service, HQ 5600 Fishers Ln 6NEH03, Rockville, MD 20852.
- *Phone:* 301–204–6488.
- *Email: Randolph.Beasley@ihs.gov.*

SUPPLEMENTARY INFORMATION: The IHS is submitting the proposed information collection to OMB for review, as required by section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995. This notice is soliciting comments from members of the public and affected agencies as required by 44 U.S.C. 3506(c)(2)(A) concerning the proposed collection of information to: (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; (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 collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

The Agency's 60-day notice (90 FR 41585) soliciting comments on the information collection was published in the **Federal Register** on August 26, 2025. No comments were received.

Title of Proposal: Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions.

Type of Information Collection Request: Reinstatement, without revision, of information collection, 0917–0028, Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions. There are no program changes or adjustments in burden hours.

OMB Control Number: 0917–0028.

Need and Use of Information Collection: This is a request for approval of the collection of information as required by section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law (Pub. L.) 101–630, 104 Stat. 4544, 4551, codified as amended at 25 United States Code (U.S.C.) § 3207; the Crime Control Act of 1990, Pub. L. 101–647, title II, subtitle E, section 231, 104 Stat. 4789, 4808, codified as amended at 34 U.S.C. 20351 (formerly codified at 42 U.S.C. 13041, which was transferred to 34 U.S.C. 20351); and 42 CFR part 136, subpart K.

The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment, in a position having regular contact with, or control over, Indian children. 25 U.S.C. 3207(a)(1) and (2). Section 3207(a)(3) of Title 25 requires regulations prescribing the minimum standards of character for individuals appointed to positions involving regular contact with, or control over, Indian children, and section 3207(b) provides that such standards shall ensure that no such individuals have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

In addition, 34 U.S.C. 20351 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 to assure that all existing and newly hired employees undergo a criminal history background check. The background investigation is to be initiated through the personnel program of the applicable Federal agency. 34 U.S.C. 20351(b)(1)(C). The statute requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision of child care services to children under the age of 18, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so, requiring a description of the disposition of the arrest or charge. 34 U.S.C. 20351(d)(1).

Status of the Proposed Information Collection:

Form(s): Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions.

Agency Form Numbers: OF 306.

Members of Affected Public: Individuals and households.

The table below provides: Type of data collection instrument, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden responses (in hours)
Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions (OMB 0917–0028)	3,000	1	12/60	600
Total	3,000			600

There are no direct costs to respondents to report.

Mark Cruz,

Director, Indian Health Service.

[FR Doc. 2026–23468 Filed 11–17–26; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Reproductive Science and Neonatology.
Date: December 9, 2026.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Thomas John O'Farrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3473, *ofarrelltj@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments.
Date: December 9–10, 2026.
Time: 9:00 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809 C, Bethesda, MD 20892, (301) 451–0359, *mukesh.kumar3@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–ES–25–002 Panel B: Environmental Health Sciences Core Centers Program (P30 Clinical Trials Optional).
Date: December 9, 2026.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Zhihong Shan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Vaccine Development.
Date: December 9, 2026.
Time: 9:30 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, *anne-sophie.wattiez@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Collaborative International Research Project Applications (PF5).
Date: December 9, 2026.
Time: 9:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Guillermo Andres Bermejo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5742, *bermejog@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Transmission of Vector-Borne and Zoonotic Diseases.
Date: December 9, 2026.
Time: 10:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Uma Basavanna, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–1398, *uma.basavanna@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–MH–25–105: BRAIN Initiative: Production and distribution facilities for brain cell type-specific access reagents.
Date: December 9, 2026.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Jennifer Kielczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *jennifer.kielczewski@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychopathology, Substance Use, and Aging.
Date: December 9, 2026.
Time: 11:00 a.m. to 9:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Benjamin Greenberg Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Computing, Devices, and Bioengineering.
Date: December 9, 2026.
Time: 1:00 p.m. to 9:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Sudhirkumar U. Yanpallewar, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–5000, *yanpalls@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Preclinical Neurodegeneration.
Date: December 9, 2026.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Meeting Format: Virtual Meeting.
Contact Person: Ashley Marie Kopec, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–9293, *kopecam@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 13, 2026.

Margaret Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23418 Filed 11–17–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA:OD–24–007: Predoctoral to Postdoctoral Fellow Transition Award in Down Syndrome for the INCLUDE Project.

Date: December 9, 2026.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bukhtiar H. Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Drug development for Alzheimer's and neurological diseases, and bioengineering technologies.

Date: December 9, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Frederique Yiannikouris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3313, *frederique.yiannikouris@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health Services and Systems.

Date: December 9, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Chiu fang Chou, DRPH Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451–3091, *chiu-fang.chou@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Promotion for Mental Health and Substance Use: Assessment and Implementation Studies in Clinical, School, and Community Settings.

Date: December 9, 2026.

Time: 10:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808 Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Contracts: Immune Mechanisms of Protection Against Mycobacterium Tuberculosis Center (IMPAc-TB)

Date: December 9, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892 (240) 402–8633, *yong.gao@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology and Population Health

Date: December 9, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Helena Eryam Dagadu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137 Bethesda, MD 20892. (301) 451–6273, *dagaduhe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–ES–25–002 Panel C: Environmental Health Sciences Core Centers Program (P30 Clinical Trials Optional).

Date: December 10, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Dmitri V. Gnatenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *gnatenkod2@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomedical Sensing, Instrumentation and Measurement.

Date: December 10, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Steven A. Ripp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 594–3010, *steven.ripp@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Immunotherapy.

Date: December 10, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: High Priority HIV and Substance Use Research.

Date: December 10, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kristina S. Wickham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892, (301) 761–5390, *kristina.wickham@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Training in Rheumatic Disease.

Date: December 10, 2026.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Melinda H. Krick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 808G, Bethesda, MD 20892, (301) 435–1199, *krickmh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 16, 2026.

Sterlyn H. Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23449 Filed 11–17–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2026–1090]

Notice of Revised National Environmental Policy Act Implementing Procedures

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Department of Homeland Security (DHS or Department) is updating DHS Directive

023, Implementation of the National Environmental Policy Act, which establishes procedures for complying with the National Environmental Policy Act (NEPA). This update is necessary in light of the recent rescission of the Council on Environmental Quality's NEPA implementing regulations, which DHS's procedures were designed to supplement. In addition, the update incorporates provisions from the Fixing America's Surface Transportation Act, the Infrastructure Investment and Jobs Act; and the Fiscal Responsibility Act of 2023 related to the environmental review process. The updated Directive promotes collaboration and efficiencies in the implementation of NEPA and modernizes the processes and procedures for environmental review. This update enables DHS to conduct coordinated, consistent, predictable, and timely environmental reviews, thus reducing unnecessary burdens and delays. The draft Directive is being made available for public review and comment. These comments will inform development of the final Directive. Upon finalization, the Directive will rescind DHS Directive 023–01, Rev 01 and DHS Instruction 023–01–001–01, Rev 01 which were issued in 2014.

DATES: Comments must be submitted by December 18, 2026. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit your comments on the draft Directive, identified by DHS docket number DHS–2026–1090, electronically at *http://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments submitted in a manner other than as listed above, including emails or letters sent to the Department's officials, may not receive a response from the Department. DHS is not accepting mailed comments at this time. If you cannot submit your comment using *http://www.regulations.gov,* please see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Instructions: All comment submissions must include the agency name, docket name, and docket number (DHS–2026–1090). Generally, all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Therefore, you may wish to limit the amount of personal information that you provide. DHS may withhold information provided in comments from public viewing that DHS determines may impact the privacy of an individual or is offensive.

Docket: For access to the docket and to read the draft Directive, background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. DHS–2026–1090. The draft Directive will also be available at *www.dhs.gov/nepa.*

FOR FURTHER INFORMATION CONTACT: Victoria Porto, Executive Director, Energy & Environment Division; email: *eed-ep@hq.dhs.gov,* telephone: (202) 714–8525.

SUPPLEMENTARY INFORMATION:

I. Background

A. Need for This Action

The National Environmental Policy Act, as amended, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. 42 U.S.C. 332(2)(C). The Council on Environmental Quality (CEQ) previously issued regulations at 40 CFR parts 1500–1508 (CEQ regulations) implementing NEPA that were binding on Federal agencies. On April 19, 2006, the Department of Homeland Security (DHS or the Department) issued Directive 5100.1, to establish the policies and procedures that DHS would use to comply with NEPA and CEQ's then operative regulations. 71 FR 16790 (Apr. 4, 2006). In 2014, DHS rescinded Directive 5100.1 and in its place issued a new internal Directive and Instruction Manual. 79 FR 70538 (Nov. 26, 2014). These documents establish the Department's current internal procedures for complying with NEPA.

Several recent developments now require DHS to revise its NEPA procedures. First, CEQ's NEPA implementing regulations were rescinded effective April 11, 2025; *see Removal of National Environmental Policy Act Implementing Regulations,* 90 FR 10610, Feb. 25, 2025). CEQ's action was necessitated by and consistent with Executive Order (E.O.) 14154, *Unleashing American Energy* (90 FR 8353, Jan. 29, 2025), in which President Trump rescinded President Carter's E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality* (42 FR 26967, May 24, 1977), which was the basis CEQ had invoked for its authority to issue regulations. DHS's NEPA implementing procedures, which were a supplement to, and relied on, those CEQ regulations, thus stand in need of fundamental revision. President Trump in E.O. 14154 further directed agencies to revise their NEPA implementing procedures consistent with the E.O., including its direction to CEQ to rescind its regulations.

In addition, Congress recently amended NEPA in significant part, in the Fiscal Responsibility Act of 2023 (FRA), Public Law 118–5, signed on June 3, 2023, in which Congress added substantial detail and direction in Title I of NEPA, including in particular on procedural issues that CEQ and individual agencies had previously addressed in their own procedures. DHS recognized the need to update its procedures in light of these legislative changes but had been awaiting CEQ action before updating its procedures. *See* 40 CFR 1507.3(c) (2024). With CEQ's regulations now rescinded, DHS must update its NEPA procedures to account for this change.

Finally, the Supreme Court on May 29, 2025 issued its decision in *Seven County Infrastructure Coalition* v. *Eagle County, Colorado,* 605 U.S. 168 (2025), in which the Supreme Court described the ''transform[ation]'' of NEPA from its roots as ''a modest procedural requirement,'' into a significant ''substantive roadblock'' that ''paralyze[s]'' ''agency decision making.'' *Id.* at 173, 183. The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a ''course correction'' mandating that courts give ''deference'' to reasonable agency conclusions underlying its NEPA process. *Id.* at 184–185. The Court acknowledged, and through its course correction sought to address, the effect on ''litigation-averse agencies'' which, in light of judicial micromanagement, had been ''tak[ing] ever more time and to prepare ever longer EISs [environmental impact statements] for future projects.'' *Id.* at 184. DHS, in turn, is updating its procedures to issue its own ''course correction'' to streamline its process of ensuring reasonable and timely NEPA decisions, consistent with the above discussed developments.

DHS has reviewed its current NEPA implementing procedures and has developed this draft Directive in consultation with CEQ. DHS is providing an opportunity for public review and comment on this draft Directive. These comments will inform development of the final Directive. DHS will publish a final notice upon signature of the final Directive.

B. Statutory Context

NEPA establishes a national environmental policy of the federal government to use all practicable means and measures to foster and promote the general welfare, create and maintain

conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. NEPA Section 101, 42 U.S.C. 4331(a).

In general, NEPA requires federal agencies to analyze all of their major federal actions to determine whether NEPA applies and, if so, what level of environmental analysis is required. NEPA identifies three levels of environmental review—categorical exclusion, environmental assessment, and environmental impact statement. NEPA Section 107, 42 U.S.C. 4336a. A categorical exclusion (CATEX) is a ''a category of actions that a federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of NEPA section 102(2)(C).'' NEPA Section 111(1), 42 U.S.C. 4336e(1). If a CATEX does not apply, the agency conducts an environmental assessment (EA) or an environmental impact statement (EIS). An EA is a ''concise'' document ''set[ting] forth the basis of [an] agency's finding of no significant impact or determination that an environmental impact statement is necessary,'' prepared in connection with a proposed agency action that does not have a significant impact, or the significance of whose impact is unknown. *See* NEPA Section 106(b)(2), 111(4), 42 U.S.C. 4336(b)(2), 4336e(4). An EIS is a document analyzing a ''major federal action'' significantly affecting the quality of the human environment.'' NEPA Section 102(C), 111(6), 42 U.S.C. 4332(C), 4336e(6); *see also Seven County,* 605 U.S. at 173. An EIS must address several factors including: (1) reasonably foreseeable environmental effects of the proposed action, (2) unavoidable adverse environmental effects, (3) feasible alternatives, (4) the relationship between human use and long term protection of the environment, and (5) irreversible and irretrievable commitments of Federal resources incurred.[1] The analysis is to be based on reliable scientific data. NEPA Section 102, 42 U.S.C. 4332.

There have been numerous statutory changes to the environmental review process since DHS last updated its NEPA procedures in 2014. In 2015, Congress directed the Department to implement a variety of reforms to streamline and accelerate its environmental review process. *See* Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (2015). In 2023, Congress amended NEPA in the FRA, Public Law 118–5 (June 3, 2023). Through these amendments, Congress added substantial detail and direction regarding procedural issues that CEQ and individual agencies had previously addressed in their own procedures. The FRA amendments include defining major Federal action; clarifying the requirements for determining whether NEPA applies and the appropriate level of NEPA review; and clarifying the scope of an EIS, including clarifying the alternatives to be included in an EIS. In addition, the FRA amendments established page and time limits for EAs and EISs, outlined specific roles for lead agencies, and directed agencies to prescribe procedures to allow a project sponsor to prepare an EA or EIS under the supervision of the agency. Further, the FRA provided guidelines for the use of analysis from a prior programmatic environmental review in a subsequent document for a specified time period, and a streamlined process for adopting another agency's CATEXs. In 2025, Congress passed the One Big Beautiful Bill Act of 2025, Public Law 119–21, title VI, 60026, (July 4, 2025), adding Section 112 of NEPA, entitled ''Project Sponsor Opt-in Fees for Environmental Reviews.'' This provision allows project sponsors to pay a fee to obtain shortened NEPA review deadlines. DHS needs to update its NEPA procedures in light of these statutory changes.

C. Expected Outcome

This Directive revises the internal procedures of DHS, promoting consistent implementation across the Department of its responsibilities under NEPA while still allowing flexibility for each of the Department's Components to carry out its own mission. These policies and procedures provide consistency, aid efficiency, reduce duplication, and refocus agency practice on fostering informed decision making, rather than generating paperwork. The Department expects that this Directive will reduce unnecessary delays. The Department also expects these changes to increase the availability and use of CATEXs, early collaboration, coordination techniques, and to improve timely completion of the environmental review process.

The Directive outlines the Department's interpretations of existing law and provides guidelines for agency procedure and practice with respect to NEPA compliance. The Directive does not in fact, nor does it intend to, govern the rights and obligations of any party outside the federal government. Further, nothing contained in the Directive is intended or should be construed to limit the Department's other authorities or legal responsibilities.

D. Reliance Interests

In deciding to revise its Directive, the Department acknowledges that third parties may claim to have reliance interests in the Department's existing NEPA procedures. However, DHS's revised procedures will have no effect on sufficiently advanced ongoing NEPA reviews, where the Department, following CEQ guidance, has decided that it will continue to apply existing procedures. Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in these *prospective* procedures.

To the extent such interests exist, the Department first notes that, as the Supreme Court recently explained, NEPA ''is a purely procedural statute'' that ''imposes no substantive environmental obligations or restrictions.'' *Seven County,* 605 U.S. at 184. Therefore, the Department believes that any asserted reliance interests grounded in substantive environmental concerns, should be entitled to no weight. Moreover, the Department further finds that any cognizable reliance interests in maintaining DHS's prior NEPA procedures are ''outweigh[ed]'' by ''other interests and policy concerns.'' *Dep't of Homeland Sec.* v. *Regents of the Univ. of California,* 591 U.S. 1, 32 (2020). The complex web of regulations and procedures that preexisted the 2023 amendments to NEPA and these new procedures repeatedly led to the same type of problems that the Supreme Court identified with respect to judicial review of agency NEPA decisions: ''more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation,'' which in turn has meant that ''[f]ewer projects

[1] NEPA Section 102(C), as amended, provides that an EIS must address: (1) the reasonably foreseeable environmental effects of the proposed agency action; (2) any reasonably foreseeable adverse environmental effects that cannot be avoided should the action be implemented; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented. 42 U.S.C. 4332(C), as amended by Public Law 118–5, 137 Stat. 38–39 (2023).

make it to the finish line,'' or even ''to the starting line.'' *Seven County,* 605 U.S. at 184. Accordingly, DHS believes that a wholesale revision and simplification of its NEPA procedures is needed to ensure a more efficient and predictable NEPA review process that supports, rather than unnecessarily hinders, DHS's ability to carry out its homeland security missions. This set of policy considerations outweighs any claimed reliance interests in the preexisting procedures.

E. Authority

DHS's foundation for the updates to its NEPA procedures is NEPA itself. Now that CEQ has rescinded its NEPA implementing regulations, *see* 90 FR 10610 (Feb. 25, 2025), *see also* 91 FR 618 (Jan. 8, 2026) (final rule finalizing removal of CEQ's NEPA implementing regulations), DHS is issuing this draft Directive in compliance with NEPA Section 102(2)(B), 42 U.S.C. 4332(B), which directs all agencies of the federal government to identify and develop methods and procedures, in consultation with CEQ, to conduct the environmental analysis that NEPA requires.

The Department's procedures incorporate the 2023 statutory amendments to NEPA, the guiding principles reflected in E.O. 14154, and the recent decision of the U.S. Supreme Court. Before publishing these procedures, the Department consulted with CEQ to ensure the procedures conform to NEPA.

II. Summary of Revisions

DHS proposes to revise its NEPA implementing procedures in accordance with the September 2025 CEQ guidance, ''Memorandum for Heads of Departments and Agencies: Implementation of the National Environmental Policy Act.'' Key changes are identified below.

A. Statutory Alignment

DHS's new NEPA implementing procedures implement major structural features of the 2023 amendments, such as deadlines and page limits for EAs and EISs, as directed at NEPA Section 107(e) and (g), 42 U.S.C. 4336a(e) and 42 U.S.C. 4336a(g). They incorporate Congress's definition of ''major Federal action'' and the exclusions thereto, as defined at NEPA Section 111(10), 42 U.S.C. 4336e(10). They incorporate Congress's mandated procedure for determining the appropriate level of review under NEPA, as provided in NEPA Section 106, 42 U.S.C. 4336. And they incorporate Congress's revision to the requirements for what an agency must address in its EISs, as provided at NEPA Section 102(2)(C), 42 U.S.C. 4332(C), and Congress's requirement that public notice and solicitation of comment be provided when issuing a notice of intent to prepare an EIS, as directed at NEPA Section 107(c), 42 U.S.C. 4336a(c). These are all crucial features of Congress's policy design and its purpose in enacting the 2023 amendments that NEPA review be more efficient and certain.

B. Identification of DHS Actions not Subject to NEPA

The Directive identifies examples of activities that do not meet the definition of a ''major federal action'' pursuant to NEPA Section 111(10), 42 U.S.C. 4336e(10). Additionally, DHS has identified a category of actions that are administrative and routine in nature, undertaken to support the normal conduct of DHS business. The identified actions encompass routine administrative, personnel, fiscal, and management activities that are inherently limited in scope and do not alter the physical environment, infrastructure capacity, or land use. While these activities are Federal actions, they are not ''major'' and therefore not subject to NEPA. These can now be classified as actions where NEPA does not apply. These actions have been retained as Appendix A for ease of reference and to avoid confusion.

C. Categorical Exclusions

Under the Directive, DHS is revising its CATEX list, now found in Appendix B, in the following manner: (1) Removal of items that no longer meet the definition of a ''major federal action'' pursuant to NEPA Section 111(10), 42 U.S.C. 4336e(10). These actions have been retained as Appendix A for ease of reference and to avoid confusion. (2) Clarification that all CATEXs may be used by any DHS Component. (3) Correction of typographical or other non-substantive errors. (4) Elimination of duplicative CATEXs. (5) Integration of adopted CATEXs. (6) Administrative modification to CATEX L13.

III. Discussion of the Directive

Section 1: General Directive Information

This section provides general context for the Directive and establishes its applicability throughout DHS, including all components. It revokes previous DHS NEPA implementing procedures found in Directive 023–01, *Implementation of the National Environmental Policy Act (2014)* and Instruction 023–01–001–01, Rev 01, *Implementation of the National Environmental Policy Act* (*Revised 2017).*

Section 2: Responsibilities

Section 2 establishes roles and responsibilities throughout DHS for the implementation of NEPA. Unless otherwise delegated, the Executive Director, Energy and Environment Division serves as the individual responsible for approving NEPA documentation. The Director, Environmental Planning and Historic Preservation is responsible for the day-to-day oversight and serves as the Federal NEPA Contact for DHS.

Section 3: Content and Procedures

In general, Section 3 provides detailed procedures for DHS implementation of NEPA. Elements are summarized below.

Section 3.1. This section recognizes the policy of DHS to comply with NEPA and integrate NEPA review at the earliest planning stages for informed decision-making, public transparency, and compliance with environmental planning requirements. The sections of the Directive are separate and severable from one another. DHS retains the authority to adopt approaches on a case-by-case basis that differ from those described in the Directive as appropriate.

Section 3.2. This section emphasizes the importance of early NEPA compliance and integration with other planning and authorization process. This section also affirmatively asserts that NEPA applies only to major federal actions with the potential to significantly impact the human environment.

This section identifies situations in which NEPA does not apply, such as non-final agency actions, actions exempted by law, nondiscretionary actions, certain regulatory actions, extraterritorial activities, presidential actions, and actions waived under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, div. C, 110 Stat. 3009, 3009–546.

DHS has identified examples of activities that do not meet the definition of a ''major federal action'' pursuant to NEPA Section 111(10), 42 U.S.C. 4336e(10). Additionally, DHS has identified a category of actions that are administrative and routine in nature, undertaken to support the normal conduct of DHS business. Although these activities are Federal actions, they are not ''major'' and therefore not subject to NEPA. These can now be classified as actions where NEPA does not apply. These actions have been

retained as Appendix A for east of reference and to avoid confusion.

To provide consistent guidance to DHS NEPA practitioners, DHS has identified thresholds for determining NEPA applicability to grants. In alignment with the statutory framework found in NEPA Section 111(10), 42 U.S.C. 4336e(10) and the definition of ''major federal action'', DHS has established a minimum threshold of 15% DHS funding or $5 million in DHS investment for an action to be considered subject to DHS review under NEPA. The 15% DHS funding requirement is necessary to demonstrate sufficient federal authority or control over an action's design, implementation, or outcome. For projects where DHS funding comprises less than 15% of the total project execution cost, the DHS role is considered incidental or ancillary, and the primary authority and decision-making responsibility remain with non-DHS entities.

Similarly, DHS has determined grant actions receiving less than $5 million in DHS funding do not rise to the level of ''major federal action'' and do not trigger a NEPA review. In 2025, approximately 44% of the EAs prepared by the Federal Emergency Management Agency (FEMA) were for projects under $5 million in funding. None resulted in a finding of significant environmental impacts. These minimum funding thresholds ensure efficient allocation of DHS resources to actions with the potential for significant environmental effects, while maintaining compliance with NEPA's statutory intent and avoiding unnecessary review of projects with only minor federal participation.

Section 3.3. Within Section 3.3 DHS establishes a hierarchical approach to NEPA compliance. DHS will first consider application of CATEX, either through established CATEX, adopted CATEX, or establishment of a new or revised CATEX. If DHS cannot apply a CATEX, DHS will then prepare an EA if a proposed action has unknown or less than significant environmental effects. If the proposed action is likely to have reasonably foreseeable significant effects, DHS will develop an EIS.

In considering whether the reasonably foreseeable effects of a proposed action are significant, DHS will analyze the potentially affected environment, as appropriate to the action, and degree of effects, including both short- and long-term effects, both beneficial and adverse effects, effects on public health and safety, economic effects and effects on the quality of life of the American people.

Section 3.4. This section explains that DHS seeks efficiency by integrating NEPA with other planning processes and using programmatic analyses, existing documents, and early scoping. Generally, until DHS makes a CATEX determination, issues a finding of no significant impact, or issues a record of decision, DHS will take no action concerning a proposed action that would (1) have an adverse environmental effect; (2) limit the choice of reasonable alternatives; or (3) result in an irreversible and irretrievable commitment of resources.

Section 3.5. Due to the mission of the Department and Departmental components, DHS anticipates the need to comply with NEPA for classified actions. Classified NEPA documents are prepared and safeguarded per security requirements, with unclassified portions made public when possible and in accordance with legal requirements.

Section 3.6. Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA Section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A). When serving as the lead agency, DHS is ultimately responsible for determining and documenting the scope of the project at hand and completing the NEPA process. Section 3.6 further identifies procedures to address disputes regarding lead agency designation and join lead agency designations.

This section also identifies cooperating agency designations. Any Federal agency, including DHS, with special expertise with respect to any environmental issue may be a cooperating agency. A state, tribal, local, or territorial agency of similar qualifications may become a cooperating or participating agency by agreement with the lead agency.

Section 3.7. This section discusses how DHS uses CATEXs. DHS establishes, revises, adopts, or removes CATEXs through consultation with CEQ and public notice. After DHS establishes or adopts CATEXs, DHS components may apply them when the action fits within the CATEX and no unmitigated ''extraordinary circumstances'' exist. DHS may apply multiple CATEXs to the constituent parts of single action but must consider whether the aggregate impacts of the constituent parts could give rise to an extraordinary circumstance or result in a reasonably foreseeable significant effect. The mere presence of an extraordinary circumstance does not necessarily prevent the application of the CATEX. DHS considers the following ''extraordinary circumstances'':

(1) A potentially significant effect on public health or safety.

(2) A potentially significant effect on species or habitats protected by the ESA, Marine Mammal Protection Act, Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, or other Federal law protecting a species or habitat.

(3) A potentially significant effect on historic properties (*e.g.,* districts, sites, buildings, structures, or objects) that are listed in or eligible for listing in the National Register of Historic Places, a potentially significant effect on traditional cultural properties or sacred sites, or lead to the loss or destruction of a significant scientific, cultural, or historical resource.

(4) A potentially significant effect on an environmentally sensitive area.

(5) A potential or threatened violation of a Federal, tribal, state, local, or territorial law or requirement imposed to protect the environment. Some examples of other requirements to consider are a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan for air quality standards; Federal, tribal, state, local, or territorial, requirements to control hazardous or toxic substances; and environmental permits.

(6) An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, or likely to involve unique or unknown environmental risks. This also includes effects that may result from the use of new technology or unproven technology. Controversy over, including public opposition to, a proposed action absent any demonstrable potential for significant environmental impacts does not itself constitute an extraordinary circumstance.

(7) Extent to which a precedent is established for future actions with significant effects.

(8) Significantly greater scope or size than normally experienced for this category of action.

(9) Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

CATEXs designated with an asterisk (*) in Appendix B require documentation utilizing the Environmental Planning and Historic Preservation (EPHP) Decision Support System (DSS), or DHS component approved system.

Section 3.8. This section provides for the use of a Notice of Intent (NOI) and Scoping to assist DHS with the preparation of EAs and EISs. Scoping may be used to identify substantive issues and connected actions for analysis.

Section 3.9. This section details when and how DHS prepares EAs. DHS will prepare an EA when an action is not

categorically excluded and significant environmental effects are not anticipated. EAs are concise documents analyzing purpose, alternatives, effects, and mitigation. EAs are limited to 75 pages and must be completed within one year.

Section 3.10. DHS issues a Finding of No Significant Impact (FONSI) when an EA shows no significant effects, closing the NEPA process for that action.

Section 3.11. DHS will prepare an EIS for actions with significant environmental effects. EISs are limited to 150 pages (300 for complex actions) and will be completed within two years.

Section 3.12. DHS issues a Record of Decision (ROD) to summarize the final decision, alternatives analyzed in the EIS, and mitigation plans, closing the NEPA process for the action.

Section 3.13. To enhance efficiencies in NEPA, DHS will utilize programmatic NEPA documents and tiering where appropriate. DHS encourages the use of supplemental NEPA documents and reliance on existing documentation, where appropriate. Where possible, DHS will integrate other environmental requirements, including compliance with other Federal environmental laws, with the NEPA process to streamline reviews and reduce duplication.

Section 3.14. DHS integrates CEQ's January 21, 2026 *Memorandum for Heads of Departments and Agencies: Emergencies and NEPA Guidance.* In general, DHS will take direct action to address immediate threats to life, property, or important natural, cultural, or historic resources. For actions subject to NEPA, DHS will determine the appropriate level of NEPA review—CATEX, EA, EIS. Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant effects without observing these procedures, DHS will consult with CEQ about alternative arrangements for compliance with NEPA Section 102(2)(C), 42 U.S.C. 4332(2)(C).

Section 3.15. This section establishes DHS procedures for project sponsor-prepared NEPA documents. When project sponsors or contractors prepare DHS NEPA documents, DHS will provide appropriate supervision and guidance. DHS retains responsibility for content.

Section 3.16. This section provides direction for DHS components wishing to prepare Component Supplemental Instructions for NEPA implementation. Supplemental Instructions must be consistent with the DHS NEPA Directive and are subject to approval by the Executive Director, DHS Energy and Environment Division. Components with approved Supplemental Instructions may also request Delegation of Authority to approve component NEPA documents.

Section 3.17. This section identifies activities requiring notification to the Energy and Environment Division.

Section 4: Authorities

This section identifies the authorities supporting the execution of this Directive.

Modifications to DHS Categorical Exclusions

1. General

Under the Directive, DHS is revising its CATEX list, now found in Appendix B, in the following manner: (1) Removal of items that no longer meet the definition of a ''major Federal action'' pursuant to NEPA Section 111(10), 42 U.S.C. 4336e(10). These actions have been retained as Appendix A for ease of reference and to avoid confusion. (2) Clarification that all CATEXs may be used by any DHS Component. (3) Correction of typographical or other non-substantive errors and administrative revisions. (4) Elimination of duplicative CATEXs. (5) Integration of previously adopted CATEXs. (6) Modification of CATEX L13. The DHS CATEX substantiation documentation is available for review at *dhs.gov/nepa.*

2. Removal

DHS has determined that 16 actions previously designated as CATEXs do not meet the definition of ''major federal action'' under NEPA Section 111(10), 42 U.S.C. 4336e(10). Identified actions are limited to routine or administrative functions that do not have the potential to significantly affect the quality of the human environment. Although these activities constitute federal actions, they are not considered ''major federal actions'' and, as such, are not subject to NEPA requirements. As such, these actions have been removed from DHS's CATEX list, found in Appendix B. However, to provide continued reference and to avoid potential confusion, these actions are listed in Appendix A of the DHS NEPA procedures.

3. Clarification

DHS is clarifying that all CATEXs may be utilized by any DHS Component or entity executing an action within the mission space of the established CATEX. While Appendix B identifies when a CATEX is more likely to be utilized by a specific Component, its use is not precluded by other Components. This clarification fosters a unified standard for compliance with NEPA, minimizes duplicative efforts, reduces administrative delays, and supports the Department's ability to rapidly respond to evolving threats and mission requirements.

4. Corrections and Administrative Revisions

The Directive makes non-substantive corrections to typographical errors identified during the review period. Additionally, in recognition of DHS's mission space, DHS has inserted ''territorial'' into previous references to state, tribal, and local equities. Additional non-substantive administrative revisions include, but are not limited to, updating references to DHS as opposed to a specific Component, renumbering, and modernizing terminology.

5. Duplications

To streamline DHS's CATEX listing, duplicative CATEXs have been removed. Impacted CATEXs were predominantly within the listing designated for primary utilization by the U.S. Coast Guard. Remaining CATEXs have been renumbered accordingly.

6. Integration

DHS has fully integrated previously adopted CATEXs into the CATEX table found in Appendix B. Integrated CATEXs have been assigned a DHS number for utilization. DHS will apply the extraordinary circumstances found in Section 3.7 for these actions.

7. Modification to CATEX L13 (Previously Numbered CATEX L38)

On behalf of the U.S. Coast Guard (USCG), DHS proposes an administrative revision to CATEX 13, previously numbered CATEX L38. The changes are intended to clarify the scope of the CATEX. The USCG has relied on CATEX L38 for actions performed as part of the Aids to Navigation (ATON) program. The modified verbiage will provide improved clarity for field users on the scope of the CATEX and require a Record of Consideration when there is potential for extraordinary circumstances. As described, DHS has determined that the revised CATEX does not normally have significant effects and that the actions described are appropriate to include within the scope of this CATEX.

IV. Notice to the Public

This notice serves to inform the public of DHS's proposed modifications to the Department's NEPA implementing procedures, found in Directive 023–01, and to request comment on the proposed

modifications. Upon issuance of this notice, the draft Directive will be available on *DHS.gov* at *https://www.dhs.gov/ocrso/eed/epb/nepa.*

Tracey L. Watkins,

Chief Readiness Support Officer, Department of Homeland Security.

[FR Doc. 2026–23515 Filed 11–17–26; 8:45 am]

BILLING CODE 9112–FF–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket No. USGS–FACA–2026; GX27GK009970000]

Call for Nominations to the Advisory Committee on Landslides

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Call for Nominations.

SUMMARY: The U.S. Geological Survey seeks nominations for individuals to be considered for current and future membership to serve on the Advisory Committee on Landslides (ACL).

DATES: All nominations must be received no later than December 18, 2026.

ADDRESSES: Please email nominations to Dr. Jonathan Godt, Designated Federal Officer, Advisory Committee on Landslides, at *jgodt@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan Godt, Landslide Hazards Program Coordinator and Designated Federal Officer, via email at *jgodt@usgs.gov,* or by telephone at 303–905–9468. 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.

SUPPLEMENTARY INFORMATION: The ACL is established under the National Landslide Preparedness Act (Pub. L. 116–323) and regulated by the Federal Advisory Committee Act, 5 U.S.C. Ch. 10. The ACL provides advice and recommendations to the Secretary of the Interior through the Interagency Coordinating Committee on Landslide Hazard on the implementation of the National Landslide Preparedness Act. The ACL will be composed of no fewer than 11 representative members and will meet 1–4 times per year.

Members of the ACL will be individuals not employed by the Federal Government who are qualified in landslide hazard and risk or related fields. The ACL membership will be representative of:

- States, including State geological organizations;
- territories, including territorial geological organizations;
- Indian Tribes, including Tribal geological organizations;
- research institutions and institutions of higher education qualified to provide advice regarding landslide hazard and risk reduction, and representing related scientific, architectural, engineering, and planning disciplines;
- industry standards development organizations; and
- State, territorial, local, and Tribal emergency management agencies.

Selection of members will ensure a reasonable cross-section of views and expertise is represented on the ACL, including a range of geographies and communities impacted by landslide hazards in the United States. Each member will serve a term of up to 3 years with terms staggered to ensure continuity. Nominations received through this call may be used to fill current and future vacancies on the ACL.

Members of the ACL serve without compensation. However, while away from their homes or regular places of business, ACL and subcommittee members engaged in ACL or subcommittee business that the Designated Federal Official approves may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior to make an informed decision regarding the candidate's suitability to serve on the ACL. Send nominations to the Designated Federal Officer at the email provided in **ADDRESSES**. Additional information about the ACL may be found online at: *https://www.usgs.gov/programs/landslide-hazards/advisory-committee-landslides-acl.*

Authority: 5 U.S.C. Ch. 10.

Matthew Arsenault,

Information Management Specialist, USGS Records Officer.

[FR Doc. 2026–23471 Filed 11–17–26; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[278A2100DDAAKE200000/A0A501010.000000]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact Between the Picayune Rancheria of Chukchansi Indians, California, and the State of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Picayune Rancheria of Chukchansi Indians, California, and the State of California.

DATES: The extension takes effect on November 18, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Troy Woodward, Acting Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov;* (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The Picayune Rancheria of Chukchansi Indians, California, and the State of California have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compact to December 31, 2027. This publication provides notice of the new expiration date of the compact.

William Henry Kirkland III,

Assistant Secretary—Indian Affairs.

[FR Doc. 2026–23404 Filed 11–17–26; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Marine Minerals Administration

[Docket ID BSEE–2026–0034; EEAA021000 278E1700D2 ET1SF0000.EAQ000OMB Control Number 1014–0034]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf

AGENCY: Marine Minerals Administration, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Marine Minerals Administration (MMA) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 18, 2026.

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. Please provide a copy of your comments to Kelly Odom, Deputy MMA ICCO, 45600 Woodland Road, Sterling, VA 20166; or by email to *Kelly.Odom@bsee.gov.* Please reference OMB Control Number 1014–0034 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kelly Odom by email at *Kelly.Odom@bsee.gov,* or by telephone at (703) 787–1775. 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: Secretary's Order 3451 established the Marine Minerals Administration (MMA), which replaced BSEE, and provided for a transition period during which existing MMA officials retain operational authority necessary for the uninterrupted accomplishment of its mission. That transition period is ongoing. Accordingly, this notice references both BSEE and MMA but is issued under the authority of the MMA.

In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 2, 2026 [91 FR 16742]. We received one comment, but it was not germane to this information collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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 authority for 30 CFR part 285, *Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf,* derives from amendments to section 8 of the Outer Continental Shelf Lands Act (OCS Lands Act) (43 U.S.C. 1337), as set forth in section 388(a) of the Energy Policy Act of 2005 (EPAct) (Pub. L.109–58). The Secretary of the Interior delegated to the Marine Minerals Administration (MMA) the authority to regulate certain activities under section 388(a) of the EPAct. These regulations specifically apply to activities that: (a) Produce or support production, transportation, or transmission of energy from sources other than oil and gas; or (b) Use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under the OCS Lands Act.

MMA uses the information collected under 30 CFR part 285 to oversee facility design, fabrication, installation, and safety management systems; ensure the safety of operations, including inspection programs and incident reporting and investigations; enforce compliance with all applicable safety, environmental, and other laws and regulations through enforcement actions (such as noncompliance notices, cessation orders, and certain lease suspensions); and oversee decommissioning activities. Specifically, MMA needs the information to:

- Enforce provisions under 30 CFR part 285, subpart D, various information submittal requirements under Subpart F, as well as provisions governing activities conducted under an approved plan, including the design, construction, operation, and decommissioning of facilities under Subparts G, H, and I.
- Evaluate FDR and FIR for consistency with the Construction and Operations Plan (COP) and applicable engineering standards.
- Maintain the decommissioning requirements related to rights-of-use and easement for alternate uses of existing OCS facilities (Alternate Use RUE).

Title of Collection: 30 CFR 285, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

OMB Control Number: 1014–0034.

Form Number(s): Form MMA–1835 Notice(s) of Noncompliance (NONCs) Form and

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
Subpart A—General Provisions				
102; 105; 110	These sections contain general references to submitting electronic comments, requests, applications, plans, notices, reports, and/or supplemental information for MMA approval—burdens covered under specific requirements.			
103; 904;	Request general departures not specifically covered elsewhere in part 285.	.5	6 requests	3
105(c)	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 285.	1	2 requests	2
111(b)(3); (b)(5); (b)(6)	Within 30 days of receiving bill, submit processing fee payments for MMA document or study preparation to process applications and other requests.	.5	2 submissions	1
			2 payments × $4,000 = $8,000	
111(b)(2), (3)	Submit comments on proposed processing fee or request approval to perform or directly pay contractors for all or part of any document, study, or other activity, to reduce MMA processing costs.	2	2 requests	4
111(b)(3)	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to MMA to reduce MMA processing fee. Pay processing fee for all or part of any document, study, or other activity, and provide results to MMA to reduce MMA processing costs.	6,000	1 submission	6,000
			1 contractor payment × $950,000 = $950,000	
111(b)(7)	Appeal MMA estimated processing costs, decisions, or orders pursuant to 30 CFR 290.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
115	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1	1 request	1
116	*Respond to request for information in FR*	*Requirement not considered IC under 5 CFR 1320.3(h)(4).*		*0*
118	Request appeal or request reconsideration of bid decision or rejection..	Requirement not considered IC under 5 CFR 1320.3(h)(9)		0
Subpart B—Reserved				
Subpart C—Reserved				
Subpart D—Lease and Grant Administration				
400; 401; 402 NONCs	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 285.			0
401(b)	Take measures directed by MMA in cessation order and submit reports to resume activities.	100	1 report	100
417(b)	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit copies of study and results, in format specified.	110	1 study/submission ..	110
			1 study × $950,000 = $950,000	
437	Provide information for reconsideration of MMA decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subpart E—Reserved				
Subpart F—Plans and Information Requirements				
** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 285 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
602	Maintain, and provide to MMA if requested, all data and information related to compliance with required terms of lease, grant, reports submitted under this Part, and approved plans.	2	9 records/submissions.	18
**614; 810	Submit copies of SAP, including required information to assist MMA to comply with NEPA/CZMA such as hazard info, air quality, SMS, and all required information, certifications, requests, etc., in format specified.	48	2 SAPs	96

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
** 637(a), (b); 810	If requesting an operations term for commercial lease, within time specified before the end of site assessment term, submit copies of COP, or FERC license application, including required information to assist MMA to comply with NEPA/CZMA such as hazard info, air quality, commissioning records, verification statements, CSSE, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, requests, etc., in format specified.	200	2 COPs	400
** 641; 651; 810	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of GAP, including required information to assist MMA to comply with NEPA/CZMA such as hazard info, air quality, SMS, and all required information, surveys and reports, certifications, project easements, requests, etc., in format specified.	48	2 GAPs	96
** 632(c); 907	Submit revised or modified COPs, including project easements, and all required additional information.	10	1 revised or modified COP.	10
615; 800(b)	Submit annual, or at other time periods as MMA determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	4 certifications	160
633; 800(b)	Submit annual, or at other time periods as MMA determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	45	9 certifications	405
636(a)	Notify MMA in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	2 notices	2
636(b)	Notify MMA in writing no later than 30 days after completion of construction and installation activities.	1	2 notices	2
636(c)	Notify MMA in writing at least 7 days before commencing commercial operations.	1	1 notice	1
637(c)	**Notify MMA 10-business days after commencing commercial operations.**.	**1**	**1 notice**	**1**
651	Submit and demonstrate operational SMS identified in GAP before beginning construction of OCS facility, submit initial findings.	27.5	2 notices	55
653(a), (b); 800(b)	Submit annual, or at other time periods as MMA determines, GAP compliance certification, recommendations, reports, etc.	40	4 certifications	160
	G—Facility Design, Fabrication, and Installation			
*** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 285.				
*** 700(a), (c), **(e), (f),** 701; **704**.	Submit Facility Design Report (FDR), including copies of the cover letter, location plat, summaries, view drawings & structural drawings, summaries, design calculations, studies, descriptions, G&G reports, archaeological reports, verification statements w/justification, design standards, critical safety systems, location of records, and all or any additional required information (paper or electronic copies as specified).	200	1 report	200

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
*** 700(a), (c), **(e), (f),** 702; **704**.	Submit Fabrication and Installation Report (FIR), including copies of the cover letter, schedules, fabrication, and installation processes, permits, quality assurance, environmental info., commissioning procedures for CSSE, project easement, location plat, location of records, summaries, drawings, design calculations, studies, reports, and verification statements, and all or any additional required information, in format specified.	160	1 report	160
700(b)	**Explain to MMA how all integrated asset packages will function together effectively and demonstrate such integration has been verified by CVA**.	**2**	**5**	**10**
700(e); 705(a); 707(a); 712; 637.	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits copies of all reports/certifications to lessee or grant holder and MMA—interim reports if required, in format specified.	100 100	1 interim report 1 final report	100 100
700(e); 705(a), (b); 707(b), (c); 708; 709; 710; 712;.	CVA conducts independent assessments/inspections on the CSSE, fabrication and installation activities and items, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits copies of all reports/verifications to lessee or grant holder and MMA—interim reports if required, in format specified, summaries, any additional information required/requested by MMA.	100 100	1 interim report 1 final report	100 100
*** 703; 705(a), (b); 712; 815(a).	CVA/project engineer monitors major project modifications and repairs, including location of records, and submits copies of all Project Modification or Repair Reports, & verification statements to lessee or grant holder and MMA—interim reports if required, in format specified, summaries, any additional information required.	20 15	1 interim report 1 final report	20 15
705(c), (d)	Request waiver of CVA requirement in writing; lessee must demonstrate design, fabrication, & installation of structures, standard design, best engineering practices, and major repair or major modification on your facility, include project engineer's qualifications.	16	1 waiver	16
706	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination and required information.	6.5	2 nominations	13
708(b)	Notify MMA if modifications identified by CVA/project engineer are accepted.	1	1 notice	1
709(a); 710	Make fabrication, quality control, methods, procedures, tolerances, testing, installation towing, and other records available to CVA/project engineer for review (retention required by § 285.714); verify, witness, survey, or check installation and commissioning of items; verify procedures, activities, installations, CSSE functions as designed, structural integrity, stability, ballast, and records.	1	3 records	3
714; 703(b)	Until MMA releases financial assurance, compile, retain, and make available to MMA and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, records of commissioning of critical safety systems, inspection results, and location of records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.[2]	100	1 lessee	100
H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and GAPs				
802(a); 902(e)	Notify MMA of archaeological resource within 72 hours of discovery.	3	1 notice	3
802(d)	If applicable, submit payment for MMA costs in carrying out National Historic Preservation Act responsibilities.	.5	1 payment	1

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
	Safety Management Systems			
810; 614(b); 632(b); 651	**Use a Safety Management System for all activities conducted pursuant to a lease and make available to MMA upon request.** Submit safety management system description with the SAP, COP, or GAP to MMA upon request. SMS must include, but not limited to, safety of personnel, remote monitoring, control, and shut down capabilities; emergency response procedures, fire suppression equipment, how and when you will test your SMS, ensure personnel are properly trained.	**30**	2 submissions	60 60 hours current +60 from rule = 120
812(b)(1) Form MMA–0187	Submit safety and environmental performance data **(Form MMA–0187, Performance Measures Data—Renewable Energy)**.	**82**	**10 Forms**	**820**
812(b)(2)	**Provide report summary on SMS audit, corrective actions, and changes to SMS every 3 years**.	**5**	**1 report**	**5**
813(b)(1)	Report within 24 hours when any required equipment taken out of service for more than 12 hours; provide written confirmation if reported orally.	.5 1	2 reports 1 written confirmation	1 1
813(b)(3)	Notify MMA when equipment returned to service; provide written confirmation if reported orally.	.5	2 notices	1
815(a), (c)	Submit comprehensive written report when required to analyze cable, P/L, or facility damage or failures to determine cause and as soon as available.	1.5	1 report	2
816	Submit plan of corrective action plan on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2	1 plan/report	2
822	Retain records of design, construction, operation, maintenance, repairs, and investigations on or related to lease or grant (any vessels engaged in activities authorized under this part) area; make available to MMA upon request.	1	4 records retention	4
823	Request reimbursement within 90 days for food, quarters, and transportation provided to MMA reps during inspection.	2	1 request	2
824(a)	Develop annual self-inspection plan covering all facilities; retain records and make available to MMA upon request.	24	2 plans	48
824(b), (c)	Conduct annual self-inspection of facilities and submit report by November 1, develop & retain summary reports for inspections, noting any failures, required maintenance or replacement of CSSE;	36	2 reports	72
825	Based on API RP 2A–WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to MMA upon request.	60 .5 Oral	2 assessments/actions. 2 incidents	120 1
830(a), (c); 831 thru 833	Immediately report incidents to MMA via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	4 Written	1 incident	4
830(d)	Report oil spills as required by *MMA 30 CFR 250.187(d)*	*Burden covered under MMA 1014–0007*		*0*

Citations in 30 CFR 285	Reporting and recordkeeping requirement [1]	Hour burden	Average number of annual responses	Annual burden hours
			Non-hour cost burdens	
I—Decommissioning				
**** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 285 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in parts 285.				
**** 902; 905, 906; 907; 908(b), (c); 909; 638(a).	Submit for approval, in format specified, copies of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, 90 days after cancellation, relinquishment, other termination of lease or grant, or 90 days after MMA determines facility no longer useful for operations, Include documentation of coordination efforts regarding requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information/evidence requested or modify and resubmit application.	19	1 application	19
902(d); 908(a)	Submit a decommissioning notice to MMA at least 60 days before commencing decommissioning activities including description of changes to approved removal methods and procedures in approved decommissioning application, including changes to types of vessels and equipment you will use; updated decommissioning schedule.	1	1 notice	1
910(b)	Within 60 days after removing a facility, verify to MMA that site is cleared.	1	1 verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report including summaries of removal activities, including date they were completed; descriptions of mitigation measures taken.	8	1 report	8
MMA does not anticipate decommissioning activities for at least 5 years, so the requirements have been given a minimal burden.				
Total Burden			**119 Responses**	**9,802 Hours**
			$1,908,000 Non-Hour Costs Burdens	

MMA–0187, Performance Measures Data—Renewable Energy.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Primary respondents comprise Federal OCS companies that are lessees, designated operators, ROW or RUE grant holders subject to the reporting, and recordkeeping requirements under 30 CFR part 285. Other potential respondents are companies or State and local governments that submit information or comments relative to alternative energy-related uses of the OCS; certified verification agents; and surety or third-party guarantors.

Total Estimated Number of Annual Respondents: Currently, there are approximately 35 entities pursuing renewable energy projects on the OCS. Not all the potential respondents would submit information at any given time, and some may submit multiple times.

Total Estimated Number of Annual Responses: 119.

Estimated Completion Time per Response: Varies from .5 hour to 6,000 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 9,802.

Respondent's Obligation: Most responses are mandatory.

Frequency of Collection: Submissions are on occasion, monthly, annually, and biennially.

Total Estimated Annual Nonhour Burden Cost: 1,908,000.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Deputy Associate Director, Regulations and Standards Division.

[FR Doc. 2026–23455 Filed 11–17–26; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–808 and 731–TA–1809 (Preliminary)]

Amine Compounds From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of amine compounds from China, provided for in subheadings 2921.29.00, 2922.19.96, and 2934.99.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of the subject merchandise from China that are

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

alleged to be subsidized by the government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

Background

On September 29, 2026, Evonik Corporation, Piscataway, New Jersey, and Huntsman International LLC, The Woodlands, Texas, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of amine compounds from China and LTFV imports of amine compounds from China. Accordingly, effective September 29, 2026, the Commission instituted countervailing duty investigation No. 701–TA–808 and antidumping duty investigation No. 731–TA–1809 (Preliminary).

[2] 91 FR 67290 and 91 FR 67294 (October 26, 2026).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 5, 2026 (91 FR 63307). The Commission conducted its conference on October 20, 2026. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 13, 2026. The views of the Commission are contained in USITC Publication 5817 (November 2026), entitled *Amine Compounds from China: Investigation Nos. 701–TA–808 and 731–TA–1809 (Preliminary).*

By order of the Commission.

Issued: November 13, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026–23420 Filed 11–17–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–465 and 731–TA–1161 (Third Review)]

Steel Grating From China; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing and antidumping duty orders on steel grating from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on May 1, 2026 (91 FR 23456) and determined on August 4, 2026, that it would conduct expedited reviews (91 FR 54881, August 25, 2026).[2] [3]

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner David Johanson voted to conduct full reviews.

[3] Commissioner David Foley, Commissioner Samuel Negatu, and Commissioner Bart Thanhauser did not participate in the adequacy vote.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on November 13, 2026. The views of the Commission are contained in USITC Publication 5812 (November 2026), entitled *Steel Grating from China: Investigation Nos. 701–TA–465 and 731–TA–1161 (Third Review).*

By order of the Commission.

Issued: November 13, 2026.

Sharon Bellamy,

Secretary to the Commission.

[FR Doc. 2026–23407 Filed 11–17–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–473 and 731–TA–1173 (Third Review)]

Potassium Phosphate Salts From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and the antidumping duty orders on potassium phosphate salts from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: September 4, 2026.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202) 708–2579, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 4, 2026, the Commission determined that the domestic interested party group response to its notice of institution (91 FR 32445, June 1, 2026) of the subject

five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on November 17, 2026. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before November 24, 2026 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by November 24, 2026. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determinations.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 16, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–23507 Filed 11–17–26; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted on behalf of ICL Specialty Products Inc. and Prayon, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kyndahl D. Bertram, D.O.; Decision and Order

On September 5, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Kyndahl D. Bertram, D.O., of Alexandria, Virginia (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 4. The OSC proposed the revocation of Registrant's Certificate of Registration, N9918357, alleging that Registrant is ''currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the Commonwealth of Virginia, the state in which [she is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).[1]

[1] According to Agency records, Registrant's DEA registration expired on July 31, 2026. The fact that a registrant allows her registration to expire during the pendency of an OSC does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476–68479 (2019).

The OSC notified Registrant of her right to file a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. RFAAX 1, at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing, and the Agency finds her to be in default. RFAA, at 3.[2] ''A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.'' *Id.* at 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), and 1301.46. RFAA, at 4; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are deemed admitted. According to the OSC, on or about May 21, 2025, the Virginia Board of Medicine suspended Registrant from the practice of osteopathic medicine in Virginia. RFAAX 1, at 2.

According to Virginia online records, of which the Agency takes official notice,[3] Registrant's Virginia osteopathic medical license is suspended. Virginia Department of Health Professions License Lookup, *https://dhp.virginiainteractive.org/Lookup/Index* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice osteopathic medicine in Virginia, the state in which she is registered with DEA.[4]

[2] Based on the Government's submissions in its RFAA dated August 31, 2026, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on September 29, 2025, Registrant confirmed receipt of the OSC via email. RFAAX 2, at 3; *see also id.,* Appendix B.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

[4] Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to

Continued

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006) (''The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21).''). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371, 71372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978), *Scott Hansen, A.P.R.N.,* 90 FR 27338 (2025).[5]

According to Virginia statute, ''dispense'' means ''to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Va. Code § 54.1–3401 (2026). Additionally, Virginia statute defines ''practitioner'' as ''a physician . . . or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in [Virginia].'' *Id.*

Here, the undisputed evidence in the record is that Registrant lacks authority to practice osteopathic medicine in Virginia. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Virginia. Thus, because Registrant lacks authority to practice osteopathic medicine in Virginia and, therefore, is not authorized to handle controlled substances in Virginia, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FB9918357 issued to Kyndahl D. Bertram, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Kyndahl D. Bertram, D.O., to renew or modify this registration, as well as any other pending application of Kyndahl D. Bertram, D.O., for additional registration in Virginia. This Order is effective December 18, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on November 12, 2026, by DEA Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–23513 Filed 11–17–26; 8:45 am]

BILLING CODE 4410–09–P

show the contrary.'' The material fact here is that Registrant, as of the date of this Order, is not licensed to practice osteopathic medicine in Virginia. Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the Office of the Administrator, Drug Enforcement Administration, at *dea.addo.attorneys@dea.gov.*

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

[OMB Number 1123–0014]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Previously Approved Collection; Title—Application for Certificates of Pardon for the Offense of Simple Possession of Marijuana—E.O.

AGENCY: The Office of the Pardon Attorney, Department of Justice.

ACTION: 60-Day Notice.

SUMMARY: The Department of Justice (DOJ), Office of the Pardon Attorney, 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 60 days, until January 19, 2027.

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 Kira Gillespie, Deputy Pardon Attorney, Office of the Pardon Attorney, 950 Pennsylvania Avenue NW, Main Justice—RFK Building, Washington, DC 20530; *USPardon.Attorney@usdoj.gov;* 202–616–6073.

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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Certificate of Pardon for Simple Possession of Marijuana.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Office of the Pardon Attorney.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Individuals or households will be asked to respond to this request, and the obligation to respond is voluntary. On October 6, 2022, the President issued a proclamation (Executive Order 10467) pardoning many persons who had been convicted federally of a simple possession of marijuana offense. Additionally, on December 22, 2023, the President issued a supplemental proclamation (Executive Order 10688) widening the scope of eligibility for pardon applicants. The purpose of this collection is to gather information necessary to enable the Office of the Pardon Attorney, U.S. Department of Justice, to expeditiously administer the provisions of Executive Orders 10467 and 10688. If a person wants proof of their pardon, they can submit the Application to verify their eligibility under the proclamations. The collection will thereby enable individuals to apply for certificates of pardon, restoring political, civil, and other rights by implementing a process to provide certificates of pardon as provided by the proclamations. A person who qualified under the proclamation is pardoned regardless of whether they submit an Application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The Office of the Pardon Attorney estimates that a potential pool of approximately 350 applicants may apply.[1] The Application for the certificate is simple, and will not take long to complete, approximately 10 minutes. The applicants must also provide proof of their prior convictions or charges, which we estimate would take approximately 20 minutes, including research, phone calls, and conversations with necessary personnel to obtain the appropriate documentation. Therefore, the Office of the Pardon Attorney estimates it would take approximately 30 minutes total.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 175 hours. It is estimated that respondents will take 30 minutes to complete an Application. The burden hours for collecting respondent data sum to 175 hours (350 respondents × 0.5 hours = 175 hours).

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: November 16, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–23474 Filed 11–17–26; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

[OMB Control No. 1230–0NEW]

Proposed Information Collection: Office of Disability Employment Policy Quick Turnaround Surveys

AGENCY: Office of Disability Employment Policy, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Disability Employment Policy, Department of Labor, ODEP is soliciting comments on the information collection for Office of Disability Employment Policy Quick Turnaround Surveys.

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

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, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–ODEP, 200 Constitution Avenue NW, Room S–1303, Washington, DC 20210.
- ODEP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Rosenblum by telephone at (202) 693–1000x15833 (this is not a toll-free number) or by email at *Rosenblum.David.B@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the

[1] PARDON has experienced a diminishing number of applications since the proclamation was issued in October 2022. To determine the number of likely potential applicants, PARDON took the number of applications in 2025 (533) and the number of applications in 2026 (153), calculated the average (343), and rounded up.

general public and federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

ODEP is soliciting comments regarding a new generic information collection. The collection would allow for a quick review process by OMB of a series of 8 to 20 short surveys relevant to the contracts and grants administered by ODEP. The surveys and interviews would cover a variety of issues, including but not limited to governance, administration, funding, service design and delivery, and participant experiences. Depending on the purpose for collecting the information, these may be conducted with state workforce agencies, local workforce development boards, American Job Centers, partner programs, other entities involved in activities relevant to ODEP, and customers of ODEP contractors and grantees. Each survey instrument will be designed on an ad hoc basis and will focus on topics of pressing policy or research interest. Examples of broad topic areas include but are not limited to:

- Effectiveness of technical assistance,
- Customer satisfaction,
- State and local management information systems,
- New processes and procedures, and
- Integration and coordination with other programs.

ODEP is seeking this new collection to be able to obtain quick approval to conduct surveys so that it can collect and analyze, on a timely basis, information on various programs, practices, or problems, and to meet its obligations to develop high quality policy, research, and technical assistance. This generic information collection will permit publication of results obtained from these surveys. ODEP will request information in these surveys that is not otherwise available. Other research and evaluation efforts, including long-range evaluations, take many years for data to be gathered and analyzed. Administrative information, including quarterly or annual data reported by states and local areas, do not provide sufficient information on key operational practices, staff, or participant perspectives, and new or rapidly emerging issues. ODEP will make every effort to coordinate the quick turnaround surveys with other data collections in ODEP or other parts of the Department of Labor, in order to ease the burden on local, state, and other respondents, to avoid duplication, and to fully explore how data and information from each study can be used to inform other studies. Information from the quick turnaround surveys will thus complement but not duplicate other ODEP reporting requirements or evaluation studies.

II. Desired Focus of Comments

ODEP is soliciting comments concerning the proposed information collection related to Office of Disability Employment Policy Quick Turnaround Surveys. ODEP is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

III. Current Actions

This information collection request concerns the Office of Disability Employment Policy Quick Turnaround Surveys. ODEP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Information Collection Title: Office of Disability Employment Policy Quick Turnaround Surveys.

Type of Review: New.

Agency: DOL–ODEP.

OMB Control Number: 1230–0NEW.

Affected Public: State, Local, or Tribal Government; Federal Government; Business or other for-profit; Not-for-profit institutions; Individuals or households.

Number of Respondents: 10,000.

Number of Responses: 10,000.

Annual Burden Hours: 2,500 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

(Authority: 44 U.S.C. 3507(a)(1)(D))

Julie Hocker,

Assistant Secretary for the Office of Disability Employment Policy, Labor.

[FR Doc. 2026–23487 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, ''Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 19, 2027.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Corey Dixon by telephone at 202–693–3451 (this is not a toll-free number), or by email at *OUI-PRA@dol.gov.* For persons with a hearing or speech disability who need assistance using the telephone system, please dial 711 to access telecommunications relay services.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, 200 Constitution Ave. NW, Suite

S–4524, Washington, DC 20210 by email: *OUI-PRA@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Corey Dixon by telephone at 202–693–3451 (this is not a toll-free number) or by email at *OUI-PRA@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The SQSP is a comprehensive performance management system implemented in 1995 for the UI program and the principal vehicle that state UI agencies use to plan, record, and manage program improvement efforts. SQSP also serves as the grant document through which states receive Federal UI administrative funding. SQSP links program performance with the budget and planning process. The SQSP package also includes key reports associated with workload and cost detail from states used to determine administrative funding in excess of initial funding allocations made to each state.

The SQSP, with its State Plan Narrative, Corrective Action Plans (CAPs), and Integrity Action Plan, represents the state's formal plan and schedule for improving performance. States will continue to use the State Plan Narrative to provide a general summary of the UI program in the state. Actions planned to correct deficiencies for Secretary Standards, Core Measures, and UI programs are expected to be addressed in CAPs. Each SWA is required to submit one CAP for each deficiency. Based on the most recent activity during the FY 2027 SQSP process, a total of 750 CAPs were submitted from SWAs. This is a decrease of 124 CAPs from the last OMB approval cycle and represents a significant decline in the burden associated with the SQSP information collection. ETA proposes extending this collection with a revision due to the change in estimated burden.

The Secretary of Labor is authorized to provide funds to administer the UI program and to govern the expenditures of those funds. The SQSP is a major part of the Department's program oversight and governance and administrative funding distribution process. The Social Security Act sections 302, and 303(a)(8) and (9), authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0132.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: UI SQSP Planning and Reporting Guidelines.

Form: ET Handbook No. 336, 18th Edition.

OMB Control Number: 1205–0132.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Biennial, Annual, and Quarterly.

Total Estimated Annual Responses: 1,386.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 5,923 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Marek Laco,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026–23504 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Correction; Job Corps Health Questionnaire (OMB No. 1205–0033)

ACTION: Correction notice.

AGENCY: Employment and Training Administration (ETA), Labor.

SUMMARY: This is a correction of a notice published October 16, 2026 (91 FR 65786) which in error referenced OMB No. 1205–0149 instead of 1205–0033. The OMB will consider all written comments that the agency receives on or before November 16, 2026.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2026–23488 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

[OMB Control No. 1225–0059]

Proposed Extension of Information Collection; Department of Labor Generic Clearance for Outreach Activities

AGENCY: Office of the Assistant Secretary for Administration and Management, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance

request for comment to provide the public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Assistant Secretary for Administration and Management (OASAM) is soliciting comments on the information collection for the Department of Labor Generic Clearance for Outreach Activities.

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments. A copy of this Information Collection Request (ICR) with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Nora Heranndez by telephone at (202) 693–8633 (this is not a toll-free number), or by email at *DOL_PRA_PUBLIC@dol.gov.* Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; by email: *DOL_PRA_PUBLIC@dol.gov.* All submissions received must include the agency name and OMB Control Number 1225–0059.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez, *Departmental Clearance Officer* by telephone at 202–693–8633 (this is not a toll-free number), or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The information collections in this generic clearance are designed to support outreach opportunities related to a wide range of agency responsibilities including, but not limited to: pension programs, occupational safety and health programs, mine safety and health programs, veterans' programs, employment and training programs, statistical programs, and labor management standards.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

II. Desired Focus of Comments

OASAM is soliciting comments concerning the proposed information collection. OASAM is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OASAM's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OASAM, located at Office of the Assistant Secretary for Administration and Management, Room N1301, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns the Department of Labor's Generic Clearance for Outreach Activities. OASAM has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension.

Agency: DOL—OASAM.

Title of Collection: Department of Labor Generic Clearance for Outreach Activities.

OMB Number: 1225–0059.

Affected Public: Individuals or Households; Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal Government.

Number of Respondents: 1,000,000.

Number of Responses: 1,000,000.

Annual Burden Hours: 100,000 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2026–23490 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety & Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Safety Standards for Underground Coal Mine Ventilation—Belt Entry provide safety requirements for the use of the conveyor belt entry as a ventilation intake to course fresh air to working sections and areas where mechanized mining equipment is being installed or removed in mines with three or more entries. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 27, 2026 (91 FR 46964).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed.

OMB Control Number: 1219–0138.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 96.

Total Estimated Number of Responses: 405.

Total Estimated Annual Time Burden: 1,447 hours.

Total Estimated Annual Other Costs Burden: $200.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23489 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quick-Turnaround Surveys and Site Visits

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under this clearance, ETA collects data from state workforce agencies and local workforce investment areas on a quick turnaround basis. ETA proposes conducting 8 to 20 short surveys of up to 30 questions that would provide timely information identifying the scope and magnitude of various practices or problems nationally. The surveys are needed to understand key operational issues in light of the Administration's policy priorities and of other partner programs. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 1, 2026 (91 FR 56215).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Quick-Turnaround Surveys and Site Visits.

OMB Control Number: 1205–0436.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 7,000.

Total Estimated Number of Responses: 7,000.

Total Estimated Annual Time Burden: 7,000 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2026–23483 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Logging Operations Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collection of information contained in the Logging Operations Standard is necessary to reduce workers' risk of death or serious injury by requiring employers to ensure operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must ensure that operating and maintenance instructions are available for each vehicle. The Standard also requires the employer to provide training to workers and to certify that they have provided this training. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 25, 2026 (91 FR 14596).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Logging Operations Standard.

OMB Control Number: 1218–0198.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 7,465.

Total Estimated Number of Responses: 46,276.

Total Estimated Annual Time Burden: 1,355 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23495 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Issuance of Insurance Policy

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The CM–921 provides insurance carriers with the means to supply DCMWC with information showing that a responsible coal mine operator is insured against liability for payment of compensation under the Federal Black Lung Benefits Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 26, 2026 (91 FR 30728).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection

of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Notice of Issuance of Insurance Policy.

OMB Control Number: 1240–0048.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 3,715.

Total Estimated Number of Responses: 3,715.

Total Estimated Annual Time Burden: 65 hours.

Total Estimated Annual Other Costs Burden: $12.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior PRA Analyst.

[FR Doc. 2026–23497 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Hazardous Waste Operations and Emergency Response Standard requires information that is needed by employers and employees to comply with standards and regulations addressing workers engaged in hazardous waste site activities and emergency response to releases of hazardous materials. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 8, 2026 (91 FR 25386).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard.

OMB Control Number: 1218–0202.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 17,211.

Total Estimated Number of Responses: 1,381,624.

Total Estimated Annual Time Burden: 232,668 hours.

Total Estimated Annual Other Costs Burden: $3,405,362.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23501 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Homeless Veterans' Reintegration Program Grant Recipient Reporting

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Veterans' Employment and Training Service (VETS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Homeless Veterans' Reintegration Program (HVRP) is necessary for the proper oversight of grant funds administered by the Department of Labor's VETS as required by regulation. HVRP funds over 150 discretionary

grants that annually serve veterans experiencing or at risk of homelessness, along with associated Stand Down events. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 4, 2026 (91 FR 56918).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–VETS.

Title of Collection: Homeless Veterans' Reintegration Program Grant Recipient Reporting.

OMB Control Number: 1293–0014.

Affected Public: Private Sector—Businesses or other for-profits, Not-for-profit institutions.

Total Estimated Number of Respondents: 194.

Total Estimated Number of Responses: 659.

Total Estimated Annual Time Burden: 1,889 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2026–23498 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certification of Funeral Expenses Under the Longshore and Harbor Workers' Compensation Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: Form LS–265 is used to report funeral expenses payable under the Longshore and Harbor Workers' Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 9, 2026 (91 FR 34837).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Certification of Funeral Expenses under the Longshore and Harbor Workers' Compensation Act.

OMB Control Number: 1240–0040.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 21.

Total Estimated Number of Responses: 21.

Total Estimated Annual Time Burden: 5 hours.

Total Estimated Annual Other Costs Burden: $7.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior PRA Analyst.

[FR Doc. 2026–23484 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registration for Public Data Service

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection applies to user registrations required to access a public Application Programming Interface (API) that provides machine-readable subsets of public data generated by programs and activities of the U.S. Department of Labor. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 1, 2026 (91 FR 56221).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–CEO.

Title of Collection: Registration for Public Data Service.

OMB Control Number: 1290–0044.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 200.

Total Estimated Number of Responses: 200.

Total Estimated Annual Time Burden: 30 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23493 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Ethylene Oxide Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor worker exposure to Ethylene Oxide (EtO), to provide medical surveillance, and to establish and maintain accurate records of worker exposure to EtO. These records will be used by employers, workers, physicians, and the Government to ensure that workers are not harmed by exposure to EtO. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 8, 2026 (91 FR 25385).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OSHA.

Title of Collection: Ethylene Oxide Standard.

OMB Control Number: 1218–0108.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 2,123.

Total Estimated Number of Responses: 87,592.

Total Estimated Annual Time Burden: 24,521 hours.

Total Estimated Annual Other Costs Burden: $4,261,393.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23482 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Agency Information Collection Activities; Submission for OMB Review; American Time Use Survey (ATUS) Super Intelligence (SI) Questions

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 18, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The ATUS SI questions will measure individuals' familiarity, use, and experiences with SI tools, and allow BLS to link SI use to the detailed, activity-based time diary information collected in the American Time Use Survey, OMB Control Number 1220–0175. The new items respond to the growing policy and research interest in understanding the role of SI in daily life and in the workforce. Cognitive testing was conducted using question wording that referred to ''Artificial Intelligence (AI)''. Following Executive Order 14434, terminology was updated to SI. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 10, 2026 (91 FRN 42775).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Agency: DOL–BLS.

Title of Collection: American Time Use Survey (ATUS) Super Intelligence (SI) Questions.

OMB Control Number: 1220–0NEW.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 7,672.

Total Estimated Number of Responses: 7,672.

Total Estimated Annual Time Burden: 256 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2026–23506 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Extension of Information Collection; BLS Labor Market Information Cooperative Agreement Application Package

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Labor Market Information (LMI) Cooperative Agreement Application Package.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 19, 2027.

ADDRESSES: Send comments to Morgan Scheinin, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Morgan Scheinin, BLS Clearance Officer, at 202–691–7268 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS enters into Cooperative Agreements with State Workforce Agencies (SWAs) annually to provide financial assistance to the SWAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment and Wage Statistics, and Quarterly Census of Employment and Wages. The Cooperative Agreement provides the

basis for managing the administrative and financial aspects of these programs.

The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SWAs and monitor their financial and programmatic performance and adherence to administrative requirements imposed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR 200) and other grant related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

II. Current Action

Office of Management and Budget clearance is being sought for the LMI Cooperative Agreement application package. The extension of this collection of information will allow the BLS to incorporate routine annual updates to the Cooperative Agreement and work statements which define SWA deliverables and requirements and allow the BLS to carry out its responsibilities to monitor financial and programmatic performance.

The Cooperative Agreement application package being submitted for approval is representative of the package sent every year to state agencies. The work statements included in the Cooperative Agreement application also are representative of what is included in the whole LMI Cooperative Agreement package. The final Cooperative Agreement, including the work statements, will be submitted separately to the Office of Management and Budget for review of any minor year-to-year information collection burden changes they may contain.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Labor Market Information (LMI) Cooperative Agreement Application Package.

OMB Number: 1220–0079.

Type of Review: Extension.

Affected Public: State, Local, or Tribal Governments.

Form	Number of respondents	Number of responses per respondent	Total responses	Average burden (hours)	Estimated total burden (hours)
Work Statements	54	1	54	1.5	81
LMI Budget Information Form (BIF)	54	1	54	1.5	81
Monthly Automated Financial Reports	3	12	36	15/60	9
LMI Obligations and Expenditures (ObEx) Form	51	12	612	1	612
Budget Variance Request Form	27	1	27	15/60	6.8
Transmittal and Certification Form	54	1	54	8/60	7.2
FRW—A: Base Programs	54	1	54	25/60	22.5
FRW—B: AAMC	15	1	15	25/60	6.3
Property Listing	27	1	27	25/60	11.3
Total	54		933		837

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed on October 27, 2026.

Lizabeth McLean,

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2026–23505 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Extension of Information Collection; Occupational Safety and Health Statistics (OSHS) Cooperative Agreement (CA)Application Package

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''*BLS Occupational Safety and Health Statistics (OSHS) Cooperative Agreement Application Package.*'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 19, 2027.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems,

Bureau of Labor Statistics, by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, telephone number 202–691–7628 (this is not a toll free number.) (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has delegated to the BLS the authority to collect, compile, and analyze statistical data on work-related injuries and illnesses, as authorized by the Occupational Safety and Health Act of 1970 (Pub. L. 91–596). The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the State Grant Agencies (SGAs) and monitor their financial and programmatic performance and adherence to administrative requirements imposed by the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR 200) and other grant related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements. The BLS requires financial reporting that will produce the information that is needed to monitor the financial activities of the BLS Occupational Safety and Health Statistics grantees.

II. Current Action

Office of Management and Budget clearance is being sought for the OSHS Cooperative Agreement application package. The extension of this collection of information will allow the BLS to incorporate routine annual updates to the Cooperative Agreement and work statements which define SGA deliverables and requirements and allow the BLS to carry out its responsibilities to monitor financial and programmatic performance.

The Cooperative Agreement application package being submitted for approval is representative of the package sent every year to state agencies. The work statements included in the Cooperative Agreement application also are representative of what is included in the whole OSHS Cooperative Agreement package. The final Cooperative Agreement, including the work statements, will be submitted separately to the Office of Management and Budget for review of any minor year-to-year information collection burden changes they may contain.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: BLS Occupational Safety and Health Statistics (OSHS) Cooperative Agreement Application Package.

OMB Number: 1220–0149.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, or Tribal Governments.

Form	Number of respondents	Number of responses per respondent	Total responses	Average burden (hours)	Estimated total burden (hours)
Work Statements	55	1	55	2	110
OSHS Budget Information Form	55	1	55	1.5	82.5
BLS–OSHS2	55	4	220	1	220
BLS–OSHS TCF	55	1	55	8/60	7.3
OSHS Budget Variance Request Form	20	1	20	15/60	5
BLS–OSHS FRW–A: Base Programs	55	1	55	25/60	22.9
BLS–OSHS FRW–B: AAMC	5	1	5	25/60	2.1
BLS–OSHS Property Listing	28	1	28	25/60	11.7
Total	55	.....	493	.....	462

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed on this 27th day of October 2026.

Lizabeth McLean,

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2026–23496 Filed 11–17–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Revision of Information Collection; Local Area Unemployment Statistics Program

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Local Area Unemployment Statistics

(LAUS) Program.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before January 19, 2027.

ADDRESSES: Send comments to Morgan Scheinin, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Morgan Scheinin, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The BLS has been charged by Congress (29 U.S.C. 1 and 2) with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency-based employment and unemployment estimates is a cooperative Federal-State program which uses employment and unemployment inputs available in State Workforce Agencies.

The labor force estimates developed and issued in the Local Area Unemployment Statistics (LAUS) program are used for economic analysis and as a tool in the implementation of Federal economic policy in such areas as employment and economic development under the Workforce Innovation and Opportunity Act of 2014 and the Public Works and Economic Development Act, among others.

The estimates are also used in economic analysis by public agencies and private industry, and for State and area funding allocations and eligibility determinations according to legal and administrative requirements. Implementation of current policy and legislative authorities could not be accomplished without collection of the data.

The reports and manual covered by this request are integral parts of the LAUS program insofar as they ensure and measure the timeliness, quality, consistency, and adherence to program directions of the LAUS estimates and related research.

II. Current Action

Office of Management and Budget clearance is being sought to continue the information collection request that makes up the LAUS program. All aspects of the information collection are conducted electronically. All data are entered directly into BLS-provided systems. There have been no substantive changes to the data collection forms since the prior OMB approval. The instructions for the ASU data collection exercise were updated from Technical memorandum LAUSS2312 to LAUSS2614.

The BLS, as part of its responsibility to develop concepts and methods by which States prepare estimates under the LAUS program, developed a manual for use by the States. The manual explains the conceptual framework for the State and area estimates of employment and unemployment, specifies the procedures to be used, provides input information, and discusses the theoretical and empirical basis for each procedure. This manual is updated on a regular schedule.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Local Area Unemployment Statistics (LAUS) Program.

OMB Number: 1220–0017.

Type of Review: Revision.

Affected Public: State Governments.

Annual Number of Respondents: 52.

Frequency: Annually for LAUS 16 and LAUS 8 (with additional submissions usually needed), LAUS 15 as needed.

Form	Annual number of respondents	Number of responses per respondent	Total annual responses	Average annual burden (hours)	Estimated total burden (hours)
LAUS 8	52	11	572	1	572
LAUS 15	6	1	6	2	12
LAUS 16	52	1	52	1	52
Totals	.....	.....	630	.....	636

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed on November 4, 2026.

Lizabeth McLean

Chief, Division of Management Systems, Branch of Policy Analysis.

[FR Doc. 2026–23485 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0014]

The Hazard Communication Standard; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Hazard Communication Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by January 19, 2027.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov.* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for the inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2009–0014) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone: (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Hazard Communication Standard (29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, and 1928.21) protect workers from the adverse health effects that may result from occupational exposure to hazardous chemicals. The major information collection requirements in the standard include: chemical manufacturers or importers must evaluate chemicals produced in their workplaces or imported by them to classify the chemicals in accordance with this section; for each chemical, the chemical manufacturer or importer must determine the hazard classes, and, *where appropriate,* the category of each class that apply to the chemical being classified; chemical manufacturers, importers or employers classifying chemicals shall identify and consider the full range of available scientific literature and other evidence concerning the potential hazards; all employers who have workers exposed to hazardous chemicals must develop, implement and maintain a written hazard communication program; the chemical manufacturer, importer, or distributor must ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked; chemical manufacturers and importers must obtain or develop a safety data sheet for each hazardous chemical they produce or import; employers must have a safety data sheet in the workplace for each hazardous chemical which they use; the chemical manufacturer, importer or employer preparing the safety data sheet must ensure that the information provided accurately reflects the scientific evidence used in making the hazard classification; and chemical manufacturers, importers, or employers who withhold the specific chemical identity or the exact concentration or concentration range, must immediately disclose the chemical identity or exact concentration where a treating physician or nurse determines that a medical emergency exists and that information is necessary for emergency or first-aid treatment.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Hazard Communication Standard. The agency is seeking an adjustment decrease in burden going from 7,206,569 to 6,782,712 hours, a difference of 423,857 hours. The decrease in burden is due to the removal of the one-time burden for the revision and reclassification of SDSs and labels and familiarization of the revision of the rule. Also, the agency is requesting a decrease in capital cost going from $69,207,596 to $69,117,934, a difference of $89,662. The reduction in costs is due to a decrease in the number of establishments affected.

The agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Hazard Communication Standard (29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, and 1928.21).

OMB Control Number: 1218–0072.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 5,580,906.

Total Responses: 97,114,670.

Frequency: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 6,782,712.

Estimated Cost (Operation and Maintenance): $69,117,934.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax) if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number (Docket No. OSHA–2009–0014) for the ICR. You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 7–2025 (90 FR 27878).

Signed at Washington, DC, on November 2, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23491 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of Intertek Testing Services NA, Inc. (ITSNA), for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications. ITSNA requests the addition of three test standards to the NRTL scope of recognition.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 3, 2026.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Extension of comment period: Submit requests for an extension of the comment period on or before December 3, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1000 ext. 11847; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1000 ext. 11538 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc., (ITSNA) is applying to expand the current recognition as a NRTL. ITSNA requests the addition of three test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by NRTLs or applicant organizations for

initial recognition, as well as for expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *https://www.osha.gov/dts/otpca/nrtl/index.html.*

II. General Background on the Applications

ITSNA submitted an application, dated June 24, 2024 (OSHA–2007–0039–0081), to expand recognition to include five additional test standards. This application was amended on September 2, 2026, removing three standards from the original application (OSHA–2007–0039–0083). ITSNA also submitted a separate application on July 29, 2025 (OSHA–2007–0039–0082), to expand their NRTL scope of recognition to include an additional standard. This expansion covers the remaining two standards from the amended September 2026 application and the one standard in the July 2025 application. OSHA staff performed a detailed analysis of the application packets and other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1, below, lists the test standards found in ITSNA's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 962	Household and Commercial Furnishings.
UL 3703	Standard for Solar Trackers.
UL 2056	Power Banks.

III. Preliminary Findings on the Applications

ITSNA submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files and related material preliminarily indicates that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of the three test standards listed above for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of ITSNA's applications. OSHA seeks public comment on these preliminary determinations.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0039 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner and after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant ITSNA's applications for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making these decisions, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878, June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on November 2, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23499 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2025–0001]

Advisory Committee on Construction Safety and Health (ACCSH): Charter Renewal

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Renewal of the ACCSH Charter.

SUMMARY: The Secretary of Labor (Secretary) has approved the renewal of the ACCSH charter. The renewed charter will expire two years from its filing date.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1000 ext. 18477; email: *meilinger.francis2@dol.gov.*

For general information about ACCSH: Mr. Jose Herrera, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–1000 ext. 18302; email: *herrera.jose.h@dol.gov.*

SUPPLEMENTARY INFORMATION:

The Secretary has approved the renewal of the ACCSH charter. The renewed charter will expire two years from the filing date.

Congress established ACCSH in Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. & 3704(d)(4)), to advise the Secretary in the formulation of construction safety

and health standards as well as on policy matters arising under the CSA and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. & 651 *et seq.*).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. 1001, *et seq.*), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (7/12/2023). Pursuant to FACA (5 U.S.C. 1001, *et seq.*), the ACCSH charter must be renewed every two years.

The new charter was revised to reflect OSHA's July 1, 2025 final rule revoking 29 CFR 1911.10 and 29 CFR 1912.3 (90 FR 27996) by removing of references to the aforementioned regulations and updating the committee membership composition to reflect the nine members established by the CSA.

The new ACCSH charter is available to read or download at *http://www.regulations.gov* (Docket No. OSHA–2025–0001), the federal rulemaking portal. The charter also is available on the ACCSH page on OSHA's web page at *http://www.osha.gov/advisorycommittee/accsh/charter,* and at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions. In addition, the charter is available for viewing or download at the Federal Advisory Committee Database at *http://www.facadatabase.gov.*

Authority and Signature

David L. Keeling, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 651, *et seq.,* 40 U.S.C. 3704, Secretary of Labor's Order No. 7–2025 (90 FR 27878), 5 U.S.C. 1001, *et seq.,* and 29 CFR part 1912.

Signed at Washington, DC.

David L. Keeling,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23500 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of TUV SUD America, Inc. for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 3, 2026.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0043). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before December 3, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1000 ext. 18477 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1000 ext. 11538 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

OSHA is providing notice that TUV SUD America, Inc. (TUVAM), is applying for expansion of the current recognition as a NRTL. TUVAM requests the addition of fifteen recognized test standards and one recognized testing site to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVAM currently has eighteen facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: 401 Edgewater Place, Suite #500, Wakefield, Massachusetts 01880.

II. General Background on the Applications

TUVAM submitted applications to OSHA for expansion of the NRTL scope of recognition. The first application, dated December 15, 2025 (OSHA–2007–0043–0079), requested the expansion of the NRTL scope of recognition to include one additional test site located at: Budapester Str. 7, 94315 Straubing, Germany and thirteen additional test standards. TUVAM submitted another application on December 17, 2024 (OSHA–2007–0043–0073), requesting the addition of seven test standards. The application was amended on February 6, 2026 (OSHA–2007–0043–0078) to separate two standards from the original submission. The other five standards in the original December 17, 2024 application were covered in another notice (see 91 FR 54392, August 21, 2026). The expansion proposed in this notice covers the thirteen standards and one site from the December 15, 2025 application, as well as the two standards in the amended February 6, 2026 application, for a total of fifteen standards and one recognized site.

OSHA staff performed an on-site review of TUVAM's testing facilities at TÜV SÜD Product Services, GmbH on March 25, 2026, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVAM has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the applications.

Table 1, below, lists the appropriate test standards found in TUVAM's applications for expansion for testing and certification of products under the NRTL Program.

Table 1—Proposed Appropriate Test Standards for Inclusion in TUVAM's NRTL Scope of Recognition

Test standard	Test standard title
UL 60079–0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL 60079–1	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures ''d''.
UL 60079–2	Explosive Atmospheres—Part 2: Protection by Pressurized Enclosures ''p''.
UL 60079–7	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety ''e''.
UL 60079–11	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety ''i''.
UL 60079–15	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection ''n''.
UL 60079–18	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation ''m''.
UL 60079–25	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079–28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079–31	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure ''t''.
NFPA 496	Purged and Pressurized Enclosures for Electrical Equipment.
UL 913	Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations.
UL 121201	Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations.
UL 2272	Standard for Electrical Systems for Personal E-Mobility Devices.
UL 2849	Standard for Electrical Systems for eBikes.

III. Preliminary Findings on the Applications

TUVAM submitted acceptable applications for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that TUVAM has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of one proposed test site and the fifteen test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of TUVAM's applications.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0043 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVAM's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878; June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on November 2, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23492 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2017–0005]

Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment Standards for Construction and General Industry.

DATES: Comments must be submitted (postmarked, sent, or received) by January 19, 2027.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2017–0005) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The Electric Power Generation, Transmission, and Distribution Standards (29 CFR 1926 and 29 CFR 1910.269) and the Electrical Protective Equipment Standards (29 CFR 1926.97 and 29 CFR 1910.137) specify a number of collection of information requirements. The following describes the collection of information requirements contained in the standards.

Electric Power Generation, Transmission, and Distribution Standard (§§ 1926 and 1910.269)

For host employer responsibilities paragraphs 1910.269(a)(3)(i) and 1926.950(c)(1) for construction and general industry, before work begins, the host employer must inform the contract employers of: the characteristics of the host employer's installation listed; conditions listed in paragraphs of this section that are known to the host employer; information about the design and operation of the host employer's installation that the contract employer needs to make the assessments required by this section; and any other information about the design and operation of the host employer's installation that is known by the host employer, that the contract employer requests, that is related to the protection of the contract employer's employees.

For contract employer responsibilities paragraph 1910.269(a)(3)(ii) and 1926.950(c)(2) for construction and general industry, contract employers must ensure that each of the employees is instructed in the hazardous conditions relevant to the employee's work that the contract employer is aware of as a result of information communicated to the contract employer by the host employer; before work begins, the contract employer must advise the host employer of any unique hazardous conditions presented by the contract employer's work; and the contract employer must advise the host employer of any unanticipated hazardous conditions found during the contract employer's work that the host employer did not mention. The contract employer shall provide this information to the host employer within 2 working days after discovering the hazardous condition.

In job briefing the information provided by the employer in paragraphs 1910.269(1)(i) and 1926.952(a)(1) for construction and general industry, in assigning an employee or a group of employees to perform a job, the employer must provide the employee in charge of the job with all available information that relates to the determination of existing characteristics and conditions required.

For the engineering analyses to determine maximum anticipated per unit transient overvoltage in paragraphs 1910.269(l)(3)(ii) and 1926.960(c)(1)(ii) for construction and general industry, the employer must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground, through an engineering analysis or assume a maximum anticipated per-unit transient overvoltage, phase-to-ground, in accordance with the tables listed. When the employer uses portable protective gaps to control the maximum transient overvoltage, the value of the maximum anticipated per-unit transient overvoltage, phase-to-ground, must provide for five standard deviations

between the statistical sparkover voltage of the gap and the statistical withstand voltage corresponding to the electrical component of the minimum approach distance. The employer must make any engineering analysis conducted to determine maximum anticipated per-unit transient overvoltage available upon request to employees and to the Assistant Secretary or designee for examination and copying.

Electrical Protective Equipment Standard (§§ 1926.97 and 1910.137)

Testing Certification (§§ 1926.97(c)(2)(xii) and 1910.137(c)(2)(xii)).

Employers must certify that the electrical protective equipment used by their workers have passed the tests specified in paragraphs (c)(2)(vii)(D), (c)(2)(viii), (c)(2)(ix), and (c)(2)(xi) of the Standards. The certification must identify the equipment that passed the tests and the dates of the tests. The two standards require testing: periodically (generally, every 6 months for rubber insulating gloves and every 12 months for most other types of rubber insulating equipment); after any repairs; and before the equipment is returned to service after any inspection finds certain defects. In addition, the employer must test rubber insulating gloves before reuse after employees use them without protector gloves and must certify that testing. These performance-based standards ensure that employers maintain the most recent test records for equipment that passes the required test without specifying precisely how the employer must maintain those records.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extends the approval of the information collection requirements specified in the Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and the Electrical Protective Equipment Standards for Construction and General Industry. The agency is seeking an adjustment increase in burden from 394,614 to 407,614 hours, a total increase of 13,000 hours. This increase in burden is due to an increase in the number of affected projects.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Electric Power Generation, Transmission, and Distribution Standards for Construction and General Industry and Electrical Protective Equipment for Construction and General Industry.

OMB Control Number: 1218–0253.

Affected Public: Business or other for-profits.

Number of Respondents: 24,151.

Number of Responses: 2,137,282.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 407,614.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2017–0005). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 7–2025 (90 FR 27878).

Signed at Washington, DC, on November 3, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23486 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240–0028]

Proposed Revision of Information Collection; Report of Changes That May Affect Your Black Lung Benefits, CM–929, CM–929P and Quick Costumer Connect Form

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection requests (ICRs) titled, ''Report of Changes that May Affect Your Black Lung Benefits'' (Forms CM–929, CM–929P and Quick Costumer Connect). This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered.

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, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–OWCP, Division of Coal Mine Workers' Compensation, 200 Constitution Avenue NW, Suite C3520–DCMWC Washington, DC 20210.
- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, at *suggs.anjanette@dol.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

This ICR seeks approval under the PRA for an extension of an existing collection titled Report of Changes That May Affect Your Black Lung Benefits (Forms CM–929, CM–929P and Quick Costumer Connect form). These forms help determine continuing eligibility of primary beneficiaries receiving black lung benefits. The primary beneficiary or their representative payee is required to verify, update or self-report certain information that may affect entitlement to benefits, including changes to income, marital status, receipt of state workers' compensation benefits, and their dependents' status. While the information collected remains the same as in the currently approved collection, the updated forms add an electronic filing option. The Black Lung Benefits Act, 30 U.S.C. 901 *et seq.,* and its implementing regulations, 20 CFR 725.513(a), 725.533(e), authorizes this information collection. See 30 U.S.C. 936(a). OMB has currently approved this information collection for use through May 31, 2027.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration and be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0028.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the Report of Changes that May Affect Your Black Lung Benefits. OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Avenue NW, Room S3524, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns Report of Changes that May Affect Your Black Lung Benefits. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Office of Workers' Compensation Programs.

OMB Number: 1240–0028.

Affected Public: Individuals or households, Business or other for-profit, and not profit institutions.

Number of Respondents: 32,784.

Number of Responses: 32,784.

Annual Burden Hours: 8,863 hours.

Annual Respondent or Recordkeeper Cost: $0.0.

OWCP Forms: CM–929, CM–929P and Quick Costumer Connect, Report of Changes that May Affect Your Black Lung Benefits.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2026–23503 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Revision of Information Collection: Rehabilitation Action Report; OMB Control No. 1240–0008

AGENCY: Office of Workers' Compensation Programs (OWCP), Labor.

ACTION: Raequest for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments on the information collection for the OWCP–44, Rehabilitation Action Report.

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

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, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit the U.S. Department of Labor, Office of Workers' Compensation Programs, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210.
- OWCP will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, at *suggs.anjanette@dol.gov @dol.gov* (email); (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Longshore and Harbor Workers' Compensation Act (LHWCA), and the Federal Employees' Compensation Act (FECA). 33 U.S.C. 939 (LHWCA) and 5 U.S.C. 8104 and 8111 (FECA) authorize OWCP to pay for approved vocational rehabilitation services to eligible workers with work-related disabilities. These acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8104(a) of the FECA and Section 939(c) of the LHWCA provide that eligible injured workers are to be furnished vocational rehabilitation services, and Section 8111(b) of the FECA and Section 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to provide prompt notification of key events in the vocational rehabilitation process that may require OWCP action related to claims and benefits. This information may be used to decide if maintenance allowances should continue to be paid.

FECA: https://www.ecfr.gov/current/title-20/part-10 https://www.dol.gov/owcp/dfec/regs/statutes/feca.htm

Longshore: https://www.dol.gov/owcp/dlhwc/lslaws.htm Division of Federal Employees', Longshore and Harbor Workers' Compensation (DFELHWC) | U.S. Department of Labor (dol.gov)

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to Rehabilitation Action Report. OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Documents related to this information collection request are available at *https://regulations.gov.* Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns the Rehabilitation Action Report, Form OWCP–44. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, with minor change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs, OWCP.

OMB Number: 1240–0008.

Affected Public: Individuals or Households.

Number of Respondents: 6,544.

Frequency: On Occasion.

Number of Responses: 6,544.

Annual Burden Hours: 1,112.

Annual Respondent or Recordkeeper Cost: $0.00.

OWCP: *1240–0008:* Rehabilitation Action Report.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2026–23494 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–CH–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation (LSC) Board of Directors

will meet virtually on November 23, 2026. The meeting will begin at 11:30 a.m. Eastern Time and continue until the Board concludes its agenda.

PLACE: Public Notice of Virtual Meeting.

LSC will conduct the November 23, 2026, meeting via videoconference.

Public Observation: Unless otherwise noted herein, the meeting will be open to public observation via LSC's YouTube channel: *https://www.youtube.com/@LegalServicesCorp/streams.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Matters to be discussed include a briefing by the Inspector General; considering and acting on the Board of Directors' transmittal letter to accompany the Inspector General's Semiannual Report to Congress for the period of April 1, 2026, through September 30, 2026.

CONTACT PERSON FOR MORE INFORMATION: Kimberly Little, Board and Executive Coordinator, at (202) 295–1500. Questions may also be sent by electronic mail to the Office of the Corporate Secretary at *updates@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

(Authority: 5 U.S.C. 552b.)

Dated: November 16, 2026.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2026–23527 Filed 11–16–26; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: U.S. National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The U.S. National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to the permit applications by December 18, 2026. The applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, U.S. National Science Foundation, 401 Dulany Street, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The U.S. National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 16 U.S.C. 2401 *et seq.*), as amended by the Antarctic Science, Tourism and Conservation Act of 1996 (Pub. L. 104–227), has developed regulations (45 CFR parts 670 to 674) for the establishment of a permit system for various activities in Antarctica related to the designation of certain animals and certain geographic areas as requiring special protection, among other purposes.

Application Details

Permit Application: 2027–006

1. *Applicant:* James Hansen, Textron Aviation, One Cessna Blvd., Wichita, KS 67215.

Activity for Which Permit is Requested: Waste Management (45 CFR 671). The applicant seeks an ACA permit in association with waste management activities for a flight expedition from Punta Arenas, Chile to King George Island in the Antarctic Peninsula region. The applicant would conduct a single trip to King George Island using a King Air 350CER aircraft in December 2026. The aircraft would spend approximately two hours on the ground at King George Island before returning to Punta Arenas, Chile. The aircraft would not be refueled while in Antarctica and has a fuel capacity of 775 gallons. No materials are planned to be released to the environment during the expedition. All solid and liquid waste will be contained on the aircraft and returned to Punta Arenas, Chile for disposal.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 5–14, 2026.

Permit Application: 2027–007

2. *Applicant:* Holly Keltner, Northern Illinois University, 1620 Wagner Rd., Batavia, IL 60510.

Activity for Which Permit is Requested: Take, Import into USA (45 CFR 670). The applicant seeks an ACA permit in association with research into transportation of nutrients by seabirds linking marine and terrestrial ecosystems. The applicant proposes to collect up to 12 samples of two different plant species, Antarctic hair grass (*Deschampsia antarctica*) and Antarctic pearlwort (*Colobanthus quitensis*), with up to three newest-growth leaves collected per sample, leaving individual plants intact. Samples will be collected opportunistically at potential sites throughout the Antarctic Peninsula with the support of a non-governmental tour vessel. Samples will be imported into the USA for analysis.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: November 7–December 31, 2026.

Permit Application: 2027–008

3. *Applicant:* Susan Caballero, Nova Southeastern University, 8000 North Ocean Drive, Dania Beach, FL 33004.

Activity for Which Permit is Requested: Take, Harmful Interference, Import into USA (45 CFR 670). The applicant seeks an ACA permit in association with research into understanding the levels of genetic diversity of humpback whales (*Megaptera novaeangliae*) and leopard seals (*Hydrurga leptonyx*) in the Antarctic Peninsula. The applicant proposes to conduct photo identification of marine mammals of interest, conduct skin biopsy sampling, and analyze seawater for marine mammal environmental DNA. Particularly, the applicant proposes to collect up to 30 skin biopsy samples from humpback whales using a modified biopsy crossbow arrow. The applicant further proposes to collect up to 15 skin biopsy samples from leopard seals using small biopsy darts from a Daninject biopsy system which was developed to have minimal impact on pinnipeds. The applicant is trained and experienced in the biopsy collection methods and would be the only person conducting these activities. The applicant would conduct research with the support of a non-governmental tour vessel, and sampling would occur using small boat support opportunistically at sites throughout the Antarctic Peninsula. Samples would be imported into the USA for genetic analysis.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: January 29, 2027–February 20, 2027.

Permit Application: 2027–009

4. *Applicant:* Jessie Creamean, Colorado State University, 1371 Campus Delivery, Fort Collins, CO 80523.

Activity for Which Permit is Requested: Take, Harmful Interference,

Import into USA (45 CFR 670). The applicant seeks an ACA permit in association with research to determine how Antarctic marine and terrestrial environments vary seasonally in their production of atmospheric bioaerosols. The applicant proposes to collect up to 12 samples of mosses, 12 samples of lichens, and 12 samples of vascular plants across a range of species per year over a two-year project duration. The applicant proposes that samples may cover a range of species and the small samples would be collected and stored within 1oz whirlpak bags. Sampling would occur at pre-approved locations in the vicinity of Palmer Station and in a manner designed to minimize disturbance to surrounding vegetation. Samples would be imported into the USA for genetic analysis.

Location: Palmer Station, Antarctica.

Dates of Permitted Activities: November 1, 2026–May 31, 2028.

Permit Application: 2027–010

5. *Applicant:* Laura Smith, 60 South Limited, 1498 Paradise Point Rd., Oakland, MD 21550.

Activity for Which Permit is Requested: Waste Management (45 CFR 671). The applicant seeks an ACA permit in association with waste management activities for the operation of three vessels, the ''Ocean Tramp,'' ''Hans Hansson,'' and ''Meredien'' in the Antarctic Peninsula region. All vessels carry 12 passengers or fewer. The applicant proposes activities that include: small boat cruising, shore landings, kayaking, polar plunge, mountaineering and skiing, coastal camping, snorkeling and freediving, filming, and transfer of passengers to commercial air services on King George Island. Wastes generated during shore-based activities would be returned to the vessel for proper disposal. The applicant also proposes the use of a small Unmanned Aerial System (UAS) for scientific, navigational, or commercial reasons. Only experienced pilots would operate UAS and appropriate mitigation measures would be implemented to reduce the risk of loss of the UAS to the environment.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 1, 2026–April 15, 2031.

Permit Application: 2027–011

6. *Applicant:* Holly Fearnbach, 446 Harbor Vista Dr., Friday Harbor, WA 98250.

Activity for Which Permit is Requested: Take, Import into USA (45 CFR 670). The applicant seeks an ACA permit in association with research into the health of the Antarctic trophic food web. The applicant proposes to collect photogrammetric measurements, blow samples, and fecal samples from whales in the Antarctic Peninsula region including up to 300 non-invasive samples from Killer whales (*Orcinus orca*), 200 non-invasive samples from Humpback whales (*Megaptera novaeangliae*), 100 non-invasive samples from Antarctic minke whale (*Balaenoptera bonaerensis*), and 100 non-invasive samples from Arnoux's beaked whale (*Bernardius arnuxii*). Samples would be collected using a small Unmanned Aerial System (UAS). The applicant would conduct research with the support of a non-governmental tour vessel, and sampling would occur using small boat support opportunistically at sites throughout the Antarctic Peninsula. Samples would be imported into the USA for analysis.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: December 1, 2026–December 24, 2026.

Jean C. Allen,

Office Director, Office of Polar Programs.

[FR Doc. 2026–23469 Filed 11–17–26; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. K2025–1656; MC2027–32 and K2027–32; MC2027–33 and K2027–33; MC2027–34 and K2027–34; MC2027–35 and K2027–36]

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:* November 23, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

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]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such 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 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. 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 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are

[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).

negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* K2025–1656; *Filing Title:* USPS Request Concerning Amendment Two to Priority Mail & USPS Ground Advantage Contract 842, With Material Under Seal; *Filing Acceptance Date:* November 13, 2026; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Elsie Lee-robbins; *Comments Due:* November 23, 2026.

2. *Docket No(s).:* MC2027–35 and K2027–36; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 1131 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 23, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2027–32 and K2027–32; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1128, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s).:* MC2027–33 and K2027–33; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1129, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s).:* MC2027–34 and K2027–34; *Filing Title:* USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1130, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 13, 2026; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–23448 Filed 11–17–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106900; File No. SR–NYSE–2026–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Sections 303A.00 and 303A.07 of the NYSE Listed Company Manual

November 13, 2026.

I. Introduction

On July 31, 2026, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Sections 303A.00 and 303A.07 of the NYSE Listed Company Manual (''Manual'') to extend the transition period in which a listed company must establish and internal audit function. The proposed rule change was published for comment in the **Federal Register** on August 18, 2026.[3] On September 25, 2026, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to take action on the proposed rule change.[5] The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

Section 303A.07(c) of the Manual states that each company listed on the Exchange must have an internal audit function. The Exchange states that the purpose of the internal audit function is to provide an issuer's management and audit committee with ongoing assessments of the issuer's risk management processes and system of internal controls.[7] The function may be outsourced to a third-party service provider other than an issuer's independent auditor.

Sections 303A.00 and 303A.07 of the Manual provide a transition period for certain issuers to become compliant with the internal audit function.[8] Pursuant to Section 303A.07, issuers must have an internal audit function in place no later than the first anniversary of their listing date. The Exchange proposes to extend the transition period to implement an internal audit function from one year to five years.

According to the Exchange, issuers have expressed concern that developing a capable internal audit function within the first year of listing presents challenges as issuers adjust to life as a newly public company. In expressing concern over the current one-year compliance period, issuers often cite competing business and regulatory obligations requiring management's attention and the challenges of building an internal audit function to assess a company's internal control environment while a company is still in its early stages and continuing to grow. The Exchange states that it believes that having a robust internal audit function is a key component of sound corporate governance, but agrees that providing issuers with additional time to develop such function will result in a more effective function.[9]

The Exchange further states that, during the proposed five-year transition period, other requirements will continue to provide sufficient assurance that issuers listed on the Exchange are appropriately managing risk. All issuers listed on the Exchange are required to have an Audit Committee comprised of at least three independent directors.[10] The Audit Committee of an issuer listed on the Exchange must have a written charter that requires it to ''at least annually, obtain and review a report by the [company's] independent auditor describing: the firm's internal quality-control procedures; any material issues

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106128 (Aug. 13, 2026), 91 FR 53448 (''Notice''). Comments received on the proposed rule change are available at: *https://www.sec.gov/rules-regulations/public-comments/sr-nyseamer-2026-37.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 106502, 91 FR 61907 (Sept. 30, 2026). The Commission designated November 16, 2026, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change. *See id.*

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 53448.

[8] Section 303A.00 of the Manual provides a one-year transition period for companies listing in connection with an initial public offering, carve-out or spin-off transaction. Section 303A.07 states that all listed companies must have an internal audit function within one year of listing.

[9] *See* Notice, *supra* note 3, at 53448.

[10] *See* Section 303A.07(a) of the Manual.

raised by the most recent internal quality-control review.'' [11] In addition, Section 404(a) of the Sarbanes-Oxley Act [12] obligates management to maintain an adequate internal control structure for financial reporting and annually assess its effectiveness. Section 404(b) of the Sarbanes-Oxley Act [13] requires a company's independent auditor to provide an attestation on management's internal control assessment. In addition, the CEO and CFO certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act [14] require an additional level of management responsibility for internal control oversight. The Exchange states that the Sarbanes-Oxley Act and its provisions discussed herein was enacted after the Exchange first adopted its internal audit requirement and that, in this regard, the internal audit function may be viewed as a supplement for the statutory protections embodied in the Sarbanes-Oxley Act.[15] The Exchange also states that Nasdaq Stock Market (''Nasdaq'') does not require companies listed on that exchange to maintain an internal audit function.[16]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEAMER–2026–17 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [17] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, Section 6(b)(5) of the Act,[19] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange's proposal would extend the transition period in which a listed company must establish an internal audit function from one year to five years. The Commission has received a significant number of comment letters on the proposed rule change, most of which oppose the proposal.[20] Commenters state, among other things, that the period of time immediately following initial listing is precisely when independent oversight matters most and that the alternative safeguards mentioned in the proposal are not adequate substitutes for an internal audit function.[21]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal to change the transition period for newly listed companies to establish an internal audit function from one year to five years includes sufficient analysis to support a conclusion that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.[22] The Commission also seeks comment on the issues raised by commenters.[23]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, including the issues raised by commenters, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Sections 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[24] any request for an opportunity to make an oral presentation.[25]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 9, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 23, 2026. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2026–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2026–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/*

[11] Section 303A.07(b)(iii) of the Manual.

[12] *See* 15 U.S.C. 7262(a).

[13] *See* 15 U.S.C. 7262(b).

[14] *See* 15 U.S.C. 7241; 18 U.S.C. 1350.

[15] *See* Notice, *supra* note 3, at 53448.

[16] *See id.*

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 3.

[21] *See, e.g.,* Letters from Jeffrey Mahoney, General Counsel, Council of Institutional Investors (Sept. 3, 2026); Auditing Standards Committee of the Auditing Section of the American Accounting Association (Sept. 8, 2026); Vera Cherepanova, Executive Director, Board of the Future (Sept. 8, 2026); Anthony J. Pugliese, President and Chief Executive Officer, The Institute of Internal Auditors (Sept. 8, 2026).

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* note 3.

[24] 17 CFR 240.19b–4.

[25] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

rules/sro.shtml). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2026–37 and should be submitted by December 9, 2026. Rebuttal comments should be submitted by December 23, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23423 Filed 11–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0176]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rules 8b–1 to 8b–5; 8b–10 to 8b–22; and 8b–25 to 8b–31

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or ''Commission'') is submitting to the Office of Management and Budget (OMB) this request for extension of the previously approved collection of information discussed below.

Rules 8b–1 to 8b–5; 8b–10 to 8b–22; and 8b–25 to 8b–31 (''rules under Section 8(b)'') (17 CFR 270.8b–1 to 8b–31) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') set forth the procedures for preparing and filing a registration statement under the Investment Company Act. These procedures are intended to facilitate the registration process. These rules generally do not require respondents to report information.[1]

The Commission believes that it is appropriate to estimate the total respondent burden associated with preparing each registration statement form rather than attempt to isolate the impact of the procedural instructions under Section 8(b) of the Investment Company Act, which impose burdens only in the context of the preparation of the various registration statement forms. Accordingly, the Commission is not submitting a separate burden estimate for the rules under Section 8(b), but instead will include the burden for these rules in its estimates of burden for each of the registration forms under the Investment Company Act. The Commission is, however, submitting an hourly burden estimate of one hour for administrative purposes.

The collection of information under the rules under Section 8(b) is mandatory. The information provided under the rules under Section 8(b) is not kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr*=202608–3235–001 or email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice, by December 21, 2026.

Dated: November 13, 2026.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23408 Filed 11–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106901; File No. SR–NASDAQ–2026–097]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide Transparency to the Process for Selection of an Initial Trading Date

November 13, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2026, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide transparency to the process for selection of an initial trading date and time for new listings.

The text of the proposed rule change is set forth below; proposed new language is italic; deleted text is in brackets.

* * * * *

The NASDAQ Stock Market LLC Rules

* * * * *

5200. General Procedures and Prerequisites for Initial and Continued Listing on The Nasdaq Stock Market

5205. The Applications and Qualifications Process

(a)–(i) No change.

(j) Once Nasdaq approves a Company's application to list a security, the security will begin trading on Nasdaq on a date and, where applicable, at a quotation time, that is mutually agreed upon by Nasdaq and the Company.

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings,* and at the principal office of the Exchange.

[26] 17 CFR 200.30–3(a)(57).

[1] Although the rules under Section 8(b) of the Investment Company Act are generally procedural in nature, two of the rules require respondents to disclose some limited information. Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control. The information required by both of these rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to adopt new Listing Rule 5205(j), which will specify that, once a company's application to list a security is approved, the security will begin trading on Nasdaq on a date and at a time that is mutually agreed upon by Nasdaq and the company. Nasdaq believes that including this requirement in its rules will add transparency to Nasdaq's process of scheduling initial public offerings and other new listings.

After a security has been approved for listing, Nasdaq works with the issuing company and its advisors to schedule a preferred initial trading date, which may in unusual circumstances be moved by either Nasdaq or the company due to market conditions, company preference or other events where launch is not in the interests of investors or the market. In the case of an initial listing that uses the Nasdaq IPO Halt Cross [3] to initiate trading, Nasdaq will also establish, in conjunction with the company and its underwriter or financial advisor (as applicable), a time to commence the ''Pre-Launch Period.'' No date or time would ever be selected without the agreement of the company, and the Exchange expects that companies will coordinate with their underwriter or financial advisors, as applicable, when selecting the date and time.

While this has been Nasdaq's longstanding practice, and confusion has not previously occurred, Nasdaq believes it will aid transparency to modify its rules to explicitly state that trading will begin on a date, and at a time, that is mutually agreed upon by Nasdaq and the listing company.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adding transparency to how the date and time for the initiation of trading is selected. Further, requiring the mutual agreement of Nasdaq and the company will enhance investor protection in rare instances where market conditions, company preference or other events make the selection of a certain day or time suboptimal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change merely reflects how Nasdaq, together with the listing company, determines the trading date for new securities and will not have any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder. Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 [9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that the proposed change provides transparency to Nasdaq's current practice of establishing the day and time for a security to initially trade and would codify this practice, making no change to how listings are scheduled. The Exchange further states that waiving the operative delay will eliminate any potential confusion as to the mechanism for selecting a date and time during that delayed period. For these reasons, and because the proposed rule change raises no new or novel legal or regulatory issues, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] Nasdaq Rule 4120(b)(4)(C).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2026–097 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2026–097. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2026–097 and should be submitted on or before December 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23422 Filed 11–17–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106899; File No. SR–NYSEARCA–2026–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules its Rules To Permit the Listing of Binary Options Overlying Key Performance Indicators

November 13, 2026.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2026, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rules to permit the listing of binary options overlying key performance indicators (''KPIs'') reported by certain issuers of stock (''binary KPI options''). The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to permit the listing of binary options overlying KPIs reported by certain issuers of stock (''binary KPI options''). The Exchange's proposal is substantively identical to the recent approval received by Cboe Exchange, Inc. (''Cboe) to permit listing of binary options that overlie KPIs.[4]

Binary options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is an amount contingent upon the occurrence of the option being in- or at-the-money rather than the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence.

Similar to the approved proposal by Cboe the Exchange proposes to amend its Rules to permit the listing of binary KPI options. Binary KPI options are European-style, cash-settled options contracts listed on an underlying KPI of an issuer whose exercise settlement value is determined not by the market price of the issuer's stock, but by whether a specific financial or operating metric reported by the issuer in an earnings-related filing submitted to the U.S. Securities and Exchange Commission (the ''Commission'') meets or exceeds a pre-specified strike level.

Similar to the approved proposal by Cboe, the Exchange proposes to adopt Section 9 (Binary KPI Options) to describe binary KPI options. The Rules in proposed Section 9 apply only to binary KPI options. All other Rules apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires.

Specifically, the Exchange proposes to adopt Rule 5.96–O (Applicability, Definitions). Like other standardized options, binary KPI options have standardized terms that are established by the Exchange. Standardized terms for binary KPI options include the exercise criteria that are the condition or criteria of a binary KPI option, the exercise settlement amount (*i.e.,* payout amount), strike prices, expiration dates, settlement type as A.M.-settlement or P.M.-settlement, the settlement style (as European), and the requirements used to determine if the KPI condition or criteria of a binary KPI option has been met (the ''payout determination requirement''). The Exchange proposes to establish these terms in new Rule 5.96–O and additional provisions in proposed 5.98–O, as described below.

The Exchange proposes to define a ''binary KPI option'' in new Rule 5.96–O(b) as a cash-settled option contract listed on an underlying KPI of an issuer with an exercise settlement amount that is established at the creation of the option and with a settlement value that is determined by whether a specific KPI disclosed by the issuer in an earnings-related filing submitted to the Commission meets or exceeds its exercise price. Binary KPI options are paid out if the reported value of the applicable KPI (1) equals or is greater than (as the payout determination requirement) the exercise price for a call binary KPI option or (2) is less than (as the payout determination requirement) the exercise price for a put binary KPI option. The Exchange also proposes to

[13] 17 CFR 200.30–3(a)(12) and 59.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 106659 (October 13, 2026) (SR–CBOE–2026–061) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing of Binary Options Overlying Key Performance Indicators Reported by Certain Issuers of Stock) (''Cboe Binary KPI Approval'').

provide that unless the context dictates otherwise, the terms underlying security, equity, or index, or any variations of these terms, in the Rules mean KPI for purposes of binary KPI options.

The Exchange proposes to define a ''call binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is at or above the exercise price at expiration (*i.e.,* in- or at-the-money).[5]

The term ''Clearing Corporation'' would mean the registered clearing agency designated by the Exchange to clear binary KPI options.[6]

The Exchange proposes to define ''exercise price'' (also referred to as ''strike price'') as the value [7] to which the settlement value of the underlying KPI is compared to the exercise settlement amount. For binary KPI options, the exercise price is the exercise threshold of an option contract that establishes a number, value, or measure that is compared against the settlement value of the underlying KPI to determine if the cash payout amount (*i.e.,* the exercise settlement amount) will be paid out. In other words, binary options will have a threshold number as the exercise price that will be used to determine if the exercise criteria of the binary option has been met and the option will be exercised (and if holders will receive the cash payout amount). For binary KPI options, the exercise threshold will be a number that reflects or is compared to the underlying KPI of the binary option.

The Exchange proposes to define the term KPI (or ''key performance indicator'') as a key financial or operating metric disclosed by an issuer in its earnings-related filings submitted to the Commission (*i.e.,* Form 8–K, Form 10–Q, or Form 10–K, as applicable).[8]

The Exchange proposes to define ''put binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is below the exercise price at expiration (*i.e.,* in-the-money).[9]

The Exchange proposes to define ''settlement value'' as the value of the underlying KPI that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money.[10] The proposed definition specifies that the ''settlement value'' is the value of the applicable KPI as disclosed in the applicable issuer's earnings-related filing submitted to, the Commission on the applicable expiration date (for both A.M.-settled and P.M.-settled binary KPI options).[11] The Exchange designates the applicable KPI and the relevant reporting period (for example, a calendar quarter) at the time of listing a binary KPI option. Proposed paragraph (b) of the settlement value definition provides if the applicable KPI is not reported or otherwise unavailable on the expiration date (and will not be reported), settlement (including any payout of the exercise settlement amount) will occur in accordance with the Rules of the Clearing Corporation.

Additionally, proposed paragraph (c) of the settlement value definition states if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the settlement value (and the exercise settlement amount) of the binary KPI option does not change. In other words, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether it is later restated by the issuer.

The Exchange proposes to adopt Rule 5.97–O(a) (Designation of Binary KPI Option Contracts) to identify the binary KPI options that may be listed for trading on the Exchange. Pursuant to proposed Rule 5.97–O(a), the Exchange may from time to time approve for listing and trading on the Exchange any of the following binary KPI options contracts for the following issuers:

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Apple, Inc	Earnings per Share: Diluted; Total Net Sales; Net Sales by Category: iPhone; Net Sales by Category: Services; Net Sales by Reportable Segment: Americas; Net Sales by Reportable Segment: Greater China.
Advanced Micro Devices, Inc	GAAP Diluted Earnings per Share; GAAP Revenue; Net Revenue: Data Center Segment; Net Revenue: Client and Gaming Segment; GAAP Operating Margin (%).
Alphabet Inc	Diluted Net Income per Share; Revenues; YouTube Ads Revenues; Google Cloud Revenues.
Amazon.com, Inc	Diluted Earnings per Share; Total Net Sales; AWS: Net Sales; North America: Net Sales; International: Net Sales; Net Sales: Advertising Services.
Bank of America Corporation	Diluted Earnings per Share; Total Revenue, Net of Interest Expense; Net Interest Income; Provision for Credit Losses; Net Income.
Citigroup Inc	Diluted Earnings per Share; Total Revenue, Net of Interest Expense; Net Interest Income; Total Provision for Credit Losses; Net Income.
Coinbase Global, Inc	Net Income per Share—Diluted; Total Revenue; Transaction Revenue; Total Trading Volume; Subscription and Services Revenue.
Ford Motor Company	GAAP Earnings per Share—Diluted; Total Revenues; Ford Pro Segment: Revenue; Ford Model e Segment: Revenue; Ford Blue Segment: Revenue.
Intel Corporation	GAAP Earnings per Share Attributable to Intel—Diluted; Net revenue; Revenue: Client Computing Group (CCG); Revenue: Data Center and AI (DCAI); Revenue: Intel Foundry; GAAP Operating Margin (%).
JPMorgan Chase & Co	Earnings per Share—Diluted; Net Revenue—Reported; Net Interest Income; Provision for Credit Losses; Net Income.

[5] *See* proposed Rule 5.96–O(b)(2).

[6] *See* proposed Rule 5.96–O(b)(3). The definition of Clearing Corporation reflects that the Exchange may designate the Options Clearing Corporation (''OCC'') or another registered clearing agency to clear binary KPI options. References in this filing to the Clearing Corporation therefore are intended to be clearing agency-neutral. The proposed definition does not alter the requirement that clearing and settlement occur through a registered clearing agency subject to the applicable provisions of the Act and the rules and oversight applicable to that clearing agency. Upon designation of a clearing agency to clear binary KPI options, the Exchange will submit a separate rule filing to update Rules to reflect such designation.

[7] *See* proposed Rule 5.96–O(b)(4). The value of an exercise price is measured in the applicable units of the KPI. For example, some KPIs are measured in U.S. dollars while others may be measured in percentages or numbers.

[8] *See* proposed Rule 5.96–O(b)(6).

[9] *See* proposed Rule 5.96–O(b)(7).

[10] *See* proposed Rule 5.96–O(b)(8).

[11] While the timing of an issuer's official disclosure informs whether the Exchange will establish a binary KPI option as A.M.-settled or P.M.-settled (as further discussed below), the Exchange will use the KPI value included in an issuer's report submitted to the Commission (and not the press release announcing earnings results, for example) as the settlement value. The Exchange understands, however, these values are generally the same.

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Marathon Digital Holdings, Inc	Earnings (Net Loss) per Share of Common Stock—Diluted; Revenues; Number of Blocks Won (# Bitcoin (BTC)); Energized Hashrate (EH) (# EH/s); Total Bitcoin Holdings (# BTC); BTC Produced (# BTC); BTC Purchased (# BTC).
Meta Platforms, Inc	Earnings per Share: Diluted; Revenue; Family Daily Active People (DAP) (#); Revenue: Advertising; Operating Margin (%).
Microsoft Corporation	Diluted Earnings per Share; Revenue; Intelligent Cloud: Revenue; Microsoft Cloud Revenue; More Personal Computing: Revenue.
Netflix, Inc	Earnings per Share: Diluted; Revenues; United States and Canada (UCAN): Revenue; Europe, Middle East, and Africa (EMEA): Revenue Operating Margin (%).
NVIDIA Corporation	GAAP Diluted Earnings per Share; Revenue; Data Center Revenue; Edge Computing Revenue; Automotive Revenue.
Palantir Technologies Inc	Earnings per Share Attributable to Common Stockholders, Diluted; Revenue; Net Income; Closed Deals of at Least $1 Million (#).
Robinhood Markets, Inc	Net Income Attributable to Robinhood Common Stockholders: Diluted; Total Net Revenues; Funded Customers (#); Average Revenue per User (''ARPU''); Robinhood Gold Subscribers (#).
SoFi Technologies, Inc	Earnings per Share Attributable to Common Stockholders—Diluted; Total Net Revenue; Total Net Revenue—Technology Platform; Total Net Revenue—Financial Services; Total Net Revenue—Lending.
Space Exploration Technologies Corp	Earnings per Share: Diluted; Total Revenues.
Super Micro Computer, Inc	Net Income per Common Share: Diluted; Net Sales; Gross Margin (%); Cash Flow Used in Operations; Net Income.
Target Corporation	Diluted Earnings per Share; Net Sales; Food & Beverage Net Sales; Apparel & Accessories Net Sales; Operating Income: Rate (%).
Tesla, Inc	Net Income per Share of Common Stocks Attributable to Common Stockholders: Diluted Total Revenues; Total Automotive Revenue; Model 3/Y Production (#); Supercharger Connectors (#); Free Cash Flow.
The Walt Disney Company	Diluted Earnings per Share; Revenues; Entertainment Subscription Video on Demand (SVOD) Operating Income; Revenues: Experiences; Segment Operating Income: Sports.

The Exchange proposes to add Rule 5.97–O(b) to clarify that binary KPI options are a separate class from other options overlying the stock of the issuer and are a separate class from other binary KPI options with differently underlying KPIs for the same issuer. The Exchange believes this is reasonable given that an individual KPI is the specific underlying of binary KPI options, and generally options with different underlyings (*e.g.,* different underlying security or index) are different option classes.

Next, the Exchange proposes to adopt Rule 5.98–O (Terms of Binary KPI Option Contracts) to describe the permissible terms of binary KPI option series. Proposed Rule 5.98–O provides that binary KPI options listed and traded on the Exchange are designated as to expiration date, exercise price, settlement type, exercise style, exercise settlement amount, contract multiplier, and underlying KPI. After approving a particular binary KPI option class for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that binary KPI option class.

Proposed Rule 5.98–O(a) states binary KPI options have European-style settlement. Proposed Rule 5.98–O(a) further provides that the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled. Binary KPI options for issuers [12] that disclose their earnings results before the open of the Core Trading Session on a given trading day are designated as A.M.-settled binary KPI options, and binary KPI options for issuers that disclose their earnings results after the close of RTH on a given trading day are designated as P.M.-settled binary KPI options. The Exchange notes that the proposed concepts of A.M.-settlement and P.M.-settlement for binary KPI options differ compared to traditional options, for which ''P.M.-settled'' generally means that the expiration of an option so designated will settle to the closing price of the underlying security or index value and ''A.M.-settled'' generally means that the expiration of an option so designated will settle to the opening price of the underlying. While different than how these terms apply to standard options, the Exchange believes the proposed description of A.M.-settlement and P.M.-settlement appropriately reflect the earnings disclosure practices of issuers. Additionally, while the timing of the event that will determine whether the Exchange designates a binary KPI option as A.M.-settled or P.M.-settled is different than that for traditional options, the trading hours on expiration dates for each of A.M.-settled and P.M.-settled binary KPI options are consistent with those of A.M.- settled and P.M.-settled index options (traditional and binary) today.

Proposed Rule 5.98–O(a) further states that the exercise style of binary KPI options is European-style, which is consistent with the exercise style of the binary KPI options that Cboe recently received approval to list.[13] A European-style option may only be exercised on its expiration date.[14]

Proposed Rule 5.98–O(b) describes permissible expirations for binary KPI options. Specifically, the proposed rule change will permit the Exchange to list series that expire on the date the issuer announces its earnings results for the applicable reporting period (such as calendar quarter). The expiration date for a binary KPI option will be the date on which an issuer discloses the applicable KPI in its earnings results (for example, the date on which it issues an earnings results press release) for the specified reporting period (with the specific expiration date to be finalized when an issuer announces the date on which it will disclose its earnings

[12] The Exchange determines whether an issuer discloses its earnings results before or after the close of the Core trading hours on a given trading day based on publicly available information regarding the issuer's disclosure practice.

[13] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(a).

[14] *See* Rule 5.10–O(13).

results for that reporting period).[15] If that date is a Tuesday, Wednesday, Thursday, or Friday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately prior to that day. If that date is a Monday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately following that Monday. The disclosed KPIs relate to a specific reporting period (such as a calendar quarter), which KPIs an issuer publicly announces on a date following the end of that reporting period.[16]

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional options, the Exchange's proposed designation of expiration dates for binary KPI options will differ to reflect standard issuer disclosure practices. In some instances, an issuer might not establish the specific date on which it will announce its earnings results for a reporting period until weeks prior to the disclosure date. Consequently, unlike standard equity and index options that have an exact expiration date when strikes are first listed, a binary KPI option will be listed for trading with a placeholder expiration date if the date the KPI information will be disclosed by the issuer is not publicly known. If a placeholder expiration date is required, it will be set as the first trading day following the date of the deadline for the issuer's submission of its earnings-related filing for the reporting period applicable to the series. Once an issuer announces the disclosure date of the KPI information, the expiration date will be updated as the finalized expiration date of the option contract.[17] Ultimately, the expiration date for a binary KPI option is the issuer's earnings disclosure date, even if that date is unknown at the time the series is listed.

The Exchange may designate binary KPI option series to expire up to 12 months from the time they are listed and may list up to two expirations at one time for a binary KPI option (per KPI per issuer). The Exchange may open for trading a series of binary KPI options at least one business week prior to the expiration date of a binary KPI option. First, the proposed rule change permits the Exchange to list binary KPI options to expire up to 12 months from the time they are listed. The proposed rule change also limits the Exchange to list up to two expirations at one time for binary KPI options.

The proposal to list expirations at least one business week prior to the expiration date of binary KPI option (as well as the proposed language regarding shifting an expiration date to the business day immediately before or after an expiration date that falls on a day the Exchange is not open for business) is substantially similar to current Exchange rules applicable to the binary KPI options that Cboe's recently received approval to list.[18] The Exchange believes it is appropriate to permit listing of binary KPI options that expire up to 12 months from the time they are listed to accommodate different issuer reporting periods, as well as to permit the Exchange to list expirations for consecutive calendar quarter periods or for a calendar quarter and annual reporting period at the same time. As discussed above, issuers disclose KPIs in their periodic reports submitted to the Commission.

Proposed Rule 5.98–O(c) describes the automatic exercise feature of binary KPI options. Specifically, the proposed rule states that binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price in the case of a put binary KPI option.

Proposed Rule 5.98–O(d) describes the permissible exercise prices (or strike prices) the Exchange may designate for series of binary KPI options. Proposed Rule 5.98–O(c)(1) describes how the value of exercise prices of binary KPI options are measured. Specifically, the exercise price of each binary KPI option series will be fixed at an amount equal to an underlying KPI value divided by a scaling factor. Because the value of certain KPIs may be very large (*e.g.,* billions of dollars), the Exchange proposes that the exercise value of the underlying KPI will be divided by a scaling factor based on the value of the KPI in the issuer's most recent earnings-related disclosure as of the time a binary KPI option class is listed) as follows:

- if the most recently disclosed KPI value is greater than or equal to one trillion, the exercise price equals that value divided by one trillion (*e.g.,* for such KPIs, an exercise price of 27.00 is equivalent to a KPI value of 27,000,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one billion but less than one trillion, the exercise price equals that value divided by one billion (*e.g.,* for such KPIs, an exercise price of 112.00 is equivalent to a KPI value of 112,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one million but less than one billion, the exercise price equals that value divided by one million (*e.g.,* for such KPIs, an exercise price of 900.00 is equivalent to a KPI value of 900,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one thousand but less than one million, the exercise price equals that value divided by one thousand (*e.g.,* for such KPIs, an exercise price of 42.00 is equivalent to a KPI value of 42,000.00); and
- if the most recently disclosed KPI value is less than one thousand, the exercise price equals that value and is not divided by a scaling factor (*e.g.,* for such KPIs, an exercise price of 774.00 is equivalent to a KPI value of 774.00).[19]

The Exchange will apply a different scaling factor to newly listed binary KPI option series for a new expiration only after the value of the KPI in the issuer's earnings-related disclosures has a value in a different scaling tier for four consecutive reporting periods or if the Exchange deems it necessary in the interests of a fair and orderly market. Application of a different scaling factor will not affect the exercise prices of any series of the binary KPI options previously opened. For example, if the Exchange begins listing a new class of binary KPI options and the most recently disclosed KPI value for the issuer at the time of that listing was for the third quarter of 2026 and was $892,000, the exercise prices for that class of binary KPI options will be scaled by 1,000, and thus exercise prices of 895,995, and 1,005, would represent $895,000, $995,000, and $1,005,000, respectively. If the issuer discloses a KPI

[15] For example, for a binary KPI option series, the Exchange may designate the reporting period for a series to be the fourth quarter of 2026. The expiration date for that series would be the date on which the applicable issuer establishes as the date it will announce earnings results for that quarter. The Exchange will issue a Trader Update when the specific expiration date for a binary KPI option is finalized. Additionally, the Exchange will maintain a reference data file for each issuer KPI on which the Exchange lists binary KPI options (as will be described in the Exchange's technical specifications available on its public website), and that reference data file will be updated with the specific expiration date for a binary KPI option once known.

[16] While earnings results are often reported with respect to the time period covered by the issuer's earnings release, such as a calendar quarter, certain issuers may disclose results for different time periods. For example, it is possible in an earnings release for an issuer to announce a KPI that covers a calendar month rather than a calendar quarter.

[17] Issuers have different practices as to when they disclose their earnings results (and when they announce their earnings disclosure dates); however, each issuer's practice is generally consistent and predictable.

[18] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(b).

[19] When applying the scaling factor, the Exchange will not round the scaled KPI value and instead will truncate the value so the scaled strike price value fits within standard strike listing format.

value of $1,020,000 in its fourth quarter 2026 earnings disclosure, the Exchange will continue to list exercise prices scaled by 1,000. If the issuer then discloses KPI values of $1,112,000, $1,237,000, and $1,064,000 for the first, second, and third quarters, respectively, of 2027, the Exchange will begin scaling the exercise prices by 1,000,000 for the fourth quarter 2027 expirations (or for the first quarter 2028 expirations if the Exchange had already listed fourth quarter 2027 expirations prior to the disclosure of the third quarter 2027 KPI value). The Exchange believes this will permit consistency for listing scaled KPI values while allowing the Exchange to update strike prices to reflect long-term changes to an issuer's KPI values.

The Exchange will announce via Trader Update if the scaling factor applied to a binary KPI options changes (for example, the KPIs will be scaled in billions rather than in millions). Additionally, the Exchange will update this information in the Exchange's technical specifications regarding binary KPI options and reference data file that describes the terms of binary KPI options, both of which will be available on the Exchange's website (customers receive notifications of such updates). This is consistent with how the Exchange provides information regarding product information (including updates) for all options the Exchange lists for trading.[20]

It is possible for a KPI to have a negative value, such as earnings per share (which is equivalent to a loss per share). Proposed Rule 5.98–O(d)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values. For these series, the exercise price will equal the absolute value of the KPI and will be scaled as described above. For example, if an issuer's earnings per share in the last reporting period was −$3.52 (and thus was a loss per share), a binary KPI option for such issuer with a strike of 3.58 will reflect an expected loss of $3.58 per share. The Exchange will incorporate into symbology for binary KPI options whether the value of the strike price is positive or negative, including if the Exchange lists binary KPI option series with both positive and negative strike prices. Whether a symbol reflects a positive or negative value will be available on contract specifications as well as the reference data file for the specific binary KPI option on the Exchange's public website.

[20] The binary KPI option contract specifications available on the Exchange's public website will set forth the scaling factor for each binary KPI option.

Proposed Rule 5.98–O(d)(2) provides the minimum interval between strike prices for binary KPI options series is:

- 0.01 where the strike price is less than 10;
- 0.10 where the strike price is 10 or greater but less than 100;
- 1.00 where the strike price is 100 or greater but less than 1,000;
- 10.00 where the strike price is 1,000 or greater but less than 10,000; and
- 100.00 where the strike price is 10,000 or greater.

As discussed above, while KPI values above 1,000 are generally scaled, there may be circumstances in which the Exchange lists strikes above 1,000 or even 10,000 given the Exchange's proposal to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters). This may occur when a KPI value is near the top of a scaling range; for continuity, the Exchange will continue listing strike prices using the lower scaling factor and not change to a higher scaling factor until the KPI value is regularly within that higher range (as noted above). Suppose a KPI value is 995,000,000; in this case, strike prices will be scaled by 1,000,000. Thus, the Exchange may list binary KPI options above and below 995 (995,000,000 divided by 1,000,000). However, it is realistic that the KPI may increase to above 1,000,000,000. As proposed, the Exchange may list strike prices, for example, of 1,000 (representing 1,000,000,000) and above, for expirations until the KPI value is above 1,000,000,000 for four consecutive reporting periods. To reduce confusion, the Exchange would not scale strike prices using different scaling factors within a single expiration (and would not change the scale until the KPI value is consistently at the higher level). Therefore, it is possible the Exchange may list strikes greater than 1,000. Similarly, while strikes above 10,000 may be rare, given the Exchange proposes to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters, as proposed), depending on market factors and demand, it is possible (although unlikely) the Exchange may determine it is appropriate to list strikes above 10,000 if market factors or expectations signify a significant increase of the KPI value. The proposed strike intervals accommodate the listing of binary KPI options in these circumstances before the Exchange shifts the strike prices for an issuer's KPI to a different scaling level.

The proposed strike intervals are identical to the strike intervals applicable to the binary KPI options that Cboe's recently received approval to list [21] and generally consistent with current Exchange Rules for other options, which provide for larger strike intervals as the values of strike prices increase. Given the scaling factor for larger KPI values, it may appear the proposed rule change will permit smaller strike intervals for larger KPI values if those intervals are considered solely on a nominal basis. However, that is not the case if the actual values of the strike intervals are considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. For example, suppose a strike price of 950 represents $950 million. The proposed rule change would permit strike intervals of $1.00. However, that $1.00 corresponds to $1,000,000. In other words, if the Exchange listed strikes of 950, 951, and 952, the difference in values of those strikes are $1 million, not $1 (*i.e.,* the strikes represent values of $950,000,000, $951,000,000, and $952,000,000). Similarly, suppose a strike price of 3 represents $3,000,000,000. The proposed rule change would permit strike intervals of $0.01. However, in this case, that $0.01 corresponds to $10,000,000. If the Exchange listed strikes of 3.00, 3.01, and 3.02, the difference in values of those strikes are $10,000,000, not $0.01 (*i.e.,* the strikes represent values of $3,000,000,000, $3,010,000,000, and $3,020,000,000, respectively). As a result, the permissible strike intervals for strike prices representing values in the billions are actually larger than the permissible strike intervals for strike prices representing values in the millions. This is consistent with the general premise underlying current strike intervals that larger strike intervals apply to larger strike values.

Proposed Rule 5.98–O(e) addresses bid and offer conventions for binary options with multipliers other than 100. Proposed Rule 5.98–O(e) provides that bids and offers for a binary option with a multiplier other than 100 must be expressed in terms of dollars per 1/multiplier of the total value of the contract. For example, if a binary option has a multiplier of 1, an offer of ''0.50'' represents an offer of $0.50. It will provide clarity and consistency in market quotations relative to the

[21] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(c)(2).

notional size of the option and promotes investor understanding of the cost and value of binary KPI option contracts. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

Proposed Rule 5.98–O(f) describes the initial series of a binary KPI option the Exchange may open for trading. Specifically, the Exchange may open for trading one or more binary KPI option series with a fixed KPI value as the strike price (scaled as described above), with approximately the same number of strike prices being opened above and below the at-the-money KPI value (*i.e.,* the value of the KPI in the issuer's most recent earnings-related disclosure) at the time the binary KPI options are opened. The ''at-the-money'' KPI value may be the value of the KPI in the issuer's most recent earnings-related filing submitted to the Commission, the issuer's disclosed estimate of the KPI for the next reporting period, or analysts' consensus estimate as reported by major market vendors, as the Exchange deems appropriate based on the most recent market information available to the Exchange. Because KPIs are static values, the Exchange believes it is appropriate to determine strike prices based on all available information that would inform expectations about the KPIs (as investors would do). The Exchange understands that an issuer's previously disclosed KPI, as well as issuer and analyst estimates of the KPI, are primary factors investors may consider when determining in which direction the KPI value may move in the next reporting period (similar to how investors consider the then-current price of an underlying stock when considering their options investment strategies and which direction the stock price may move). Therefore, the Exchange believes using the most recently available of these values is appropriate to use for determining which strikes it should list for a specific issuer KPI. The Exchange believes this flexibility to select the most appropriate at-the-money value is similar to current rules that permit the Exchange to list additional series to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially. The Exchange believes the proposed definition of at-the-money will allow the Exchange to list series with strike prices that are consistent with investor expectations and demands and that are based on information available in the market.

The Exchange will list strike prices for binary KPI option series that are reasonably close to the at-the-money KPI value at the time of listing. A strike is ''reasonably close'' to the at-the-money KPI value if (1) for KPIs less than or equal to 1, it is no more than 2; [22] (2) for KPIs greater than 1 and less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (3) for KPIs greater than 10, it is no more than 30% above or below the at-the-money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) provided demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.

Per proposed Rule 5.98–O(g), the Exchange may add new series of binary KPI options when the Exchange deems it necessary to maintain a fair and orderly market or to meet customer demand, and the opening of a new series of binary KPI options on the Exchange will not affect any other series of options of the same binary KPI option class previously opened. This is consistent with Cboe's authority to add new series of binary KPI options.[23] The Exchange may list additional series using updated at-the-money KPI values, such as if the Exchange lists binary KPI options series for an expiration before the applicable issuer has disclosed the KPI value in a filing submitted to the Commission for the immediately preceding reporting period and that value is then disclosed in a filing submitted to the Commission or if the issuer or major market data vendors publish estimates of the KPI value. For example, before expiration of a binary KPI options series set to expire on the date of an issuer's disclosure of its third quarter earnings results, the Exchange lists series of that binary KPI option to expire on the date of an issuer's disclosure of its fourth quarter earnings results (using the KPI from the second quarter earnings results as the at-the-money KPI value). After the issuer discloses its third quarter earnings results in a filing submitted to the Commission, including the applicable KPI, the Exchange may list additional series for the fourth quarter binary KPI options using the third quarter KPI result as the at-the-money KPI value. Suppose, further, that after the issuer discloses its third quarter earnings results, the issuer publishes an estimate of the fourth quarter KPI value. As investors may see this estimate (and possibly factor it into their investment decisions), the Exchange may determine it is appropriate to consider this estimate the ''at-the-money'' value and list additional strikes above and below this value Any additional strike prices the Exchange lists will be reasonably close (as defined above) to the at-the-money KPI value at the time of listing.

Continuing the above example, suppose the Exchange lists binary KPI options for the fourth quarter before the binary KPI options for the third quarter have expired. As proposed, the Exchange would list strikes above and below the at-the-money strike, which at the time of listing would be the settlement value KPI from the issuer's second quarter earnings results disclosure (the most recently available KPI). If the KPI for the option was net sales, and the second quarter value was $45.093 billion, the at-the-money strike would be 45.10, and the Exchange could list strikes within 30% of that value, and additional series based on customer demand or market changes. After the Exchange lists those series, the issuer discloses its third quarter earnings results, including net sales of $57.241 billion. As proposed, after that disclosure, the Exchange may list additional strikes within 30% of $57.24 to reflect the change in value of the underlying (as well as additional series based on customer demand or market changes).

This proposed framework for listing and adding series is identical to recently approved framework for Cboe to list and add binary KPI options [24] and similar to the framework in current Rules for listing and adding series of equity options. While the proposed strike intervals are narrower than these rules, the permissible ranges are also narrower. The Exchange acknowledges the proposed framework would still permit the Exchange to list a large number of strikes per KPI per expiration. However, the Exchange intends to apply its standard strike listing practices to binary KPI options. Specifically, the Exchange generally

[22] The Exchange believes this is appropriate given the potentially small values of certain KPIs. For example, suppose the second quarter earnings per share of a company was $0.04. In such a case, if strikes were limited to 100% above this value, the Exchange could only list strikes up to $0.08, which would provide investors with minimal investment options. Therefore, the Exchange believes this provision is appropriate to provide the Exchange with authority to list meaningful strikes for smaller-valued KPIs.

[23] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(e).

[24] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(e).

lists strikes at wider intervals as they move farther away from the at-the-money value, while listing more granular intervals for strikes closer to the at-the-money value. The Exchange also generally delists granular strikes that are deep out-of-the-money if the Exchange determines they are sufficiently covered by wider strike intervals that are close in value.

These proposed provisions regarding the listing of binary KPI option series are identical to recently approved framework for Cboe to list and add binary KPI options and similar to provisions regarding permissible series of other options. The Exchange believes it is reasonable to list binary KPI options for a new reporting period prior to the expiration of then-listed binary KPI options for the immediately preceding reporting period (*e.g.,* listing binary KPI options for the fourth quarter before expiration of binary KPI options for the third quarter), and thus before the settlement value of the applicable KPI is known for the immediately preceding reporting period for these options, to permit investors to roll positions from one expiration to the next. As proposed, once the settlement value for the immediately preceding reporting period is known (the third quarter in this example), the Exchange may list additional series of the binary KPI options that reflect that KPI value. This is consistent with current practice if there is a change (including a substantial change) in the price of underlying security or value of an underlying index. For example, Rule 6.4–O(a) provides that the Exchange may open additional series of a short-term option series overlying a security when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened, subject to the ''reasonably close'' parameters set forth in that rule. Disclosure of, as an example, the third quarter KPI value after the fourth quarter binary KPI options series were listed based on the second quarter KPI value (if the third quarter KPI value differs from the second quarter KPI value) is similar to the move in the price of an underlying security, which may result in the Exchange listing additional series based on the updated price of the underlying security. Similarly consistent with current practice for other options (as set forth in Rule 6.4–O, Commentary .07(d), for example), opening of binary KPI options based on this later-disclosed KPI value will not affect any other series of options of the same binary KPI options class previously opened.

Proposed Rule 5.98–O(h) provides that the contract multiplier for each class of binary KPI options is one.

The Exchange proposes to add new Rule 5.99–O (Determination of Settlement Value) to establish that binary KPI options that are ''at-the-money,'' ''in-the-money,'' or ''out-of-the-money'' are a function of the settlement value of the underlying KPI in relation to the type of binary KPI option (*i.e.,* put or call) and the exercise price. As described above, the settlement value for a binary KPI option is the value of the KPI for the applicable reporting period as disclosed in the applicable issuer's earnings-related filing submitted to the Commission. While the Exchange factors the timing of an issuer's disclosure of a KPI value into the determination of whether the Exchange lists a binary KPI option as A.M.-settled or P.M.-settled, the Exchange will source the settlement value from the earnings-related filing for the applicable reporting period that the issuer submits to the Commission. Generally, companies issue press releases that contain earnings results and near contemporaneously submit a Form 8–K to the Commission with the press release as an exhibit. Therefore, it is unlikely the value of the KPI in the Commission filing will differ from the value in the initial announcement; however, the value in the Commission filing will be the ultimate settlement value.

Proposed Rule 5.100–O (Adjustment) provides that binary KPI option contracts are subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been made pursuant to Rule 5.100–O (and Rules of the Clearing Corporation, the Exchange will announce this adjustment via Trader Update, which will become effective as of the time specified in that announcement.

As described below, binary KPI options would be cleared by the Clearing Corporation, which would serve as the central counterparty to each transaction and facilitate standardized clearing, settlement, and contract administration processes pursuant to its Rules. Consistent with this centralized clearing framework, proposed Rule 5.100–O provides that binary KPI options would be subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been determined, the Exchange will announce this adjustment via Trader Update, which will become effective at the time specified in that announcement. The Exchange believes that limiting contract adjustments to those provided under the Rules of the Clearing Corporation provides a clear and transparent framework under which any adjustments to binary KPI options would be administered. A registered clearing agency designated to clear binary KPI options would be subject to Commission oversight and would possess expertise in the clearance and settlement of financial products. Because binary KPI options represent a novel product type, the Exchange anticipates that the Clearing Corporation would develop adjustment procedures designed to address the unique characteristics of these contracts and the types of events that may require adjustment. To the extent the Clearing Corporation adopts new adjustment procedures for binary KPI options, those procedures would be subject to the applicable regulatory process, including review and approval by the Commission, as applicable, before the Exchange commences trading in the product.

Next, the Exchange proposes to add Rule 5.101–O to provide that binary KPI options may be traded on the Exchange from 9:30 a.m. to 4:00 p.m.[25] Further, the last day of trading for P.M.-settled binary KPI options is the day of expiration, and the last day of trading for A.M.-settled binary KPI options is the trading day prior to expiration. The Exchange believes proposed Rule 5.100–O is consistent with the approved opening auction framework of Cboe for binary KPI options[26] and will ensure that binary KPI options open for trading in an orderly and transparent manner.

The Exchange recognizes it is possible, although unusual and unlikely, that KPI information may become available at unexpected times. Proposed Rule 5.101–O addresses the impact on trading and expiration that such disclosure may have. First, proposed Rule 5.101–O(c) provides if the Exchange confirms an issuer discloses the KPI prior to the expiration date (*i.e.,* the date on which the issuer had announced it would disclose its earnings results for the applicable reporting period), trading in the applicable binary KPI options series will cease, and the expiration date for the option accelerates to a date on or shortly after the date of that disclosure in accordance with the Rules of the

[25] Unless otherwise specified, all times in this proposal are Eastern Time.

[26] *See* Cboe Rule 5.1(3)(F).

Clearing Corporation.[27] This may occur if, for example, the applicable issuer discloses the KPI information in advance of the expiration date of the option. If the issuer discloses KPI information after the expiration date, which may be the case if, for example, the issuer's disclosure of its earnings is delayed, trading in the option will not be impacted and will cease as of the expiration date. While the expiration date will not change, expiration and settlement processing of such options will be delayed until the KPI information becomes available, in accordance with the rules of the Clearing Corporation.

Additionally, proposed Rule 5.101–O(d) provides if there is an unofficial disclosure [28] of the KPI prior to the expiration date, the Exchange may determine to halt (and resume) trading in the applicable binary KPI options series in accordance with Rule 6.65–O. In certain circumstances, the expiration date for the option may accelerate in accordance with the Rules of the Clearing Corporation; if this occurs, trading in the binary KPI will cease. This proposed provision addresses the unlikely event that KPI information becomes available through sources other than the issuer in advance of the expiration date. If the Exchange determines the KPI information reported from the unofficial source is unreliable, trading in the binary KPI option may resume until it expires.

The Exchange proposes to adopt Rule 5.102–O (Position Limits for Binary KPI Options) to set forth position limit requirements for binary KPI options. The Exchange proposes to adopt Rule 5.102–O(a) to provide that in determining compliance with Rule 6.8 (Position Limits), the position limit for binary KPI options is 25,000 standard option contracts per expiration and 100 binary KPI option contracts equal one standard option contract.

Per proposed Rule 5.102–O(b), positions in binary KPI options on the same KPI that have different expiration dates are not aggregated (as proposed position limits are calculated per expiration) and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated. In addition, a long KPI call and a short put KPI of the same type, on the same issuer having the same expiration shall be aggregated. Conversely, a short KPI call and a long put KPI of the same type, on the same issuer having the same expiration shall be aggregated.

The Exchange proposes to adopt Rule 5.102(c) to provide that Binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Finally, per Rule 5.102–O(d), the Exchange proposes a hedge exemption for Market Makers with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits prescribed in Rule 6.8–O.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting binary KPI option positions create a hedge similar to those for which the equity exemption is available. The Exchange believes the proposed hedge exemption will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also proposes to adopt Rule 5.103–O (Reporting of Positions) to provide that positions in binary KPI options shall be reported pursuant to Rule 6.6–O, except, in computing reportable binary KPI options thereunder, aggregation of positions shall be in accordance with Rule 5.102–O. The proposed Rule 5–103–O further provides that for purposes of this report, 100 binary KPI option contracts equal one standard option contract. The Exchange believes this is reasonable given that binary KPI options have a multiplier of 1 while standard equity option contracts have a multiplier of 100.

The Exchange proposes to adopt Rule 5.104–O to establish the minimum increment for bids and offers on orders for binary KPI options, which may not be less than $0.01.

Except as otherwise described above, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner as standard equity and index options are permitted to be listed and traded under current Rules. The Rules that apply to the listing and trading of non-binary options on the Exchange, including those related to customer accounts, margin requirements and trading halt procedures,[29] which are designed to prevent fraudulent and manipulative acts and practices, will apply to the listing and trading of binary KPI options. The Exchange has analyzed its capacity and represents that it believes the Exchange has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

Trading in Flexible Execution (''FLEX'') options, Qualified Contingent Cross (''QCC'') orders and complex Customer Best Execution (''CUBE'') auctions will not be offered. The Exchange may determine to support particular order types, order instructions, or times-in-force on a class-by-class basis. If the Exchange modifies the applicability of any functionality or order instructions for binary KPI options, the Exchange will submit a proposed rule change to reflect such changes to the trading system.

The Exchange will send quotation and transaction price information for binary KPI options to The Options Price Reporting Authority (''OPRA'') in the same manner it sends this information to OPRA for all other options the Exchange lists. Additionally, the Exchange understands from OPRA that it will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists. The Exchange intends to follow OPRA's standard capacity monitoring process for binary KPI options (in accordance with OPRA instructions), which includes submission of quarterly capacity projections (the Exchange will include its projected binary KPI option volume in the applicable submission). Further, the Exchange understands from

[27] The proposed acceleration of binary KPI options is similar to the existing acceleration process for equity options when the underlying security of such options has been converted entirely to cash. *See* OCC Rule 807.

[28] Unofficial disclosure of a KPI may include, for example, an unsanctioned leak of the KPI or disclosure of the KPI by a source other than the issuer.

[29] Binary KPI options will not be tied to the trading state of the underlying issuer stock and thus, trading in binary KPI options will not be affected by halts in the underlying issuer stock. The binary KPI options will halt in accordance with Rule 6.65–O.

OPRA that no technical changes are required to accommodate the reporting to OPRA of quotation and transaction information regarding binary KPI options (the Exchange represents, if later required by OPRA, it will adhere to any new technical requirements OPRA deems necessary to accommodate binary KPI options).[30]

The Exchange does not believe OTP Holders and OTP Firms will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange's automated system.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to binary KPI options, and that it has the necessary systems capacity to support the option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior and other improper trading. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (''FINRA''). Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.[31] The Exchange is also a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options.

The Exchange will report any information regarding binary KPI options required to be reported to the Consolidated Audit Trail (''CAT'') in the same manner it reports this information to CAT for all other options the Exchange lists.[32] The Exchange represents, if later required by FINRA CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options.

Pursuant to the Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan''),[33] participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and Exchange Rules 6.92–O through 6.96–O regarding intermarket linkage) applies during all trading sessions during which multiply listed options trade. Rule 6.96–O addresses order routing away from the Exchange to promote compliance with the Linkage Plan. If the proposed binary KPI options become multiply listed options, Users may designate an order for routing (or not available for routing), and the Exchange System is designed to, at all times, prevent trade-throughs and avoid displaying locked/crossed markets in accordance with the Linkage Plan (and Exchange Rules 6.94–O through 6.96–O regarding intermarket linkage).

Upon launch, binary KPI options will clear through the Clearing Corporation as that term is defined in proposed Rule 5.96–O. In doing so, the proposal would bring these securities products within the established regulatory infrastructure applicable to listed options, including exchange trading and surveillance, standardized disclosure, and centralized clearance and settlement through a registered clearing agency, as further described below. Additionally, binary KPI Options would be cleared through a registered clearing agency, which would serve as the central counterparty to each transaction and facilitate risk mitigation through established clearing, settlement, contract adjustment, and other standardized operational processes.

The Options Listing Procedure Plan (the ''OLPP'') sets forth procedures to facilitate the listing and trading of standardized options. This plan currently describes procedures with respect to options issued by and cleared at the OCC. If the Exchange ultimately does not designate the OCC as the Clearing Corporation for the purposes of the definition set forth in proposed Rule 5.96–O, the Exchange will take steps necessary and within its authority to amend the OLPP to reflect listing procedures applicable to binary KPI Options to the extent not cleared by the OCC.

The Exchange represents it will not list for trading binary KPI options until the registered clearing agency designated as the Clearing Corporation is authorized and operationally ready to clear the options and until all applicable filings and documents of the Clearing Corporation related to binary KPI options being cleared through the Clearing Corporation are approved by the Commission or effective after review by the Commission, as applicable.

As discussed in further detail below, the Exchange intends for binary KPI options to be treated as listed standardized options. Rule 9b–1 under the Act establishes a disclosure framework for standardized options pursuant to which investors receive a disclosure document describing the terms, characteristics, and risks of the product before trading. Depending on which registered clearing agency is designated as the Clearing Corporation, the applicable Rule 9b–1 disclosure document may be based on an existing options disclosure document utilized by that clearing agency, as modified or supplemented, as appropriate, or another comparable disclosure document prepared in connection with the clearance of binary KPI options. In either case, the disclosure document would contain substantially similar information regarding the terms, characteristics, risks, settlement mechanics, and other material features of binary KPI options and would be tailored, as necessary, to address the product's unique features and distinctions from traditional listed options. The Exchange believes that disclosure through the Rule 9b–1 framework would better serve the informational needs of investors than a traditional prospectus because binary KPI options are standardized options for which the principal investor considerations relate to the contract's terms, payout structure, settlement

[30] The Exchange understands OPRA may need to update how it disseminates open interest information for binary KPI options, as its current process incorporates information from OCC and references in this filing are clearing agency-neutral.

[31] Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (''SRO'') registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

[32] CAT reporting requirements will apply to broker-dealers with respect to binary KPI options in the same manner as they apply to any other options the Exchange lists. The Exchange understands from FINRA CAT there will be no changes to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to CAT.

[33] The Linkage Plan requires U.S. options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. The full text of the Linkage Plan is available at *https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.*

mechanics, and trading characteristics rather than the disclosure typically provided in connection with an offering of a corporate issuer's securities.

The Exchange will not commence listing and trading of binary KPI options until a registered clearing agency is authorized and operationally ready to clear the contracts; the applicable disclosure document under Rule 9b–1 is in place; any necessary changes relating to CAT, FINRA, OPRA, the Linkage Plan, and OLPP have been completed; and the Exchange has issued an implementation notice to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[34] in general, and furthers the objectives of Section 6(b)(5) of the Act,[35] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[36] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As an initial matter, the Exchange's proposal is substantively the same as the recently approved proposal made by the Cboe to list binary KPI options.[37] Similar to Cboe, the Exchange believes that trading such instruments as binary KPI options would promote a fair and orderly market and facilitate new investment and hedging opportunities on a Commission-regulated exchange.

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[38] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it establishes a clear and transparent framework for a new category of listed options (binary KPI options) that are tied to financial and operating metrics of issuers that are publicly disclosed in reports submitted to the Commission. Currently, investors wishing to position their investment strategies around earnings disclosures must rely primarily on equity options, whose pricing is affected by a wide range of variables beyond the reported financial or operating measure of interest (*e.g.,* implied volatility, delta, time value, and general market movement). Binary KPI options allow investors to take a targeted, defined-risk position directly on a specific financial or operating measure (*i.e.,* a KPI) for a particular reporting period. The Exchange believes this additional investment tool will protect investors and the public interest because it will promote market efficiency, enable more precise price discovery around earnings events, allow investors to hedge against potential idiosyncratic risks, and remove a gap in current national securities exchange-listed products available to market participants.

The Exchange believes the proposed list of issuers and KPIs on which the Exchange may list binary KPI options will prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. First, as noted above, the Exchange is proposing to list binary KPI contracts based on specific financial and operating metrics reported by the following issuers in their earnings-related disclosures submitted to the Commission: Apple, Inc.; Advanced Micro Devices, Inc.; Alphabet Inc.; Amazon.com, Inc.; Bank of America Corporation; Citigroup Inc.; Coinbase Global, Inc.; Ford Motor Company; Intel Corporation; JPMorgan Chase & Co.; Marathon Digital Holdings, Inc.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; NVIDIA Corporation; Palantir Technologies Inc.; Robinhood Markets, Inc.; SoFi Technologies, Inc.; Space Exploration Technologies Corp.; Super Micro Computer, Inc.; Target Corporation; Tesla, Inc.; and The Walt Disney Company. The Exchange believes offering investors an additional investment tool on a national securities exchange related to some of the most actively traded stocks and options will perfect the mechanism of a free and open market and benefit investors by allowing them to further refine their investment strategies, including using these options to hedge idiosyncratic, even-specific risk embedded in the specific KPIs (as further discussed below), for these actively traded companies.

The Exchange believes the proposed universe of issuers will prevent fraudulent and manipulative acts and practices, because the proposed issuers are large, well-capitalized, and widely followed issuers with highly liquid underlying securities and options markets. As noted in its filing to amend its rules to permit the listing of binary KPI options,[39] Cboe noted that during May 2026, each of the issuers exceeded $3 billion in market capitalization and ranked among the top 200 U.S. companies by average daily options or stock volume, with the exception of Space Exploration Technologies Corp (commonly referred to as SpaceX), which was not trading in May 2026 but which the Exchange believes will satisfy these measures with its first month of trading results based on its volumes since it began trading.[40]

Securities with high market capitalizations and liquid markets are generally less susceptible to manipulation because of the substantial capital required to artificially influence prices of those securities. The depth and breadth of trading activity for securities with significant market capitalizations, such as the stocks of the proposed issuers, make it unlikely that a single market participant would be able to exert undue influence on the price of such a stock, as large volumes of buyers and sellers are what ultimately continuously reflect the true market value of the stock. The Exchange believes the KPIs of issuers with high market capitalizations proposed to underlie binary KPI options are similarly less susceptible to manipulation because any attempt to

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78f(b)(5).

[37] *See* Cboe Binary KPI Approval Order, *supra* note 4.

[38] 15 U.S.C. 78f(b).

[39] *See* Securities Exchange Act Release No. 105877 (July 10, 2026), 91 FR 43418 (July 15, 2026) (SR–CBOE–2026–061) (''Notice of Filing of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators (''KPIs'') Reported by Certain Issuers of Stock (''Binary KPI Options'')).

[40] As noted by Cboe, the ADV of SpaceX stock between June 12 and June 22, 2026 was approximately 290,009,963 shares. The market capitalization of SpaceX as of June 22, 2026 was $2.145 trillion.

distort a financial metric of such an issuer would require an enormous and economically impractical deployment of capital, which would likely exceed the fixed payout of a binary KPI option. Therefore, like stocks of large-cap issuers, KPIs of large-cap issuers are less susceptible to manipulation due to the structural barriers that would make manipulating KPI values operationally difficult and financially irrational (in addition to the rigorous financial oversight to which these issuers are subject, as further discussed below).

In addition to the proposed issuers being highly capitalized and having actively traded stocks and options on such stocks, the Exchange also believes the proposed limited universe of issuers for binary KPI options to those proposed will prevent fraudulent and manipulative acts and practices because each issuer is subject to periodic reporting requirements under the Act. Therefore, each of the proposed issuers must file annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the Commission, which as discussed above disclose information the issuer believes is necessary for an investor to understand its financial condition, changes in financial condition and results of operations, which can include KPIs. Further, each issuer maintains audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and is subject to executive certification requirements under the Sarbanes-Oxley Act. As a result, the settlement-determining KPI values for each eligible issuer are produced within the Commission's supervisory jurisdiction, are publicly verifiable from a Commission-regulated source and are subject to relevant anti-fraud provisions under the Act, which the Exchange believes will reduce the potential for manipulation of the underlying KPIs as well as the applicable issuer's stock.

Further, the Exchange believes the proposed limited universe of issuers will introduce binary KPI options in a well-developed, well-understood, and transparent Commission-regulated market environment. Each issuer is among the most widely followed, actively traded, and extensively analyzed issuer in its respective sector, with deep and liquid equity and derivatives markets and a broad institutional and retail investor base. The depth of existing market activity surrounding these issuers supports fair and orderly pricing by ensuring that binary KPI options are listed in markets where price discovery is well-established, liquidity is readily available, and participants have broad access to the information necessary to form and express informed views on KPI outcomes. The Exchange believes the continuous public scrutiny to which these issuers are subject substantially reduces the likelihood that any market participant could obtain or maintain an informational advantage sufficient to manipulate the settlement value of the binary KPI options.

The Exchange believes the proposed KPI metrics will similarly prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange's proposal limits eligible KPIs to GAAP and non-GAAP measures and other statistics related to an issuer's financial condition and operational results, all of which the proposed issuers disclose in their earnings-related filings (*i.e.,* Forms 8–K, 10–Q, and 10–K) submitted to the Commission. As such, the settlement values of the proposed binary KPI options are derived exclusively from information that issuers deem as material information required to be disclosed in reports submitted to the Commission. These metrics are routinely referenced and tracked in the investment community and are figures that the market recognizes as a meaningful and central indicator of issuer performance. The Exchange believes that the inclusion of well-established metrics as eligible KPIs expands the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process.

The proposed KPI metrics are among the most widely followed and extensively analyzed measures for the proposed issuers. Specifically, the Exchange proposes to be able to list a binary KPI option on earnings per share (prepared in accordance with GAAP) for each proposed issuer. This metric is among the most widely followed and extensively analyzed figures in public company financial disclosure and is disclosed in each issuer's periodic Commission filings. Similarly, the Exchange proposes to list binary KPI options on revenue, prepared in accordance with the applicable GAAP, for each issuer. As is the case for earnings per share, revenue is a widely followed financial metric for publicly reporting companies and is the subject of extensive analyst coverage.

The Exchange proposes KPIs representing revenues broken out by applicable reportable segment, business unit, or product category, including cloud and artificial intelligence infrastructure revenues, streaming and geographic subscription revenues, automotive segment revenues, financial services segment revenues, consumer product category revenues, and digital asset exchange transaction and subscription revenues, among others, for several of the proposed issuers. Each such metric is a GAAP-defined figure required to be disclosed in the issuer's periodic Commission filings. The Exchange understands these metrics enable market participants to express views on specific high-profile business lines that are extensively covered by analysts and subject to a high volume of publicly available forecasts.

The Exchange proposes KPIs for the proposed financial institution issuers that are specific to financial institution income statement presentation, including net interest income, provision for credit losses, and net income. Each such metric reflects the distinct GAAP reporting framework applicable to banking institutions and is subject to the same periodic disclosures as other proposed KPIs.

The proposed rule change also includes operating margin, gross margin, or cash flow from operations KPIs for several issuers, each of which is computed directly from GAAP financial statement line items disclosed in the issuer's periodic Commission filings. These metrics provide market participants with insight into issuer profitability and capital generation and complement other revenue and earnings figures when market participants are evaluating the value of an issuer and its stock.

The Exchange also proposes several non-financial operational KPIs that issuers disclosed in their periodic Commission filings, including relevant production volumes, network and infrastructure counts, user engagement metrics, deal counts, digital asset trading volume, and digital asset mining and holdings metrics. Each designated non-financial operational metric is closely tied to the core economic activity of the respective issuer's business and is a figure that the issuer has affirmatively chosen to disclose to the public as a key indicator of business performance. Issuers typically designate and disclose such metrics precisely because they are understood by the market to be among the most meaningful measures of their business activities. As discussed above, this is consistent with Commission guidance that an issuer should include KPIs in these report that the issuer believes an investor needs to gain understanding of its financial condition, changes in

financial condition and results of operations, as such KPIs present the ''pulse'' of the issuer's business. The market significance of these metrics is further reflected in the extensive analyst coverage and investor attention, particularly near each reporting date. Each metric is subject to executive certification as part of the periodic report in which it appears and is widely tracked by financial data services and equity research analysts.

Overall, the Exchange believes that the proposed well-established, publicly reported metrics as eligible KPIs will expand the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process. As a result, the Exchange believes the proposed KPIs will protect investors and the public interest as it will permit the Exchange to offer investors additional investment and hedging tools on the Exchange that investors can incorporate into their investment strategies regarding the proposed issuers.

The Exchange believes the proposed contract terms for binary KPI options will promote just and equitable principles of trade, remove impediments to and perfect a free and open market and national market system, and protect investors. As discussed above, the Exchange believes the proposed contract terms for binary KPI options are standardized option terms. Like standard option contracts currently listed for trading on the Exchange, each proposed binary KPI option will be a call or a put, will have an underlying, exercise price, an expiration date, a settlement type, a exercise style, and a multiplier. Each proposed binary KPI option will have an exercise settlement amount paid depending on how the settlement value of the underlying compares to the exercise price.

The proposed binary KPI options will function identically to, and carry the same contractual terms as, the binary KPI options the Cboe has recently been approved to list. The proposed definitions of binary KPI option, call binary KPI option, exercise price, and put binary KPI option are the same as those terms employed by Cboe for its binary KPI options.

The proposed definition of settlement value for binary KPI options is identical to the definition applied by Cboe for binary KPI options. The Exchange believes the proposed $1 exercise settlement amount is reasonable given the retail nature of the proposed binary KPI options and merely adds specificity to the Rules for binary KPI options. The Exchange notes binary KPI options differ from standardized index options (which are also cash-settled) in that the exercise settlement amount is $1.00 rather than the cash difference amount between the settlement value of the index and the strike price of an option. Since the $1.00 exercise settlement amount will be paid out to the option holder if the criteria of the binary KPI option have been met, binary KPI options utilize a fixed exercise settlement amount.

The Exchange proposes new Rule 5.96–O to list the specific binary KPI option contracts with the KPI criteria for each option contract. Such KPI criteria are established as the set of KPI events that will be used to determine whether an option contract will be exercised by comparing the strike price of the binary KPI option to the KPI value. The Exchange believes these proposed contracts (including the issuers and KPIs) are consistent with the Act for the reasons set forth above.

The Exchange believes the proposed expirations for binary KPI options will remove impediments to and perfect the mechanism of a free and open market and a national market system because they will align with the reporting periods for which the proposed issuers disclose earnings results and submit corresponding reports to the Commission. These expirations will, therefore, permit investors to incorporate binary KPI options into their investment strategies that correspond to issuers' earnings results. Further, as discussed above, the Exchange believes aligning expirations with Commission-regulated sources will reduce the potential for manipulation of the underlying KPIs, which will ultimately protect investors and the public interest.

The proposed rule establishes a strike regime for binary KPI options similar to that for traditional options. As is the case for traditional options, the proposed rule change establishes permissible strike intervals, the amounts of which increase as the value of the strike increases. Additionally, the Exchange proposes to list initial and additional series pursuant to a similar framework as traditional equity options. The differences in the proposed strike regime compared to that of standard equity and index options are necessary and appropriate to reflect the static nature of KPIs (unlike underlying equities and indexes, the values of which change throughout the trading day) and the timing of their disclosure. As noted above, the Exchange intends to list binary KPI options aligned with the cadence of the KPI disclosures as their expiration cycle (generally quarterly). The Exchange intends to list for trading binary KPI options with expirations for the then-current reporting period (*e.g.,* third quarter) as well as the following period (*e.g.,* fourth quarter) prior to the expiration of the binary KPI options for the then-current reporting period.

As the Exchange does for standard options, as well as, the Exchange lists strikes (subject to its Rules) based on relevant market information—including the then-current value of the underlying—and customer demand. As described above, the Exchange intends to do the same for binary KPI options by listing strikes relative to the then-current value of the underlying KPI or publicly available estimates from the issuer or major market data vendors. The Exchange believes it is consistent with just and equitable principles of trade to permit the Exchange to list strikes based on all available information that would inform expectations about the KPIs (as investors would do), and then add strikes based on new or updated information, as it will allow the Exchange to list series with strikes consistent with investor expectations and demands. This will enable the Exchange to respond to changes in market conditions for binary KPI options in the same manner it is able to do today for equity and index options, factoring in the static value of KPIs. Specifically, the Exchange believes this flexibility is appropriate for binary KPI options because the value of a KPI changes only when an issuer discloses that KPI, which generally happens every three months, unlike other underlyings, the value of which changes every trading day. While this proposed strike listing regime for binary KPI options differs from that of other options, the concept is the same, which is to permit the Exchange to list strikes reflective of the then-current value of the underlying and in response to customer demand. It is possible the changed value of an underlying KPI in a more recent earnings disclosure or new or updated estimates may be more sudden and pronounced than changes in the value of an underlying equity or index (which are susceptible to sudden value changes); however, like the listing rules for equity and index options, the proposed rules permit the Exchange to list strikes to reflect changes in the value of the underlying, including substantial changes.

The Exchange believes the proposed scaling of strike prices is reasonable and will protect investors, as it will permit the Exchange to list strike values in amounts similar to current strike values for other options. As noted above,

values of certain KPIs may be large (*e.g.,* in the billions). The proposed scaling will permit the Exchange, for example, to list a strike of 27 rather than 27,000,000,000, which the Exchange believes will be simpler for investors to understand (as it will be made clear that 27 will reflect billions in this example) and consistent with current strike levels. The proposed scaling also permits the strike prices for binary KPI options to fit within current system capabilities regarding strike price values. The Exchange believes scaling rather than modifying its systems (and potentially causing investors to modify their systems) will benefit investors by allowing them to trade binary KPI options in the same manner as they trade other options today.

The Exchange believes the proposed strike intervals promote just and equitable principles of trade because it will permit the Exchange to list commercially meaningful strikes that will permit investors to tailor their trading strategies with precision. The Exchange acknowledges the proposed strike intervals are smaller than those in current Rules for other types of options. However, the Exchange believes the precision is appropriate and necessary given the nature of KPIs and the proposed options. The purpose of binary KPI options is to permit investors to take discrete and precise positions on KPIs. Therefore, the Exchange needs the ability to list strikes with the precision necessary to permit investors to take these positions. For example, earnings per share is generally a relatively small number (under $10). While strike intervals for other options are limited to $0.50 intervals, that would not be meaningful in the context of binary KPI options when investors are looking to take positions for a specific KPI, which will be measured in penny intervals. Therefore, the Exchange believes smaller strike intervals will benefit investors because they will allow the Exchange to list binary KPI options that will enable investors to use these options in the precise nature for which they are intended and provide sufficient flexibility for the Exchange to list series to respond to changes in market conditions and customer demand, while other rules will place bounds around the strikes the Exchange may list.

Further, as discussed above, the proposed strike intervals are consistent with the strike intervals used by Cboe for the binary KPI options it recently received approval to list. Given the scaling factor for larger KPI values, while it may appear the proposed rule change will permit smaller strike intervals for larger KPI values, that may be true on a nominal basis but is not the case if the actual value of the strike intervals is considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. As a result, the permissible strike intervals for strike prices representing higher KPI values are actually larger than the permissible strike intervals for strike prices representing lower KPI values. This is consistent with general premise underlying current strike intervals that larger strike intervals apply to larger strike values and, therefore, the Exchange believes the proposed rule change will promote just and equitable principles of trade.

The Exchange believes this proposed rule change clearly describes the proposed terms of binary KPI options, such as with respect to expirations (including the Exchange's announcement of the specific expiration date after binary KPI options series for that expiration are listed) and exercise prices (including the scaling factor, negative values, and potential changes to that scaling factor for a binary KPI option class) for all investors. As discussed above, these terms and changes to such terms will be described in Exchange notices, technical specifications (including binary KPI option reference data files), and contract specifications (all of which are posted on the Exchange's public website and thus available to all investors). Exchange ATP Holders and retail brokerage firms are highly sophisticated investors that intake information regarding other Exchange-listed options (including changes) in the same manner that the Exchange plans to release this information for binary KPI options. Therefore, the Exchange expects retail customers to have access to all relevant information regarding the terms of binary KPI options they choose to trade, including changes to expiration dates and exercise price values as announced by the Exchange.

Proposed Rule 5.98–O(e) specifies a multiplier of one for binary KPI options rather than require the Exchange to designate a multiplier of at least one. This proposed multiplier is consistent with the definition of contract multiplier applicable to the binary KPI options approved for listing on Cboe. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

The Exchange believes proposed Rule 5.101–O, which establishes the Core Trading Hours for binary KPI options is consistent with the Act, protects investors, and prevents fraudulent and manipulative practices. The Exchange believes the proposed structure ensures that trading in binary KPI options ceases before the earnings disclosure that determines settlement. The distinction between A.M.- and P.M.-settled contracts mirrors the settlement terms applicable to the binary KPI options approved for listing on Cboe.

The Exchange believes proposed Rule 5.101–O(e), which provides that for binary KPI options, the System initiates the opening rotation at 9:30 a.m., removes impediments to a free and open market by applying the same proven opening process to binary KPI options that governs other listed options classes on the Exchange. Additionally, unlike equity options, for which the underlying opens for trading and can trigger the opening rotation, KPIs do not trade, so triggering the opening rotation based on a set time is reasonable for binary KPI options.

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 6.85–O is consistent with the Act and promotes just and equitable principles of trade because the standard obvious error framework, which evaluates whether an execution price deviates from a ''theoretical value'' by a prescribed amount, is incompatible with the structure of binary KPI options. Binary KPI options have no continuously observable theoretical value (unlike equity and index options) prior to the date of the earnings-related disclosure. Rather, their exercise settlement amount is fixed at either a pre-specified dollar amount or zero, depending entirely on whether the reported KPI satisfies the exercise condition, which itself is based on a single, publicly verifiable metric, disclosed in Commission filings. Applying an obvious error framework premised on theoretical value calculations to a product with a binary, fixed payout would be technically inapplicable and could produce unjust or arbitrary results. Moreover, because settlement of binary KPI options is determined by issuer-reported metrics disclosed through Commission filings (*i.e.,* figures produced pursuant to established accounting standards, subject to independent audit, and certified under the Sarbanes-Oxley Act), the settlement process is itself governed by a comprehensive external regulatory framework. The Exchange believes that establishing any alternative dispute mechanism in this context would be not

only unnecessary, but potentially disruptive to market integrity, as it may introduce an element of post-hoc discretion into a settlement process that is expressly designed to be objective, verifiable, and rule-bound.

Finally, the Exchange notes that it is planning to implement a systemic maximum execution price protection for binary KPI options on a class basis, pursuant to which any execution price for a binary KPI option above the Exchange-designated maximum execution price for that class is either rejected or adjusted down to that maximum execution price. This protection will provide investors with an additional safeguard against executions at potential erroneous prices, further limiting the need for a separate obvious error provision applicable to binary KPI options, which the Exchange believes protects investors and the public interest. The Exchange represents it will not list for trading binary KPI options until such systemic control is in place.

The Exchange believes the proposed amendments related to position limits for binary KPI options are consistent with the Act because they establish a rational position limit framework for binary KPI options that protects against manipulation while facilitating legitimate trading activity in a novel product.

The Exchange believes the proposed position limit, which is the smallest possible position limit that can apply to equity options, is appropriate and consistent with the Act. Specifically, the proposed position limit of 25,000 standard contracts is equivalent to the position limit in Rule 6.8–O, Commentary .06 that applies to an equity option for which the underlying security does not meet the requirements for a higher option contract limit (including newly listed equity options). The position limit for options on the stocks of the issuers of the proposed KPIs is ten times higher (*i.e.,* 250,000 contracts) pursuant to Rule 6.8–O, Commentary .06. Given the large market capitalization and liquidity of these stocks, the Exchange believes the proposed position limit for binary KPI options for the issuers of those stocks is conservative and reasonable for the binary KPI options. Therefore, the Exchange believes the proposed position limit will promote just and equitable principles of trade, as it is sufficient to mitigate potential manipulation and prevent disruption in the markets for the issuers' stocks and options on the stocks while accommodating investors trading activity for legitimate economic purposes.

As proposed, binary KPI options with a multiplier of one will count toward applicable limits on a proportional basis relative to standard equity options on the issuer's stock, which carry a multiplier of 100. This treatment is consistent with the position limits applied to other reduced-value options, such as micro-options (which also have a contract multiplier of one).[41] Because the proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 25,000 contracts with a value of $1.00 with a multiplier of 100 would equate to $2,500,000 notional value, while 25,000 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $25,000 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of calculating compliance with position limits effectively calibrates these limits so that investors may hold positions in binary KPI options for an economically equivalent number of contracts as they may hold in standard equity options. Therefore, the Exchange believes this proposed treatment is consistent with just and equitable principles of trade, as it counts option positions in a manner equivalent with their value.

The Exchange further believes the proposal is reasonable given the nature of binary KPI options and their relationship to the underlying issuer. Because binary KPI options have a fixed maximum notional value and settle on an all-or-nothing basis based on a KPI of the issuer rather than the price of the issuer's stock as with a standard equity option, the Exchange believes the proposed position limits appropriately reflects the distinct structure of these contracts and limits the potential for any single market participant to exert undue influence over binary KPI option settlement. With respect to binary KPI options, the economic risk of a position is binary, in that the contract either settles in-the-money at $1.00 or out-of-the money at $0.00. Additionally, with respect to binary KPI options, the maximum notional exposure per contract is fixed in advance; it cannot exceed $1.00.

Further, the Exchange's proposal to provide that positions in binary KPI options on the same KPI with different expiration dates and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated reflects the distinct structure of binary KPI options. Each binary KPI option expiration corresponds to a separate event tied to a specific issuer reporting period. Thus, the Exchange believes aggregating positions across different expiration dates would not accurately reflect the risk profile of these positions and would impose an unnecessary burden on market participants seeking exposure to company KPI events across different reporting periods.

Similarly, the Exchange believes it is reasonable to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Because binary KPI options and equity options overlying the same issuer have different risk profile (*i.e.,* binary KPI options settle based on a KPI of the issuer rather than its stock price), the Exchange believes it would be inappropriate and misleading to require aggregation of these positions for purposes of position limits. As noted above, binary KPI options are based solely on whether a single, specified-issuer KPI meets a discrete threshold at a defined future date, and their value reflects the market's probability assessment of that singular outcome. Standard equity options, on the other hand, reflect a broad array of factors bearing on the price of the underlying security, including macroeconomic conditions and sector dynamics, of which any individual KPI is only one component. Because the two products are not priced off of a common reference and do not represent economically equivalent or fungible exposures, aggregating positions across them would not meaningfully advance the prevention of manipulative practices with respect to the underlying security.

The Exchange further notes that this proposed non-aggregation framework in proposed Rule 5.102–O(b) is consistent with that applied by Cboe regarding binary KPI options. To avoid possible confusion the proposed rule provides that a long KPI call and a short put KPI of the same type, on the same issuer having the same expiration shall be aggregated and, conversely, that a short KPI call and a long put KPI of the same type, on the same issuer having the same expiration shall be aggregated.

Finally, the Exchange believes the hedge exemption provision in proposed Rule 5.102–O(d) is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Proposed Rule 5.102–O(d), provides a hedge exemption for Market Makers

[41] *See* Rule 6.8–O, Commentary .06.

with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits proscribed in Rule 6.8–O.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting short binary KPI option positions create a hedge similar to one to which the equity hedge exemption is available. The Exchange believes the proposed hedge exemption will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also believes the proposed adoption of Rule 5.103–O is consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor ATP Holder positions effectively and detect any accumulation of positions that may approach or exceed applicable limits, to the benefit of investors. The Exchange believes it is consistent with just and equitable principles of trade for 100 binary KPI option contracts to equal one standard option contract for purposes of determining whether the report in proposed Rule 5.103–O is required given the size of binary KPI contracts. As discussed above, proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100. Therefore, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 200 contracts with a value of $1.00 with a multiplier of 100 would equate to $20,000 notional value, while 200 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $200 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of this report effectively calibrates the reporting requirement so that investors are required to submit the report for an economically equivalent number of contracts, which promotes just and equitable principles of trade.

The Exchange believes the proposal will provide the Exchange and regulators with visibility into large position concentrations in binary KPI options, preserving the ability to identify unusual activity and respond to any unforeseen concerns, while calibrating the threshold to a metric that is meaningful for this contract given its smaller multiplier relative to that of standard equity options. The Exchange believes this reporting framework, coupled with the position limits amendments, provides a fully adequate regulatory framework for these instruments.

Further, as noted above, the Exchange believes it has an adequate surveillance program in place to detect potentially manipulative trading in binary KPI options. The Exchange notes that manipulation of the reported KPI would constitute securities fraud and expose the issuer to liability under federal securities law, separate and apart from any exchange-related violation.

The Exchange believes the proposed binary KPI options will serve as a vehicle to hedge idiosyncratic, event-specific risk embedded in the specific KPIs. Standard equity options are calibrated to the price of the underlying security and capture a full spectrum of factors or risks which may affect issuer value, such as macroeconomic conditions or sector dynamics. Because equity option pricing incorporates this full spectrum, a participant seeking to hedge exposure to a single, discrete KPI outcome cannot do so precisely using standard equity options. Because settlement of a binary KPI option is determined solely by whether a specified-issuer KPI meets a defined threshold, the contract effectively isolates certain individual risks an investor may seek to manage. For example, consider an investor holding a long-term position in a particular issuer stock, who believes the issuer's quarterly revenue will fall short of expectations (for reasons unrelated to the issuer's long-term prospects). The investor may utilize the binary KPI option to hedge precisely against the near-term risk without disruption to the underlying equity position. This targeted hedging utility represents a distinct and additive function relative to existing listed products, which the Exchange believes will serve the interests of investors and provide an efficient mechanism for managing event-specific, KPI-driven risk.

The Exchange believes the proposed rule change will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide investors with a securities exchange-listed investment choice for these instruments, offering price transparency and the regulatory protections of a national securities exchange. The Exchange believes the proposed rule change will permit investors to manage their risk exposures and carry out their investment objectives on a securities exchange with more flexibility and broader applicability. The Exchange also believes the proposed rule change will promote competition, as it will meet demands of investors that currently may trade products structured in substantively the same manner as the proposed binary KPI options in other markets (as further discussed below). Binary KPI options would provide investors with a straightforward means of expressing a directional view on key financial and operating metrics. The Exchange further believes the proposed rule change is consistent with the protection of investors and the public interest, as binary KPI options would be subject to the Exchange's existing rules governing the listing and trading of options. The Exchange believes expanding the universe of binary options will benefit investors, particularly retail investors and other investors who prefer simplicity, as a complementary offering to current exchange-traded options.

The proposed rule change will permit the Exchange to list binary KPI options on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listed options. These benefits include: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. The

Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is intended to provide a market for binary KPI options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, counter-party credit risk for Exchange-listed binary KPI options is significantly reduced through the issuance and guarantee of the contracts by a registered clearing agency. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options that the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying issuer KPIs, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a national securities exchange would create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within an established regulatory framework designed to afford investors in securities with important protections. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market or other market platforms offer. It would contribute to leveling the playing field with these alternative markets and provide investors with safeguards associated with Commission and SRO oversight of the trading activity in these exchange-listed binary KPI options.

Ultimately, the Exchange believes the proposed rule change will provide investors with greater trading tools and opportunities and flexibility, resulting in investors having additional means to carry out their investment objectives and manage their risk exposures through products listed and traded on a national securities exchange. The Exchange believes the proposed rule change will offer market participants a simplified, transparent, and limited risk investment choice that may be more aligned with their specific timing needs, investment and hedging strategies, and risk tolerances. The Exchange believes it benefits the investing public to continue to enhance its listed product offerings to respond to continuously changing needs of investors and to a continuously changing competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options will be available to all market participants who wish to trade such options on the same terms and in the same manner (including with respect to the payout terms and amount). All market participants will be subject to the same rules applicable to binary KPI options, as described in this proposed rule change. Except as set forth in the proposed rule change, binary KPI options will trade in the same manner as binary KPI options on Cboe.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options have been approved to be listed on Cboe and other options exchanges may propose similar products. Additionally, as noted above, substantively similar products to binary KPI options, as proposed, are available in the OTC market and various other markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change will provide investors with a comparable alternative to Cboe, the OTC market and other venues. The Exchange believes it may be a more attractive alternative to the OTC market and these other venues, as market participants will benefit from being able to trade these options in an exchange environment, which provides, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. As a result, the Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it will allow the Exchange to offer a securities exchange-listed alternative to the products currently available in these other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[42] and Rule 19b–4(f)(6) thereunder.[43] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[44]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [45] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2026–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2026–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NYSEARCA–2026–107 and should be submitted on or before December 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

J. Matthew DeLesDernier,

Deputy Secretary.

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[45] 15 U.S.C. 78s(b)(2)(B).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106894; File No. SR–NYSEAMER–2026–101]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule To Lower Certain Initiating Participant Rebates in Customer Best Execution Auctions

November 13, 2026.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 2, 2026, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to lower certain initiating participant rebates related to Customer Best Execution (''CUBE'') Auctions. The Exchange proposes to implement the fee change effective November 2, 2026. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to lower certain initiating participant rebates related to CUBE Auctions.[4] The Exchange proposes to implement the fee change effective November 2, 2026.[5]

Background

The Exchange has established various pricing incentives designed to encourage increased electronic volume executed on the Exchange, including, but not limited to, the American Customer Engagement (''ACE'') Program.[6] To encourage participation in the ACE Program and CUBE Auctions, the Exchange offers an ACE Initiating Participant Rebate to ACE Program participants that initiate Single-Leg CUBE Auctions,[7] Complex CUBE Auctions,[8] and AON Single-Leg or AON Complex CUBE Auctions.[9] Currently, the ACE Initiating Participant Rebate for each of these auctions $0.115 per contact for all issues (*i.e.,* penny and non-penny).

In addition, the Exchange offers the Alternative Initiating Participant Rebate that enables non-ACE Program participants to qualify for this Rebate on certain initiating Complex CUBE Auctions provided they meet certain

[4] *See generally* Rules 971.1NYP and 971.2NYP and Commentaries .04 (describing the CUBE Auction, which is an electronic crossing mechanism for single-leg, complex, and AON orders with a price improvement auction on the Exchange).

[5] In addition, the Exchange proposes the non-substantive amendment to Fee Schedule, Section IA to remove the chart related to Rates for options transactions effective through October 31, 2026, as such rates are no longer in effect.

[6] *See* Fee Schedule Sections I.E. (American Customer Engagement (''ACE'') Program).

[7] *See* Fee Schedule Section I.G (CUBE Auction Fees & Credits, Single-Leg CUBE Auction), note 2, Rebate is applied to each of the first 5,000 contracts per leg of a CUBE Order executed in a CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW, and the Rebate amount is tied to the ACE Program Tiers. This Rebate is in addition to any additional credits set forth above.

[8] *See* Fee Schedule Section I.G (CUBE Auction Fees & Credits, Complex CUBE Auction), note 2, Rebate applied to each of the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW and is in addition to any additional credits set forth above.

[9] *See* Fee Schedule Section I.G (CUBE Auction Fees & Credits, AON Single-Leg or AON Complex Cube Auction), note 2 Rebate may be applied to each of the first 5,000 contracts of an AON CUBE Order executed in an AON Single-Leg CUBE auction, or the first 1,000 contracts per leg of an AON CUBE Order executed in an AON Complex CUBE auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW. The Rebate is in addition to any additional credits set forth above.

monthly volume qualification levels and increase their initiating CUBE volume.[10] Currently, the Alternative Initiating Participant Rebate is $0.115 per contract for all issues.

The Exchange proposes to reduce the ACE Initiating Participant Rebate for all three auctions and the Alternative Initiating Participant Rebate, for Complex CUBE Auctions, from $0.115 per contract to $0.105 per contract across all issues. The proposed change is the result of the Exchange's ongoing reassessment and rebalancing of its fee structure overall and, in this instance, its CUBE rebate structure.[11]

The proposal only slightly reduces the amount of the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate where applicable. As such, the Exchange believes that the Rebates will continue to encourage ATP Holders to initiate CUBE Auctions, whether single-leg, complex, or AON.

The change will apply equally to all similarly situated market participants. Moreover, the Exchange believes all market participants stand to benefit from the continuing increased order flow, which promotes market depth, facilitates tighter spreads and enhances price discovery. Increased order flow promotes market depth, facilitates tighter spreads and enhances price discovery, which enhances market quality for all participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 20 registered options exchanges competing for order flow. Based on publicly available information and, excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2026, the Exchange had 12.39% market share of executed volume of multiply-listed equity and ETF options order flow. In such a low concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

In response to these competitive forces and as discussed herein, the Exchange has established various pricing incentives regarding its CUBE Auctions, including, but not limited to, the ACE Initiating Participant Rebate, the Alternative Initiating Rebate and Professional Volume Incentive Initiating Participant Rebate, which are designed to encourage ATP Holders to utilize the CUBE Auction and to direct (increased) volume to the Exchange.

The Exchange believes that the proposed changes in the ACE Initiating Participant Rebate and the Alternative Initiating Rebate are reasonable, equitable, and not unfairly discriminatory and will continue to provide the intended incentive for ATP Holders to utilize the CUBE Auctions on the Exchange. To the extent this purpose is achieved, the Exchange believes that the proposed CUBE rebate would not discourage ATP Holders from directing activity to the Exchange. The Exchange also believes that the proposal represents an equitable allocation of credits and is not unfairly discriminatory because the proposal will apply equally to all similarly situated ATP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed changes to the ACE Initiating Participant Rebate and the Alternative Initiating Rebate would not affect intramarket competition because, as noted above, it would impact all market participants equally and, therefore, would not impose a disparate burden on competition among market participants on the Exchange. Similarly, the proposed changes are designed to continue to attract order flow to the Exchange by offering ATP Holders competitive incentives to continue to direct their order flow to the Exchange, thereby increasing liquidity to the benefit of all market participants.

Intermarket Competition. The Exchange believes that the proposed changes to the ACE Initiating Participant Rebate and the Alternative Initiating Rebate would not affect intermarket competition. As noted above, the Exchange operates in a highly competitive market in which the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and to attract order flow to the Exchange. The proposed change reflects this competitive reality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may

[10] *See* Fee Schedule Section I.G (CUBE Auction Fees & Credits, Complex CUBE Auction), note 2, Rebate is applied to each of the first 1,000 contracts per leg of a Complex CUBE Order executed in a Complex CUBE Auction, except in MXEA, MXEF, MXUSA, MXWLD, and MXACW. This Rebate is in addition to any additional credits set forth above.

[11] As part of its ongoing assessment, the Exchange lowered the rebates from $0.12 to $0.115 in October 2026. *See* NYSEAMER–2026–94 (October 15, 2026).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2026–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2026–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2026–101 and should be submitted on or before December 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23421 Filed 11–17–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0216]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 19a–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C.3501 *et seq.*), the Securities and Exchange Commission (''SEC'' or ''Commission'') is submitting to the Office of Management and Budget (OMB) this request for extension of the proposed collection of information.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment. Section 19(a) authorizes the Commission to prescribe the form of such statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act, entitled ''Written Statement to Accompany Dividend Payments by Management Companies,'' sets forth specific requirements for the information that must be included in statements made pursuant to section 19(a) by or on behalf of management companies.[1] The rule requires that the statement indicate what portions of distribution payments are made from net income, net profits from the sale of a security or other property (''capital gains'') and paid-in capital. When any part of the payment is made from capital gains, rule 19a–1 also requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion is subsequently determined to be significantly inaccurate, a correction must be made on a statement made pursuant to section 19(a) or in the first report to shareholders following the discovery of the inaccuracy.

The purpose of rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which distribution payments are made. The rule is intended to prevent shareholders from confusing income dividends with distributions made from capital sources. Absent rule 19a–1, shareholders might receive a false impression of fund gains.

Based on a review of filings made with the Commission, the staff estimates that approximately 14,122 series of registered investment companies that are management companies may be subject to rule 19a–1 each year,[2] and that each portfolio on average mails two statements per year to meet the requirements of the rule.[3] The staff further estimates that the time needed to make the determinations required by the rule and to prepare the statement required under the rule is approximately 1 hour per statement. The total annual burden for all portfolios therefore is estimated to be approximately 28,244 burden hours.[4]

The staff estimates that approximately one-third of the total annual burden (9,415 hours) would be incurred by a paralegal with an average hourly wage rate of approximately $285 per hour,[5]

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

[1] Section 4(3) of the Act (15 U.S.C. 80a–4(3)) defines ''management company'' as ''any investment company other than a face amount certificate company or a unit investment trust.''

[2] This estimate is as of December 2025 and is based on the Commission staff's review of EDGAR filings through May 06, 2026. The number of management investment company portfolios that make distributions for which compliance with rule 19a–1 is required depends on a wide range of factors and can vary greatly across years. Therefore, the calculation of estimated burden hours below is based on the total number of management investment company portfolios, each of which may be subject to rule 19a–1.

[3] A few portfolios make monthly distributions from sources other than net income, so the rule requires them to send out a statement 12 times a year. Other portfolios never make such distributions.

[4] This estimate is based on the following calculation: 14,122 management investment company portfolios × 2 statements per year × 1 hour per statement = 28,244 burden hours.

[5] To calculate the occupational hourly rates, the Commission uses occupational mean hourly wage data from the Occupational Employment and Wage Statistics (OEWS) program of the Bureau of Labor Statistics (BLS) for ''Securities, Commodity Contracts, and Other Financial Investments and Related Activities'' (NAICS 523)]. See Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, *https://www.bls.gov/oes/;* see also Standard Occupational Classification, U.S. BUREAU OF LABOR STATISTICS, *https://www.bls.gov/soc/* (describing occupational classification system used by BLS); EXEC. OFF. OF THE PRESIDENT, OFF. OF MGMT. & BUDGET,

Continued

and approximately two-thirds of the annual burden (18,829 hours) would be incurred by an accounting clerk with an average hourly wage rate of $164 per hour. The staff therefore estimates that the aggregate annual burden, in dollars, of the hours needed to comply with the paperwork requirements of the rule is approximately $5,771,231 ((9,415 hours × $285 = $2,683,275) + (18,829 hours × $164 = $3,087,956)). It is estimated that there is no cost burden of rule 19a–1 other than these estimates.

To comply with state law, many investment companies already must distinguish the different sources from which a shareholder distribution is paid and disclose that information to shareholders. Thus, many investment companies would be required to distinguish the sources of shareholder dividends whether or not the Commission required them to do so under rule 19a–1.

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collection of information required by rule 19a–1 is mandatory for management companies that make statements to shareholders pursuant to section 19(a) of the Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202609-3235-002* or email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice, by December 21, 2026.

Dated: November 16, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23470 Filed 11–17–26; 8:45 am]

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NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (2022), available at *https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf* (describing the industry classification system used by BLS and other agencies). The mean hourly wage for each occupation is adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. See Employment Cost Index, U.S. BUREAU OF LABOR STATISTICS, *https://www.bls.gov/eci/*. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis's annual gross output data for NAICS 523 to total annual wages across all occupations for NAICS 523 in the OEWS data. See Gross Output by Industry, U.S. BUREAU OF ECONOMIC ANALYSIS, *https://www.bea.gov/data/industries/gross-output-by-industry;* Occupational Employment and Wage Statistics, U.S. BUREAU OF LABOR STATISTICS, *https://www.bls.gov/oes/*. The final product is the occupational hourly rate. See generally UPDATED METHODOLOGY FOR CALCULATING OCCUPATIONAL HOURLY RATES (Dec. 19, 2025), available at *https://www.sec.gov/files/method-occupational-hourly-rates.pdf*.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106898; File No. SR–NYSEAMER–2026–97]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Rules To Permit the Listing of Binary Options Overlying Key Performance Indicators

November 13, 2026.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 4, 2026, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange propose to amend its Rules to permit the listing of binary options overlying key performance indicators (''KPIs'') reported by certain issuers of stock (''binary KPI options'').The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to permit the listing of binary options overlying KPIs reported by certain issuers of stock (''binary KPI options''). The Exchange's proposal is substantively identical to the recent approval received by Cboe Exchange, Inc. (''Cboe'') to permit listing of binary options that overlie KPIs.[4]

Binary options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is an amount contingent upon the occurrence of the option being in- or at-the-money rather than the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence.

Similar to the approved proposal by Cboe, the Exchange proposes to amend its Rules to permit the listing of binary KPI options. Binary KPI options are European-style, cash-settled options contracts listed on an underlying KPI of an issuer whose exercise settlement value is determined not by the market price of the issuer's stock, but by whether a specific financial or operating metric reported by the issuer in an earnings-related filing submitted to the U.S. Securities and Exchange Commission (the ''Commission'') meets or exceeds a pre-specified strike level.

Similar to the approved proposal by Cboe, the Exchange proposes to adopt Section 20 (Binary KPI Options) to describe binary KPI options. The Rules in proposed Section 20 apply only to binary KPI options. All other Rules apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires.

Specifically, the Exchange proposes to adopt Rule 900KPI (Applicability, Definitions). Like other standardized options, binary KPI options have standardized terms that are established by the Exchange. Standardized terms for

[1] 15 U.S.C. 78s(b)(1)

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 106659 (October 13, 2026) (SR–CBOE–2026–061) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing of Binary Options Overlying Key Performance Indicators Reported by Certain Issuers of Stock) (''Cboe Binary KPI Approval Order'').

binary KPI options include the exercise criteria that are the conditions or criteria of a binary KPI option, the exercise settlement amount (*i.e.,* payout amount), strike prices, expiration dates, settlement type as A.M.-settlement or P.M.-settlement, the settlement style (as European), and the requirements used to determine if the KPI condition or criteria of a binary KPI option has been met (the ''payout determination requirement''). The Exchange proposes to establish these terms in new Rule 900KPI and additional provisions in proposed Rule 902KPI, as described below.

The Exchange proposes to define a ''binary KPI option'' in new Rule 900KPI(b) as a cash-settled option contract listed on an underlying KPI of an issuer with an exercise settlement amount that is established at the creation of the option and with a settlement value that is determined by whether a specific KPI disclosed by the issuer in an earnings-related filing submitted to the Commission meets or exceeds its exercise price. Binary KPI options are paid out if the reported value of the applicable KPI (1) equals or is greater than (as the payout determination requirement) the exercise price for a call binary KPI option or (2) is less than (as the payout determination requirement) the exercise price for a put binary KPI option. The Exchange also proposes to provide that unless the context dictates otherwise, the terms underlying security, equity, or index, or any variations of these terms, in the Rules mean KPI for purposes of binary KPI options.

The Exchange proposes to define a ''call binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is at or above the exercise price at expiration (*i.e.,* in- or at-the-money).[5]

The term ''Clearing Corporation'' would mean the registered clearing agency designated by the Exchange to clear binary KPI options.[6]

The Exchange proposes to define ''exercise price'' (also referred to as ''strike price'') as the value[7] to which the settlement value of the underlying KPI is compared to the exercise settlement amount. For binary KPI options, the exercise price is the exercise threshold of an option contract that establishes a number, value, or measure that is compared against the settlement value of the underlying KPI to determine if the cash payout amount (*i.e.,* the exercise settlement amount) will be paid out. In other words, binary options will have a threshold number as the exercise price that will be used to determine if the exercise criteria of the binary option has been met and the option will be exercised (and if holders will receive the cash payout amount). For binary KPI options, the exercise threshold will be a number that reflects or is compared to the underlying KPI of the binary option.

The Exchange proposes to define the term KPI (or ''key performance indicator'') as a key financial or operating metric disclosed by an issuer in its earnings-related filings submitted to the Commission (*i.e.,* Form 8–K, Form 10–Q, or Form 10–K, as applicable).[8]

The Exchange proposes to define ''put binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is below the exercise price at expiration (*i.e.,* in-the-money).[9]

The Exchange proposes to define ''settlement value'' as the value of the underlying KPI that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money.[10] The proposed definition specifies that the ''settlement value'' is the value of the applicable KPI as disclosed in the applicable issuer's earnings-related filing submitted to the Commission on the applicable expiration date (for both A.M.-settled and P.M.-settled binary KPI options).[11] The Exchange designates the applicable KPI and the relevant reporting period (for example, a calendar quarter) at the time of listing a binary KPI option. Proposed paragraph (b) of the settlement value definition provides if the applicable KPI is not reported or otherwise unavailable on the expiration date (and will not be reported), settlement (including any payout of the exercise settlement amount) will occur in accordance with the Rules of the Clearing Corporation.

Additionally, proposed paragraph (c) of the settlement value definition states if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the settlement value (and the exercise settlement amount) of the binary KPI option does not change. In other words, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether it is later restated by the issuer.

The Exchange proposes to adopt Rule 901KPI(a) (Designation of Binary KPI Option Contracts) to identify the binary KPI options that may be listed for trading on the Exchange. Pursuant to proposed Rule 901KPI(a), the Exchange may from time to time approve for listing and trading on the Exchange any of the following binary KPI options contracts for the following issuers:

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Apple, Inc	Earnings per Share: Diluted; Total Net Sales; Net Sales by Category: iPhone; Net Sales by Category: Services; Net Sales by Reportable Segment: Americas; Net Sales by Reportable Segment: Greater China.
Advanced Micro Devices, Inc	GAAP Diluted Earnings per Share; GAAP Revenue; Net Revenue: Data Center Segment; Net Revenue: Client and Gaming Segment; GAAP Operating Margin (%).
Alphabet Inc	Diluted Net Income per Share; Revenues; YouTube Ads Revenues; Google Cloud Revenues.
Amazon.com, Inc	Diluted Earnings per Share; Total Net Sales; AWS: Net Sales; North America: Net Sales; International: Net Sales; Net Sales: Advertising Services.

[5] *See* proposed Rule 900KPI(b)(2).

[6] *See* proposed Rule 900KPI(b)(3). The definition of Clearing Corporation reflects that the Exchange may designate the Options Clearing Corporation (''OCC'') or another registered clearing agency to clear binary KPI options. References in this filing to the Clearing Corporation therefore are intended to be clearing agency-neutral. The proposed definition does not alter the requirement that clearing and settlement occur through a registered clearing agency subject to the applicable provisions of the Act and the rules and oversight applicable to that clearing agency. Upon designation of a clearing agency to clear binary KPI options, the Exchange will submit a separate rule filing to update Rules to reflect such designation.

[7] *See* proposed Rule 900KPI(b)(4). The value of an exercise price is measured in the applicable units of the KPI. For example, some KPIs are measured in U.S. dollars while others may be measured in percentages or numbers.

[8] *See* proposed Rule 900KPI(b)(6).

[9] *See* proposed Rule 900KPI(b)(7).

[10] *See* proposed Rule 900KPI(b)(8).

[11] While the timing of an issuer's official disclosure informs whether the Exchange will establish a binary KPI option as A.M.-settled or P.M.-settled (as further discussed below), the Exchange will use the KPI value included in an issuer's report submitted to the Commission (and not the press release announcing earnings results, for example) as the settlement value. The Exchange understands, however, these values are generally the same.

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Bank of America Corporation	Diluted Earnings per Share; Total Revenue, Net of Interest Expense; Net Interest Income; Provision for Credit Losses; Net Income.
Citigroup Inc	Diluted Earnings per Share; Total Revenue, Net of Interest Expense; Net Interest Income; Total Provision for Credit Losses; Net Income.
Coinbase Global, Inc	Net Income per Share—Diluted; Total Revenue; Transaction Revenue; Total Trading Volume; Subscription and Services Revenue.
Ford Motor Company	GAAP Earnings per Share—Diluted; Total Revenues; Ford Pro Segment: Revenue; Ford Model e Segment: Revenue; Ford Blue Segment: Revenue.
Intel Corporation	GAAP Earnings per Share Attributable to Intel—Diluted; Net revenue; Revenue: Client Computing Group (CCG); Revenue: Data Center and AI (DCAI); Revenue: Intel Foundry; GAAP Operating Margin (%).
JPMorgan Chase & Co	Earnings per Share—Diluted; Net Revenue—Reported; Net Interest Income; Provision for Credit Losses; Net Income.
Marathon Digital Holdings, Inc	Earnings (Net Loss) per Share of Common Stock—Diluted; Revenues; Number of Blocks Won (# Bitcoin (BTC)); Energized Hashrate (EH) (# EH/s); Total Bitcoin Holdings (# BTC); BTC Produced (# BTC); BTC Purchased (# BTC).
Meta Platforms, Inc	Earnings per Share: Diluted; Revenue; Family Daily Active People (DAP) (#); Revenue: Advertising; Operating Margin (%).
Microsoft Corporation	Diluted Earnings per Share; Revenue; Intelligent Cloud: Revenue; Microsoft Cloud Revenue; More Personal Computing: Revenue.
Netflix, Inc	Earnings per Share: Diluted; Revenues; United States and Canada (UCAN): Revenue; Europe, Middle East, and Africa (EMEA): Revenue Operating Margin (%).
NVIDIA Corporation	GAAP Diluted Earnings per Share; Revenue; Data Center Revenue; Edge Computing Revenue; Automotive Revenue.
Palantir Technologies Inc	Earnings per Share Attributable to Common Stockholders, Diluted; Revenue; Net Income; Closed Deals of at Least $1 Million (#).
Robinhood Markets, Inc	Net Income Attributable to Robinhood Common Stockholders: Diluted; Total Net Revenues; Funded Customers (#); Average Revenue per User (“ARPU”); Robinhood Gold Subscribers (#).
SoFi Technologies, Inc	Earnings per Share Attributable to Common Stockholders—Diluted; Total Net Revenue; Total Net Revenue—Technology Platform; Total Net Revenue—Financial Services; Total Net Revenue—Lending.
Space Exploration Technologies Corp	Earnings per Share: Diluted; Total Revenues.
Super Micro Computer, Inc	Net Income per Common Share: Diluted; Net Sales; Gross Margin (%); Cash Flow Used in Operations; Net Income.
Target Corporation	Diluted Earnings per Share; Net Sales; Food & Beverage Net Sales; Apparel & Accessories Net Sales; Operating Income: Rate (%).
Tesla, Inc	Net Income per Share of Common Stocks Attributable to Common Stockholders: Diluted; Total Revenues; Total Automotive Revenue; Model 3/Y Production (#); Supercharger Connectors (#); Free Cash Flow.
The Walt Disney Company	Diluted Earnings per Share; Revenues; Entertainment Subscription Video on Demand (SVOD) Operating Income; Revenues: Experiences; Segment Operating Income: Sports.

The Exchange proposes to add Rule 901KPI(b) to clarify that binary KPI options are a separate class from other options overlying the stock of the issuer and are a separate class from other binary KPI options with different underlying KPIs for the same issuer. The Exchange believes this is reasonable given that an individual KPI is the specific underlying of binary KPI options, and generally options with different underlyings (*e.g.,* different underlying security or index) are different option classes.

Next, the Exchange proposes to adopt Rule 902KPI (Terms of Binary KPI Option Contracts) to describe the permissible terms of binary KPI option series. Proposed Rule 902KPI provides that binary KPI options listed and traded on the Exchange are designated as to expiration date, exercise price, settlement type, exercise style, exercise settlement amount, contract multiplier, and underlying KPI. After approving a particular binary KPI option class for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that binary KPI option class.

Proposed Rule 902KPI(a) states binary KPI options have European-style settlement. Proposed Rule 902KPI(a) further provides that the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled. Binary KPI options for issuers [12] that disclose their earnings results before the open of the Core Trading Session on a given trading day are designated as A.M.-settled binary KPI options, and binary KPI options for issuers that disclose their earnings results after the close of the Core Trading Session on a given trading day are designated as P.M.-settled binary KPI options. The Exchange notes that the proposed concepts of A.M.-settlement and P.M.-settlement for binary KPI options differ compared to traditional options, for which ‘‘P.M.-settled’’ generally means that the expiration of an option so designated will settle to the closing price of the underlying security or index value and ‘‘A.M.-settled’’ generally means that the expiration of an option so designated will settle to the opening price of the underlying. While different than how these terms apply to standard and binary index options, the Exchange believes the proposed description of A.M.-settlement and P.M.-settlement appropriately reflect the earnings disclosure practices of issuers. Additionally, while the timing of the event that will determine whether the Exchange designates a binary KPI option as A.M.-settled or P.M.-settled is different than that for traditional options and binary index options, the trading hours on expiration dates for each of A.M.-settled and P.M.-settled

[12] The Exchange determines whether an issuer discloses its earnings results before or after the close of the Core Trading Session on a given trading day based on publicly available information regarding the issuer’s disclosure practice.

binary KPI options are consistent with those of A.M.- settled and P.M.-settled index options (traditional and binary) today.

Proposed Rule 902KPI(a) further states that the exercise style of binary KPI options is European-style, which is consistent with exercise style of the binary KPI options that Cboe recently received approval to list.[13] A European-style option may only be exercised on its expiration date.[14]

Proposed Rule 902KPI(b) describes permissible expirations for binary KPI options. Specifically, the proposed rule change will permit the Exchange to list series that expire on the date the issuer announces its earnings results for the applicable reporting period (such as calendar quarter). The expiration date for a binary KPI option will be the date on which an issuer discloses the applicable KPI in its earnings results (for example, the date on which it issues an earnings results press release) for the specified reporting period (with the specific expiration date to be finalized when an issuer announces the date on which it will disclose its earnings results for that reporting period).[15] If that date is a Tuesday, Wednesday, Thursday, or Friday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately prior to that day. If that date is a Monday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately following that Monday. The disclosed KPIs relate to a specific reporting period (such as a calendar quarter), which KPIs an issuer publicly announces on a date following the end of that reporting period.[16]

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional options, the Exchange's proposed designation of expiration dates for binary KPI options will differ to reflect standard issuer disclosure practices. In some instances, an issuer might not establish the specific date on which it will announce its earnings results for a reporting period until weeks prior to the disclosure date. Consequently, unlike standard equity and index options that have an exact expiration date when strikes are first listed, a binary KPI option will be listed for trading with a placeholder expiration date if the date the KPI information will be disclosed by the issuer is not publicly known. If a placeholder expiration date is required, it will be set as the first trading day following the date of the deadline for the issuer's submission of its earnings-related filing for the reporting period applicable to the series. Once an issuer announces the disclosure date of the KPI information, the expiration date will be updated as the finalized expiration date of the option contract.[17] Ultimately, the expiration date for a binary KPI option is the issuer's earnings disclosure date, even if that date is unknown at the time the series is listed.

The Exchange may designate binary KPI option series to expire up to 12 months from the time they are listed and may list up to two expirations at one time for a binary KPI option (per KPI per issuer). The Exchange may open for trading a series of binary KPI options at least one business week prior to the expiration date of a binary KPI option. First, the proposed rule change permits the Exchange to list binary KPI options to expire up to 12 months from the time they are listed. The proposed rule change also limits the Exchange to list up to two expirations at one time for binary KPI options.

The proposal to list expirations at least one business week prior to the expiration date of binary KPI option (as well as the proposed language regarding shifting an expiration date to the business day immediately before or after an expiration date that falls on a day the Exchange is not open for business) is substantially similar to current Exchange rules applicable to the binary KPI options that Cboe's recently received approval to list.[18] The Exchange believes it is appropriate to permit listing of binary KPI options that expire up to 12 months from the time they are listed to accommodate different issuer reporting periods, as well as to permit the Exchange to list expirations for consecutive calendar quarter periods or for a calendar quarter and annual reporting period at the same time. As discussed above, issuers disclose KPIs in their periodic reports submitted to the Commission.

Proposed Rule 902KPI(c) describes the automatic exercise feature of binary KPI options. Specifically, the proposed rule states that binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price in the case of a put binary KPI option.

Proposed Rule 902KPI(d) describes the permissible exercise prices (or strike prices) the Exchange may designate for series of binary KPI options. Proposed Rule 902KPI(d)(1) describes how the value of exercise prices of binary KPI options are measured. Specifically, the exercise price of each binary KPI option series will be fixed at an amount equal to an underlying KPI value divided by a scaling factor. Because the value of certain KPIs may be very large (*e.g.,* billions of dollars), the Exchange proposes that the exercise price value of the underlying KPI will be divided by a scaling factor based on the value of the KPI in the issuer's most recent earnings-related disclosure as of the time a binary KPI option class is listed) as follows:

- if the most recently disclosed KPI value is greater than or equal to one trillion, the exercise price equals that value divided by one trillion (*e.g.,* for such KPIs, an exercise price of 27.00 is equivalent to a KPI value of 27,000,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one billion but less than one trillion, the exercise price equals that value divided by one billion (*e.g.,* for such KPIs, an exercise price of 112.00 is equivalent to a KPI value of 112,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one million but less than one billion, the exercise price equals that value divided by one million (*e.g.,* for such KPIs, an exercise price of 900.00 is equivalent to a KPI value of 900,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one thousand but less than one million, the exercise price equals that value divided by one thousand (*e.g.,* for such KPIs, an exercise price of 42.00 is equivalent to a KPI value of 42,000.00); and
- if the most recently disclosed KPI value is less than one thousand, the

[13] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(a).

[14] *See* Rule 900C(20).

[15] For example, for a binary KPI option series, the Exchange may designate the reporting period for a series to be the fourth quarter of 2026. The expiration date for that series would be the date on which the applicable issuer establishes as the date it will announce earnings results for that quarter. The Exchange will issue a Trader Update when the specific expiration date for a binary KPI option is finalized. Additionally, the Exchange will maintain a reference data file for each issuer KPI on which the Exchange lists binary KPI options (as will be described in the Exchange's technical specifications available on its public website), and that reference data file will be updated with the specific expiration date for a binary KPI option once known.

[16] While earnings results are often reported with respect to the time period covered by the issuer's earnings disclosure, such as a calendar quarter, certain issuers may disclose results for different time periods. For example, it is possible in an earnings disclosure for an issuer to announce a KPI that covers a calendar month rather than a calendar quarter.

[17] Issuers have different practices as to when they disclose their earnings results (and when they announce their earnings disclosure dates); however, each issuer's practice is generally consistent and predictable.

[18] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(b).

exercise price equals that value and is not divided by a scaling factor (*e.g.,* for such KPIs, an exercise price of 774.00 is equivalent to a KPI value of 774.00).[19]

The Exchange will apply a different scaling factor to newly listed binary KPI option series for a new expiration only after the value of the KPI in the issuer's earnings-related disclosures has a value in a different scaling tier for four consecutive reporting periods or if the Exchange deems it necessary in the interests of a fair and orderly market. Application of a different scaling factor will not affect the exercise prices of any series of the binary KPI options previously opened. For example, if the Exchange begins listing a new class of binary KPI options and the most recently disclosed KPI value for the issuer at the time of that listing was for the third quarter of 2026 and was $892,000, the exercise prices for that class of binary KPI options will be scaled by 1,000, and thus exercise prices of 895, 995, and 1005, would represent $895,000, $995,000, and $1,005,000, respectively. If the issuer discloses a KPI value of $1,020,000 in its fourth quarter 2026 earnings disclosure, the Exchange will continue to list exercise prices scaled by 1,000. If the issuer then discloses KPI values of $1,112,000, $1,237,000, and $1,064,000 for the first, second, and third quarters, respectively, of 2027, the Exchange will begin scaling the exercise prices by 1,000,000 for the fourth quarter 2027 expirations (or for the first quarter 2028 expirations if the Exchange had already listed fourth quarter 2027 expirations prior to the disclosure of the third quarter 2027 KPI value). The Exchange believes this will permit consistency for listing scaled KPI values while allowing the Exchange to update strike prices to reflect long-term changes to an issuer's KPI values.

The Exchange will announce via Trader Update if the scaling factor applied to a binary KPI options changes (for example, the KPIs will be scaled in billions rather than in millions). Additionally, the Exchange will update this information in the Exchange's technical specifications regarding binary KPI options and reference data file that describes the terms of binary KPI options, both of which will be available on the Exchange's website (customers receive notifications of such updates). This is consistent with how the Exchange provides information regarding product information (including updates) for all options the Exchange lists for trading.[20]

It is possible for a KPI to have a negative value, such as earnings per share (which is equivalent to a loss per share). Proposed Rule 902KPI(d)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values. For these series, the exercise price will equal the absolute value of the KPI and will be scaled as described above. For example, if an issuer's earnings per share in the last reporting period was −$3.52 (and thus was a loss per share), a binary KPI option for such issuer with a strike of 3.58 will reflect an expected loss of $3.58 per share. The Exchange will incorporate into symbology for binary KPI options whether the value of the strike price is positive or negative, including if the Exchange lists binary KPI option series with both positive and negative strike prices. Whether a symbol reflects a positive or negative value will be available on contract specifications as well as the reference data file for the specific binary KPI option on the Exchange's public website.

Proposed Rule 902KPI(d)(2) provides the minimum interval between strike prices for binary KPI options series is:

- 0.01 where the strike price is less than 10;
- 0.10 where the strike price is 10 or greater but less than 100;
- 1.00 where the strike price is 100 or greater but less than 1,000;
- 10.00 where the strike price is 1,000 or greater but less than 10,000; and
- 100.00 where the strike price is 10,000 or greater.

As discussed above, while KPI values above 1,000 are generally scaled, there may be circumstances in which the Exchange lists strikes above 1,000 or even 10,000 given the Exchange's proposal to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters). This may occur when a KPI value is near the top of a scaling range; for continuity, the Exchange will continue listing strike prices using the lower scaling factor and not change to a higher scaling factor until the KPI value is regularly within that higher range (as noted above). Suppose a KPI value is 995,000,000; in this case, strike prices will be scaled by 1,000,000. Thus, the Exchange may list binary KPI options above and below 995 (995,000,000 divided by 1,000,000). However, it is realistic that the KPI may increase to above 1,000,000,000. As proposed, the Exchange may list strike prices, for example, of 1,000 (representing 1,000,000,000) and above, for expirations until the KPI value is above 1,000,000,000 for four consecutive reporting periods. To reduce confusion, the Exchange would not scale strike prices using different scaling factors within a single expiration (and would not change the scale until the KPI value is consistently at the higher level). Therefore, it is possible the Exchange may list strikes greater than 1,000. Similarly, while strikes above 10,000 may be rare, given the Exchange proposes to maintain a lower scale level until a KPI value is consistently above a certain level (*e.g.,* above one billion for four consecutive quarters, as proposed), depending on market factors and demand, it is possible (although unlikely) the Exchange may determine it is appropriate to list strikes above 10,000 if market factors or expectations signify a significant increase of the KPI value. The proposed strike intervals accommodate the listing of binary KPI options in these circumstances before the Exchange shifts the strike prices for an issuer's KPI to a different scaling level.

The proposed strike intervals are identical to the strike intervals applicable to the binary KPI options that Cboe's recently received approval to list[21] and generally consistent with current Exchange Rules for other options, which provide for larger strike intervals as the values of strike prices increase. Given the scaling factor for larger KPI values, it may appear the proposed rule change will permit smaller strike intervals for larger KPI values if those intervals are considered solely on a nominal basis. However, that is not the case if the actual values of the strike intervals are considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. For example, suppose a strike price of 950 represents $950 million. The proposed rule change would permit strike intervals of $1.00. However, that $1.00 corresponds to $1,000,000. In other words, if the Exchange listed strikes of 950, 951, and 952, the difference in values of those strikes are $1 million, not $1 (*i.e.,* the strikes represent values of $950,000,000, $951,000,000, and $952,000,000). Similarly, suppose a strike price of 3 represents

[19] When applying the scaling factor, the Exchange will not round the scaled KPI value and instead will truncate the value so the scaled strike price value fits within standard strike listing format.

[20] The binary KPI option contract specifications available on the Exchange's public website will set forth the scaling factor for each binary KPI option.

[21] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(c)(2).

$3,000,000,000. The proposed rule change would permit strike intervals of $0.01. However, in this case, that $0.01corresponds to $10,000,000. If the Exchange listed strikes of 3.00, 3.01, and 3.02, the difference in values of those strikes are $10,000,000, not $0.01 (*i.e.,* the strikes represent values of $3,000,000,000, $3,010,000,000, and $3,020,000,000, respectively). As a result, the permissible strike intervals for strike prices representing values in the billions are actually larger than the permissible strike intervals for strike prices representing values in the millions. This is consistent with the general premise underlying current strike intervals that larger strike intervals apply to larger strike values.

Proposed Rule 902KPI(e) addresses bid and offer conventions for binary options with multipliers other than 100. Proposed Rule 902KPI(e) provides that bids and offers for a binary option with a multiplier other than 100 must be expressed in terms of dollars per 1/multiplier of the total value of the contract.[22] For example, if a binary option has a multiplier of 1, an offer of ''0.50'' represents an offer of $0.50. It will provide clarity and consistency in market quotations relative to the notional size of the option and promote investor understanding of the cost and value of binary KPI option contracts. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

Proposed Rule 902KPI(f) describes the initial series of a binary KPI option the Exchange may open for trading. Specifically, the Exchange may open for trading one or more binary KPI option series with a fixed KPI value as the strike price (scaled as described above), with approximately the same number of strike prices being opened above and below the at-the-money KPI value (*i.e.,* the value of the KPI in the issuer's most recent earnings-related disclosure) at the time the binary KPI options are opened. The ''at-the-money'' KPI value may be the value of the KPI in the issuer's most recent earnings-related filing submitted to the Commission, the issuer's disclosed estimate of the KPI for the next reporting period, or analysts' consensus estimate as reported by major market vendors, as the Exchange deems appropriate based on the most recent market information available to the Exchange. Because KPIs are static values, the Exchange believes it is appropriate to determine strike prices based on all available information that would inform expectations about the KPIs (as investors would do). The Exchange understands that an issuer's previously disclosed KPI, as well as issuer and analyst estimates of the KPI, are primary factors investors may consider when determining in which direction the KPI value may move in the next reporting period (similar to how investors consider the then-current price of an underlying stock when considering their options investment strategies and which direction the stock price may move). Therefore, the Exchange believes using the most recently available of these values is appropriate to use for determining which strikes it should list for a specific issuer KPI. The Exchange believes this flexibility to select the most appropriate at-the-money value is similar to current rules that permit the Exchange to list additional series to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially. The Exchange believes the proposed definition of at-the-money will allow the Exchange to list series with strike prices that are consistent with investor expectations and demands and that are based on information available in the market.

The Exchange will list strike prices for binary KPI option series that are reasonably close to the at-the-money KPI value at the time of listing. A strike is ''reasonably close'' to the at-the-money KPI value if (1) for KPIs less than or equal to 1, it is no more than 2;[23] (2) for KPIs greater than 1 and less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (3) for KPIs greater than 10, it is no more than 30% above or below the at-the-money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) provided demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.

Per proposed Rule 902KPI(g), the Exchange may add new series of binary KPI options series when the Exchange deems it necessary to maintain a fair and orderly market or to meet customer demand, and the opening of a new series of binary KPI options on the Exchange will not affect any other series of options of the same binary KPI option class previously opened. This is consistent with Cboe's authority to add new series of binary KPI options.[24] The Exchange may list additional series using updated at-the-money KPI values, such as if the Exchange lists binary KPI options series for an expiration before the applicable issuer has disclosed the KPI value in a filing submitted to the Commission for the immediately preceding reporting period and that value is then disclosed in a filing submitted to the Commission or if the issuer or major market data vendors publish estimates of the KPI value. For example, before expiration of a binary KPI options series set to expire on the date of an issuer's disclosure of its third quarter earnings results, the Exchange lists series of that binary KPI option to expire on the date of an issuer's disclosure of its fourth quarter earnings results (using the KPI from the second quarter earnings results as the at-the-money KPI value). After the issuer discloses its third quarter earnings results in a filing submitted to the Commission, including the applicable KPI, the Exchange may list additional series for the fourth quarter binary KPI options using the third quarter KPI result as the at-the-money KPI value. Suppose, further, that after the issuer discloses its third quarter earnings results, the issuer publishes an estimate of the fourth quarter KPI value. As investors may see this estimate (and possibly factor it into their investment decisions), the Exchange may determine it is appropriate to consider this estimate the ''at-the-money'' value and list additional strikes above and below this value Any additional strike prices the Exchange lists will be reasonably close (as defined above) to the at-the-money KPI value at the time of listing.

Continuing the above example, suppose the Exchange lists binary KPI options for the fourth quarter before the binary KPI options for the third quarter have expired. As proposed, the Exchange would list strikes above and below the at-the-money strike, which at the time of listing would be the settlement value KPI from the issuer's second quarter earnings results disclosure (the most recently available

[22] The Exchange notes this would apply to all binary options, not just binary KPI options, as Rule 900BIN permits binary options to have multipliers of at least one.

[23] The Exchange believes this is appropriate given the potentially small values of certain KPIs. For example, suppose the second quarter earnings per share of a company was $0.04. In such a case, if strikes were limited to 100% above this value, the Exchange could only list strikes up to $0.08, which would provide investors with minimal investment options. Therefore, the Exchange believes this provision is appropriate to provide the Exchange with authority to list meaningful strikes for smaller-valued KPIs.

[24] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(e).

KPI). If the KPI for the option was net sales, and the second quarter value was $45.093 billion, the at-the-money strike would be 45.10, and the Exchange could list strikes within 30% of that value, and additional series based on customer demand or market changes. After the Exchange lists those series, the issuer discloses its third quarter earnings results, including net sales of $57.241 billion. As proposed, after that disclosure, the Exchange may list additional strikes within 30% of $57.24 to reflect the change in value of the underlying (as well as additional series based on customer demand or market changes).

This proposed framework for listing and adding series is identical to recently approved framework for Cboe to list and add binary KPI options [25] and similar to the framework in current Rules for listing and adding series of equity options. While the proposed strike intervals are narrower than these rules, the permissible ranges are also narrower. The Exchange acknowledges the proposed framework would still permit the Exchange to list a large number of strikes per KPI per expiration. However, the Exchange intends to apply its standard strike listing practices to binary KPI options. Specifically, the Exchange generally lists strikes at wider intervals as they move farther away from the at-the-money value, while listing more granular intervals for strikes closer to the at-the-money value. The Exchange also generally delists granular strikes that are deep out-of-the-money if the Exchange determines they are sufficiently covered by wider strike intervals that are close in value.

These proposed provisions regarding the listing of binary KPI option series are identical to recently approved framework for Cboe to list and add binary KPI options and similar to provisions regarding permissible series of other options. The Exchange believes it is reasonable to list binary KPI options for a new reporting period prior to the expiration of then-listed binary KPI options for the immediately preceding reporting period (*e.g.,* listing binary KPI options for the fourth quarter before expiration of binary KPI options for the third quarter), and thus before the settlement value of the applicable KPI is known for the immediately preceding reporting period for these options, to permit investors to roll positions from one expiration to the next. As proposed, once the settlement value for the immediately preceding reporting period is known (the third quarter in this example), the Exchange may list additional series of the binary KPI options that reflect that KPI value. This is consistent with current practice if there is a change (including a substantial change) in the price of underlying security or value of an underlying index. For example, Rule 903(d) provides that the Exchange may open additional series of a short-term option series overlying a security when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened, subject to the ''reasonably close'' parameters set forth in that rule. Disclosure of, as an example, the third quarter KPI value after the fourth quarter binary KPI options series were listed based on the second quarter KPI value (if the third quarter KPI value differs from the second quarter KPI value) is similar to the move in the price of an underlying security, which may result in the Exchange listing additional series based on the updated price of the underlying security. Similarly consistent with current practice for other options (as set forth in Rule 903, Commentary .10(c), for example), opening of binary KPI options based on this later-disclosed KPI value will not affect any other series of options of the same binary KPI options class previously opened.

Proposed Rule 902KPI(h) provides that the contract multiplier for each class of binary KPI options is one.

The Exchange proposes to add new Rule 903KPI (Determination of Settlement Value) to establish that binary KPI options that are ''at-the-money,'' ''in-the-money,'' or ''out-of-the-money'' are a function of the settlement value of the underlying KPI in relation to the type of binary KPI option (*i.e.,* put or call) and the exercise price. As described above, the settlement value for a binary KPI option is the value of the KPI for the applicable reporting period as disclosed in the applicable issuer's earnings-related filing submitted to the Commission. While the Exchange factors the timing of an issuer's disclosure of a KPI value into the determination of whether the Exchange lists a binary KPI option as A.M.-settled or P.M.-settled, the Exchange will source the settlement value from the earnings-related filing for the applicable reporting period that the issuer submits to the Commission. Generally, companies issue press releases that contain earnings results and near contemporaneously submit a Form 8–K to the Commission with the press release as an exhibit. Therefore, it is unlikely the value of the KPI in the Commission filing will differ from the value in the initial disclosure; however, the value in the Commission filing will be the ultimate settlement value.

Proposed Rule 904KPI (Adjustment) provides that binary KPI options are subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been made pursuant to proposed Rule 904KPI (and the Rules of the Clearing Corporation), the Exchange will announce this adjustment via Trader Update, which will become effective as of the time specified in that announcement.

As described below, binary KPI options would be cleared by the Clearing Corporation, which would serve as the central counterparty to each transaction and facilitate standardized clearing, settlement, and contract administration processes pursuant to its Rules. Consistent with this centralized clearing framework, proposed Rule 904KPI provides that binary KPI options would be subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been determined, the Exchange will announce this adjustment via Trader Update, which will become effective at the time specified in that announcement. The Exchange believes that limiting contract adjustments to those provided under the Rules of the Clearing Corporation provides a clear and transparent framework under which any adjustments to binary KPI options would be administered. A registered clearing agency designated to clear binary KPI options would be subject to Commission oversight and would possess expertise in the clearance and settlement of financial products. Because binary KPI options represent a novel product type, the Exchange anticipates that the Clearing Corporation would develop adjustment procedures designed to address the unique characteristics of these contracts and the types of events that may require adjustment. To the extent the Clearing Corporation adopts new adjustment procedures for binary KPI options, those procedures would be subject to the applicable regulatory process, including review and approval by the Commission, as applicable, before the Exchange commences trading in the product.

Next, the Exchange proposes to add Rule 905KPI to provide that binary KPI options, may be traded on the Exchange

[25] *See* Cboe Binary KPI Approval Order, *supra* note 4 and Cboe Rule 4.82(e).

from 9:30 a.m. to 4:00 p.m.[26] Further, the last day of trading for P.M.-settled binary KPI options is the day of expiration, and the last day of trading for A.M.-settled binary KPI options is the trading day prior to expiration. The Exchange believes proposed Rule 905KPI is consistent with the approved opening auction framework of Cboe for binary KPI options [27] and will ensure that binary KPI options open for trading in an orderly and transparent manner.

The Exchange recognizes it is possible, although unusual and unlikely, that KPI information may become available at unexpected times. Proposed Rule 905KPI addresses the impact on trading and expiration that such disclosure may have. First, proposed Rule 905KPI(c) provides if the Exchange confirms an issuer discloses the KPI prior to the expiration date (*i.e.,* the date on which the issuer had announced it would disclose its earnings results for the applicable reporting period), trading in the applicable binary KPI options series will cease, and the expiration date for the option accelerates to a date on or shortly after the date of that disclosure in accordance with the Rules of the Clearing Corporation.[28] This may occur if, for example, the applicable issuer discloses the KPI information in advance of the expiration date of the option. If the issuer discloses KPI information after the expiration date, which may be the case if, for example, the issuer's disclosure of its earnings is delayed, trading in the option will not be impacted and will cease as of the expiration date. While the expiration date will not change, expiration and settlement processing of such options will be delayed until the KPI information becomes available, in accordance with the rules of the Clearing Corporation.

Additionally, proposed Rule 905KPI(d) provides if there is an unofficial disclosure [29] of the KPI prior to the expiration date, the Exchange may determine to halt (and resume) trading in the applicable binary KPI options series in accordance with Rule 953NY. In certain circumstances, the expiration date for the option may accelerate in accordance with the Rules of the Clearing Corporation; if this occurs, trading in the binary KPI will cease. This proposed provision addresses the unlikely event that KPI information becomes available through sources other than the issuer in advance of the expiration date. If the Exchange determines the KPI information reported from the unofficial source is unreliable, trading in the binary KPI option may resume until it expires.

The Exchange proposes to adopt Rule 906KPI (Position Limits for Binary KPI Options) to set forth position limit requirements for binary KPI options. The Exchange proposes to adopt Rule 906KPI(a) to provide that in determining compliance with Rule 904 (Position Limits), the position limit for binary KPI options is 25,000 standard option contracts per expiration and 100 binary KPI option contracts equal one standard option contract.

Per proposed Rule 906KPI(b), positions in binary KPI options on the same KPI that have different expiration dates are not aggregated (as proposed position limits are calculated per expiration) and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated. In addition, a long KPI call and a short put KPI of the same type, on the same issuer having the same expiration shall be aggregated. Conversely, a short KPI call and a long put KPI of the same type, on the same issuer having the same expiration shall be aggregated.

The Exchange proposes to adopt Rule 906KPI(c) to provide that Binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Finally, per Rule 906KPI(d), the Exchange proposes a hedge exemption for Market Makers with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits prescribed in Rule 904.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting binary KPI option positions create a hedge similar to those for which the equity exemption is available. The Exchange believes the proposed hedge exemption will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also proposes to adopt Rule 907KPI (Reporting of Positions) to provide that positions in binary KPI options shall be reported pursuant to Rule 906, except, in computing reportable binary KPI options thereunder, aggregation of positions shall be in accordance with Rule 906KPI. The proposed Rule 907KPI further provides that for purposes of this report, 100 binary KPI option contracts equal one standard option contract. The Exchange believes this is reasonable given that binary KPI options have a multiplier of 1 while standard equity option contracts have a multiplier of 100.

The Exchange proposes to adopt Rule 908KPI to establish the minimum increment for bids and offers on orders for binary KPI options, which may not be less than $0.01.

Except as otherwise described above, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner as standard equity and index options and binary index options are permitted to be listed and traded under current Rules. The Rules that apply to the listing and trading of non-binary options on the Exchange, including those related to customer accounts, margin requirements and trading halt procedures,[30] which are designed to prevent fraudulent and manipulative acts and practices, will apply to the listing and trading of binary KPI options. The Exchange has analyzed its capacity and represents that it believes the Exchange has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

Trading in Flexible Execution (''FLEX'') options, Qualified Contingent

[26] Unless otherwise specified, all times in this proposal are Eastern Time.

[27] *See* Cboe Rule 5.1(3)(F).

[28] The proposed acceleration of binary KPI options is similar to the existing acceleration process for equity options when the underlying security of such options has been converted entirely to cash. *See* OCC Rule 807.

[29] Unofficial disclosure of a KPI may include, for example, an unsanctioned leak of the KPI or disclosure of the KPI by a source other than the issuer.

[30] Binary KPI options will not be tied to the trading state of the underlying issuer stock and thus, trading in binary KPI options will not be affected by halts in the underlying issuer stock. The binary KPI options will halt in accordance with Rule 953NY.

Cross (''QCC'') orders and complex Customer Best Execution (''CUBE'') auctions will not be offered. The Exchange may determine to support particular order types, order instructions, or times-in-force on a class-by-class basis. If the Exchange modifies the applicability of any functionality or order instructions for binary KPI options, the Exchange will submit a proposed rule change to reflect such changes to the trading system.

The Exchange will send quotation and transaction price information for binary KPI options to The Options Price Reporting Authority (''OPRA'') in the same manner it sends this information to OPRA for all other options the Exchange lists. Additionally, the Exchange understands from OPRA that it will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists. The Exchange intends to follow OPRA's standard capacity monitoring process for binary KPI options (in accordance with OPRA instructions), which includes submission of quarterly capacity projections (the Exchange will include its projected binary KPI option volume in the applicable submission). Further, the Exchange understands from OPRA that no technical changes are required to accommodate the reporting to OPRA of quotation and transaction information regarding binary KPI options (the Exchange represents, if later required by OPRA, it will adhere to any new technical requirements OPRA deems necessary to accommodate binary KPI options).[31]

The Exchange does not believe American Trade Permit (''ATP'') Holders will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange's automated system.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to binary KPI options, and that it has the necessary systems capacity to support the option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior and other improper trading In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (''FINRA''). Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.[32] The Exchange is also a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options.

The Exchange will report any information regarding binary KPI options required to be reported to the Consolidated Audit Trail (''CAT'') in the same manner it reports this information to CAT for all other options the Exchange lists.[33] The Exchange represents, if later required by FINRA CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options.

Pursuant to the Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan''),[34] participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and Exchange Rules 990NY through 993NY regarding intermarket linkage) applies during all trading sessions during which multiply listed options trade. Rule 993NY addresses order routing away from the Exchange to promote compliance with the Linkage Plan. If the proposed binary KPI options become multiply listed options, Users may designate an order for routing (or not available for routing), and the Exchange System is designed to, at all times, prevent trade-throughs and avoid displaying locked/crossed markets in accordance with the Linkage Plan (and Exchange Rules 990NY through 993NY regarding intermarket linkage).

Upon launch, binary KPI options will clear through the Clearing Corporation as that term is defined in proposed Rule 900KPI(b). In doing so, the proposal would bring these securities products within the established regulatory infrastructure applicable to listed options, including exchange trading and surveillance, standardized disclosure, and centralized clearance and settlement through a registered clearing agency, as further described below. Additionally, binary KPI options would be cleared through a registered clearing agency, which would serve as the central counterparty to each transaction and facilitate risk mitigation through established clearing, settlement, contract adjustment, and other standardized operational processes.

The Options Listing Procedure Plan (the ''OLPP'') sets forth procedures to facilitate the listing and trading of standardized options. This plan currently describes procedures with respect to options issued by and cleared at the OCC. If the Exchange ultimately does not designate the OCC as the Clearing Corporation for the purposes of the definition set forth in proposed Rule 900KPI(b), the Exchange will take steps necessary and within its authority to amend the OLPP to reflect listing procedures applicable to binary KPI options to the extent not cleared by the OCC.

The Exchange represents it will not list for trading binary KPI options until the registered clearing agency designated as the Clearing Corporation is authorized and operationally ready to clear the options and until all applicable filings and documents of the Clearing Corporation related to binary KPI options being cleared through the Clearing Corporation are approved by the Commission or effective after review by the Commission, as applicable.

As discussed in further detail below, the Exchange intends for binary KPI options to be treated as listed standardized options. Rule 9b–1 under the Act establishes a disclosure

[31] The Exchange understands OPRA may need to update how it disseminates open interest information for binary KPI options, as its current process incorporates information from OCC and references in this filing are clearing agency-neutral.

[32] Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (''SRO'') registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. *See* 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO. Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

[33] CAT reporting requirements will apply to broker-dealers with respect to binary KPI options in the same manner as they apply to any other options the Exchange lists. The Exchange understands from FINRA CAT there will be no changes to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to CAT.

[34] The Linkage Plan requires U.S. options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. The full text of the Linkage Plan is available at *https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.*

framework for standardized options pursuant to which investors receive a disclosure document describing the terms, characteristics, and risks of the product before trading. Depending on which registered clearing agency is designated as the Clearing Corporation, the applicable Rule 9b–1 disclosure document may be based on an existing options disclosure document utilized by that clearing agency, as modified or supplemented, as appropriate, or another comparable disclosure document prepared in connection with the clearance of binary KPI options. In either case, the disclosure document would contain substantially similar information regarding the terms, characteristics, risks, settlement mechanics, and other material features of binary KPI options and would be tailored, as necessary, to address the product's unique features and distinctions from traditional listed options. The Exchange believes that disclosure through the Rule 9b–1 framework would better serve the informational needs of investors than a traditional prospectus because binary KPI options are standardized options for which the principal investor considerations relate to the contract's terms, payout structure, settlement mechanics, and trading characteristics rather than the disclosure typically provided in connection with an offering of a corporate issuer's securities.

The Exchange will not commence listing and trading of binary KPI options until a registered clearing agency is authorized and operationally ready to clear the contracts; the applicable disclosure document under Rule 9b–1 is in place; any necessary changes relating to CAT, FINRA, OPRA, the Linkage Plan, and OLPP have been completed; and the Exchange has issued an implementation notice to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[35] in general, and furthers the objectives of Section 6(b)(5) of the Act,[36] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[37] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As an initial matter, the Exchange's proposal is substantively the same as the recently approved proposal made by the Cboe to list binary KPI options.[38] Similar to Cboe, the Exchange believes that trading such instruments as binary KPI options would promote a fair and orderly market and facilitate new investment and hedging opportunities on a Commission-regulated exchange.

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[39] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it establishes a clear and transparent framework for a new category of listed options (binary KPI options) that are tied to financial and operating metrics of issuers that are publicly disclosed in submitted to the Commission. Currently, investors wishing to position their investment strategies around earnings disclosures must rely primarily on equity options, whose pricing is affected by a wide range of variables beyond the reported financial or operating measure of interest (*e.g.,* implied volatility, delta, time value, and general market movement). Binary KPI options allow investors to take a targeted, defined-risk position directly on a specific financial or operating measure (*i.e.* a KPI) for a particular reporting period. The Exchange believes this additional investment tool will protect investors and the public interest because it will promote market efficiency, enable more precise price discovery around earnings events, allow investors to hedge against potential idiosyncratic risks, and remove a gap in current national securities exchange-listed products available to market participants.

The Exchange believes the proposed list of issuers and KPIs on which the Exchange may list binary KPI options will prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. First, as noted above, the Exchange is proposing to list binary KPI contracts based on specific financial and operating metrics reported by the following issuers in their earnings-related disclosures submitted to the Commission: Apple, Inc.; Advanced Micro Devices, Inc.; Alphabet Inc.; Amazon.com, Inc.; Bank of America Corporation; Citigroup Inc.; Coinbase Global, Inc.; Ford Motor Company; Intel Corporation; JPMorgan Chase & Co.; Marathon Digital Holdings, Inc.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; NVIDIA Corporation; Palantir Technologies Inc.; Robinhood Markets, Inc.; SoFi Technologies, Inc.; Space Exploration Technologies Corp.; Super Micro Computer, Inc.; Target Corporation; Tesla, Inc.; and The Walt Disney Company. The Exchange believes offering investors an additional investment tool on a national securities exchange related to some of the most actively traded stocks and options will perfect the mechanism of a free and open market and benefit investors by allowing them to further refine their investment strategies, including using these options to hedge idiosyncratic, even-specific risk embedded in the specific KPIs (as further discussed below), for these actively traded companies.

The Exchange believes the proposed universe of issuers will prevent fraudulent and manipulative acts and practices, because the proposed issuers are large, well-capitalized, and widely followed issuers with highly liquid underlying securities and options markets. During May 2026, each of the issuers exceeded $3 billion in market capitalization and ranked among the top 200 U.S. companies by average daily options or stock volume, with the exception of Space Exploration Technologies Corp (commonly referred to as SpaceX), which was not trading in May 2026 but which the Exchange believes will satisfy these measures with

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(5).

[38] *See* Cboe Binary KPI Approval Order, *supra* note 4.

[39] 15 U.S.C. 78f(b).

its first month of trading results based on its volumes since it began trading.[40]

Securities with high market capitalizations and liquid markets are generally less susceptible to manipulation because of the substantial capital required to artificially influence prices of those securities. The depth and breadth of trading activity for securities with significant market capitalizations, such as the stocks of the proposed issuers, make it unlikely that a single market participant would be able to exert undue influence on the price of such a stock, as large volumes of buyers and sellers are what ultimately continuously reflect the true market value of the stock. The Exchange believes the KPIs of issuers with high market capitalizations proposed to underlie binary KPI options are similarly less susceptible to manipulation because any attempt to distort a financial metric of such an issuer would require an enormous and economically impractical deployment of capital, which would likely exceed the fixed payout of a binary KPI option. Therefore, like stocks of large-cap issuers, KPIs of large-cap issuers are less susceptible to manipulation due to the structural barriers that would make manipulating KPI values operationally difficult and financially irrational (in addition to the rigorous financial oversight to which these issuers are subject, as further discussed below).

In addition to the proposed issuers being highly capitalized and having actively traded stocks and options on such stocks, the Exchange also believes the proposed limited universe of issuers for binary KPI options to those proposed will prevent fraudulent and manipulative acts and practices because each issuer is subject to periodic reporting requirements under the Act. Therefore, each of the proposed issuers must file annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the Commission, which as discussed above disclose information the issuer believes is necessary for an investor to understand its financial condition, changes in financial condition and results of operations, which can include KPIs. Further, each issuer maintains audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and is subject to executive certification requirements under the Sarbanes-Oxley Act. As a result, the settlement-determining KPI values for each eligible issuer are produced within the Commission's supervisory jurisdiction, are publicly verifiable from a Commission-regulated source and are subject to relevant anti-fraud provisions under the Act, which the Exchange believes will reduce the potential for manipulation of the underlying KPIs as well as the applicable issuer's stock.

Further, the Exchange believes the proposed limited universe of issuers will introduce binary KPI options in a well-developed, well-understood, and transparent Commission-regulated market environment. Each issuer is among the most widely followed, actively traded, and extensively analyzed issuers in its respective sector, with deep and liquid equity and derivatives markets and a broad institutional and retail investor base. The depth of existing market activity surrounding these issuers supports fair and orderly pricing by ensuring that binary KPI options are listed in markets where price discovery is well-established, liquidity is readily available, and participants have broad access to the information necessary to form and express informed views on KPI outcomes. The Exchange believes the continuous public scrutiny to which these issuers are subject substantially reduces the likelihood that any market participant could obtain or maintain an informational advantage sufficient to manipulate the settlement value of the binary KPI options.

The Exchange believes the proposed KPI metrics will similarly prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange's proposal limits eligible KPIs to GAAP and non-GAAP measures and other statistics related to an issuer's financial condition and operational results, all of which the proposed issuers disclose in their earnings-related filings (*i.e.,* Forms 8–K, 10–Q, and 10–K) submitted to the Commission. As such, the settlement values of the proposed binary KPI options are derived exclusively from information that issuers deem as material information required to be disclosed in reports submitted to the Commission. These metrics are routinely referenced and tracked in the investment community and are figures that the market recognizes as a meaningful and central indicator of issuer performance. The Exchange believes that the inclusion of well-established metrics as eligible KPIs expands the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process.

The proposed KPI metrics are among the most widely followed and extensively analyzed measures for the proposed issuers. Specifically, the Exchange proposes to be able to list a binary KPI option on earnings per share (prepared in accordance with GAAP) for each proposed issuer. This metric is among the most widely followed and extensively analyzed figures in public company financial disclosure and is disclosed in each issuer's periodic Commission filings.

Similarly, the Exchange proposes to list binary KPI options on revenue, prepared in accordance with the applicable GAAP, for each issuer. As is the case for earnings per share, revenue is a widely followed financial metric for publicly reporting companies and is the subject of extensive analyst coverage.

The Exchange proposes KPIs representing revenues broken out by applicable reportable segment, business unit, or product category, including cloud and artificial intelligence infrastructure revenues, streaming and geographic subscription revenues, automotive segment revenues, financial services segment revenues, consumer product category revenues, and digital asset exchange transaction and subscription revenues, among others, for several of the proposed issuers. Each such metric is a GAAP-defined figure required to be disclosed in the issuer's periodic Commission filings. The Exchange understands these metrics enable market participants to express views on specific high-profile business lines that are extensively covered by analysts and subject to a high volume of publicly available forecasts.

The Exchange proposes KPIs for the proposed financial institution issuers that are specific to financial institution income statement presentation, including net interest income, provision for credit losses, and net income. Each such metric reflects the distinct GAAP reporting framework applicable to banking institutions and is subject to the same periodic disclosures as other proposed KPIs.

The proposed rule change also includes operating margin, gross margin, or cash flow from operations KPIs for several issuers, each of which is computed directly from GAAP financial statement line items disclosed in the issuer's periodic Commission filings. These metrics provide market participants with insight into issuer profitability and capital generation and complement other revenue and earnings figures when market participants are

[40] The ADV of SpaceX stock between June 12 and June 22, 2026 was approximately 290,009,963 shares. The market capitalization of SpaceX as of June 22, 2026 was $2.145 trillion.

evaluating the value of an issuer and its stock.

The Exchange also proposes several non-financial operational KPIs that issuers disclosed in their periodic Commission filings, including relevant production volumes, network and infrastructure counts, user engagement metrics, deal counts, digital asset trading volume, and digital asset mining and holdings metrics. Each designated non-financial operational metric is closely tied to the core economic activity of the respective issuer's business and is a figure that the issuer has affirmatively chosen to disclose to the public as a key indicator of business performance. Issuers typically designate and disclose such metrics precisely because they are understood by the market to be among the most meaningful measures of their business activities. As discussed above, this is consistent with Commission guidance that an issuer should include KPIs in these report that the issuer believes an investor needs to gain understanding of its financial condition, changes in financial condition and results of operations, as such KPIs present the ''pulse'' of the issuer's business. The market significance of these metrics is further reflected in the extensive analyst coverage and investor attention, particularly near each reporting date. Each metric is subject to executive certification as part of the periodic report in which it appears and is widely tracked by financial data services and equity research analysts.

Overall, the Exchange believes that the proposed well-established, publicly reported metrics as eligible KPIs will expand the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process. As a result, the Exchange believes the proposed KPIs will protect investors and the public interest as it will permit the Exchange to offer investors additional investment and hedging tools on the Exchange that investors can incorporate into their investment strategies regarding the proposed issuers.

The Exchange believes the proposed contract terms for binary KPI options will promote just and equitable principles of trade, remove impediments to and perfect a free and open market and national market system, and protect investors. As discussed above, the Exchange believes the proposed contract terms for binary KPI options are standardized option terms. Like standard option contracts and binary index option contracts currently listed for trading on the Exchange, each proposed binary KPI option will be a call or a put, will have an underlying, exercise price, an expiration date, a settlement type, a exercise style, and a multiplier. As is the case for binary index options, each proposed binary KPI option will have an exercise settlement amount paid depending on how the settlement value of the underlying compares to the exercise price.

The proposed binary KPI options will function identically to, and carry the same contractual terms as, the binary KPI options the Cboe has recently been approved to list. The proposed definitions of binary KPI option, call binary KPI option, exercise price, and put binary KPI option are the same as those terms employed by Cboe for its binary KPI options.

The proposed definition of settlement value for binary KPI options is identical to the definition applied by Cboe for binary KPI options. The Exchange believes the proposed $1 exercise settlement amount is reasonable given the retail nature of the proposed binary KPI options and merely adds specificity to the Rules for binary KPI options. The Exchange notes binary KPI options differ from standardized index options (which are also cash-settled) in that the exercise settlement amount is $1.00 rather than the cash difference amount between the settlement value of the index and the strike price of an option. Since the $1.00 exercise settlement amount will be paid out to the option holder if the criteria of the binary KPI option have been met, binary KPI options utilize a fixed exercise settlement amount.

The Exchange proposes new Rule 901KPI to list the specific binary KPI option contracts with the KPI criteria for each option contract. Such KPI criteria are established as the set KPI events that will be used to determine whether an option contract will be exercised by comparing the strike price of the binary KPI option to the KPI value. The Exchange believes these proposed contracts (including the issuers and KPIs) are consistent with the Act for the reasons set forth above.

The Exchange believes the proposed expirations for binary KPI options will remove impediments to and perfect the mechanism of a free and open market and a national market system because they will align with the reporting periods for which the proposed issuers disclose earnings results and submit corresponding reports to the Commission. These expirations will, therefore, permit investors to incorporate binary KPI options into their investment strategies that correspond to issuers' earnings results. Further, as discussed above, the Exchange believes aligning expirations with Commission-regulated sources will reduce the potential for manipulation of the underlying KPIs, which will ultimately protect investors and the public interest.

The proposed rule establishes a strike regime for binary KPI options similar to that for traditional options and binary index options. As is the case for traditional options and binary index options, the proposed rule change establishes permissible strike intervals, the amounts of which increase as the value of the strike increases. Additionally, the Exchange proposes to list initial and additional series pursuant to a similar framework as traditional equity options. The differences in the proposed strike regime compared to that of standard equity and index options are necessary and appropriate to reflect the static nature of KPIs (unlike underlying equities and indexes, the values of which change throughout the trading day) and the timing of their disclosure. As noted above, the Exchange intends to list binary KPI options aligned with the cadence of the KPI disclosures as their expiration cycle (generally quarterly). The Exchange intends to list for trading binary KPI options with expirations for the then-current reporting period (*e.g.,* third quarter) as well as the following period (*e.g.,* fourth quarter) prior to the expiration of the binary KPI options for the then-current reporting period.

As the Exchange does for standard options, as well as binary index options, the Exchange lists strikes (subject to its Rules) based on relevant market information—including the then-current value of the underlying—and customer demand. As described above, the Exchange intends to do the same for binary KPI options by listing strikes relative to the then-current value of the underlying KPI or publicly available estimates from the issuer or major market data vendors. The Exchange believes it is consistent with just and equitable principles of trade to permit the Exchange to list strikes based on all available information that would inform expectations about the KPIs (as investors would do), and then add strikes based on new or updated information, as it will allow the Exchange to list series with strikes consistent with investor expectations and demands. This will enable the Exchange to respond to changes in market conditions for binary KPI options in the same manner it is able to do today for equity and index options (including binary index options), factoring in the static value of KPIs.

Specifically, the Exchange believes this flexibility is appropriate for binary KPI options because the value of a KPI changes only when an issuer discloses that KPI, which generally happens every three months, unlike other underlyings, the value of which changes every trading day. While this proposed strike listing regime for binary KPI options differs from that of other options, the concept is the same, which is to permit the Exchange to list strikes reflective of the then-current value of the underlying and in response to customer demand. It is possible the changed value of an underlying KPI in a more recent earnings disclosure or new or updated estimates may be more sudden and pronounced than changes in the value of an underlying equity or index (which are susceptible to sudden value changes); however, like the listing rules for equity and index options, the proposed rules permit the Exchange to list strikes to reflect changes in the value of the underlying, including substantial changes.

The Exchange believes the proposed scaling of strike prices is reasonable and will protect investors, as it will permit the Exchange to list strike values in amounts similar to current strike values for other options. As noted above, values of certain KPIs may be large (*e.g.,* in the billions). The proposed scaling will permit the Exchange, for example, to list a strike of 27 rather than 27,000,000,000, which the Exchange believes will be simpler for investors to understand (as it will be made clear that 27 will reflect billions in this example) and consistent with current strike levels. The proposed scaling also permits the strike prices for binary KPI options to fit within current system capabilities regarding strike price values. The Exchange believes scaling rather than modifying its systems (and potentially causing investors to modify their systems) will benefit investors by allowing them to trade binary KPI options in the same manner as they trade other options today.

The Exchange believes the proposed strike intervals promote just and equitable principles of trade because it will permit the Exchange to list commercially meaningful strikes that will permit investors to tailor their trading strategies with precision. The Exchange acknowledges the proposed strike intervals are smaller than those in current Rules for other types of options. However, the Exchange believes the precision is appropriate and necessary given the nature of KPIs and the proposed options. The purpose of binary KPI options is to permit investors to take discrete and precise positions on KPIs. Therefore, the Exchange needs the ability to list strikes with the precision necessary to permit investors to take these positions. For example, earnings per share is generally a relatively small number (under $10). While strike intervals for other options are limited to $0.50 intervals, that would not be meaningful in the context of binary KPI options when investors are looking to take positions for a specific KPI, which will be measured in penny intervals. Therefore, the Exchange believes smaller strike intervals will benefit investors because they will allow the Exchange to list binary KPI options that will enable investors to use these options in the precise nature for which they are intended and provide sufficient flexibility for the Exchange to list series to respond to changes in market conditions and customer demand, while other rules will place bounds around the strikes the Exchange may list.

Further, as discussed above, the proposed strike intervals are consistent with the strike intervals used by Cboe for the binary KPI options it recently received approval to list. Given the scaling factor for larger KPI values, while it may appear the proposed rule change will permit smaller strike intervals for larger KPI values, that may be true on a nominal basis but is not the case if the actual value of the strike intervals is considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. As a result, the permissible strike intervals for strike prices representing higher KPI values are actually larger than the permissible strike intervals for strike prices representing lower KPI values. This is consistent with general premise underlying current strike intervals that larger strike intervals apply to larger strike values and, therefore, the Exchange believes the proposed rule change will promote just and equitable principles of trade.

The Exchange believes this proposed rule change clearly describes the proposed terms of binary KPI options, such as with respect to expirations (including the Exchange's announcement of the specific expiration date after binary KPI options series for that expiration are listed) and exercise prices (including the scaling factor, negative values, and potential changes to that scaling factor for a binary KPI option class) for all investors. As discussed above, these terms and changes to such terms will be described in Exchange notices, technical specifications (including binary KPI option reference data files), and contract specifications (all of which are posted on the Exchange's public website and thus available to all investors). Exchange ATP Holders and retail brokerage firms are highly sophisticated investors that intake information regarding other Exchange-listed options (including changes) in the same manner that the Exchange plans to release this information for binary KPI options. Therefore, the Exchange expects retail customers to have access to all relevant information regarding the terms of binary KPI options they choose to trade, including changes to expiration dates and exercise price values as announced by the Exchange.

Proposed Rule 902KPI(e) specifies a multiplier of one for binary KPI options rather than require the Exchange to designate a multiplier of at least one as the rules for binary index options do. This proposed multiplier is consistent with the definition of contract multiplier applicable to the binary KPI options approved for listing on Cboe. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

The Exchange believes proposed Rule 905KPI, which establishes the Core Trading Session for binary KPI options is consistent with the Act, protects investors, and prevents fraudulent and manipulative practices. The Exchange believes the proposed structure ensures that trading in binary KPI options ceases before the earnings disclosure that determines settlement. The distinction between A.M.- and P.M.-settled contracts mirrors the settlement terms applicable to the binary KPI options approved for listing on Cboe.

The Exchange believes proposed Rule 905KPI(e), which provides that for binary KPI options, the System initiates the opening rotation at 9:30 a.m., removes impediments to a free and open market by applying the same proven opening process to binary KPI options that governs other listed options classes on the Exchange. Additionally, unlike equity options, for which the underlying opens for trading and can trigger the opening rotation, KPIs do not trade, so triggering the opening rotation based on a set time is reasonable for binary KPI options.

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 975NY is consistent with the Act and promotes just and equitable principles of trade because the standard obvious error

framework, which evaluates whether an execution price deviates from a ''theoretical value'' by a prescribed amount, is incompatible with the structure of binary KPI options. Binary KPI options have no continuously observable theoretical value (unlike equity and index options) prior to the date of the earnings-related disclosure. Rather, their exercise settlement amount is fixed at either a pre-specified dollar amount or zero, depending entirely on whether the reported KPI satisfies the exercise condition, which itself is based on a single, publicly verifiable metric, disclosed in Commission filings. Applying an obvious error framework premised on theoretical value calculations to a product with a binary, fixed payout would be technically inapplicable and could produce unjust or arbitrary results. Moreover, because settlement of binary KPI options is determined by issuer-reported metrics disclosed through Commission filings (*i.e.,* figures produced pursuant to established accounting standards, subject to independent audit, and certified under the Sarbanes-Oxley Act), the settlement process is itself governed by a comprehensive external regulatory framework. The Exchange believes that establishing any alternative dispute mechanism in this context would be not only unnecessary, but potentially disruptive to market integrity, as it may introduce an element of post-hoc discretion into a settlement process that is expressly designed to be objective, verifiable, and rule-bound.

Finally, the Exchange notes that it is planning to implement a systemic maximum execution price protection for binary KPI options on a class basis, pursuant to which any execution price for a binary KPI option above the Exchange-designated maximum execution price for that class is either rejected or adjusted down to that maximum execution price. This protection will provide investors with an additional safeguard against executions at potential erroneous prices, further limiting the need for a separate obvious error provision applicable to binary KPI options, which the Exchange believes protects investors and the public interest. The Exchange represents it will not list for trading binary KPI options until such systemic control is in place.

The Exchange believes the proposed amendments related to position limits for binary KPI options are consistent with the Act because they establish a rational position limit framework for binary KPI options that protects against manipulation while facilitating legitimate trading activity in a novel product.

The Exchange believes the proposed position limit, which is the smallest possible position limit that can apply to equity options, is appropriate and consistent with the Act. Specifically, the proposed position limit of 25,000 standard contracts is equivalent to the position limit in Rule 904, Commentary .07 that applies to an equity option for which the underlying security does not meet the requirements for a higher option contract limit (including newly listed equity options). The position limit for options on the stocks of the issuers of the proposed KPIs is ten times higher (*i.e.,* 250,000 contracts) pursuant to Rule 904, Commentary .07. Given the large market capitalization and liquidity of these stocks, the Exchange believes the proposed position limit for binary KPI options for the issuers of those stocks is conservative and reasonable for the binary KPI options. Therefore, the Exchange believes the proposed position limit will promote just and equitable principles of trade, as it is sufficient to mitigate potential manipulation and prevent disruption in the markets for the issuers' stocks and options on the stocks while accommodating investors trading activity for legitimate economic purposes.

As proposed, binary KPI options with a multiplier of one will count toward applicable limits on a proportional basis relative to standard equity options on the issuer's stock, which carry a multiplier of 100. This treatment is consistent with the position limits applied to other reduced-value options, such as micro-options (which also have a contract multiplier of one).[41] Because the proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 25,000 contracts with a value of $1.00 with a multiplier of 100 would equate to $2,500,000 notional value, while 25,000 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $25,000 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of calculating compliance with position limits effectively calibrates these limits so that investors may hold positions in binary KPI options for an economically equivalent number of contracts as they may hold in standard equity options. Therefore, the Exchange believes this proposed treatment is consistent with just and equitable principles of trade, as it counts option positions in a manner equivalent with their value.

The Exchange further believes the proposal is reasonable given the nature of binary KPI options and their relationship to the underlying issuer. Because binary KPI options have a fixed maximum notional value and settle on an all-or-nothing basis based on a KPI of the issuer rather than the price of the issuer's stock as with a standard equity option, the Exchange believes the proposed position limits appropriately reflects the distinct structure of these contracts and limits the potential for any single market participant to exert undue influence over binary KPI option settlement. With respect to binary KPI options, the economic risk of a position is binary, in that the contract either settles in-the-money at $1.00 or out-of-the money at $0.00. Additionally, with respect to binary KPI options, the maximum notional exposure per contract is fixed in advance; it cannot exceed $1.00.

Further, the Exchange's proposal to provide that positions in binary KPI options on the same KPI with different expiration dates and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated reflects the distinct structure of binary KPI options. Each binary KPI option expiration corresponds to a separate event tied to a specific issuer reporting period. Thus, the Exchange believes aggregating positions across different expiration dates would not accurately reflect the risk profile of these positions and would impose an unnecessary burden on market participants seeking exposure to company KPI events across different reporting periods.

Similarly, the Exchange believes it is reasonable to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Because binary KPI options and equity options overlying the same issuer have different risk profile (*i.e.,* binary KPI options settle based on a KPI of the issuer rather than its stock price), the Exchange believes it would be inappropriate and misleading to require aggregation of these positions for purposes of position limits. As noted above, binary KPI options are based solely on whether a single, specified-issuer KPI meets a discrete threshold at a defined future date, and their value reflects the market's probability assessment of that singular outcome. Standard equity options, on the other

[41] *See* Rule 904, Commentary .07.

hand, reflect a broad array of factors bearing on the price of the underlying security, including macroeconomic conditions and sector dynamics, of which any individual KPI is only one component. Because the two products are not priced off of a common reference and do not represent economically equivalent or fungible exposures, aggregating positions across them would not meaningfully advance the prevention of manipulative practices with respect to the underlying security.

The Exchange further notes that this proposed non-aggregation framework in proposed Rule 906KPI(b) is consistent with that applied by Cboe regarding binary KPI options. To avoid possible confusion the proposed rule provides that a long KPI call and a short put KPI of the same type, on the same issuer having the same expiration shall be aggregated and, conversely, that a short KPI call and a long put KPI of the same type, on the same issuer having the same expiration shall be aggregated.

Finally, the Exchange believes the hedge exemption provision in proposed Rule 906KPI(d) is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Proposed Rule 906KPI(d), provides a hedge exemption for Market Makers with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits prescribed in Rule 904.

The Exchange believes the proposed hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. The Exchange believes that offsetting short binary KPI option positions create a hedge similar to one to which the equity hedge exemption is available. The Exchange believes the proposed hedge exemption will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also believes the proposed adoption of Rule 907KPI is consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor ATP Holder positions effectively and detect any accumulation of positions that may approach or exceed applicable limits, to the benefit of investors. The Exchange believes it is consistent with just and equitable principles of trade for 100 binary KPI option contracts to equal one standard option contract for purposes of determining whether the report in proposed Rule 907KPI is required given the size of binary KPI contracts. As discussed above, proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100. Therefore, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 200 contracts with a value of $1.00 with a multiplier of 100 would equate to $20,000 notional value, while 200 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $200 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of this report effectively calibrates the reporting requirement so that investors are required to submit the report for an economically equivalent number of contracts, which promotes just and equitable principles of trade.

The Exchange believes the proposal will provide the Exchange and regulators with visibility into large position concentrations in binary KPI options, preserving the ability to identify unusual activity and respond to any unforeseen concerns, while calibrating the threshold to a metric that is meaningful for this contract given its smaller multiplier relative to that of standard equity options. The Exchange believes this reporting framework, coupled with the position limits amendments, provides a fully adequate regulatory framework for these instruments.

Further, as noted above, the Exchange believes it has an adequate surveillance program in place to detect potentially manipulative trading in binary KPI options. The Exchange notes that manipulation of the reported KPI would constitute securities fraud and expose the issuer to liability under federal securities law, separate and apart from any exchange-related violation.

The Exchange believes the proposed binary KPI options will serve as a vehicle to hedge idiosyncratic, event-specific risk embedded in the specific KPIs. Standard equity options are calibrated to the price of the underlying security and capture a full spectrum of factors or risks which may affect issuer value, such as macroeconomic conditions or sector dynamics. Because equity option pricing incorporates this full spectrum, a participant seeking to hedge exposure to a single, discrete KPI outcome cannot do so precisely using standard equity options. Because settlement of a binary KPI option is determined solely by whether a specified-issuer KPI meets a defined threshold, the contract effectively isolates certain individual risks an investor may seek to manage. For example, consider an investor holding a long-term position in a particular issuer stock, who believes the issuer's quarterly revenue will fall short of expectations (for reasons unrelated to the issuer's long-term prospects). The investor may utilize the binary KPI option to hedge precisely against the near-term risk without disruption to the underlying equity position. This targeted hedging utility represents a distinct and additive function relative to existing listed products, which the Exchange believes will serve the interests of investors and provide an efficient mechanism for managing event-specific, KPI-driven risk.

The Exchange believes the proposed rule change will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide investors with a securities exchange-listed investment choice for these instruments, offering price transparency and the regulatory protections of a national securities exchange. The Exchange believes the proposed rule change will permit investors to manage their risk exposures and carry out their investment objectives on a securities exchange with more flexibility and broader applicability. The Exchange also believes the proposed rule change will promote competition, as it will meet demands of investors that currently may trade products structured in substantively the same manner as the proposed binary KPI options in other markets (as further discussed below). Binary KPI options would provide investors with a straightforward means of expressing a directional view on key

financial and operating metrics. The Exchange further believes the proposed rule change is consistent with the protection of investors and the public interest, as binary KPI options would be subject to the Exchange's existing rules governing the listing and trading of options. The Exchange believes expanding the universe of binary options will benefit investors, particularly retail investors and other investors who prefer simplicity, as a complementary offering to current exchange-traded options.

The proposed rule change will permit the Exchange to list binary KPI options on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listed options. These benefits include: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. The Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is intended to provide a market for binary KPI options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, counter-party credit risk for Exchange-listed binary KPI options is significantly reduced through the issuance and guarantee of the contracts by a registered clearing agency. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options that the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying issuer KPI, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a national securities exchange would create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within an established regulatory framework designed to afford investors in securities with important protections. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market or other market platforms offer. It would contribute to leveling the playing field with these alternative markets and provide investors with safeguards associated with Commission and SRO oversight of the trading activity in these exchange-listed binary KPI options.

Ultimately, the Exchange believes the proposed rule change will provide investors with greater trading tools and opportunities and flexibility, resulting in investors having additional means to carry out their investment objectives and manage their risk exposures through products listed and traded on a national securities exchange. The Exchange believes the proposed rule change will offer market participants a simplified, transparent, and limited risk investment choice that may be more aligned with their specific timing needs, investment and hedging strategies, and risk tolerances. The Exchange believes it benefits the investing public to continue to enhance its listed product offerings to respond to continuously changing needs of investors and to a continuously changing competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options will be available to all market participants who wish to trade such options on the same terms and in the same manner (including with respect to the payout terms and amount). All market participants will be subject to the same rules applicable to binary KPI options, as described in this proposed rule change. Except as set forth in the proposed rule change, binary KPI options will trade in the same manner as binary KPI options on Cboe.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options have been approved to be listed on Cboe and other options exchanges may propose similar products. Additionally, as noted above, substantively similar products to binary KPI options, as proposed, are available in the OTC market and various other markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change will provide investors with a comparable alternative to the OTC market and other venues. The Exchange believes it may be a more attractive alternative to Cboe, the OTC market and these other venues, as market participants will benefit from being able to trade these options in an exchange environment, which provides, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. As a result, the Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it will allow the Exchange to offer a securities exchange-listed alternative to the products currently available in these other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A)(iii) of the Act[42] and Rule 19b–4(f)(6) thereunder.[43] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[44]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[45] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2026–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2026–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NYSEAMER–2026–97 and should be submitted on or before December 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

J. Matthew DeLesDernier,

Deputy Secretary.

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[42] 15 U.S.C. 78s(b)(3)(A)(iii).

[43] 17 CFR 240.19b–4(f)(6).

[44] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[45] 15 U.S.C. 78s(b)(2)(B).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106897; File No. SR–CBOE–2026–085]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule

November 13, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2026, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule to (1) apply the existing SPX/SPXW Electronic Execution Surcharge to S&P 500 Index (''SPX'') options with a.m.-settlement trading under the OSI root symbol SPXO (''SPXO''), and add SPXO to each other provision of the Fees Schedule that currently references SPXW;[3] (2) amend the fees, initiating credits, and credit cap applicable to Qualified Contingent Cross (''QCC'') orders; (3) amend the Market-Maker manual (open outcry) transaction fee for Multiply Listed options classes to distinguish between Penny and non-Penny classes; (4) adopt a new Floor Broker Break-Up Credits Program for Floor Broker orders executed against Market-Makers on the trading floor, and make related amendments to the Floor Broker Sliding Scale Rebate Program and Floor Broker Sliding Scale Supplemental Rebate Program; (5) amend footnote 55 to define Index Binaries as binary options on XSP, MRUT, DJX and MGTN, and replace references to ''XSPBX'' elsewhere in the Fees Schedule with references to ''Index Binaries (55)''; (6) adopt a fee holiday for Market-Maker orders in Index Binaries executed electronically and adding liquidity; (7) amend the transaction fee for Index Binaries where the premium is greater than or equal to $1.00 to a flat $0.01 per contract for fee codes HC (Customer), HD (Clearing Trader Permit Holder Proprietary, Broker-Dealer, Joint Back-Office, Non-Trading Permit Holder Market Maker, and Professional) and HB (Market-Maker, Electronic, Removing-Liquidity); and (8) adopt a Flex AIM Response Fee and a corresponding FLEX break-up credit for Customer Agency orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/options/regulation/rule_filings/cone/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Noting, however, that the SPXW Surcharge Programs (described below) shall not apply to SPXO and shall remain only applicable to SPXW.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective November 1, 2026.

SPXO Electronic Execution Surcharge and Other Conforming Changes

First, the Exchange proposes to amend its Fees Schedule to apply the SPX/SPXW Electronic Execution Surcharge to SPXO options. The Exchange intends to list SPX options that are a.m.-settled under the OSI root symbol SPXO beginning on November 9, 2026.[4] Currently, the Fees Schedule assesses an Electronic Execution Surcharge of $0.14 per contract on electronic executions in SPXW options [5] (noting that this is different than the Electronic Execution Surcharge of $0.21 for SPX).[6] The Exchange proposes to amend the Fees Schedule to provide that the $0.14 per contract surcharge will also apply to electronic executions in SPXO options. In addition, the Exchange proposes to add SPXO to each other provision of the Fees Schedule that currently references SPXW (*e.g.,* by amending references to ''SPX (incl SPXW)'' to read ''SPX (incl SPXW and SPXO),'' and references to ''SPX/SPXW'' to read ''SPX/SPXW/SPXO''), including in the Underlying Symbol List A rate table, the Index License Surcharge, the Floor Broker Solicitation Surcharge, the SPX/SPXW/SPXO Liquidity Provider Sliding Scale, the SCORe Program, the Market-Maker Tier Appointment Fees, the Floor Broker Trading Surcharge, the Floor Brokerage Fees and Floor Brokerage Fees Discount Scale, the GTH1 and GTH2 SPX/SPXW/SPXO LMM Incentive Programs, and footnote 41, so that SPXO is treated in the same manner as SPXW throughout the Fees Schedule. The Exchange intends to launch SPXO options on November 9, 2026. Accordingly, no SPXO fees will be assessed prior to the launch date.

The Exchange believes that SPXO options are comparable to SPXW options, as both are weekly options on the S&P 500 Index exclusively listed on the Exchange (the primary difference is that SPXO options are a.m.-settled while SPXW options are p.m.-settled), and that it is therefore appropriate to assess the same Electronic Execution Surcharge on electronic executions in both products.

QCC Fees, Initiating Credits, and Credit Cap

Next, the Exchange proposes to amend the fees, credits, and credit cap applicable to QCC orders.[7] Currently, the Exchange assesses a fee of $0.18 per contract on Non-Customer, Non-Professional Customer QCC orders (fee code QN), and a fee of $0.00 per contract on Customer and Professional Customer QCC orders. The Exchange proposes to increase the fee for Non-Customer, Non-Professional Customer QCC orders from $0.18 to $0.20 per contract. Fees for Customer and Professional Customer QCC orders will remain unchanged.

The Exchange also currently provides a credit of $0.11 per contract to the initiating side of a QCC transaction, except that no credit is paid on Customer (C) to Customer (C) executions, Customer (C) to Professional (U) executions, Professional (U) to Professional (U) executions or Professional (U) to Customer (C).[8] The Exchange proposes to amend the initiating credit so that the amount of the credit depends on (i) the initiating side and (ii) the contra side. Specifically, as proposed, the initiator of a QCC transaction will receive (i) no credit where both the initiating and contra sides are Customer or Professional Customer orders (in accordance with current practice); [9] (ii) a credit for the initiating order of $0.18 per contract where only one side of the transaction is a Non-Customer, Non-Professional Customer order; and (iii) a credit for the initiating order of $0.30 per contract where both sides of the transaction are Non-Customer, Non-Professional Customer orders. To reflect this structure, the Exchange proposes to bifurcate the Per Contract Credit column of the QCC Rate Table into two sections, one for Customer and Professional (capacity codes C and U) and one for all other capacities, mirroring the existing fee structure, and to set forth the applicable credits for each. Because the exclusion of Customer-to-Customer, Customer-to-Professional, and Professional-to-Professional executions will be reflected in the proposed credit amounts themselves, the Exchange also proposes to delete the existing sentence in the QCC Rate Table Notes providing that credits will not be paid on such executions. The following table summarizes the current and proposed QCC fees and initiating credits:

Capacity	Current fee	Proposed fee	Current initiating credit	Proposed initiating credit
Customer, Professional Customer	$0.00	$0.00	$0.00 if contra Customer or Professional Customer; $0.11 otherwise.	$0.00 if contra Customer or Professional Customer; $0.18 otherwise.
Non-Customer, Non-Professional Customer.	0.18	0.20	$0.11	$0.18 if contra Customer or Professional Customer; $0.30 otherwise.

Finally, the Exchange proposes to increase the maximum amount of QCC initiating credits a TPH may receive in a calendar month (the ''QCC Credit Cap'') from $350,000 to $500,000. The Exchange notes that its current practice of aggregating affiliated TPHs with at least 75% common ownership for purposes of determining if the QCC

[4] *See* Cboe Options to List S&P 500 a.m.—Settled Expiring Weekly Options.

[5] *See* Securities Exchange Act Release No. 93955 (January 12, 2022) 87 FR 2971 (January 19, 2022) (SR–CBOE–2021–076).

[6] *See* Cboe Fees Schedule.

[7] A ''Qualified Contingent Cross'' or ''QCC'' Order is comprised of an originating order to buy or sell at least 1,000 standard option contracts (or 10,000 mini-option contracts) that is identified as being part of a qualified contingent trade (''QCT'') coupled with a contra-side order or orders totaling an equal number of contracts. *See* Rule 5.6.

[8] The Exchange proposes clarifying in its Fee Schedule that Professional (U) to Customer (C) is also excluded. While the rule filing to establish the credit exclusion for Professional did call out both Professional to Professional and Professional to Customer when the fee for Professional was reduced to $0.00, the Exchange acknowledges that it may be clearer to specify each excluded combination in the Fees Schedule. *See* Securities Exchange Act Release No. 90642 (December 11, 2020), 85 FR 82005 (December 17, 2020) (SR–CBOE–2020–115) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule With Respect to Certain Fees Related to Qualified Contingent Cross Transactions the Exchange's LMM Incentive Programs).

[9] Meaning, the following transactions would be excluded from a credit: (i) Customer (C) to Customer (C) executions, (ii) Customer (C) to Professional (U) executions, (iii) Professional (U) to Professional (U) executions, and (iv) Professional (U) to Customer (C) executions.

Credit Cap has been met will remain unchanged.

The proposed changes are designed to encourage TPHs to initiate additional QCC transactions on the Exchange. The increased QCC Credit Cap allows TPHs that initiate significant QCC volume to continue to earn credits on that volume and has been increased in connection with the changes to initiator credits.

Multiply Listed Market-Maker Manual Transaction Fees

Next, the Exchange proposes to amend the transaction fee assessed on Market-Maker orders executed manually (*i.e.,* in open outcry) in Multiply Listed options classes. Currently, the Exchange assesses a fee of $0.45 per contract on Market-Maker manual transactions in all Multiply Listed options classes, yielding fee code MB. The Exchange proposes to separate this fee by Penny and non-Penny classes. Specifically, the Exchange proposes to increase the fee for Market-Maker manual transactions in Penny classes (fee code MB) from $0.45 to $0.50 per contract and to adopt a fee of $0.95 per contract for Market-Maker manual transactions in non-Penny classes, which will yield new fee code ME.

The Exchange notes that it, like other options exchanges, commonly assesses different transaction fees for Penny and non-Penny classes,[10] reflecting the wider spreads and generally greater potential profitability of transactions in non-Penny classes.

The proposed fees are in line with those recently adopted by other options exchanges with physical trading floors. NYSE American recently amended its Fee Schedule to increase the fee for Market Maker Manual transactions in non-Penny issues from $0.50 to $0.90 per contract and then to $1.00 per contract effective November 1, 2026, while retaining a fee of $0.50 per contract for Market Maker Manual transactions in Penny issues.[11] Nasdaq PHLX likewise recently increased its Non-Penny Symbol Floor Options Transaction Charge for Lead Market Makers and Market Makers, and currently assesses its market makers a fee of $1.00 per contract for floor transactions in non-Penny symbols,[12] and BOX assesses its market makers a fee of $1.00 per contract for Qualified Open Outcry and FLEX Open Outcry Order orders for manual transactions in non-Penny classes.[13] Most recently, MIAX Sapphire increased the fee assessed to Floor Market Makers for QFO and cQFO transactions in non-Penny classes that trade against all other origins from $0.50 to $0.94 per contract, while retaining a fee of $0.50 per contract for such transactions in Penny classes.[14] The Exchange's proposed fee of $0.50 per contract in Penny classes is identical to the corresponding fees at NYSE American, and MIAX Sapphire, and its proposed fee of $0.95 per contract in non-Penny classes falls within the range of $0.94 to $1.00 per contract assessed by MIAX Sapphire and NYSE American (beginning November 1, 2026), Nasdaq PHLX, and BOX, and is lower than the fees assessed by NYSE American, Nasdaq PHLX, and BOX.

The Exchange believes that, taken together with the proposed Floor Broker Break-Up Credits Program described below, which is designed to attract additional Floor Broker order flow for execution against Market-Makers, the proposed fee changes will not discourage Market-Makers from continuing to participate in transactions on the trading floor.

Floor Broker Break-Up Credits Program

Next, the Exchange proposes to adopt a new Floor Broker Break-Up Credits Program (the ''Floor Broker Program'') under the Floor Broker Programs section of the Fees Schedule. Currently, Floor Brokers may earn rebates under the Floor Broker Sliding Scale Rebate Program and the Floor Broker Sliding Scale Supplemental Rebate Program. As proposed, the Floor Broker Program will provide a rebate of $0.20 per contract in Penny classes and $0.25 per contract in non-Penny classes for an applicable trade executed by a Floor Broker against a Market-Maker on the trading floor. Consistent with the existing Floor Broker programs, the Floor Broker Program will apply to all products except Underlying Symbol List A (34), Sector Indexes (47), DJX, CBTX, MBTX, MGTN, MRUT, NANOS, SPEQX, SPESG, XSP, Index Binaries (55), and FLEX Micros. Rebates paid through the Floor Broker Program will be in lieu of rebates accrued under the Floor Broker Sliding Scale Rebate Program and the Floor Broker Sliding Scale Supplemental Rebate Program; however, volume executed under the Floor Broker Program will continue to count toward tier qualification under both of those programs. In connection with this change, the Exchange proposes to amend the notes to the Floor Broker Sliding Scale Rebate Program and the Floor Broker Sliding Scale Supplemental Rebate Program to delete the language providing that Non-Firm Facilitated rebates under those programs apply to the portion of Floor Broker orders executed against Market-Maker quotes or orders. As a result, Floor Broker orders executed against Market-Makers will receive the Floor Broker Program rebate rather than Non-Firm Facilitated rebates under the sliding scale programs, while such volume will continue to be counted for purposes of calculating Volume (and thus tier qualification) under the Floor Broker Sliding Scale Rebate Program, which already provides that Volume includes the portion of Floor Broker orders executed against Market-Maker quotes or orders. The Exchange also proposes to amend footnotes 24 and 33 to add the Floor Broker Break-Up Credits Program to the list of programs from which Index Binaries and FLEX Micro Options, respectively, are excluded, consistent with the treatment of the existing Floor Broker programs.

The proposed rebate is designed to incentivize Floor Brokers to bring additional order flow to the Exchange's trading floor for execution against Market-Makers, which the Exchange believes will increase liquidity and trading opportunities on the trading floor to the benefit of all market participants.

The proposed Floor Broker Program is in line with floor broker break-up credits recently adopted by other options exchanges. NYSE Arca and NYSE American each provide a rebate of $0.20 per contract for Manual trades executed by a Floor Broker against a Market Maker on the trading floor, in lieu of any rebates achieved through their manual billable rebate programs,[15] and Nasdaq PHLX recently adopted a $0.20 per contract rebate for open outcry floor executions that are contra a Lead Market Maker or Market Maker, in lieu of any Floor Broker Incentive Program rebate.[16] MIAX Sapphire likewise

[10] *See, e.g.,* NYSE American Options Fee Schedule, Effective as of November 1, 2026, charging broker-dealers $0.50 for penny electronic transactions and $1.00 for non-penny electronic transactions.

[11] *See* Securities Exchange Act Release No. 106720 (October 21, 2026), 91 FR 67356 (October 26, 2026) (SR–NYSEAMER–2026–93).

[12] *See* Securities Exchange Act Release No. 105913 (July 14, 2026), 91 FR 44933 (July 17, 2026) (SR–Phlx–2026–44).

[13] *See* BOX Exchange LLC Fee Schedule, Section V.A.

[14] *See* SR–SAPPHIRE–2026–37 (filed October 27, 2026) (refiling SR–SAPPHIRE–2026–35, Securities Exchange Act Release No. 106314 (September 9, 2026), 91 FR 58231 (September 14, 2026)).

[15] *See* Securities Exchange Act Release No. 106720 (October 21, 2026), 91 FR 67356 (October 26, 2026) (SR–NYSEAMER–2026–93); *see also* Securities Exchange Act Release No. 106721 (October 21, 2026), 91 FR 67351 (October 26, 2026) (SR–NYSEARCA–2026–104).

[16] *See* Securities Exchange Act Release No. 105913 (July 14, 2026), 91 FR 44933 (July 17, 2026) (SR–PHLX–2026–44).

provides a ''Floor Broker Breakup Credit'' to the Floor Broker that submits a QFO or cQFO for executions that trade with a Floor Market Maker, instead of the $0.10 Floor Broker rebate otherwise available, and recently increased that credit from $0.20 to $0.25 per contract in non-Penny classes, while retaining a credit of $0.20 per contract in Penny classes.[17] The Exchange's proposed Floor Broker Program rebates of $0.20 per contract in Penny classes and $0.25 per contract in non-Penny classes are in line with the the MIAX Sapphire Floor Broker Breakup Credit. Like MIAX Sapphire, the Exchange proposes a higher rebate in non-Penny classes in light of the higher proposed Market-Maker manual fee in non-Penny classes, which the Exchange believes appropriately balances the incentive provided to Floor Brokers with the fees assessed on the Market-Makers against which their orders trade and may encourage additional Floor Broker liquidity in non-Penny classes.

Index Binaries—Amendment to Footnote 55 and Replacement of References to XSPBX

Next, the Exchange proposes to (i) amend footnote 55 to provide that Index Binaries include binary options on XSP, MRUT, DJX and MGTN; and (ii) replace each other reference to ''XSPBX'' in the Fees Schedule with a reference to ''Index Binaries (55),'' so that each provision of the Fees Schedule that currently applies to, or excludes, XSPBX will apply to, or exclude, all Index Binaries. For purposes of the Fees Schedule, ''Index Binaries'' are binary index options, as defined in Rule 4.70, that are listed for trading on the Exchange and identified in footnote 55 of the Fees Schedule. The term ''Binary Option'' means an option contract having an exercise settlement amount that is established at the creation of an option and only two possible payoff outcomes: either a fixed amount equal to the exercise payout amount or nothing at all.[18]

Effective October 1, 2026, the Exchange amended the Rate Table—Binary Options in its Fees Schedule to replace the fixed, premium-based transaction fees previously applicable to XSPBX options (*i.e.,* XSP binary options) with a tier-based constant transaction fee methodology applicable to ''Index Binaries,'' and adopted new footnote 55, which provides that ''Index Binaries include XSPBX.'' [19] In that filing, the Exchange noted that it anticipated adding other binary index options to footnote 55 in future amendments to the Fees Schedule as it lists binary index options on additional indexes. The Exchange is now (or shortly after this filing expects to be) listing binary index options on additional indexes and accordingly proposes to amend footnote 55 to provide that ''Index Binaries include binary options on XSP, MRUT, DJX, and MGTN.'' As a result, transaction fees for orders in DJX, MRUT, and MGTN binary options will be calculated in the same manner as such fees are calculated for XSP binary options today.

In addition to the Rate Table—Binary Options, XSPBX is currently referenced in a number of other provisions of the Fees Schedule that exclude XSPBX from certain volume calculations, incentive programs, caps, and surcharges. These include the Liquidity Provider Sliding Scale, the Volume Incentive Program (''VIP''), Break-Up Credits, the Marketing Fee, the Floor Broker Sliding Scale Rebate Program, the Floor Broker Sliding Scale Supplemental Rebate Program, the Order Router Subsidy (''ORS'') Program, and the Complex Order Router Subsidy (''CORS'') Program tables and notes, as well as footnotes 6, 10, 11, 22, 24, 29, 30, 35, 36, and 44 of the Fees Schedule. The Exchange proposes to replace each of these references to ''XSPBX'' with ''Index Binaries (55),'' rather than enumerating each individual Index Binary in each provision. As a result, each Index Binary, including DJX, MRUT and MGTN binary options, will be excluded from the same programs, volume calculations, caps, and surcharges from which XSP binary options are excluded today. This change does not alter the treatment of XSP binary options under the Fees Schedule and simplifies the Fees Schedule by ensuring that any product identified in footnote 55 is treated consistently throughout the Fees Schedule.

Index Binaries—Market-Maker Fee Holiday and Fees for Premiums of $1.00 or Greater

The Exchange also proposes to amend certain transaction fees applicable to Index Binaries. Currently, Cboe Options Market-Maker/DPM/LMM orders in Index Binaries executed electronically and adding liquidity are assessed a flat fee of $0.05 per contract (fee code HA). The Exchange proposes to adopt a fee holiday for fee code HA to which such orders will be assessed a fee of $0.00 per contract. The proposed fee holiday is designed to encourage Market-Makers to participate and quote competitively in Index Binaries, including newly listed Index Binaries. Cboe Options Market-Maker/DPM/LMM orders in Index Binaries executed manually will continue to be assessed a flat fee of $0.15 per contract (fee code HM).

Further, the Exchange proposes to amend the transaction fee applicable to Index Binaries yielding fee codes HB, HC, and HD where the premium is greater than or equal to $1.00. Currently, the fees for such transactions are $0.01184 per contract for Customer orders (fee code HC) and $0.01386 per contract for Non-Customer orders (fee codes HB and HD), which reflect an approximation derived from the tier-based constant (k) pricing methodology. The Exchange proposes to instead assess a flat fee of $0.01 per contract for all capacities where the premium is greater than or equal to $1.00. Fees for Index Binaries where the premium is less than $1.00 will continue to be calculated using the existing tier-based constant methodology. To reflect this change, the Exchange proposes to restructure the Rate Table—Binary Options to set forth, in separate columns, (i) the flat Transaction Fee Per Contract when the premium is greater than or equal to $1.00 ($0.01 for fee codes HC, HD, and HB) and (ii) the Tier Based Constant (k) when the premium is less than $1.00 (unchanged at 1.2% for fee code HC and 1.4% for fee codes HD and HB), and to retitle the fee calculation column as the ''Fee Calculation when Premium is <$1.00.''

Flex AIM Response Fee and FLEX Break-Up Credit

Finally, the Exchange proposes to adopt a Flex AIM Response Fee and a corresponding FLEX break-up credit. Specifically, the Exchange proposes to add a new ''Flex AIM Response Fee (20)'' line item to each of the Rate Table—All Products Excluding Underlying Symbol List A (34) and Binary Options and the Rate Table—Underlying Symbol List A (34), pursuant to which the Exchange will assess a fee of $1.00 per contract on orders executed in FLEX AIM and FLEX SAM auctions that were initially entered as an AIM Response. The fee will apply to all capacities (C, F, L, M, B, N, U, and J) and to both Multiply Listed and proprietary products. The Exchange also proposes to amend footnote 20, which currently provides that applicable standard transaction fees will apply to all orders executed in

[17] *See* SR–SAPPHIRE–2026–37 (filed October 27, 2026).

[18] *See* Rule 1.1.

[19] *See* Securities Exchange Act Release No. 106680 (October 16, 2026), 91 FR 66591 (October 21, 2026) (SR–CBOE–2026–080).

AIM, SAM, FLEX AIM, and FLEX SAM auctions that were initially entered an AIM Responses, to (i) limit that provision to AIM and SAM auctions and (ii) provide that orders in FLEX AIM and FLEX SAM auctions (excluding FLEX Micros) that were initially entered an AIM Responses will be charged the new, proposed fee. In addition, the Exchange proposes to revise the Break-Up Credits table to add a new line item providing a credit of $0.50 per contract to Customer (capacity code C) Agency orders executed in FLEX AIM and FLEX SAM in all underlying symbols excluding FLEX Micros, when the Agency Order trades against an AIM Response, and to make a conforming change to the notes for the existing Break-Up Credits to provide that those credits apply to orders executed in AIM and SAM (deleting the references to FLEX AIM and FLEX SAM). Given the custom nature of FLEX options and the lack of on-screen liquidity, the Exchange understands the efforts brokers take to price these options and source liquidity to trade against their customers' orders can be substantial. Therefore, the Exchange believes that the proposed fee and credit will help protect the price discovery efforts of the parties that initiate FLEX AIM and FLEX SAM auctions and compensate Customer Agency orders whose volume is broken up, thereby encouraging market participants to continue to bring FLEX order flow to the Exchange rather than to other exchanges or over-the-counter markets.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. There are currently 20 registered options exchanges competing for order flow, and no single options exchange has more than approximately 20% of the market share of executed volume.[24] Accordingly, the Exchange is subject to significant competitive forces in setting the terms on which it offers its services, particularly with respect to Multiply Listed options.

The Exchange believes that applying the SPX/SPXW Electronic Execution Surcharge to SPXO options is reasonable because SPXO options, like SPXW options, are weekly options on the S&P 500 Index, and the Exchange believes it is appropriate to apply the same surcharge to electronic executions in comparable products. The amount of the surcharge is not changing, and the proposed change merely extends an existing surcharge to a new product. The proposed change is equitable and not unfairly discriminatory because the surcharge will apply equally to all electronic executions in SPXO options by all market participants subject to the surcharge (once the options are launched), in the same manner as it currently applies to SPXW options.

The Exchange believes that the proposed increase to the Non-Customer, Non-Professional Customer QCC fee from $0.18 to $0.20 per contract is reasonable because the proposed fee remains modest and, combined with the proposed increased initiating credits, is designed to maintain an attractive overall pricing structure for QCC transactions. The Exchange believes that the proposed tiered QCC initiating credit structure is reasonable because it is designed to incentivize TPHs to initiate QCC transactions on the Exchange by offering increased credits of $0.18 per contract and $0.30 per contract (as applicable), compared to the current $0.11 per contract credit. The Exchange believes it is reasonable to provide a greater credit for transactions when the initiator is Non-Professional/Non-Customer as their fees are higher (*i.e.,* a fee of $0.20 per contract for a Non-Professional/Non Customer compared to $0.00 per contract for Customer/Professional). Similarly, the Exchange believes that increasing the QCC Credit Cap from $350,000 to $500,000 is reasonable because it allows TPHs to earn credits on a greater amount of QCC volume, further incentivizing QCC order flow and is done in parallel with an increase to the per contract credit. The proposed changes are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated participants.

The Exchange believes that the proposed Market-Maker manual transaction fees for Multiply Listed options classes of $0.50 per contract in Penny classes and $0.95 per contract in non-Penny classes are reasonable because they are in line with fees assessed by other options exchanges for similar transactions. In particular, NYSE Arca, NYSE American, and MIAX Sapphire each assess a fee of $0.50 per contract for market maker manual or floor transactions in Penny classes, and MIAX Sapphire assesses $0.94 per contract and NYSE American (beginning November 1, 2026), Nasdaq PHLX, and BOX each assess $1.00 per contract for such transactions in non-Penny classes, such that the Exchange's proposed non-Penny fee is within the range of, and in several instances lower than, the fees assessed by other exchanges with trading floors. The Exchange believes it is reasonable to assess a higher fee in non-Penny classes because non-Penny classes generally have wider spreads and therefore present greater potential profitability for Market-Makers, and because the Exchange, like other exchanges, already differentiates between Penny and non-Penny classes for other transaction fees. The Exchange further believes that the proposed fees, considered together with the proposed Floor Broker Program, will not discourage Market-Makers from participating in open outcry transactions, as the Floor Broker Program is designed to attract additional Floor Broker order flow with which Market-Makers may trade. The proposed fees are equitable and not unfairly discriminatory because they will apply equally to all Market-Makers executing manual transactions in Multiply Listed

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

[23] 15 U.S.C. 78f(b)(4).

[24] *See* Cboe U.S. Options Market Volume Summary as of October 20, 2026.

options classes. The Exchange believes it is equitable and not unfairly discriminatory to assess Market-Makers a higher manual fee than certain other market participants because Market-Makers benefit from the ability to interact with Floor Broker order flow made available in open outcry, and the differential is consistent with the fee structures of other options exchanges.

The Exchange believes that the proposed Floor Broker Program is reasonable because it is designed to incentivize Floor Brokers to bring additional order flow to the trading floor for execution against Market-Makers, thereby increasing liquidity and execution opportunities on the trading floor. The proposed rebate is also in line with comparable floor broker break-up credits recently adopted by NYSE Arca, NYSE American, Nasdaq PHLX, and MIAX Sapphire, each of which provides a rebate of $0.20 per contract for floor broker executions against market makers on the trading floor, and is in line with the MIAX Sapphire Floor Broker Breakup Credit of $0.20 per contract in Penny classes and $0.25 per contract in non-Penny classes. The Exchange believes it is reasonable to provide a higher rebate in non-Penny classes as fees are higher for non-penny classes.[25] The Exchange also believes it is reasonable to pay the rebate in lieu of rebates under the Floor Broker Sliding Scale Rebate Program and the Floor Broker Sliding Scale Supplemental Rebate Program, and to make conforming amendments to those programs so that Non-Firm Facilitated rebates no longer apply to the portion of Floor Broker orders executed against Market-Makers, as doing so avoids paying duplicative rebates on the same contracts. The Exchange believes it is reasonable to continue to count such volume toward tier qualification under the sliding scale programs because it may prevent Floor Brokers from being disadvantaged under those programs as a result of executing orders against Market-Makers and is consistent with how such volume is counted today. The Exchange also believes it is reasonable to apply the same product exclusions that apply to the existing programs, so that the Floor Broker programs are administered consistently. The proposed rebate is equitable and not unfairly discriminatory because it will be available equally to all Floor Brokers whose orders are executed against Market-Makers on the trading floor, and the treatment of such volume under the sliding scale programs will apply equally to all Floor Brokers. The Exchange believes it is equitable and not unfairly discriminatory to offer the rebate only to Floor Brokers, as Floor Brokers play an important role in bringing order flow to the trading floor, thereby enhancing liquidity and price discovery in open outcry.

The Exchange believes the proposed amendment to footnote 55 is reasonable because it applies the existing tier-based constant fee methodology, and the existing flat fees for Cboe Options Market-Maker/DPM/LMM liquidity-adding and manual executions (as amended by this proposed rule change), additional binary index options. The Exchange believes it is reasonable to apply a single fee methodology to all Index Binaries because each shares the same binary payout structure, for which a fee that scales with the contract price is appropriate. The Exchange also believes it is reasonable to replace other references to XSP binary options in the Fees Schedule with references to Index Binaries because doing so treats all Index Binaries consistently, excluding them from the same incentive programs, volume calculations, caps, and surcharges from which XSP binary options are currently excluded, and avoids the need to enumerate each Index Binary in multiple provisions of the Fees Schedule. These changes are equitable and not unfairly discriminatory because the same formula, tier-based constants, and flat fees (as applicable) will apply uniformly to all market participants within each applicable capacity in all Index Binaries, and all market participants will be subject to the same program exclusions with respect to all Index Binaries.

The Exchange believes the proposed fee holiday for Cboe Options Market-Maker/DPM/LMM orders in Index Binaries executed electronically and adding liquidity is reasonable because it will reduce costs for Market-Makers and is designed to encourage Market-Makers to provide liquidity and quote competitively in Index Binaries, which benefits all market participants through tighter markets and increased trading opportunities. The Exchange believes it is equitable and not unfairly discriminatory to apply the fee holiday only to Market-Makers because Market-Makers, unlike other market participants, are subject to quoting obligations and add value through continuous liquidity provision, and the fee holiday will apply equally to all Market-Makers. The Exchange believes that assessing a flat fee of $0.01 per contract for Index Binaries where the premium is greater than or equal to $1.00 is reasonable because it simplifies and streamlines the fees applicable to such transactions and represents a modest decrease from the estimated current fees of $0.01184 (for Customers) and $0.01386 (for Non-Customers) per contract. The proposed change is equitable and not unfairly discriminatory because the same $0.01 fee will apply to all capacities.

The Exchange believes the proposed Flex AIM Response Fee and FLEX break-up credit are reasonable because they are designed to protect the price discovery efforts of market participants that bring FLEX orders to the Exchange for execution in FLEX AIM and FLEX SAM auctions and to compensate Customer Agency orders whose volume is broken up by AIM Responses, which the Exchange believes will encourage market participants to continue to execute FLEX transactions on the Exchange rather than on other exchanges or in the over-the-counter market. The Exchange believes it is reasonable to assess the fee on AIM Responses, as responders benefit from the price discovery provided by the initiating party, and to pay a portion of that amount to Customer Agency orders as a credit. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to limit the credit to Customer Agency orders because the existing Break-Up Credits are likewise directed to Customer Agency orders. The Exchange also believes it is reasonable to exclude FLEX Micros from the fee and credit, consistent with the exclusion of FLEX Micros from other incentive programs and surcharges under the Fees Schedule. The proposed fee and credit are equitable and not unfairly discriminatory because the fee will apply equally to all AIM Responses in FLEX AIM and FLEX SAM auctions regardless of capacity, and the credit will apply equally to all Customer Agency orders that are broken up by an AIM Response, in both Multiply Listed and proprietary products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will apply

[25] The proposed Market-Maker manual fee in non-Penny classes ($0.95 per contract) is higher than the proposed fee in Penny classes ($0.50 per contract). See also, *e.g.,* SR–SAPPHIRE–2026–37 (increasing the MIAX Sapphire Floor Broker Breakup Credit to $0.25 per contract in non-Penny classes in connection with an increase to the Floor Market Maker fee in non-Penny classes); NYSE American Options Fee Schedule, Section I.A. (providing a Floor Broker rebate of $0.20 per contract for Manual trades executed against a Market Maker on the Trading Floor).

uniformly to all similarly situated market participants. The proposed changes to QCC fees and credits will apply equally to all TPHs that execute QCC orders, the proposed Market-Maker manual transaction fees will apply equally to all Market-Makers, the proposed Floor Broker Program and related amendments to the Floor Broker sliding scale programs will apply equally to all Floor Brokers, the SPX/SPXW Electronic Execution Surcharge and other provisions that reference SPXW will apply to SPXO in the same manner as they apply to SPXW, the existing Index Binaries fee methodology, flat fees (as amended), and program exclusions will apply uniformly to all market participants in all Index Binaries, the Index Binaries fee holiday will apply equally to all Market-Makers, and the Flex AIM Response Fee and FLEX break-up credit will apply equally to all FLEX AIM and FLEX SAM Responses and all Customer Agency orders, respectively. As discussed above, the Exchange believes the proposed changes are designed to incentivize additional order flow to the Exchange, which benefits all market participants through increased liquidity and trading opportunities.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed Market-Maker manual fees and Floor Broker Program are in line with fees and rebates recently adopted by NYSE Arca, NYSE American, Nasdaq PHLX, and MIAX Sapphire for comparable floor transactions, and therefore reflect, rather than burden, intermarket competition. With respect to the Exchange's other proposed fee changes, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues, including other options exchanges and off-exchange venues, if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes the proposed changes reflect this competitive environment and are designed to attract additional order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and paragraph (f) of Rule 19b–4 [27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2026–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CBOE–2026–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2026–085 and should be submitted on or before December 9, 2026.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23424 Filed 11–17–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106902; File No. SR–CMESC–2026–010]

Self-Regulatory Organizations; CME Securities Clearing Inc.; Notice of Filing of Proposed Rule Change for Transaction Submission Amendments

November 13, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2026, CME Securities Clearing Inc. (''CMESC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been primarily prepared by CMESC. CMESC filed the proposed rule change pursuant to Section 19(b)(2) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. CMESC's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of CME Securities Clearing Inc. (''CMESC'') includes modifications to (i) the CMESC Rulebook (the ''Rules''),[4] including Rule 101 (Definitions), Rule 306 (Financial, Operational, and Other Requirements for Member Applicants), Rule 602 (Submission of Transaction Data), Rule 605 (Submission of Transaction Data), Rule 606 (Corporation Authority), Rule 608 (Compliance with Regulatory Standards), and Rule 1502 (Submission of Eligible Securities Transactions for Clearing; Functions of the Clearing System); (ii) the CMESC Operational Risk Management Policy (''ORMP''); (iii) the CMESC Risk Management Framework (''RMF''); and (iv) the CMESC Credit Risk Management Assessment Methodology (''CAM'').

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

[4] Capitalized terms used herein and not defined have the meanings assigned to such terms in the Rules, as applicable, available at *https://www.cmegroup.com/rulebook/CMESC/CMESC%20Rulebook.pdf.*

Each modification is described in more detail below.

II. CMESC's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CMESC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CMESC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. CMESC's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The primary purpose of the proposed rule change is to enhance the alignment of CMESC's transaction submission process with existing market structures and participant expectations. In particular, the proposed rule change is designed to (i) define single-dealer execution platforms and clarify their role in submitting Eligible Securities Transactions for clearance and settlement; (ii) establish terms for asset managers to submit Eligible Securities Transactions, including block transactions, on behalf of Participants; (iii) update existing descriptions regarding the submission requirements for single-sided and matched transactions; and (iv) make other appropriate clarifying and conforming edits.

Definitions

The proposed rule change amends Rule 101 to introduce a defined term for Single-Dealer Execution Platforms (''SDEPs''). Specifically, a SDEP would be defined to mean ''a principal-based trade execution platform on which a Participant acts as a dealer on both sides of the market and is counterparty to all transactions occurring on the platform and which is approved by the Corporation to send Eligible Securities Transactions executed on the platform between the single dealer Participant and another Participant to the Corporation for clearance and settlement.'' The existing Rules include references to SDEPs without utilizing a formally defined term. Defining SDEP in the Rulebook will clarify the Rules and align them with terms to be used in certain agreements that will govern operational connections and trade submissions to CMESC. For increased clarity in the Rules and related agreements, Rule 101 would also be amended to introduce the new defined term ''Approved Platforms,'' which would include both SDEPs and Eligible Platforms (the latter of which is already an existing defined term in the Rules).

The proposed rule change also amends Rule 101 to introduce a defined term for ''Asset Managers.'' Specifically, an Asset Manager would be defined to mean ''an investment adviser for a Participant that is duly authorized to execute transactions for and submit Eligible Securities Transactions to the Corporation for clearance and settlement in the name, and on behalf, of the Participant.'' The definition is intended to cover a range of potential relationships, including investment managers acting for managed accounts, fund managers acting for funds. An Asset Manager does not have to be a Member or a User, but it is possible that a Member could be acting in the capacity of an Asset Manager for another Participant. This approach aligns with CMESC's overall intention to allow duly authorized third parties (*i.e.,* ''agents'') to perform operational tasks on behalf of principals (*i.e.,* Participants), particularly in the context of managed accounts and funds that would generally rely on a manager for trade execution and submission for clearance and settlement, while the Participants remain primarily liable to CMESC for the underlying obligations. The RMF is being updated to address authorized agents performing operational tasks on behalf of Participants, as well as to clarify the use of the term ''Asset Manager'' in the document.

The proposed rule change also amends Rule 101 to introduce a defined term for ''Block Transaction.'' A Block Transaction would be defined to mean ''an Eligible Securities Transaction executed by an Asset Manager as a single transaction on behalf of more than one Participant with a single other Participant as contra-party that is submitted by the Asset Manager to the Corporation for clearance and settlement, where the transaction, if accepted by the Corporation, will be broken into its component transactions and allocated to each Participant on the blocked side of the transaction upon novation by the Corporation.'' The new definition is intended to allow Asset Managers to submit for clearance and settlement a Block Transaction executed on behalf of multiple Participants it manages, including funds, consistent with current market practice. Following novation, the Block Transaction components would be allocated to the accounts of the individual Participants covered by the Block Transaction.

Transaction Submission Process

The proposed rule change amends Rule 1502 to make a number of related changes to the rules describing the transaction submission process. First, the proposed changes would clarify that SDEPs may be involved in the transaction submission process pursuant to the Rules in the same way as Eligible Platforms, by replacing ''Eligible Platform'' with the proposed new definition ''Approved Platform'' in Rule 1502(a)(i)(A) and (b)(iv), which applies to both Eligible Platforms and SDEPs.

Second, the proposed changes would clarify a Member's role in submitting transactions and address Asset Managers' role in submitting transactions, including Block Transactions, to CMESC on behalf of Participants. Specifically, the proposed changes to Rule 1502(a)(i)(A)(x) would permit a duly authorized Member or an Asset Manager to submit a matched Repo Transactions or Cash Treasury Transactions for the respective accounts of two Participants where it has the authority to submit both sides. The proposed changes to Rule 1502(a)(i)(A)(y) would permit a Participant itself, its authorizing Member (if the Participant is a User) or its Asset Manager to submit a single-sided Repo Transaction or Cash Treasury Transaction for the account of the Participant, and further clarifying that where an Asset Manager submits such a single-sided transaction for the account of a Participant that is deemed submission by the Participant. The proposed changes to Rule 1502(a)(i)(A)(z) would enable an Asset Manager to submit an alleged Repo Transaction or Cash Treasury Transaction for the Account of a Participant, which is deemed submission by the Participant. Lastly, additional proposed changes throughout Rule 1502(a)(i)(A) update the in-line explanations of certain terms to account for an Asset Manager acting on behalf of one or more buyers or sellers with respect to Block Transactions.

Similarly, the proposed changes would add subparagraph (e) to Rule 1502(a)(i)(A) to specify that an Asset Manager may submit a Clear to Deliver Transaction or a Cash Treasury Transaction as a Block Transaction either as a matched transaction or a single-sided Repo Transaction or single-sided Cash Treasury Transaction for match at the full block quantity, along with instructions for allocating the transaction into separate transactions for

the quantity of each allocation against each individual Participant covered by the Block Transaction. Proposed subparagraph (e) would further specify that the Corporation will accept the Block Transaction for novation and post-novation allocation only if each separate transaction comprising the Block Transaction passes the applicable validations and credit checks.[5]

The proposed changes to Rule 1502(a)(ii) and (iii) would update existing descriptions regarding the submission requirements for single-sided and matched transactions to account for Asset Managers submitting for clearance and settlement trades on behalf of Participants, including Block Transactions on behalf of multiple Participants. The proposed changes to these provisions also would specify the transaction information that must be submitted for Block Transactions.

The proposed changes to Rule 1502(a)(i)(A)(b) and (c) also include clarification for when CMESC will reject any pending, unmatched single-sided Clear to Deliver Transactions or Cash Treasury Transactions [6] or unclaimed alleged trades involving those instruments.[7] This change would align the deadline to reject unmatched or unclaimed, alleged trades with the closure of the applicable submission window for the relevant underlying transaction, rather than setting the deadline at the end of the Business Day.

In connection with these changes, CMESC proposes to update Rule 1502(a)(i) to provide that, subject to Rule 602, Cash Treasury Transactions and Repo Transactions may be submitted to CMESC's Securities Clearing System for the account of a Member or User in accordance with Rule 1502, the terms of any agreement(s) with the Corporation governing submission of transactions and access to the Corporation's system(s), and the specifications for accessing the Corporation's systems including provisions to clarify that any person interacting with CMESC's systems is required to comply with applicable usage and access requirements to address generally persons submitting Eligible Securities Transactions on behalf of Participants. CMESC proposes to make conforming updates to Rule 602 to specify that ''no person,'' not just Members and Users, permitted to access the Corporation's Securities Clearing Systems shall provide false or inaccurate transaction data, which applies to Asset Managers that are not themselves Participants.

Additional Clarifying and Conforming Changes

The proposed rule change makes various conforming changes in Rules 306, 602, 605, 606, 608, and 1502 to reflect the introduction of the new defined terms; clarify the respective roles of SDEPs, Asset Managers, Approved Platforms, and Members in the transaction submission process; and eliminate now-redundant legacy terms.

In addition, CMESC proposes to update the CAM to distinguish between ''Asset Managers'' as referenced therein from the new definition proposed for the Rulebook. CMESC also proposes to update Section 6.1 of the ORMP to reflect the fact that authorized agents acting on behalf of Participants may also access CMESC core processing systems pursuant to applicable Rules and agreements.

2. Statutory Basis

For the reasons set forth below, CMESC believes the proposed rule change is consistent with Section 17A of the Act [8] and SEC Rules 17Ad–22(e)(18)(iv)(C) [9] and 17Ad–22(e)(21)(i).[10]

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[11] CMESC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because it will provide additional operational flexibility for Participants by enabling them to leverage existing relationships and market practices, in accordance with the Rules, when submitting transactions for clearance and settlement. These modifications will thus support Participants' ability to participate in CMESC's Clearing Services, which will promote the prompt and accurate clearance and settlement of transactions in or involving U.S. Treasury securities (including eligible secondary market securities transactions that market participants may be required to centrally clear pursuant to the rules of a covered clearing agency adopted pursuant to SEC Rule 17Ad–22(e)(18)(iv) [12]).

SEC Rule 17Ad–22(e)(18)(iv)(C) requires that a covered clearing agency for U.S. Treasury securities have written policies and procedures reasonably designed to ensure that it has appropriate means to facilitate access to the clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of the clearing agency's indirect participants.[13] CMESC believes the proposed rule change is consistent with these requirements in SEC Rule 17Ad–22(e)(18)(iv)(C) regarding facilitating access to the clearance and settlement services of all eligible secondary market transactions because it will provide operational flexibility for Participants by allowing them to leverage existing relationships and market practices in accordance with the Rules when submitting eligible secondary market transactions for clearance and settlement.

SEC Rule 17Ad–22(e)(21)(i) requires that a covered clearing agency have clearing and settlement arrangements that are efficient and effective in meeting the requirements of its participants and the markets the clearing agency services.[14] CMESC believes the proposed rule change is consistent with these requirements in SEC Rule 17Ad–22(e)(21)(i) regarding meeting the needs of Participants because it will provide operational flexibility for Participants by allowing them to leverage existing relationships and market practices in accordance with the Rules when submitting transactions for clearance and settlement.

B. CMESC's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [15] requires that the rules of a clearing agency not impose any burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act. CMESC believes that the proposed rule change would not impose a burden on competition that is

[5] Rule 1502(b)(iv) includes a description of the credit control types that authorizing Members may utilize with respect to Users.

[6] Subparagraphs a. and b. of Rule 1502(a)(i)(A) provide, in relevant part, that an unmatched single-sided transaction is either (i) the (securities) purchase leg of a Cash Treasury Transaction or a Clear to Deliver Transaction, as applicable, for which a contra sale leg has not been submitted to the Corporation for matching, or (ii) the (securities) sale leg of a Cash Treasury Transaction or a Clear to Deliver Transaction, as applicable, for which a contra purchase leg has not been submitted to the Corporation for matching.

[7] An unclaimed alleged trade is a trade that has been alleged in the clearing system to a counterparty who has not accepted the trade.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 17Ad–22(e)(18)(iv)(C).

[10] 17 CFR 240.17Ad–22(e)(21)(i).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(18)(iv).

[13] 17 CFR 240.17Ad–22(e)(18)(iv)(C).

[14] 17 CFR 240.17Ad–22(e)(21)(i).

[15] 15 U.S.C. 78q–1(b)(3)(I).

not necessary or appropriate in furtherance of the purposes of the Act. CMESC believes that the proposed rule change may enhance competition because, as detailed above, the proposed rule change would provide operational flexibility for Participants by enabling them to leverage existing relationships and market practices, in accordance with the Rules, when submitting transactions for clearance and settlement, thereby facilitating access to CMESC's Clearing Services for eligible secondary market transactions in U.S. Treasury securities. CMESC recognizes that various Members may perceive varying degrees of benefits of the proposed rule change conferred on them, depending on each Member's regulatory status and its entity type. CMESC believes that the effect of the proposed rule change on competition is distributed equally among all types of prospective Members because the proposed changes will apply to all Member types in the same ways and therefore would not disadvantage or favor any particular type of Member. As such, CMESC believes that the proposed rule change would promote competition and does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. CMESC's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CMESC currently does not have any Members or Users and has not received nor solicited any written comments from others related to this proposal. CMESC has not received any unsolicited written comments on this proposal from any interested parties. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information. All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777. CMESC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CMESC–2026–010 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–CMESC–2026–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking*). Copies of the filing also will be available for inspection and copying at the principal office of CMESC and on CMESC's website (*https://www.cmegroup.com/market-regulation/rule-filings.html*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–CMESC–2026–010 and should be submitted on or before December 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23426 Filed 11–17–26; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 13169]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Ruth Patir: (M)otherland'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Ruth Patir: (M)otherland'' at The Jewish Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*).

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Sherry C. Keneson-Hall,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2026–23476 Filed 11–17–26; 8:45 am]

BILLING CODE 4710–05–P

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority No. 635]

Functions of the Department of State Relating to the National Endowment for Democracy

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including section 1 of the Basic Authorities Act (22 U.S.C. 2651a); sections 1311–14 of the Foreign Affairs Reform and Restructuring Act of 1998 (22 U.S.C. 6531–33; 22 U.S.C. 2651a(b)(3)); and the National Endowment for Democracy (NED) Act (22 U.S.C. 4411–16), I hereby delegate the following functions, including those that are or were vested in the Director of the United States Information Agency or in that Agency and are now vested in me:

(1) To the Under Secretary of State for Public Diplomacy, acting in coordination with the Director of the Bureau of Global Acquisitions, the functions relating to audits of the National Endowment for Democracy as described in section 504(g) of the NED Act (22 U.S.C. 4413(g)).

(2) To the Under Secretary of State for Public Diplomacy, acting in coordination with the Bureau of Administration, the functions relating to the National Endowment for Democracy's compliance with the Freedom of Information Act as described in section 506 of the NED Act (22 U.S.C. 4415).

(3) To the Under Secretary of State for Public Diplomacy, acting in coordination with the Bureau of Global Acquisitions, the functions relating to administration of the grant program with the National Endowment for Democracy as described in section 503(a) and 504(a) of the NED Act (22 U.S.C. 4412(a) and 4413(a)).

(4) To the Under Secretary of State for Public Diplomacy, acting in coordination with regional bureaus, the authority to consult with the National Endowment for Democracy on any overseas program funded by the Endowment prior to the commencement of the activities of that program, as described in section 505(b) of the NED Act (22 U.S.C. 4414(b)). The Department will therefore not view NED's consultation responsibility as having been satisfied by any communications that do not include the Under Secretary of State for Public Diplomacy or that Under Secretary's designee. This authority may not be exercised by any other component of the State Department aside from the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, or pursuant to a redelegation by the Under Secretary of State for Public Diplomacy.

The Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources may exercise the authority delegated herein. The Under Secretary for Management may exercise the functions herein referenced of the Bureau of Global Acquisitions and the Bureau of Administration. The Under Secretary of State for Political Affairs may exercise the functions herein referenced of the Regional Bureaus. Functions delegated by this delegation of authority may be redelegated to an Officer of the United States, to the extent consistent with law.

To the extent that this delegation conflicts with the prior delegation of functions relating to the grant program with the National Endowment of Democracy articulated in Delegation of Authority 234, Section 1(7), this delegation takes precedence. It does not otherwise repeal or affect any delegation of authority currently in effect.

This document will be published in the **Federal Register**.

Dated: September 16, 2026.

Marco Rubio,

Secretary of State, U.S. Department of State.

[FR Doc. 2026–23462 Filed 11–17–26; 8:45 am]

BILLING CODE 4710–05–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2027, and other business.

DATES: The SJI Board of Directors will be meeting on Monday, December 14, 2026 at 1:00 p.m. CT.

ADDRESSES: Heflin-Torbert Judicial Building, 300 Dexter Avenue, Montgomery, AL.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703–660–4979, *contact@sji.gov.*

(Authority: 42 U.S.C. 10702(f))

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2026–23451 Filed 11–17–26; 8:45 am]

BILLING CODE 6820–SC–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2026–0562]

Applications for Inclusion on the Binational Panels Roster Under the United States-Mexico-Canada Agreement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for applications.

SUMMARY: The United States-Mexico-Canada Agreement (USMCA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a USMCA Party. The United States annually renews its selections for the roster. USTR invites applications from eligible individuals wishing to be included on the roster for the period April 1, 2027, through March 31, 2028.

DATES: USTR must receive your application by December 4, 2026.

ADDRESSES: You should submit your application through the Federal eRulemaking Portal: *http://www.regulations.gov,* using docket number USTR–2026–0562. Follow the submission instructions below.

FOR FURTHER INFORMATION CONTACT: Thor Petersen, Associate General Counsel, *Thorvald.J.Petersen@ustr.eop.gov,* 202.395.9599.

SUPPLEMENTARY INFORMATION:

A. Binational Panel AD/CVD Reviews Under the USMCA

Article 10.12 of the USMCA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one USMCA Party with respect to the products of another USMCA Party. Binational panels decide whether AD/CVD determinations are in accordance with the domestic laws of the importing USMCA Party using the standard of review that would have been applied by a domestic court of the importing USMCA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a 3-member extraordinary challenge committee, selected from a separate roster composed of 15 current or former judges.

Article 10.11 of the USMCA provides that a USMCA Party may refer an amendment to the AD/CVD statutes of another USMCA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the WTO Antidumping or Subsidies Agreements, successor agreements, or the object and purpose of the USMCA with regard to the establishment of fair and predictable conditions for the progressive liberalization of trade while maintaining effective and fair disciplines on unfair trade practices. If the panel finds that the amendment is inconsistent, the two USMCA Parties must consult and seek to achieve a mutually satisfactory solution.

B. Roster and Composition of Binational Panels

Annex 10–B.1 of the USMCA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 10 binational panels, with each USMCA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

When there is a request to establish a panel, roster members from the two involved USMCA Parties will complete a disclosure form that is used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

C. Criteria for Eligibility for Inclusion on Roster

The United States bases the selection of individuals for inclusion on the Chapter 10 roster on the eligibility criteria set out in Annex 10–B.1 of the USMCA. Annex 10–B.1 provides that Chapter 10 roster members must be citizens of a USMCA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with the governments of any of the three USMCA Parties. Annex 10–B.1 also provides that, to the fullest extent practicable, the roster must include judges and former judges.

D. Adherence to the USMCA Code of Conduct for Binational Panelists

The Code of Conduct under Chapter 10 and Chapter 31 (Dispute Settlement) (see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/code-code-codigo.aspx?lang=eng*), which was established pursuant to Article 10.17 of the USMCA, provides that current and former Chapter 10 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.'' The Code of Conduct also provides that candidates who serve on Chapter 10 rosters, as well as those who ultimately are selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 10–B.1 of the USMCA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 10–B.1 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

E. Procedures for Selection of Roster Members

Section 412 of the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113, 19 U.S.C. 4582) establishes procedures for the selection by the U.S. Trade Representative on behalf of the United States of the individuals for inclusion on the Chapter 10 roster. The roster is renewed annually and applies during the one-year period beginning April 1 of each calendar year.

Under Section 412 of the Act, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 10 roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, the U.S. Trade Representative selects the final list of individuals for inclusion on the Chapter 10 roster.

F. Applications

USTR invites eligible individuals who wish to be included on the Chapter 10 roster for the period April 1, 2027, through March 31, 2028, to submit applications. In order to be assured of consideration, USTR must receive your application by December 4, 2026. Submit applications electronically to *Regulations.gov*, using docket number USTR–2026–0562. For technical questions on submitting comments on *Regulations.gov*, please contact the *Regulations.gov* help desk at *regulationshelpdesk@gsa.gov* or 1.866.498.2945. If you are unable to submit through *Regulations.gov* after seeking assistance from the help desk, please contact Sandy McKinzy at 202.395.9483 before transmitting your application and in advance of the deadline.

In order to ensure the timely receipt and consideration of applications, USTR strongly encourages applicants to make on-line submissions, using *Regulations.gov*. To apply via *Regulations.gov*, enter docket number USTR–2026–0562 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' on the left side of the search-results page, and click on the 'comment' link. For further information on using the *Regulations.gov* website, please consult the resources provided on the website by clicking on 'How to Use Regulations.gov' on the bottom of the page.

Regulations.gov allows users to provide comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that candidates submit applications in an attached document. If a document is attached, please type ''Application for Inclusion on USMCA Chapter 10 Roster'' in the 'upload file' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the 'type comment' field.

Applications must be typewritten, and should be headed ''Application for Inclusion on USMCA Chapter 10 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.

7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.

8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.

9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Submit only one copy of publications, testimony, speeches, and decisions.

10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.

11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.,* and the dates of all registration periods.

12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.

13. A short statement of qualifications and availability for service on Chapter 10 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.

14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

G. Current Roster Members and Prior Applicants

Current members of the Chapter 10 roster do not need to resubmit their full applications. Current members of the Chapter 10 roster who remain interested in inclusion on the roster should submit a statement indicating that they are reapplying and submit any applicable updates to their applications on file. Individuals who previously have applied but have not been selected must submit new applications to reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9 of the previous section, such materials need not be resubmitted.

H. Public Disclosure

Applications are covered by a Privacy Act System of Records Notice and are not subject to public disclosure and will not be posted publicly on *Regulations.gov.* They may be referred to other federal agencies and Congressional committees in the course of determining eligibility for the roster, and shared with foreign governments and the USMCA Secretariat in the course of panel selection.

I. False Statements

False statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 10 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Juan Millan,

Deputy General Counsel for Monitoring & Enforcement, Office of the United States Trade Representative.

[FR Doc. 2026–23412 Filed 11–17–26; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2026–3707]

Parts and Accessories Necessary for Safe Operation; Application for Exemption From Safety Vision, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comments on an application for exemption submitted by Safety Vision, LLC (Safety Vision) to allow motor carriers to operate commercial motor vehicles (CMV) equipped with Safety Vision's View Smart camera monitor system [1] (CMS) installed as an alternative to the two rear-vision mirrors required by the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA is required by statute to publish a notice explaining each exemption request. This notice does not indicate what decision FMCSA will ultimately reach on the request. After reviewing the application, safety analyses, and public comments submitted, FMCSA will grant or deny the exemption.

DATES: Comments must be received on or before December 18, 2026.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2026–3707 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, W58–213, West Building, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, W58–213, West Building, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2026–3707) 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.

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, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Moreno, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA; *MCPSV@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2026–3707), indicate the specific section of this document to

[1] Safety Vision refers to this as a camera mirror system, however, FMCSA uses the terminology camera monitor system and for consistency in Agency documents will use that phrasing in processing the exemption application.

which the comment applies, and provide a reason for your 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 *https://www.regulations.gov/docket/FMCSA-2026-3707/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Sarah Stella, Chief, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *sarah.stella@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* insert FMCSA–2026–3707 in the keyword box, select the document tab and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket by visiting Dockets Operations in room W58–213 of the DOT West Building, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the 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 the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, 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 absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the exempted party will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Current Regulatory Requirements

Section 393.80(a) of the FMCSRs requires that each bus, truck, and truck-tractor operating in interstate commerce be equipped with two rear-vision mirrors, one at each side. The mirrors must be positioned to reflect to the driver a view of the highway to the rear and the area along both sides of the CMV. Section 393.80(a) cross-references the National Highway Traffic Safety Administration's standards for mirrors on motor vehicles (49 CFR 571.111, Federal Motor Vehicle Safety Standard (FMVSS) No. 111). Paragraph S7.1 of FMVSS No. 111 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a gross vehicle weight rating (GVWR) greater than 4,536 kg and less than 11,340 kg and each bus, other than a school bus, with a GVWR of more than 4,536 kg. Paragraph S8.1 provides requirements for mirrors on multipurpose passenger vehicles and trucks with a GVWR of 11,340 kg or more.

Applicant's Request

Safety Vision has applied for an exemption from § 393.80(a) to allow motor carriers to equip their fleets with the company's ''Safety Vision View Smart'' installed as an alternative to the two rear-vision mirrors required by the FMCSRs. This technology is considered a CMS, which is a camera-based rear visibility system. According to Safety Vision, its system provides an equivalent or greater level of safety than traditional mirrors through an expanded field of view, improved low ambient light performance, blind spot reduction, reduced driver fatigue, and driver alerts.

According to Safety Vision, the View Smart system uses a dual lens, weatherproof camera on either side of the vehicle, providing analog signals to monitors installed on the vehicle's A-pillars. Safety Vision states its system meets or exceeds FMVSS 111 safety standards by providing a more comprehensive field of view that covers UNECE R46 Class II (main view) and Class IV (wide view) requirements. Additionally, by replacing the large mirror housing with cameras mounted high on the vehicle, blind spots usually located near the A-pillars are eliminated while also reducing the risk of collision damage.

Safety Vision states that the display monitors provide improved low ambient light visibility when compared to rearview mirrors, including an automatic brightness adjustment for better driver visibility in varying lighting conditions. Safety Vision also states that the system can outline any pedestrians or vehicles that approach the cameras' detection zones and provides an audible alert when pedestrians or vehicles are nearby, improving safety during complex maneuvers and in low-visibility conditions.

Since 2024, Safety Vision has supplied CMS to transit bus operators whose vehicles were additionally equipped with mandatory rearview mirrors. During this time, the company reports receiving positive feedback including superior image quality,

hardware design/reliability, weatherproofing, increased viewing angles, and reduced driver fatigue.

A copy of Safety Vision's 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 Safety Vision's application for a 5-year exemption from 49 CFR 393.80(a). All comments received before the close of business on the comment closing date 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. 2026–23410 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2026–2642]

Commercial Driver's License: Saia LTL Freight; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on Saia LTL Freight's (Saia) application for an exemption to allow commercial learner's permit (CLP) holders enrolled in its driver training program to operate commercial motor vehicles (CMVs) configured with double trailers without holding a commercial driver's license (CDL) with a doubles/triples (T) endorsement, while under the direct supervision of a qualified CDL holder with a T endorsement. FMCSA is required by statute to publish a notice explaining each exemption request. This notice does not indicate what decision FMCSA will ultimately reach on the request. After reviewing the application, safety analyses, and public comments submitted, FMCSA will grant or deny the exemption.

DATES: Comments must be received on or before December 18, 2026.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2026–2642 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, W58–213, West Building, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, W58–213, West Building, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251. Each submission must include the Agency name and the docket number (FMCSA–2026–2642) 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.

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, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; *Bernadette.walker@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2026–2642), indicate the specific section of this document to which the comment applies, and provide a reason for your 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 *https://www.regulations.gov/docket/FMCSA-2026-2642/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Sarah Stella, Chief, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *sarah.stella@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* insert FMCSA–2026–2642 in the keyword box, select the document tab and choose the

document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket by visiting Dockets Operations in the DOT West Building, 1200 New Jersey Avenue SE, W58–213, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the 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 the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, 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 absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the exempted party will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Current Regulatory Requirements

Under 49 CFR 383.37(a), employers are prohibited from allowing a driver to operate a CMV if the driver does not have a CLP or CDL with the proper class or endorsements. Under 49 CFR 383.93(b)(1), a driver must obtain an endorsement to his or her CDL to operate a CMV with a double or triple trailer. Drivers are required to pass the applicable knowledge test before obtaining a doubles/triples (T) endorsement on their CDL (49 CFR 383.93(c)(1)). In addition, the regulations prohibit State Driver's Licensing Agencies from issuing a doubles/triples endorsement to CLP holders (49 CFR 383.25(a)(5)(iv) and 383.93(a)(2)).

Applicant Request

Saia LTL Freight (USDOT No. 029124), headquartered in John Creek, Georgia, has requested a 5-year exemption from the requirements in 49 CFR 383.93(b)(1) and 49 CFR 383.37(a). Saia requests relief from these requirements to permit CLP holders participating in its driver training program to receive behind-the-wheel training while operating combination vehicles configured with double trailers under the direct supervision of an experienced CDL holder who possesses a valid double/triples endorsement. Saia states that the exemption would apply to approximately 300 trainees annually using a fleet of approximately 19 training vehicles, with a gross vehicle weight of 80,000 lbs. or less. According to the application, the exemption would streamline the training pipeline and allow its trainees (CLP holders) to gain on-the-road experience with doubles under expert supervision before taking the final CDL test, thereby increasing the supply of qualified drivers for its operations.

Applicant's Equivalent Level of Safety

Saia states that it would maintain a level of safety equivalent to or greater than the level of safety that would be maintained by compliance with the current regulations by implementing several safeguards, including:

- All trainees must pass a company-administered knowledge test that mirrors the state CDL doubles/triples exam.
- Trainees must demonstrate proficiency in coupling, uncoupling, and maneuvering doubles in a closed-yard environment before entering public roads.
- All on-road training will be conducted under the direct supervision of a certified trainer/instructor who holds a valid Class A CDL with a T endorsement.
- Training will be restricted to vehicles with a gross vehicle weight of 80,000 lbs or less.
- Drivers will carry proof of their completed internal training and the company-administered exam at all times while operating.

A copy of Saia's 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 Saia's application for an exemption from the requirements in 49 CFR 383.93(b)(1) and 49 CFR 383.37(a) to allow Saia's driver trainees to operate commercial motor vehicles (CMVs) configured with double trailers while under the direct supervision of a qualified CDL holder with a T endorsement, before the CLP holder has obtained a CDL or the endorsement. All comments received before the close of business on the comment closing date 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. 2026–23409 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–1882]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V OSIRIS

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before December 18, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number

MARAD–2026–1882 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search the above DOT Docket Number and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Ye Tian, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: *smallvessels@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.[1]

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at *https://www.regulations.gov.* Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at *https://www.regulations.gov,* keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–23510 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–81–P

[1] The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–1883]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V ANNIE LAURIE

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before December 18, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2026–1883 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search the above DOT Docket Number and follow

the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Ye Tian, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: *smallvessels@dot.gov*

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.[1]

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at *https://www.regulations.gov.* Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at *https://www.regulations.gov,* keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–23511 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–81–P

[1] The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–1884]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V NEXUS

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before December 18, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2026–1884 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search the above DOT Docket Number and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West

Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Ye Tian, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: *smallvessels@dot.gov*

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.[1]

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at *https://www.regulations.gov.* Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at *https://www.regulations.gov,* keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–23509 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–81–P

[1] The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. DOT–OST–2026–4489]

Agency Information Collection Activities; Renewal of a Previously Approved Information Collection: Confidential Close Call Transit Data

AGENCY: Bureau of Transportation Statistics (BTS), Department of Transportation (DOT).

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, BTS announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. BTS is requesting approval to renew an existing ICR 2138–0044, Confidential Close Call Transit Data. The renewal of this ICR will enable BTS to continue collecting confidential close call transit data for the Washington Metropolitan Area Transit Authority (WMATA). The collection includes safety information from WMATA personnel involved in the operation, maintenance, and other duties involving bus and rail.

DATES: Comments are encouraged and will be accepted until January 19, 2027.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments by only one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the instructions for sending your comments electronically. Docket Number: [DOT–OST–2026–4489].
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, 5th Floor, Room W58–213, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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 *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Allison Fischman, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology, USDOT, *allison.fischman@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Confidential Close Call Transit Data.

OMB Control Number: 2138–0044.

Type of Review: Renewal of information collection.

Respondents: WMATA employees.

Estimated Number of Respondents: 150.

Estimated Time per Response: 60 minutes.

Frequency: Annual.

Total Annual Burden Hours: 150 hours.

Abstract: The Confidential Close Call Program for Transit is a collaborative program between BTS, WMATA, the Amalgamated Transit Union (ATU) Local 689, the International Brotherhood of Teamsters (IBT) Local 922, and the Office & Professional Employees International Union (OPEIU) Local 2. The program provides a confidential platform to facilitate the voluntary reporting of close call events without fear of discipline. The program was established in 2013 for rail employees and expanded to include bus employees in 2016.

Collecting data on the nation's transportation system is an important component of BTS' mission and responsibility to the transportation community as stated in its authorizing statute (49 U.S.C. 6302). BTS, WMATA, and the labor organizations that represent WMATA employees share a common interest in promoting transit safety based on timely, accurate, and relevant data. BTS, a principal statistical agency within the U.S. Department of Transportation, serves as the independent third party for the program to collect, analyze, and maintain confidential close call data. Under the program, a close call is defined as any situation or circumstance that has the potential for safety consequences but did not result in an adverse safety event. Knowledge about a close call presents an opportunity to address unsafe work conditions and practices, prevent accidents, contribute to decision-making, and improve overall safety in the workplace.

BTS collects close call reports submitted by WMATA employees, conducts employee interviews, develops and maintains an analytical database containing reported data and other pertinent information, and provides statistical analysis to WMATA. Data shared with BTS by WMATA employees is treated confidentially and protected by BTS under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA), codified as amended at 44 U.S.C. 3561–3583. Only statistical and non-sensitive information will be made available through publications.

Voluntary reporting of close calls to a confidential system provides a tool to identify and correct weaknesses within WMATA and prevents accidents. Close call reporting fosters a voluntary, cooperative, non-punitive environment to communicate safety concerns. Through the analysis of the data that is reported, WMATA receives information about factors that contribute to unsafe events, which becomes the catalyst to develop new training programs and identify root causes of adverse events. The database also provides valuable information regarding precursors to safety risks and contributes to research and development of intervention programs aimed at averting accidents and fatalities.

Employees involved in reporting a close call incident are asked to fill out a report and participate in a brief, confidential interview. Employees submit the report electronically to BTS. Reporting employees will be asked to provide information such as: (1) name and contact information; (2) time and location of the event; (3) a short description of the event; (4) contributing factors to the close call; and (5) any other information that might be useful in determining a root cause for such events.

Data Confidentiality Provisions: Data collected under the Confidential Close Call Program are protected under CIPSEA. In accordance with CIPSEA, these data will be used exclusively for statistical purposes and will not be disclosed in identifiable form except with the informed consent of the respondent.

Annual Burden Discussion: It is estimated that the time to complete a close call report and participate in a brief confidential interview will be no than 60 minutes for a maximum total burden of 150 hours (150 reports * 60 minutes/60 = 150 hours). Reports are submitted when there is a qualifying event, *i.e.,* when a close call occurs.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of BTS's functions; (2) the accuracy of the estimated burden; (3) ways for BTS to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Allison Fischman,

Statistician, Bureau of Transportation Statistics, U.S. Department of Transportation.

[FR Doc. 2026–23403 Filed 11–17–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2026–0793]

RIN 1557–ZA18

FEDERAL RESERVE SYSTEM

[Docket No. OP–1881]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA58

NATIONAL CREDIT UNION ADMINISTRATION

[Docket No. NCUA–2026–1684]

RIN 3133–ZA54

Proposed Third-Party Risk Management Guidance; Extension of Comment Period

AGENCY: The Office of the Comptroller of the Currency (OCC), Treasury, the Board of Governors of the Federal

Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA).

ACTION: Proposed interagency guidance and request for comment; extension of comment period.

SUMMARY: On September 15, 2026, the OCC, Board, FDIC, and NCUA (collectively, the agencies) published in the **Federal Register** a proposed interagency guidance and request for comment on third-party risk management. The proposed guidance would reflect the agencies' supervisory experience and lessons learned through examining banking organizations' third-party risk management practices and would discuss the potential benefits that may accrue when a banking organization aligns its third-party risk management practices in relation to the reasonably assessed risk levels specific to each of its third-party relationships, among other things. Public comments were requested by November 16, 2026. The agencies have determined that an extension of the comment period until December 16, 2026, is appropriate.

DATES: The comment period for the notice published on September 15, 2026 (91 FR 58536) is extended. Comments must be received on or before December 16, 2026.

ADDRESSES:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Third-Party Risk Management Guidance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/*. Enter Docket ID ''OCC–2026–0793'' in the search box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov*.

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 1E–216, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 1E–216, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and Docket ID ''OCC–2026–0793'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:*

Go to *https://regulations.gov/*. Enter Docket ID ''OCC–2026–0793'' in the search box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. OP–1881, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/apps/proposals/*. Follow the instructions for submitting comments, including attachments. *Preferred Method.*

- *Mail:* Benjamin W. McDonough, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

- *Hand Delivery/Courier:* Same as mailing address.

- *Other Means: publiccomments@frb.gov*. You must include docket number in the subject line of the message.

Comments received are subject to public disclosure. In general, comments received will be made available on the Board's website at *https://www.federalreserve.gov/apps/proposals/* without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would be not appropriate for public disclosure. Public comments may also be viewed electronically or in person in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays.

FDIC: You may submit comments to the FDIC, identified by ZRIN 3064–ZA58, by any of the following methods:

- *Agency Website: https://www.fdic.gov/federal-register-publications*. Follow instructions for submitting comments on the FDIC's website.

- *Email: comments@FDIC.gov*. Include ZRIN 3064–ZA58 in the subject line of the message.

- *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments—ZRIN 3064–ZA58, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

- *Public Inspection:* Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/federal-register-publications*. Commenters should submit only information they wish to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

NCUA: Comments may be submitted in one of the following ways. *(Please send comments by one method only):*

- *Federal eRulemaking Portal: https://www.regulations.gov.* The docket number for this proposed guidance is NCUA–2026–1684. Follow the ''Submit a comment'' instructions. If you are reading this document on *federalregister.gov,* you may use the green ''SUBMIT A PUBLIC COMMENT'' button beneath this rulemaking's title to submit a comment to the *regulations.gov* docket. A plain language summary of the proposed guidance is also available on the docket website.
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mailing address. Mailed and hand-delivered comments must be received by the close of the comment period.

Public Inspection: Please follow the search instructions on *https://www.regulations.gov* to view the public comments. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received and will not be deleted, modified, or redacted. Comments may be submitted anonymously. If you are unable to access public comments on the internet, you may contact the NCUA for alternative access by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Graham Bannon, Counsel, Amy Gopinathan, Counsel, Chief Counsel's Office, 202–649–5490; Office of the Comptroller of the Currency, 400 7th Street, SW, 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.

Board: Juan Climent, Deputy Associate Director, (202) 460–2180, Jeff Ernst, Manager, (202) 369–9439, Brock Kannan, Manager, (202) 924–0665, Allison Boller, Sr. Financial Institution Policy Analyst II, (202) 253–4686, Division of Supervision and Regulation; or Claudia Von Pervieux, Special Counsel, (202) 469–1020, Benjamin Nuyens, Senior Counsel, (202) 909–7574, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Division of Risk Management Supervision: Sumaya Muraywid, Section Chief, (202) 898–3904; Division of Depositor and Consumer Protection: Monika Jansen, Senior Policy Analyst, (202) 898–6781; Legal Division: Kate Marks, Senior Counsel, (202) 898–3896.

NCUA: Office of Examination and Insurance: Simon Hermann, Senior Credit Specialist, *shermann@ncua.gov* or (703) 518–6360; *Office of General Counsel:* Ian Marenna, Associate General Counsel for Regulations and Legislation, *imarenna@ncua.gov* or (703) 518–6540; National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION: On September 15, 2026, the OCC, Board, FDIC, and NCUA (collectively, the agencies) published in the **Federal Register** a proposed interagency guidance and request for comment on third-party risk management. The proposed guidance would reflect the agencies' supervisory experience and lessons learned through examining banking organizations' third-party risk management practices and would discuss the potential benefits that may accrue when a banking organization aligns its third-party risk management practices in relation to the reasonably assessed risk levels specific to each of its third-party relationships, among other things.[1] The proposed guidance stated that the comment period would close on November 16, 2026. The agencies have received a request to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the proposal and prepare comments. Therefore, the agencies are extending the end of the comment period for the proposal from November 16, 2026, to December 16, 2026.

Jonathan V. Gould,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Benjamin W. McDonough,

Secretary of the Board.

Federal Deposit Insurance Corporation.

[1] For a description of the banking organizations supervised by each agency, refer to the definition of ''appropriate Federal banking agency'' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)). For purposes of the proposed guidance, banking organizations also include ''insured credit unions'' as defined in the Federal Credit Union Act (12 U.S.C. 1752(7)). Use of the proposed guidance may also be relevant to any other entity supervised by the agencies.

Dated at Washington, DC, on November 12, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

By the National Credit Union Administration Board on November 12, 2026.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2026–23416 Filed 11–17–26; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on November 13, 2026. See Supplementary Information for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Sanctions Compliance, 202–622–2490; or *https://ofac.treasury.gov/contact-ofac.*

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: *https://ofac.treasury.gov.*

Notice of OFAC Actions

On November 13, 2026, OFAC determined that one or more persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order (E.O.) 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549. OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

OFAC further determined that one or more persons identified below meet one

or more of the criteria for sanctions pursuant to E.O. 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR 49079, as amended by E.O. 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (''E.O. 13224, as amended'').

As a result, the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Entities

1. LOS HUISTAS DRUG TRAFFICKING ORGANIZATION, Santa Ana Huista, Huehuetenango, Guatemala; San Antonio Huista, Huehuetenango, Guatemala; La Democracia, Huehuetenango, Guatemala; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Target Type Criminal Organization [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL; Linked To: CARTEL DE JALISCO NUEVA GENERACION).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel and Cartel de Jalisco Nueva Generacion, persons whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. LOS MENDOZA DRUG TRAFFICKING ORGANIZATION, Guatemala; Honduras; Belize; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Target Type Criminal Organization [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Sanctioned pursuant to section 1(b)(i) of E.O. 14059 for having provided, or attempted to provide, financial, material, or technological support for, or goods or services in support of, the Sinaloa Cartel, a person sanctioned pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

(Authority: E.O. 14059; E.O. 13224, as amended)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–23456 Filed 11–17–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Statement of Payments Received

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 18, 2026 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

1. Title: Statement of Payments Received.

OMB Control Number: 1545–0364.

Type of Request: Extension without change of a currently approved collection.

Description: Form 4669, Statement of Payments Received, is used by payors in specific situations to request relief from payment of certain required taxes. A payor who fails to withhold certain required taxes from a payee may be entitled to relief under sections 3402(d), 3102(f)(3), 1463, or Regulations section 1.1474–4. To apply for relief, the payor must show that the payee reported the payments and paid the corresponding tax. The payor must obtain a separate, completed Form 4669 from each payee for each year relief is requested. The information is used to verify payment of the tax. There is no change to the previously approved information collection.

Form: 4669.

Affected Public: Business or other for-profit organizations; individuals and households.

Estimated Number of Respondents: 85,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 85,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 21,250.

(Authority: 44 U.S.C. 3501 *et seq.*)

Juliana L. Pearson,

Treasury PRA Clearance Officer.

[FR Doc. 2026–23431 Filed 11–17–26; 8:45 am]

BILLING CODE 4831–GV–P



FEDERAL REGISTER

Vol. 91 Wednesday,
No. 221 November 18, 2026

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Military Readiness Activities in the Mariana Islands Training and Testing Study Area; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 261113–0006]

RIN 0648–BO60

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Military Readiness Activities in the Mariana Islands Training and Testing Study Area

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

ACTION: Proposed rule; proposed letter of authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Department of the Navy (including the U.S. Navy and the U.S. Marine Corps; Navy) and on behalf of the U.S. Coast Guard (Coast Guard), U.S. Army (Army), and U.S. Air Force (Air Force) (hereafter, Navy, Coast Guard, Army, and Air Force are collectively referred to as the Action Proponents) for Incidental Take Regulations (ITR) and an associated Letter of Authorization (LOA) pursuant to the Marine Mammal Protection Act (MMPA). The requested regulations would govern the authorization of take of marine mammals incidental to training and testing activities and modernization and sustainment of ranges conducted in the Mariana Islands Training and Testing (MITT) Study Area over the course of 7 years from July 2027 through July 2034. NMFS requests comments on this proposed rule. NMFS will consider public comments prior to making any final decision on the promulgation of the requested ITR and issuance of the LOA; agency responses to public comments will be summarized in the final rule, if issued. The Action Proponents' activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA) and the NDAA for Fiscal Year 2019 (2019 NDAA).

DATES: Comments and information must be received no later than December 18, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2026-2014.* You may submit comments on this document, identified by NOAA–NMFS–2026–2014, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit *https://www.regulations.gov* and type NOAA–NMFS–2026–2014 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Ben Laws, Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.
- *Fax:* (301) 713–0376; Attn: Ben Laws.

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 at: *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

A copy of the Action Proponents' Incidental Take Authorization (ITA) 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/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule, if promulgated, would provide a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take of marine mammals incidental to the Action Proponents' training and testing activities and modernization and sustainment of ranges (which qualify as military readiness activities) involving the use of active sonar and other transducers and explosives (also referred to as ''in-water detonations'') and vessel movement in the MITT Study Area (hereafter Study Area). The Study Area consists primarily of the Mariana Islands Range Complex (MIRC) and the Transit Corridor connecting the Study Area with the Hawaii portion of the Hawaii-California Training and Testing Study Area as well as high-seas areas to the west and north of the MIRC. The Study Area includes the at-sea areas of the MIRC and adjacent airspace, Navy pierside locations and port transit channels, bays, harbors, inshore waterways, and amphibious landing areas. Land components associated with the range complexes are generally not included in the Study Area with the exception of certain land-based activities conducted on Farallon de Medinilla (FDM) (see appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (2026 MITT Draft SEIS/OEIS) for more information). However, activities conducted at FDM are not expected to affect marine mammals and are not discussed further.

Legal Authority for the Proposed Action

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. 1371(a)(5)(A), (D)) 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 authorization is provided to the public for review and the opportunity to submit comment.

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). If such findings are made, NMFS must prescribe the permissible methods of taking; 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 (collectively referred to as ''mitigation''); and

requirements pertaining to the monitoring and reporting of the takings. The MMPA defines ''take'' to mean to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13)). The Preliminary Analysis and Negligible Impact Determination section discusses the definition of ''negligible impact.''

The 2004 NDAA (Pub. L. 108–136) amended section 101(a)(5) of the MMPA to remove the ''small numbers'' and ''specified geographical region'' provisions, 16 U.S.C. 1371(a)(5)(F), and amended the definition of ''harassment'' in section 3(18)(B) of the MMPA as applied to a ''military readiness activity'' to read as follows: ''(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]'' (16 U.S.C. 1362(18)(B)). The 2004 NDAA also amended the MMPA to establish in section 101(a)(5)(A)(iii) that ''[f]or a military readiness activity . . . , 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.'' 16 U.S.C. 1371(a)(5)(A)(iii). On August 13, 2018, the 2019 NDAA (Pub. L. 115–232) amended the MMPA to allow incidental take regulations (ITRs) for military readiness activities to be issued for up to 7 years. 16 U.S.C. 1371(a)(5)(A)(ii).

Summary of Major Provisions Within the Proposed Rule

The major provisions of this proposed rule are as follows:

- The proposed authorization of take of marine mammals by Level A harassment and/or Level B harassment by the Action Proponent in the course of the specified activities in the Study Area;
- The proposed use of defined powerdown and shutdown zones (based on activity);
- Proposed measures to reduce the likelihood of vessel strikes;
- Proposed activity limitations in certain areas and times that are biologically important (*i.e.,* for reproduction) for marine mammals;
- The proposed implementation of a Notification and Reporting Plan (for dead, live stranded, or marine mammals struck by any vessel engaged in military readiness activities); and
- The proposed implementation of a robust monitoring plan to improve our understanding of the environmental effects resulting from the Action Proponents' training and testing activities and modernization and sustainment of ranges.

This proposed rule includes an adaptive management component that allows for timely modification of mitigation, monitoring, and/or reporting measures based on new information, when appropriate.

Summary of Request

On February 23, 2026, NMFS received an application from the Action Proponents requesting authorization to take marine mammals, by Level A and Level B harassment, incidental to training, testing, and modernization and sustainment of ranges (characterized as military readiness activities) including the use of sonar and other transducers and in-water detonations in the Study Area. The Action Proponents are requesting one 7-year LOA for all training and testing activities. In response to our comments and following information exchange, the Action Proponents submitted a final revised application that we deemed adequate and complete on April 21, 2026. On April 28, 2026, we published a notice of receipt (NOR) of application in the **Federal Register** (91 FR 22810), requesting comments and information related to the Action Proponents' request for 30 days. During the 30-day public comment period on the NOR, we did not receive any public comments.

NMFS has previously promulgated ITRs pursuant to the MMPA relating to similar military readiness activities in areas located within the Study Area. NMFS published regulations effective beginning August 3, 2010 (75 FR 45527, August 3, 2010), August 3, 2015 (80 FR 46112, August 3, 2015), and from July 31, 2020, through July 30, 2027 (85 FR 46302, July 31, 2020)). For this proposed rulemaking, the Action Proponents propose to conduct substantially similar training and testing activities within the Study Area that were conducted over the past 16 years under the previous rules.

The Action Proponents' application reflects the most up-to-date compilation of training and testing activities and modernization and sustainment of ranges deemed necessary to accomplish military readiness requirements. The types and numbers of activities included in the proposed rule account for interannual variability in training and testing to meet evolving or emergent military readiness requirements. As explained herein, these proposed regulations also consolidate several actions conducted by the Navy that were previously authorized by NMFS and include some new military readiness activities carried out by the Action Proponents. In particular, these proposed regulations would cover incidental take during military readiness activities in the Study Area that would occur for a 7-year period following the expiration of the existing MMPA authorization on July 30, 2027 (85 FR 46302). In this proposed rule, we have undertaken a comprehensive assessment of the risks/impacts of all military training and testing activities on marine mammals likely to be present within the entire range of the Study Area.

Description of Proposed Activity

Overview

The Action Proponents request authorization to take marine mammals incidental to conducting military readiness activities. The Action Proponents have determined that acoustic and explosive stressors are likely to result in take of marine mammals in the form of Level A and B harassment. Detailed descriptions of these activities are provided in chapter 2 and appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS (*https://www.nepa.navy.mil/mitteis/*) and in the Action Proponents' application (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities*). A summary is provided below.

The Navy's statutory mission is to organize, train, equip, and maintain combat-ready naval forces for the peacetime promotion of the national security interests and prosperity of the United States and for prompt and sustained combat incident to operations essential to the prosecution of a naval campaign. This mission is mandated by Federal law (10 U.S.C. 8062; 10 U.S.C. 8063), which requires the readiness of the naval forces of the United States. The Navy executes this responsibility by establishing and executing at-sea training and testing, often in designated operating areas (OPAREAs) and testing and training ranges. The Navy must be able to access and use these areas and associated sea and air space 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 vessels, aircraft, weapons, combat systems, sensors, and related equipment, and conducts scientific research activities to achieve and maintain military readiness.

The mission of the Coast Guard is to ensure the maritime safety, security, and stewardship of the United States. To advance this mission, the Coast Guard must ensure its personnel can qualify and train jointly with, and independently of, the Navy and other services in the effective and safe operational use of Coast Guard vessels, aircraft, and weapons under realistic conditions. These activities help ensure the Coast Guard can safely assist in the defense of the United States by protecting the United States' maritime safety, security, and natural resources in accordance with its national defense mission (14 U.S.C. 102). The Coast Guard successfully achieves their mission in part by conducting training within the Study Area to develop, sharpen, and maintain tactics, coordination, and personnel readiness.

In addition to training of Navy and Coast Guard forces, the specified activities include Air Force and Army activities within the Study Area where those activities are similar to Navy activities and are scheduled on Navy-controlled ranges.

Dates and Duration

The specified activities would occur at any time during the 7-year period of validity of the regulations. The proposed number of military readiness activities are described in the *Detailed Description of the Specified Activity* section (table 1 through table 4).

Geographic Region

The Study Area is comprised of three components: (1) the MIRC; (2) additional areas on the high seas; and (3) a transit corridor between the MIRC and the Hawaii Range Complex (HRC) as depicted in figure 1. The MIRC includes the waters south of Guam to north of Pagan (Commonwealth of the Northern Mariana Islands; CNMI) and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 1,721,376.21 square kilometers (km^2) (501,873 square nautical miles) of open ocean (figure 1). It also includes additional areas of the high seas: the area to the north of the MIRC that is within the U.S. Exclusive Economic Zone (EEZ) of the CNMI and the areas to the west of the MIRC. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route (*i.e.,* the shortest distance) across the high seas for Navy ships transiting between the MIRC and the HRC. Although not part of any defined range complex, the transit corridor is important to the Navy in that it provides available air, sea, and undersea space where vessels and aircraft conduct training and testing while in transit. While in transit and along the corridor, vessels and aircraft would, at times, conduct basic and routine unit-level activities such as gunnery and sonar training. Ships also conduct sonar maintenance, which includes active sonar transmissions.

Training and testing activities occur within the Study Area, which is composed of a designated set of specifically bound geographic areas encompassing a water component (above and below the surface), airspace, and (for training activities only) a land component, such as FDM. The MIRC includes established OPAREAs and special use airspace, which may be further divided to provide safety and better control of the area and activities being conducted.

The MIRC includes approximately 137,196 km^2 of special use airspace. This airspace is almost entirely over the ocean (except W13A) and includes warning areas and restricted areas (R; see figure 2.2–1 of the 2026 MITT Draft SEIS/OEIS). Warning Areas (W)-517 and W–12 include approximately 40,472 km^2 of special use airspace; W–11 (A/B) is approximately 36,014 km^2 of special use airspace, and W–13 (A/B/C) is approximately 61,738 km^2 of special use airspace. The restricted area airspace over or near land areas within the MIRC includes approximately 8,447 km^2 of special use airspace and restricted areas R7201 and R7201A, which extends in a 22.2 km radius around FDM.

The MIRC includes the sea and undersea space from the ocean surface to the ocean floor. The MIRC also consists of designated sea and undersea space training areas, which include designated drop zones, underwater demolition and floating mine exclusion zones, danger zones associated with live-fire ranges, and training areas associated with nearshore waters and harbors.

Additionally, the Study Area includes pierside locations in the Apra Harbor Naval Complex (see figure 2–3 of the application) where surface ship and submarine sonar maintenance and testing occur. Activities in Apra Harbor include channels and routes to and from the Navy port in the Apra Harbor Naval Complex and associated wharves and facilities within the Navy port.

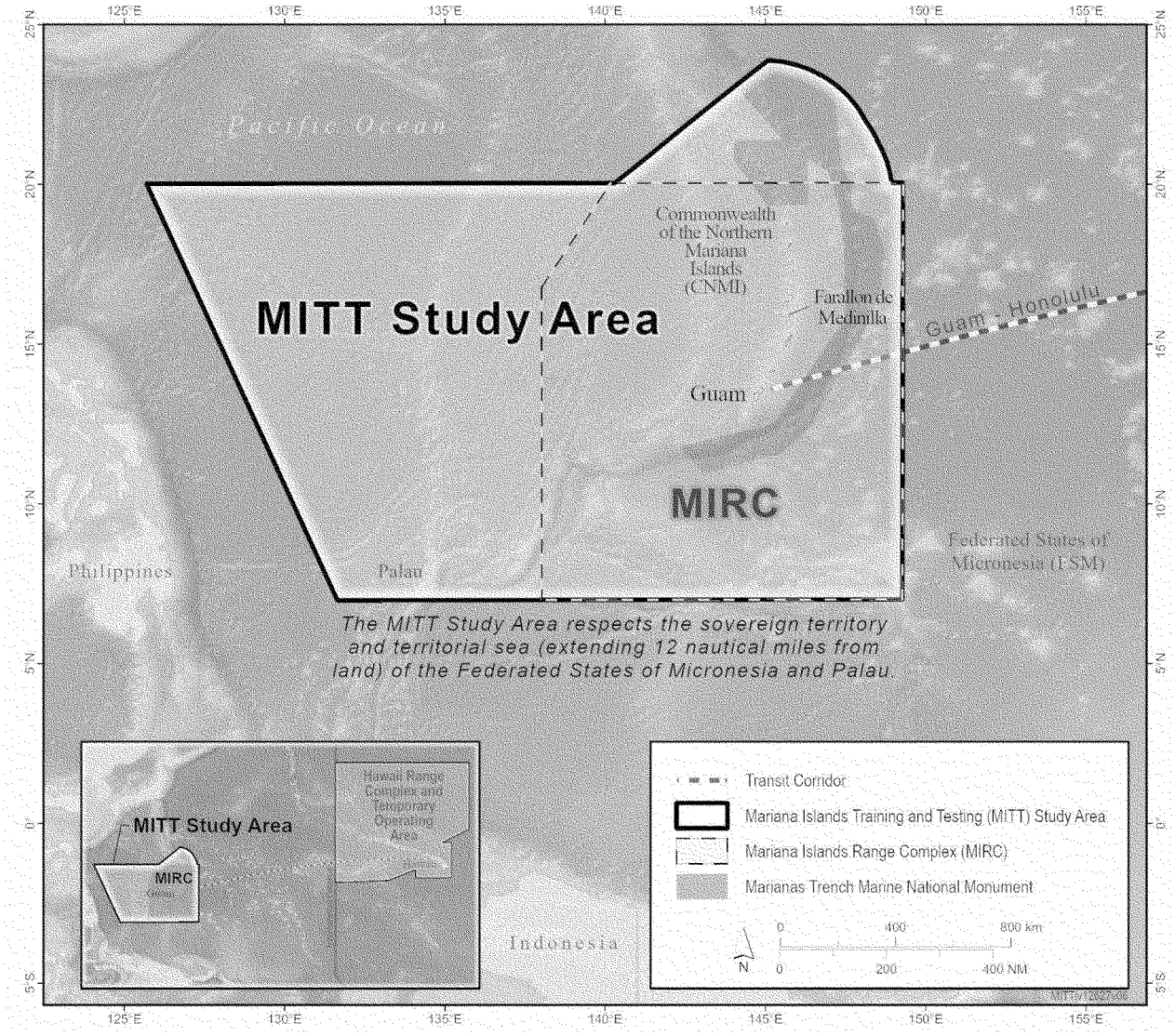


Figure 1 – Map of the Study Area

Detailed Description of the Specified Activity

The Action Proponents propose to conduct military readiness activities within the Study Area and have been conducting military readiness activities in the Study Area since the 1940s. The tempo and types of military readiness activities have varied interannually due to the introduction of new technologies, the evolving nature of international events, advances in warfighting doctrine and procedures, and changes in force structure (organization of vessels, weapons, and personnel). Such developments influence the frequency, duration, intensity, and location of required military readiness activities.

Primary Mission Areas

The Action Proponents categorize their activities into functional warfare areas called primary mission areas. For the Navy, these activities generally fall into eight primary mission areas (Coast Guard mission areas are discussed below). Most military readiness activities conducted in MITT are categorized under one of these primary mission areas; activities that do not fall within one of these areas are listed as ''other activities.'' The Navy testing community also categorizes most, but not all, of its testing activities under these primary mission areas. The Navy testing community has three additional categories of activities: vessel evaluation, unmanned systems (*i.e.,* unmanned surface vehicles (USVs), unmanned underwater vehicles (UUVs)), and acoustic and oceanographic science and technology.

The mission areas with activities that may result in take of marine mammals (and stressors associated with training and testing activities within those mission areas) include the following:

- Anti-submarine warfare (ASW; sonar and other transducers);
- Mine warfare (sonar and other transducers, in-water detonations);
- Surface warfare (sonar and other transducers, in-water detonations);
- Unmanned systems (sonar and other transducers, in-water detonations);
- Vessel evaluation (sonar and other transducers, in-water detonations); and
- Other training and testing activities (sonar and other transducers).

The Action Proponents describe and analyze the effects of their activities within the application (*see also* the 2026 MITT Draft SEIS/OEIS for additional details). In their assessment, the Action Proponents concluded that sonar and other transducers and explosives (in-water detonations) were the stressors most likely to result in impacts on

marine mammals that qualify as harassment as defined under the MMPA. Therefore, the Action Proponents' application provides their assessment of potential effects from these stressors in terms of the primary warfare mission areas in which they would be conducted. Air warfare, amphibious warfare, electronic warfare, expeditionary warfare, strike warfare, acoustic and oceanographic science and technology, and range modernization and sustainment do not use sonars, in-water explosives, or any other stressors that would result in take of marine mammals, and therefore, are not considered further herein.

The Coast Guard has four major national defense missions:

- Maritime intercept operations;
- Deployed port operations/security and defense;
- Peacetime engagement; and
- Environmental defense operations (including oil and hazardous substance response).

The Coast Guard manages 6 major operational mission programs with 11 statutory missions, which includes defense readiness. As part of the Coast Guard's defense mission, 14 U.S.C. 1 states the Coast Guard is ''at all times an armed force of the United States.'' As part of the Joint Forces, the Coast Guard maintains its readiness to carry out military operations in support of the policies and objectives of the U.S. government. As an armed force, the Coast Guard trains and operates in the joint military arena at any time and functions as a specialized service under the Navy in time of war or when directed by the President. Coast Guard service members are trained to respond immediately to support military operations and national security. Federal law created the framework for the relationship between the Navy and the Coast Guard (10 U.S.C. 101; 14 U.S.C. 2(7); 22 U.S.C. 2761; 50 U.S.C. 3004). To meet these statutory requirements and effectively carry out these missions, the Coast Guard's air and surface units train using realistic scenarios, including training with the Navy in their primary mission areas. Every Coast Guard unit is trained to support all statutory missions and, thus, trained to meet all mission requirements, which includes their defense mission requirements. Since all Coast Guard's missions generally entail the deployment of cutters or boats and either fixed-wing or rotary aircraft, the Coast Guard training requirements for one mission generally overlap with the training requirements of other missions. Thus, when the Coast Guard is training for its defense mission, the same skill sets are utilized for its other statutory missions.

The Coast Guard's defense mission does not involve use of low- or mid-frequency active sonar (LFAS or MFAS), missiles, or underwater detonations that would result in harassment of marine mammals; therefore, we do not consider the defense mission of the Coast Guard further herein.

Below, we provide additional detail for each of the applicable primary mission areas.

Anti-Submarine Warfare—

The mission of ASW is to locate, neutralize, and defeat hostile submarine forces that threaten Navy forces. ASW is based on the principle that surveillance and attack aircraft, ships, and submarines all search for hostile submarines. These forces operate together or independently to gain early warning and detection and to localize, track, target, and attack submarine threats.

ASW training addresses basic skills such as detecting and classifying submarines, as well as evaluating sounds to distinguish between enemy submarines and friendly submarines, ships, and marine life. More advanced training integrates the full spectrum of ASW from detecting and tracking a submarine to attacking a target using either exercise torpedoes (*i.e.,* torpedoes that do not contain a warhead) or simulated weapons. These integrated ASW training exercises are conducted in coordinated, at-sea training events involving submarines, ships, and aircraft.

Testing of ASW systems is conducted to develop new technologies and assess weapon performance and operability with new systems and platforms, such as unmanned systems. Testing uses ships, submarines, and aircraft to demonstrate capabilities of torpedoes, missiles, countermeasure systems, and underwater surveillance and communications systems. Tests may be conducted as part of a large-scale fleet training event involving submarines, ships, fixed-wing aircraft, and helicopters. These integrated training events offer opportunities to conduct research and acquisition activities and to train aircrew in the use of new or newly enhanced systems during a large-scale, complex exercise.

Mine Warfare—

The mission of mine warfare is to detect, classify, and avoid or neutralize (*i.e.,* disable) mines to protect U.S. ships and submarines and to maintain free access to ports and shipping lanes. Mine warfare training falls into two primary categories: (1) mine detection and classification and (2) mine countermeasure and neutralization. Mine warfare also includes offensive mine laying to gain control of or deny the enemy access to sea space. Naval mines can be laid by ships, submarines, UUVs, or aircraft.

Mine warfare neutralization training includes exercises in which aircraft, ships, submarines, underwater vehicles, unmanned vehicles, or marine mammal detection systems search for mine shapes. Personnel train to destroy or disable mines by attaching underwater explosives to or near the mine or using remotely operated vehicles to destroy the mine. Towed influence mine sweep systems mimic a particular ship's magnetic and acoustic signature, which would trigger a real mine causing it to explode.

Testing and development of mine warfare systems is conducted to improve sonar, laser, and magnetic detectors intended to hunt, locate, and record the positions of mines for avoidance or subsequent neutralization. Mine warfare testing and development falls into two primary categories: (1) mine detection and classification and (2) mine countermeasure and neutralization testing. Mine detection and classification testing involves the use of air, surface, and subsurface vessels and uses sonar, including towed and side-scan sonar, and unmanned vehicles to locate and identify objects underwater. Mine detection and classification systems are sometimes used in conjunction with a mine neutralization system. Mine countermeasure and neutralization testing uses air, surface, and subsurface platforms and systems to evaluate the effectiveness of neutralizing mine threats. Most mine neutralization tests use mine shapes or non-explosive practice mines to accomplish the requirements of the activity. For example, during a mine neutralization test, a previously located mine is destroyed or rendered nonfunctional using a rotary-wing aircraft or a manned or USV-based system that may deploy a towed neutralization system. The majority of mine warfare systems are deployed by ships, helicopters, and unmanned vehicles. Tests may also be conducted in support of scientific research to support these new technologies.

Surface Warfare—

The mission of surface warfare is to obtain control of sea space from which naval forces may operate, and surface warfare entails offensive action against surface and subsurface targets while

also defending against enemy forces. In surface warfare, aircraft use guns, air-launched cruise missiles, or other precision-guided munitions; ships employ naval guns and surface-to-surface missiles; and submarines attack surface ships using torpedoes or submarine-launched, anti-ship cruise missiles.

Surface warfare training includes Action Proponent surface-to-surface gunnery and missile exercises; air-to-surface gunnery, bombing, and missile exercises; submarine missile or torpedo launch events; and other munitions against surface targets.

Testing of weapons used in surface warfare is conducted to develop new technologies and to assess weapon performance and operability with new systems and platforms, such as unmanned systems. Tests include various air-to-surface guns and missiles, surface-to-surface guns and missiles, and bombing. Testing events may be integrated into training activities to test aircraft or aircraft systems in the delivery of ordnance on a surface target. In most cases, the tested systems are used in the same manner in which they are used for training activities.

Unmanned Systems—

USV system testing primarily uses autonomous systems designed to augment current and future platforms to help deter maritime threats. The vehicles employ a variety of sensors designed to extend the reach of manned vessels. Refer to appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS for more information on this activity.

Vessel Evaluation—

Undersea warfare testing, as part of vessel evaluation activities, evaluates a vessel's ability to detect, track, and engage undersea targets. Testing also includes assessing equipment vulnerability and ordnance lethality. Refer to appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS for more information on these activities.

Other Training Activities—

Other training activities are conducted in the Study Area that fall outside of the primary mission areas but support overall readiness. These activities include UUV training, submarine navigation training, and maintenance of ship and submarine sonar at piers and at-sea. Refer to appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS for more information on these activities

Overview of Training Activities Within the Study Area

The Action Proponents routinely train in the Study Area in preparation for national defense missions. Training activities and exercises covered in this proposed rule are briefly described below and in more detail within the 2026 MITT Draft SEIS/OEIS. Table 1 summarizes the major training exercises (MTE) and smaller integrated/coordinated training activities by scale, duration, and estimated sonar hours for the purposes of exercise reporting requirements. Each training activity described meets a requirement that can be traced ultimately to requirements set forth by the National Command Authority.[1]

Within the Navy, a MTE is comprised of multiple unit-level range exercises conducted by several units operating together while commanded and controlled by a single commander. These units are collectively referred to as carrier and expeditionary strike groups. These exercises typically employ an exercise scenario developed to train and evaluate the strike group in tactical naval tasks. In a MTE, most of the operations and activities being directed and coordinated by the strike group commander are identical in nature to the operations conducted during individual, crew, and smaller unit-level training events. However, in MTEs, these disparate training tasks are conducted in concert rather than in isolation. Some integrated or coordinated ASW exercises are similar in that they are composed of several unit-level exercises but are generally on a smaller scale than a MTE, are shorter in duration, use fewer assets, and use fewer hours of hull-mounted sonar per exercise. Coordinated training exercises involve multiple units working together to meet unit-level training requirements, whereas integrated training exercises involve multiple units working together in preparation for deployment. Coordinated exercises involving the use of sonar are presented under the category of ASW. The ASW portions of these exercises are considered together in coordinated activities for the sake of acoustic modeling. When other training objectives are being met, those activities are described via unit-level training in each of the relevant primary mission areas.

With a smaller fleet of approximately 250 cutters worldwide, Coast Guard activities are not as extensive as Navy activities due to differing mission requirements. However, the Coast Guard does train with the Navy and conducts some of the same training as the Navy. The Coast Guard does not conduct any exercises similar in scale to Navy MTEs/integrated exercises, and the use of mid- or low-frequency sonar, missiles, and underwater detonations are examples of actions that are not a part of the Coast Guard's mission requirements. Coast Guard training generally occurs close to the vessel homeport or close to shore, on established Navy training and testing ranges, or in transit to a scheduled patrol/mission. There are approximately 1,600 Coast Guard vessels (cutters up to 127.4 meters (m) and boats less than 19.8 m), and the largest cutters would be underway for 3–4 months, whereas the smaller cutters would be underway from a few days to 4 weeks. Within the Oceania District, Coast Guard Forces Micronesia/Sector Guam, there are approximately six cutters and an unspecified number of small boats homeported in Santa Rita, Guam. Cutters are defined as vessels larger than 19.8 m in length. The Coast Guard operates approximately 1,400 boats worldwide, defined as any vessel less than 19.8 m in length, which generally operate near shore and on inland waterways.

The MTEs and integrated/coordinated training activities analyzed for this request are Navy-led exercises in which the Coast Guard may participate and are described in table 1. For additional information on these activities see appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS. In addition to participating in Navy-led exercises, Coast Guard, Army, and Air Force training activities include unit-level activities conducted independently of, and not in coordination with, the Navy.

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[1] National Command Authority is a term used by the United States military and government to refer to the ultimate lawful source of military orders. The term refers collectively to the President of the United States (as commander-in-chief) and the United States Secretary of War.

Table 1 -- MTEs and Integrated/Coordinated Training Activities Analyzed within the Study Area

Training type	Exercise group	Description	Scale	Duration	Location	Exercise examples	Modeled hull-mounted sonar per exercise
Major Training Exercise	Large Integrated ASW	Larger-scale, longer duration integrated ASW exercises	Up to three Carrier Strike Groups in coordination with other Services, 2 or more submarines, multiple ASW aircraft	Typically, a 10-day exercise	Study Area	Joint Multi-Strike Group Exercise (*e.g.*, Valiant Shield)	>500 hours
Integrated/Coordinated Training	Small Integrated ASW	Small-scale, short duration integrated ASW exercises	Approximately 3-6 surface ASW units, at least 1 submarine, 2-6 ASW aircraft	Generally, <5 days	Study Area, Apra Habor	SWATT, NUWTAC	50-100 hours
Integrated/Coordinated Training	Medium Coordinated ASW	Medium-scale, short duration, coordinated ASW exercises	Approximately 2-4 surface ASW units, possibly a submarine, 2-5 ASW aircraft	Generally, 3-10 days	Study Area	GuamEx	<100 hours
Integrated/Coordinated Training	Small Coordinated ASW	Small-scale, short duration, coordinated ASW exercises	Approximately 2-4 surface ASW units, possibly a submarine, 1-2 ASW aircraft	Generally, 2-4 days	Study Area	Group Sail	<50 hours

Note: ASW = Anti-Submarine Warfare, SWATT = Surface Warfare Advanced Tactical Training, NUWTAC = Naval Undersea Warfare Training Assessment Course, GuamEx = Guam Exercise

Table 2 -- Proposed Training Activities Analyzed within the Study Area

Stressor Category	Activity type	Activity name	Description	Source bin class	Location	Annual number of activities	7-year number of activities
Acoustic	Major Training Exercises Large Integrated Anti-Submarine Warfare Training	Joint Multi-Strike Group Exercise	Typically, a 10-day joint exercise, in which up to three carrier strike groups would conduct training exercises simultaneously.	LF to HF, MF to HF, LFH, MFH, MFM, HFH, MF1, MF1C	Study Area; MIRC >3 nmi (5.6 km) from Land	1	7
Acoustic	Small Integrated Anti-Submarine Warfare Training	Surface Warfare Advanced Tactical Training (SWATT)	Multiple ships and aircraft coordinate the use of sensors, including sonobuoys, to search, detect, and track a threat submarine. SWATT exercises are not dedicated anti-submarine warfare exercises and involve multiple warfare areas.	MF to HF, LFH, MFH, MFM, MF1, MF1C	MIRC; Study Area >3 nmi (5.6 km) from Land	1	7
Acoustic	Small Integrated Anti-Submarine Warfare Training	Small Integrated Anti-Submarine Warfare Training – Navy Undersea Warfare Training Assessment Course/Multi-Sail	Multiple ships, aircraft, and submarines integrate the use of their sensors, including sonobuoys, to search for, detect, classify, localize, and track a threat submarine.	MF to HF, LFH, MFH, MFM, MF1, MF1C	Study Area; MIRC >3 nmi (5.6 km) from Land	7	49
Acoustic	Medium Coordinated Anti-Submarine Warfare Training	Medium Coordinated Anti-Submarine Warfare Training	Typically, a 3–10-day exercise with multiple ships, aircraft, and submarines integrating the use of their sensors,	LF to HF, MF to HF, MFH, MFM,	Study Area; MIRC >3 nmi (5.6 km) from Land	5	35

			including sonobuoys, to search, detect, and track threat submarines.	HFH, MF1, MF1C			
Acoustic	Small Coordinated Anti-Submarine Warfare Training	Independent Deployer Certification Exercise/Tailored Surface Warfare Training[1]	Multiple ships, aircraft, and submarines conduct integrated multi-warfare training with a surface warfare emphasis for a duration of 14 days. Serves as a ready-to-deploy certification for individual surface ships tasked with surface warfare missions.	LF to HF, MF to HF, MFH, MFM, HFH, MF1, MF1C	Study Area; MIRC >3 nmi (5.6 km) from Land	5	35
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Exercise Helicopter	Helicopter crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MFH, MFM, HFH	Study Area; MIRC >3 nmi (5.6 km) from Land	1	7
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Exercise – Maritime Patrol Aircraft	Maritime patrol aircraft crews search for, track, and detect submarines. Recoverable air launched torpedoes are employed against submarine targets.	MFM, HFH	Study Area; MIRC >3 nmi (5.6 km) from Land	1-2	10
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Exercise – Ship	Surface ship crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	MF to HF, HFH, MF1, MF1C	Study Area; MIRC >3 nmi (5.6 km) from Land	6-8	48
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Torpedo Exercise – Submarine	Submarine crews search for, track, and detect submarines. Exercise torpedoes are used during this exercise.	LF to HF, MFH, HFH	Study Area; MIRC >3 nmi (5.6 km) from Land	1-2	10
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise – Helicopter	Helicopter crews search for, track, and detect submarines.	MFH, MFM	Study Area; MIRC >3 nmi (5.6 km) from Land	16	112
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise – Maritime Patrol Aircraft	Maritime patrol aircraft crews search for, track, and detect submarines.	MFM	Study Area; MIRC >3 nmi (5.6 km) from Land	45-60	360
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise – Ship	Surface ship crews search for, track, and detect submarines. Exercise torpedoes may be used during this event.	MF to HF, MF1, MF1C	Study Area >3 nmi (5.6 km) from Land; MIRC	90	630
Acoustic	Anti-Submarine Warfare	Anti-Submarine Warfare Tracking Exercise – Submarine	Submarine crews search for, track, and detect submarines.	MFH, HFH	Study Area; MIRC; Transit Lane >3 nmi (5.6 km) from Land	14	98
Acoustic and Explosive	Mine Warfare	Civilian Port Defense – Homeland Security Anti-	Maritime security personnel train to protect civilian ports and harbors against enemy	E4, MFH, HFM, HFH	CNMI and Guam Nearshore	1	7

		Terrorism/Force Protection Exercises	efforts to interfere with access to those ports.				
Explosive	Mine Warfare	Mine Neutralization Explosive Ordnance Disposal	Personnel disable threat mines using explosive charges.	E5, E6	Agat Bay Mine Neutralization Site; Outer Apra Harbor UNDET Site; Piti UNDET Site	20	140
Acoustic	Mine Warfare	Surface Ship Object Detection	Ship crews detect and avoid mines while navigating restricted areas or channels using active sonar.	MF1K	CNMI and Guam Nearshore	20-30	170
Explosive	Mine Warfare	Underwater Demolition Qualification and Certification	Navy divers conduct various levels of training and certification in placing underwater demolition charges.	E5, E6	Agat Bay Mine Neutralization Site; Outer Apra Harbor UNDET Site; Piti UNDET Site	45	315
Explosive	Surface Warfare	Bombing Exercise Air-to-Surface	Fixed-wing aircrews deliver bombs against surface targets.	E10, E12, E9	Study Area: MIRC >50 nmi (92.6 km) from Land	39	273
Explosive	Surface Warfare	Fast Attack Craft and Fast Inshore Attack Craft	Navy and USCG ships, helicopters, and Unmanned Systems defend against small boat attacks.	E5	Study Area; MIRC >3 nmi (5.6 km) from Land	22-33	187
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Boat Medium Caliber	Small boat crews fire medium-caliber guns at surface targets.	E1	Study Area SUA >12 nmi (22.2 km) from land	9-24	108
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Medium Caliber	Surface ship crews fire medium-caliber guns at surface targets.	E1	Study Area; MIRC >12 nmi (22.2 km) from Land; Transit Lane	104-150	866
Explosive	Surface Warfare	Gunnery Exercise Surface-to-Surface Ship Large Caliber	Surface ship crews fire large-caliber guns at surface targets.	E3, E5	Study Area; MIRC >12 nmi (22.2 km) from Land; Transit Lane	180-257	1,491
Explosive	Surface Warfare	Maritime Security Operations	Helicopter, surface ship, and small boat crews conduct a suite of maritime security operations at sea, to include visit, board, search, and seizure; maritime interdiction operations; maritime interdiction operations; maritime infrastructure protection and harbor defense; ship force protection; anti-piracy operations; and drug interdiction by the USCG.	E2	Study Area; MIRC	117-139	885

Explosive	Surface Warfare	Missile Exercise Air-to-Surface	Fixed-wing and helicopter aircrews fire air-to-surface missiles at surface targets.	E10, E6, E7, E9	Study Area >12 nmi (22.2 km)	38-50	302
Explosive	Surface Warfare	Missile Exercise Air-to-Surface – Rocket	Helicopter aircrews fire both precision-guided and unguided rockets at surface targets.	E3	Study Area SUA	35-47	281
Explosive	Surface Warfare	Missile Exercise Surface-to-Surface	Surface ship crews defend against surface threats (ships or small boats) and engage them with missiles.	E9	Study Area; MIRC >50 nmi (92.6 km) from Land	8-9	59
Acoustic and Explosive	Surface Warfare	Sinking Exercise	Aircraft, ship, and submarine crews deliberately sink a seaborne target, usually a decommissioned ship made environmentally safe for sinking according to U.S. Environmental Protection Agency standards, with a variety of ordnance.	HFH, E11, E12, E5, E8, E9	Study Area; MIRC >50 nmi (92.6 km) from Land	1-2	10
Acoustic	Surface Warfare	Surface Warfare Torpedo Exercise (Submarine)	Submarine crews search for, detect, and track a surface ship simulating a threat surface ship with the goal of determining a firing solution that could be used to launch a torpedo with the intent to simulate destroying the targets.	HFH	Study Area; MIRC >3 nmi (5.6 km) from Land	1-5	19
Acoustic	Other Training Activities	Submarine Navigation	Submarine crews operate sonar for navigation and detection while transiting into and out of port during reduced visibility.	MFH, HFH	Study Area; MIRC	50	350
Acoustic	Other Training Activities	Submarine Sonar Maintenance	Maintenance of submarine sonar and other system checks are conducted pierside or at sea.	MFH	Study Area; MIRC; Inner Apra Harbor; Transit Lane	92	644
Acoustic	Other Training Activities	Surface Ship Sonar Maintenance	Maintenance of surface ship sonar and other system checks are conducted pierside or at sea.	MF1, MF1K	Study Area; MIRC; Inner Apra Harbor; Transit Lane	51	357
Acoustic	Other Training Activities	Unmanned Underwater Vehicle Training - Certification and Development Exercises	UUV certification involves training with unmanned platforms to ensure crew proficiency. Tactical development involves training with various payloads, for multiple purposes to ensure that the systems can be employed effectively in an operational environment.	MF to HF, HFM, VHFH	Study Area; MIRC; CNMI and Guam Nearshore	65-70	470

Note: LF = Low Frequency, MF = Mid-Frequency, HF = High Frequency, LFH = Low Frequency High, MFH = Mid Frequency High, MFM = Mid Frequency Mid, HFH = High Frequency High, HFM = High Frequency Mid, VHFH = Very High Frequency High, MITT = Mariana Islands Training and Testing, MIRC = Mariana Islands Range Complex, CNMI = Commonwealth of the Northern Mariana Islands, SUA = Special Use Airspace, UNDET = Underwater Demolition

[1] All ASW acoustic sources which may be used during Independent Deployer Certification Exercise/Tailored Surface Warfare Training have been accounted for in the modeling and analysis of ASW unit-level training events presented in the 2026 MITT Draft SEIS/OEIS.

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Overview of Testing Activities Within the Study Area

While this proposed rule includes an evaluation of proposed training activities by all Action Proponents, all testing activities evaluated in this proposed rule would only be conducted by the Navy. The Navy's testing community engages in a broad spectrum of research, development, testing, and evaluation activities as part of the acquisition process and in support of the fleet. These activities include, but are not limited to, basic and applied scientific research and technology development; testing, evaluation, and maintenance of systems (*e.g.,* missiles, radar, and sonar) and platforms (*e.g.,* surface ships, submarines, and aircraft); and acquisition of systems and platforms to support Navy missions and give a technological edge over adversaries. The individual commands within the research and acquisition community considered in the application are Naval Air Systems Command (NAVAIR), Naval Sea Systems Command (NAVSEA), and Office of Naval Research (ONR). Although included in the testing community, proposed ONR activities do not involve any stressors that could result in harassment of marine mammals, and therefore, are not analyzed further in this proposed rule.

The Action Proponents operate in an ever-changing strategic, tactical, financially constrained, and time-constrained environment. Testing activities occur in response to emerging science or fleet operational needs. For example, future Navy studies to develop a better understanding of ocean currents may be designed based on advancements made by non-government researchers not yet published in the scientific literature. Similarly, the Navy may be required to conduct specific operations in a geographic area where those operations have never been conducted before, which may require modifications to Navy assets to account for local environmental conditions. Such modifications must be tested in the field to ensure they meet fleet needs and requirements. Accordingly, generic descriptions of some of these activities are the best that can be articulated in a long-term, comprehensive document.

Some testing activities are similar to training activities conducted by the fleet (*e.g.,* both the fleet and the research and acquisition community fire torpedoes). While the firing of a torpedo might look identical to an observer, the difference is in the purpose of the firing. The fleet might fire the torpedo to practice the procedures for such a firing, whereas the research and acquisition community might be assessing a new torpedo

guidance technology or testing it to ensure the torpedo meets performance specifications and operational requirements (see appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS for more detailed descriptions of the activities).

The majority of testing activities conducted by NAVAIR are similar to fleet training activities, and many platforms and systems currently being tested are already being used by the fleet or are expected to be integrated into fleet and Coast Guard operations. However, some testing activities may be conducted in different locations or in a different manner than comparable fleet training activities. As a result, the environmental analysis for these testing events may differ from that of similar training activities.

NAVAIR activities include, but are not limited to, the testing of new aircraft platforms, weapons, and systems that have not yet been integrated into the fleet or Coast Guard. In addition to initial testing, most aircraft and weapon systems that have already been delivered to the fleet require follow-on testing throughout their lifecycle. This testing is often conducted in conjunction with maintenance, upgrades, and software revisions to ensure continued functionality and performance as designed. Table 3 summarizes the proposed testing activities for NAVAIR analyzed within the Study Area.

Table 3 -- Proposed NAVAIR Testing Activities Analyzed within the Study Area

Stressor Category	Activity name	Description	Source bin class	Location	Number of activities 1-year	Number of activities 7-year
Anti-Submarine Warfare						
Acoustic	ASW Torpedo Test – Aircraft	Evaluates anti-submarine warfare systems onboard rotary-wing and fixed-wing aircraft and the ability to search for, detect, classify, localize, track, and attack a submarine or similar target.	MFM, HFH	Study Area; MIRC >3 nmi (5.6 km) from Land	10	70
Acoustic	ASW Tracking Test – Fixed-Wing	The test evaluates the sensors and systems used by fixed-wing aircraft to detect and track submarines and to ensure that aircraft systems used to deploy the tracking systems perform to specifications and meet operational requirements.	LFM, LFH, MFM	Study Area; MIRC >3 nmi (5.6 km) from Land	3	21
Acoustic	ASW Tracking Test – Rotary Wing	The test evaluates the sensors and systems used to detect and track submarines and to ensure that rotary-wing systems used to deploy the tracking systems perform to specifications.	MFH, MFM	Study Area; MIRC >3 nmi (5.6 km) from Land	5	35
Surface Warfare						
Explosive	Air-to-Surface Missile Test	Test may involve both fixed-wing and rotary-wing aircraft launching missiles at surface maritime targets to evaluate the weapons system or as part of another systems integration test.	E6, E9	Study Area; MIRC >12 nmi (22.2 km) from Land	6-7	45
Note: LF = low-frequency, MF = mid-frequency, HF = high-frequency, L = low, M= medium, H = high (*e.g.*, MFL = mid-frequency low source level).						

NAVSEA activities are generally aligned with the primary mission areas used by the fleets and include, but are not limited to, new ship construction, life cycle support, and other weapon system development and testing. Testing activities are conducted throughout the life of a Navy ship, from construction through deactivation from the fleet, to verification of performance and mission capabilities. Activities include pierside and at-sea testing of ship systems, including sonar, weapons, and unmanned systems; tests to determine how the ship performs at sea (sea trials); development and operational test and evaluation programs for new technologies and systems; and testing on all ships and systems that have undergone overhaul or maintenance. Table 4 summarizes the proposed testing activities for NAVSEA analyzed within the Study Area.

Table 4 -- Proposed NAVSEA Testing Activities Analyzed within the Study Area

Stressor Category	Activity name	Description	Source bin class	Location	Number of activities 1-year	Number of activities 7-year
Anti-Submarine Warfare						
Acoustic	Pierside Sonar Testing	Pierside testing to ensure systems are fully functional in a controlled pierside environment prior to at-sea test activities and complete any required troubleshooting.	MFH, HFM	Inner Apra Harbor	6-12	84
Acoustic	At-Sea Sonar Testing	At-sea testing to ensure systems are fully functional in an open ocean environment.	MFH	Study Area; MIRC >3 nmi (5.6 km) from Land	6-12	84
Mine Warfare						
Acoustic and Explosive	Mine Countermeasure and Neutralization Testing	Air, surface, and subsurface vessels neutralize threat mines and mine-like objects.	MFM, HFH, E4	Agat Bay Mine Neutralization; Piti Floating Mine Neutralization; Helicopter Laser Hazard Area	3	21
Unmanned System						
Explosive	Unmanned Surface Vehicle System Testing	Testing involves the production or upgrade of unmanned surface vehicles. This may include testing mine detection capabilities, evaluating the basic functions of individual platforms, or conducting complex events with multiple vehicles.	E9	Study Area. Activities involving explosives will occur >12 nmi (22.2 km) from land.	1	7
Vessel Evaluation						
Acoustic and Explosive	Undersea Warfare Testing	Ships demonstrate capability of countermeasure systems and underwater surveillance, weapons engagement, and communications systems. This tests ships' ability to detect, track, and engage undersea targets.	MF to HF, MFH, MFM, HFH, E7	Study Area. Activities involving explosives will occur >12 nmi (22.2 km) from land.	16-21	75
Note: MFM – Mid Frequency Mid, HFH – High Frequency High, MFH – Mid Frequency High, MITT – Mariana Islands Training and Testing; MIRC – Mariana Islands Range Complex.						

Vessel Movement

Vessels used as part of the proposed activities include both surface and sub-surface operations of both manned and unmanned vessels (USVs, UUVs). Vessels used as part of the Action Proponents' activities include ships, submarines, unmanned vessels, and boats ranging in size from small, 26.7 m rigid hull inflatable boats to aircraft carriers with lengths up to 332.8 m. Unmanned systems may include vehicles ranging from 1.2–4.9 m, but typical size of USVs is 11–100 m while UUVs are 10–30 m in length. The Marine Corps operates small boats from 3–15.2 m in length and include small unit riverine craft, rigid hull inflatable boats and amphibious combat vehicles. Coast Guard vessels range in size from small boats between 3.9 and 19.8 m to large cutters with lengths up to 127.4 m.

Large Navy ships greater than 107 m generally operate at speeds in the range of 18.5–27.8 kilometers per hour (km/hr) for fuel conservation. Submarines generally operate at lower speeds in transit and even lower speeds for certain tactical maneuvers. Small craft (considered in this proposed rule to be less than 18 m in length) have much more variable speeds (dependent on the mission). While these speeds for large Navy vessels are representative of most events, some of the Action Proponents' vessels may need to temporarily operate outside of these parameters. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier vessel group engaged in flight operations must adjust its speed through the water accordingly. The Navy also anticipates testing large USVs, some of which would be at high speed. Conversely, there are other instances such as launch and recovery of a small rigid hull inflatable boat, vessel boarding, search and seizure training events, or retrieval of a target when vessels would be stopped or moving slowly ahead to maintain steerage. The Coast Guard currently operates approximately 250 cutters worldwide. Cutters usually carry a motor surf boat and/or a rigid-hulled inflatable boat.

The Coast Guard operates approximately 1,400 boats worldwide, defined as any vessel less than 20 m in length. These boats generally operate near shore and on inland waterways. The most common is 7.6 m long, of which the Coast Guard has more than 350; the shortest is 4 m.

The number of vessels used in the Study Area varies based on military readiness requirements, deployment schedules, annual budgets, and other unpredictable factors. Most military readiness activities involve the use of vessels. These activities could be widely dispersed throughout the Study Area but would typically be conducted near naval ports, piers, and range areas. Activities involving vessel movements occur intermittently and are variable in duration, ranging from a few hours to multiple weeks.

Action Proponent vessel traffic would especially be concentrated near the U.S. Naval Base Guam. There is no seasonal differentiation in vessel use. Large vessel movement primarily occurs with the majority of the traffic flowing between the installation and the OPAREAS. Support craft would be more concentrated in the coastal waters in the areas of the naval installation, ports, and ranges.

Additionally, the Action Proponents would operate a variety of smaller craft within the Study Area. Small craft types, sizes, and speeds vary. During military readiness activities, speeds generally range from 18.5 to 25.9 km/hr; however, vessels can and would, on occasion, operate within the entire spectrum of their specific operational capabilities. During modernization and sustainment of ranges activities, vessels would operate more slowly, typically

5.6 km/hr or less. In all cases, the Action Proponents would operate the vessels/craft in a safe manner consistent with the local conditions.

The Action Proponents fully considered the possibility of vessel strike, conducted an analysis, and determined that requesting take of marine mammals by vessel strike was not warranted. Although the Navy did not request take for vessel strike, NMFS also fully analyzed the potential for vessel strike of marine mammals as part of this rulemaking. This stressor is discussed in detail below. NMFS also concluded that take of marine mammals by vessel strike is unlikely to occur, and therefore, has not proposed authorizing take by vessel strike. Please see the Vessel Strike section for NMFS' analysis.

Foreign Navies

In furtherance of national security objectives, foreign militaries may participate in multinational training and testing events in the Study Area. Foreign military activities that are planned by and under the substantial control and responsibility of the Action Proponents are included in the specified activity. These participants could be in various training or testing events described in appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS, and their effects are analyzed in this proposed rule. However, when foreign military vessels and aircraft operate independently within the Study Area as sovereign vessels outside the planning, control, and responsibility of the Action Proponents, those activities are not considered part of the specified activity. There are many reasons why foreign military vessels may traverse U.S. waters or come into a U.S. port, or foreign aircraft may enter U.S. airspace, not all of which are at the request of any of the Action Proponents. Foreign military vessels and aircraft operate pursuant to their own national authorities and have independent rights under customary international law, embodied in the principle of sovereign immunity, to engage in various activities on the world's oceans and in associated airspace.

When foreign militaries are participating in a U.S. Navy-led exercise or event, foreign military use of sonar and explosives, when combined with the Action Proponents' use of sonar and explosives, would not result in exceedance of the analyzed levels (within each Navy Acoustic Effects Model (NAEMO) modeled sonar and explosive bin) used for estimating predicted impacts, which formed the basis of our acoustic impacts effects analysis that was used to estimate take in this proposed rule. Please see the Proposed Mitigation Measures section and Proposed Reporting section of this proposed rule for information about mitigation and reporting related to foreign navy activities in the Study Area.

Standard Operating Procedures

For training and testing to be effective, Action Proponent personnel must be able to safely use their sensors, platforms, weapons, and other devices to their optimum capabilities and as intended for use in missions and combat operations. The Action Proponents have developed standard operating procedures through decades of experience to provide for safety and mission success. While standard operating procedures are designed for the safety of personnel and equipment and to ensure the success of training and testing activities, their implementation often yields additional benefits on environmental, socioeconomic, public health and safety, and cultural resources.

Because standard operating procedures are essential to safety and mission success, the Action Proponents consider them to be part of the proposed activities and they are included in the environmental analysis (see table 1–6 of the application). Standard operating procedures that are recognized as providing a potential secondary benefit on marine mammals during training and testing activities are:

- Vessel safety;
- Weapons firing safety;
- Target deployment safety; and
- Towed in-water device safety.

Standard operating procedures (which are implemented regardless of their secondary benefits) are different from mitigation measures, which are designed entirely for the purpose of avoiding or reducing impacts. Information on mitigation measures is provided in the Proposed Mitigation Measures section.

Description of Stressors

The Action Proponents use a variety of sensors, platforms, weapons, and other devices. Military readiness activities using these systems may introduce sound and energy into the environment. The proposed military readiness activities were evaluated to identify specific components that would act as stressors by having direct or indirect impacts on marine mammals and their habitat. This analysis included identification of the spatial variation of the identified stressors. The following subsections describe the acoustic and explosive stressors for marine mammals and their habitat within the Study Area. Each description contains a list of activities that may generate the stressor. Stressor/resource interactions that were determined to have impacts that do not qualify as take under the MMPA (*i.e.,* vessel, aircraft, or weapons noise) were not carried forward for analysis in the application. NMFS reviewed the Action Proponents' analysis and conclusions on de minimis sources (*i.e.,* those that are not likely to result in the take of marine mammals) and finds them complete and supportable (see section 3.7.4 of the technical report ''Quantifying Acoustic Impacts on Marine Mammals and Sea Turtles: Methods and Analytical Approach for Phase IV Training and Testing'' (U.S. Department of the Navy, 2024), hereafter referred to as the Acoustic Impacts Technical Report). Of note, neither ship shock trials, pile driving, or airgun use is proposed in the Study Area.

Acoustic Stressors

Acoustic stressors include acoustic signals emitted into the water for a specific purpose, such as sonar and other transducers (*i.e.,* devices that convert energy from one form to another—in this case, into sound waves) as well as incidental sources of broadband sound produced as a byproduct of vessel movement, aircraft transits, use of weapons or other deployed objects. Explosives also produce broadband sound but are characterized separately from other acoustic sources due to their unique hazardous characteristics. Characteristics of each of these sound sources are described in the following sections.

To better organize and facilitate the analysis of approximately 300 sources of underwater sound used for training and testing by the Action Proponents, including sonars and other transducers and explosives, a series of source classifications, or source bins, were used. The acoustic source classification bins do not include the broadband noise such as that produced incidental to vessel and aircraft transits, weapons firing, and bow shocks. Noise produced from vessels and aircraft are not carried forward because those activities were found to have de minimis or no acoustic impacts, as stated above. Of note, the source bins used in this analysis have been revised from previous (Phase III) acoustic modeling to more efficiently group similar sources and use the parameters of the bin for propagation, making a comparison to previous bins impossible in most cases as some

sources are modeled at different propagation parameters. For example, in previous analyses, non-impulsive narrowband sound sources were grouped into bins that were defined by their acoustic properties (*i.e.,* frequency, source level, beam pattern, and duty cycle) or, in some cases, their purpose or application. In the current analysis, these sources are binned based only on their acoustic properties and not on their purpose or application. As such, sources that previously fell into a single ''purpose-based'' bin now, in many cases, fall into multiple bins while sources with similar acoustic parameters that were previously sorted into separate bins due to different purposes now share a bin. Therefore, the acoustic source bins used in the current analysis do not represent a one-for-one replacement with previous bins, making direct comparison not possible in most cases.

The use of source classification bins provides the following benefits:

- Allows new sensors or munitions to be used 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 that impacts are not underestimated, as all sources within a given class are modeled as the most impactful source (highest source level, longest duty cycle, or largest net explosive weight (NEW)) within that bin;
- Allows analyses to be conducted in a more efficient manner, without any compromise of analytical results; and
- Provides a framework to support the reallocation of source usage (hours/explosives) between different source bins, as long as the total numbers of takes remain within the overall analyzed and authorized limits. This flexibility is required to support evolving training and testing requirements, which are linked to real world events.

Sonar and Other Transducers—

Active sonar and other transducers emit non-impulsive sound waves into the water to detect objects, navigate safely, and communicate. Passive sonars differ from active sound sources in that they do not emit acoustic signals; rather, they only receive acoustic information about the environment (*i.e.,* listen). In this proposed rule, the terms sonar and other transducers will be used to indicate active sound sources unless otherwise specified.

The Action Proponents employ a variety of sonars and other transducers to obtain and transmit information about the undersea environment. Some examples are mid-frequency hull-mounted sonars used to find and track enemy submarines; high-frequency small object detection sonars used to detect mines; high-frequency underwater modems used to transfer data over short ranges; and extremely high-frequency (greater than 200 kilohertz (kHz)) Doppler sonars used for navigation, like those used on commercial and private vessels. The characteristics of these sonars and other transducers, such as source level, beam width, directivity, and frequency, depend on the purpose of the source. Higher frequencies can carry more information or provide more information about objects off which they reflect, but attenuate more rapidly. Lower frequencies attenuate less rapidly, so they may detect objects over a longer distance, but with less detail.

Propagation of sound produced underwater is highly dependent on environmental characteristics such as bathymetry, seafloor type, water depth, temperature, and salinity. The sound received at a particular location will be different than near the source due to the interaction of many factors, including propagation loss; how the sound is reflected, refracted, or scattered; the potential for reverberation; and interference due to multi-path propagation. In addition, absorption greatly affects the distance over which higher-frequency sounds propagate. The technical report ''Acoustic Concepts and Summary of Best Available Science to Support Assessing Effects on Fishes, Marine Mammals, and Reptiles due to Acoustic and Explosive Stressors'' (U.S. Department of the Navy, 2026), hereafter referred to as the Acoustic and Explosives Concepts Technical Report, explains how these factors affect the propagation of acoustic energy through the water. Because of the complexity of analyzing sound propagation in the ocean environment, the Action Proponents rely on acoustic models in their environmental analyses that consider sound source characteristics and varying ocean conditions across the Study Area. For additional information on how propagation is accounted for, see the Acoustic Impacts Technical Report.

The sound sources and platforms typically used in military readiness activities analyzed in the application are described in appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS. Sonars and other transducers used to obtain and transmit information underwater during military readiness activities generally fall into several categories of use described below.

Anti-Submarine Warfare—

Sonar used during ASW training and testing would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in this proposed rule. Types of sonars used to detect potential enemy vessels include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. In addition, acoustic targets and decoys (countermeasures) may be deployed to emulate the sound signatures of vessels or repeat received signals.

Most ASW sonars are mid-frequency (1–10 kHz) because mid-frequency sound balances sufficient resolution to identify targets with distance over which threats can be identified. However, some sources may use higher or lower frequencies. Duty cycles can vary widely from rarely used to continuously active. ASW sonars can be wide-ranging in a search mode or highly directional in a track mode.

Most ASW activities involving submarines or submarine targets would occur in waters greater than 182.9 m deep due to safety concerns about running aground at shallower depths. Sonars used for ASW activities would typically be used beyond 22.2 km from shore. Exceptions include use of dipping sonar by helicopters, pierside testing and maintenance of systems while in port, and system checks while transiting to or from port.

Mine Warfare, Small Object Detection, and Imaging—

Sonars used to locate mines and other small objects, as well as those used in imaging (*e.g.,* for hull inspections or imaging of the seafloor), are typically high-frequency or very high-frequency. Higher frequencies allow for greater resolution and, due to their greater attenuation, are most effective over shorter distances. Mine detection sonar can be deployed (towed or vessel hull-mounted) at variable depths on moving platforms (ships, helicopters, or unmanned vehicles) to sweep a suspected mined area. Hull-mounted anti-submarine sonars can also be used in an object detection mode known as ''Kingfisher'' mode (MF1K) (*e.g.,* used on vessels when transiting to and from port), where pulse length is shorter but pings are much closer together in both time and space, since the vessel goes slower when operating in this mode. Sonars used for imaging are usually used in close proximity to the area of

interest, such as pointing downward near the seafloor.

Mine detection sonar use would be concentrated in areas where practice mines are deployed, typically in water depths less than 60.9 m, and at established training or testing minefields or temporary minefields close to strategic ports and harbors. Kingfisher mode on vessels is most likely to be used when transiting to and from port. Sound sources used for imaging would be used throughout the Study Area.

Navigation and Safety—

Similar to commercial and private vessels, the Action Proponents' vessels employ navigational acoustic devices, including speed logs, Doppler sonars for ship positioning, and fathometers. These may be in use at any time for safe vessel operation. These sources are typically highly directional to obtain specific navigational data.

Communication—

Sound sources used to transmit data (*e.g.,* underwater modems), provide location (pingers), or send a single brief release signal to seafloor-mounted devices (acoustic release) may be used throughout the Study Area. These sources typically have low duty cycles and are usually only used when it is necessary to send a detectable acoustic message.

Classification of Sonar and Other Transducers—

Sonars and other transducers are grouped into bins based on their acoustic properties. Sonars and other transducers are now grouped into bins based on the frequency or bandwidth, source level, duty-cycle, and three-dimensional beam coverage. Unless stated otherwise, a reference distance of 1 microPascal (re 1 µPa) at 1 m is used for sonar and other transducers.

- Frequency of the non-impulsive acoustic source:
  - Low-frequency sources operate below 1 kHz;
  - Mid-frequency sources operate at or above 1 kHz, up to and including 10 kHz;
  - High-frequency sources operate above 10 kHz, up to and including 100 kHz;
  - Very high-frequency sources operate above 100 kHz but below 200 kHz; and
  - Broadband (frequencies spanning more than two octaves);
- Sound pressure level (SPL):
  - Greater than 160 decibels (dB) re 1 µPa, but less than 185 dB re 1 µPa;
  - Equal to 185 dB re 1 µPa and up to 205 dB re 1 µPa; and
  - Greater than 205 dB re 1 µPa.

Active sonar and other transducer use that was quantitatively analyzed in the Study Area are shown in table 5. While general parameters or source characteristics are shown in the table, actual source parameters are classified.

Table 5 -- Sonar and Other Transducers Quantitatively Analyzed in the Study Area

Source type	Source category	Description	Unit	Training and testing annual	Training and testing 7-year total
Broadband	LF to HF	<205 dB	Counts	42-52	324
Broadband	MF to HF	<205 dB	Hours	886-907	6,264
Low-frequency acoustic	LFM	185 dB to 205 dB	Hours	15	105
Low-frequency acoustic	LFH	>205 dB	Counts	243	1,698
Mid-frequency acoustic (not including hull-mounted)	MFM	185 dB to 205 dB	Counts	1,424-1,616	10,547
Mid-frequency acoustic (not including hull-mounted)	MFH	>205 dB	Hours	536-686	4,804
Hull-mounted surface ship sonar	MF1C	Hull-mounted surface ship sonar with duty cycle >80% (previously MF11)	Hours	256-258	1,797
Hull-mounted surface ship sonar	MF1K	Hull-mounted surface ship sonar in Kingfisher mode	Hours	23-33	188
Hull-mounted surface ship sonar	MF1	Hull-mounted surface ship sonar	Hours	1,386-1,392	9,720
High-frequency acoustic	HFM	185 dB to 205 dB	Hours	208-235	1,585
High-frequency acoustic	HFH	>205 dB	Counts	58-93	511
High-frequency acoustic	HFH	>205 dB	Hours	1,518-1,628	11,392
Very high-frequency acoustic	VHFH	>205 dB	Hours	130-140	940

Note: LF = low frequency, MF = mid frequency, HF = high frequency, dB = decibels, L = low, M = medium, H = high (*e.g.*, MFL = mid-frequency low source level), when following "MF1" C = Continuous, defined as duty cycle >80%, K = Kingfisher mode.

Explosive Stressors

This section describes the characteristics of explosions during military readiness activities. The activities analyzed in the application that use explosives are described in appendix A (Military Readiness Activities Descriptions) of the 2026 MITT Draft SEIS/OEIS, and terminology and metrics used when describing explosives are included in the Acoustic and Explosives Concepts Technical Report.

The near-instantaneous rise from ambient to an extremely high peak pressure is what makes an explosive shock wave potentially damaging. Farther from an explosive, the peak pressures decay and the explosive waves propagate as an impulsive, broadband sound. Several parameters influence the effect of an explosive: the weight of the explosive warhead, the type of explosive material, the boundaries and characteristics of the propagation medium, and the detonation depth in water. The NEW, the explosive power of a charge expressed as the equivalent weight of trinitrotoluene (commonly referred to as

TNT), accounts for the first two parameters. The effects of these factors are explained in the Acoustic and Explosives Concepts Technical Report.

Explosions in Water—

Explosive detonations during military readiness activities are associated with high-explosive munitions, including, but not limited to bombs, missiles, rockets, naval gun shells, torpedoes, mines, and demolition charges. Explosive detonations during military readiness activities involving the use of high-explosive munitions, including bombs, missiles, and naval gun shells, would occur in the air or near the water's surface. Explosive detonations associated with torpedoes and explosive sonobuoys would occur in the water column; mine neutralization and demolition charges would be detonated in the water column or on the ocean floor.

To better organize and facilitate the analysis of explosives used by the Action Proponents during military readiness activities that would detonate in water or at the water surface, explosive classification bins were developed. The use of explosive classification bins provides the same benefits as described for acoustic source classification bins in the Sonar and Other Transducers section. Explosives detonated in water are binned by NEW. Table 6 shows explosives use that was quantitatively analyzed in the Study Area. A range of annual use indicates that occurrence is anticipated to vary annually. The 7-year total takes that variability into account.

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Table 6 -- Explosive Sources Quantitatively Analyzed Proposed for Use Underwater or at the Water Surface

Bin	Net explosive weight (lb.)	Example explosive source	Training and testing annual	Training and testing 7-year
E1	0.1-0.25	Medium-caliber projectile	635-1,080	5,780
E2	>0.25-0.5	Grenade	200	1,400
E3	>0.5-2.5	57 mm (2.24-inch) projectiles, 2.75-inch (7 cm) rockets	870-1,896	9,168
E4	>2.5-5	Mine neutralization charge	41	287
E5	>5-10	5-inch (12.7 cm) projectile	974-1,314	7,838
E6	>10-20	Hellfire missile	86-116	692
E7	>20-60	Air-to-surface missile	4-16	40
E8	>60-100	250 lb. (113 kg) bomb; lightweight torpedo	1-2	10
E9	>100-250	500 lb. (228 kg) bomb	135-143	969
E10	>250-500	1,000 lb. (454 kg) bomb	44	308
E11	>500-675	Heavyweight Torpedo	2-4	20
E12	>675-1,000	2,000 lb. (907 kg) bomb	33-34	234

Note: > = greater than, mm = millimeter, cm = centimeter, lb. = pound, kg = kilogram

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Propagation of explosive pressure waves in water is highly dependent on environmental characteristics such as bathymetry, seafloor 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. The Acoustic and Explosives Concepts Technical Report explains the characteristics of explosive detonations and how the above factors affect the propagation of explosive energy in the water. Because of the complexity of analyzing sound propagation in the ocean environment, the Action Proponents rely on acoustic models in their environmental analyses that consider sound source characteristics and varying ocean conditions across the Study Area.

Vessel Strike

NMFS also considered the likelihood that vessel movement during military readiness activities could result in an incidental, but not intentional, strike of a marine mammal in the Study Area, which has the potential to result in serious injury or mortality. Vessel strikes are not specific to any specific military readiness activity but rather, a limited, sporadic, and incidental result of the Action Proponents' vessel movement during military readiness activities within the Study Area. Vessel strikes from commercial, recreational, and military vessels are known to seriously injure and occasionally kill cetaceans (Abramson *et al.,* 2011; Berman-Kowalewski *et al.,* 2010; Calambokidis, 2012; Crum *et al.,* 2019; Douglas *et al.,* 2008; Laggner 2009; Van der Hoop *et al.,* 2012; Van der Hoop *et al.,* 2013), although reviews of the literature on vessel strikes mainly involve collisions between commercial vessels and whales (Jensen and Silber, 2003, Laist *et al.,* 2001). Vessel speed,

size, and mass are all important factors in determining both the potential likelihood and impacts of a vessel strike to marine mammals (Blondin *et al.,* 2025; Conn and Silber, 2013; Garrison *et al.,* 2025; Gende *et al.,* 2011; Redfern *et al.,* 2019; Silber *et al.,* 2010; Szesciorka *et al.,* 2019; Vanderlaan and Taggart, 2007; Wiley *et al.,* 2016). For large vessels, speed and angle of approach can influence the severity of a strike.

The Action Proponents' vessels transit at speeds that are optimal for fuel conservation or to meet training and testing requirements. Starcovic and Mintz (2021) analyzed military and non-military vessel traffic in the Navy's Pacific Study Areas, including MITT, using ship positional data gathered from 2014–2018 for vessels greater than 19.8 m in length. Average vessel speeds in the Study Area were between 9.26 and 18.52 km/hr adjacent to Guam and the islands in the CNMI for both military and non-military vessels, likely reflecting the typically low-speed vessel movement approaching and departing ports (*e.g.,* Apra Harbor). Military vessel speeds averaged 18.52 to 27.78 km/hr offshore of the islands and increased to 27.78 to 37.04 km/hr farther offshore in the center of the Study Area, west of Guam and the CNMI.

Data on the speeds of small boats (approximately 18 m or less for purposes of this analysis) were analyzed in the HCTT Study Area, but similar data was not available for the Study Area (U.S. Department of the Navy, unpublished data). The data shows that small boats traveled at more variable speeds ranging from 0 up to 96.3 km/hr, depending on the activity and the type of vessel. Submarines generally operated at speeds ranging from 14.82 to 24.08 km/hr. Similar vessel speeds are anticipated to be used by those vessels in the Study Area when those vessels are used in similar training or testing activities. A description of representative vessels proposed for use during the military readiness activities is included in table 3.0–8 in chapter 3 (Affected Environment and Environmental Consequences) of the 2026 MITT Draft SEIS/OEIS.

While these speeds for large Navy vessels are representative of most events, some of the Action Proponents' vessels may need to temporarily operate outside of these parameters. For example, to produce the required relative wind speed over the flight deck, an aircraft carrier engaged in flight operations must adjust its speed through the water accordingly. There are specific events, including high speed tests of newly constructed vessels, where the Action Proponents' vessel would operate at higher speeds. By comparison, there are other instances when the Action Proponents vessel would be stopped or moving slowly ahead to maintain steerage, such as launch and recovery of a small rigid hull inflatable boat; vessel boarding, search, and seizure training events; or retrieval of a target.

Large Navy vessels (>121.9 m) and Coast Guard vessels within the offshore areas of range complexes and testing ranges operate differently from commercial vessels, which may reduce potential vessel strikes of large whales. Surface ships operated by or for the Navy have multiple personnel assigned to stand watch at all times when a ship or surfaced submarine is moving through the water (underway). A primary duty of personnel standing watch on surface ships is to detect and report all objects and disturbances sighted in the water that may indicate a threat to the vessel and its crew, such as debris, a periscope, surfaced submarine, or surface disturbance. Per vessel safety requirements, personnel standing watch also report any marine mammals sighted in the path of the vessel as a standard collision avoidance procedure. All vessels proceed at a safe speed so they can take proper and effective action to avoid a collision with any sighted object or disturbance and can stop within a distance appropriate to the prevailing circumstances and conditions. The Action Proponents use Lookouts to avoid collisions, and Lookouts are trained to spot marine mammals so that vessels may change course or take other appropriate action to avoid collisions.

In the Study Area, NMFS has no documented vessel strikes of marine mammals by the Action Proponents. As such, the quantitative approach to assess the likelihood of vessel strikes used in the 2024 and 2025 incidental take rulemakings for Action Proponent activities in the Atlantic Fleet Training and Testing (AFTT) and Hawaii-California Training and Testing (HCTT) Study Areas, which starts with the number of Action Proponent strikes that have occurred in the study area in question, was not applied in the Study Area. Based on this lack of strikes, the Action proponents do not anticipate vessel strikes and have not requested authorization to take marine mammals by serious injury or mortality within the Study Area during training and testing activities. As such, and in consideration of other factors described below, NMFS agrees with the Action Proponents' conclusion.

Regarding large whales, sperm whales are the only species with a year-round occurrence in the Study Area. No large whales occur in high densities in the Study Area nor are there any known records of vessel strike of large whales in the Study Area by any industry. Further, in comparison to other military readiness Study Areas (*e.g.,* AFTT and HCTT), Action Proponent vessel traffic is much lower in the Study Area. The Action Proponents would be required to implement vessel strike avoidance measures, as described in the Activity-Based Mitigation for Physical Disturbance and Strike Stressors section of this proposed rule.

Based on all of these considerations, NMFS has preliminarily determined that take by vessel strike of large whales is unlikely and supported by multiple factors, including the lack of vessel strike reports of large whales in regional NMFS stranding records (1962–2025) for the Mariana Islands (including no strikes by Action Proponent vessels in the Study Area), the relatively low density of large marine mammals in the Mariana Islands, and the seasonal nature of most species (blue whales, humpback whales, fin whales, and sei whales). In addition, there are relatively small numbers of Action Proponent vessels across a large expanse of offshore waters in the Study Area, and procedural mitigation measures would further minimize potential vessel strike.

When generally compared to mysticetes, odontocetes are more capable of physically avoiding a vessel strike, and since some species occur in large groups, they are more easily seen when they are closer to the water surface. The smaller size and maneuverability of dolphins, small whales (not including large whale calves), porpoises, and pinnipeds generally make vessel strike very unlikely. For as long as records have been kept, neither the Navy nor the Coast Guard have any record of any small whales or pinnipeds being struck by a vessel as a result of military readiness activities. Over the same time period, NMFS, the Navy, and the Coast Guard have only one record of a dolphin being struck by a vessel as a result of Navy or Coast Guard activities. The dolphin was accidentally struck by a Navy small boat in fall 2021 in Saint Andrew's Pass, Florida. Other than this one reported strike of a dolphin in 2021, NMFS has never received any reports from other LOA or IHA holders indicating that these species have been struck by vessels. Worldwide vessel strike records show little evidence of strikes of these groups or marine mammals from the shipping sector and larger vessels (though for many species, records do exist (*e.g.,* West *et al.,* 2024;

Van Waerebeek *et al.,* 2007)), and the majority of the Action Proponents' activities involving faster-moving vessels (that could be considered more likely to hit a marine mammal) are located in offshore areas where smaller delphinid, porpoise, and pinniped densities are lower. Based on this information, NMFS concurs with the Action Proponents' assessment that vessel strike is not likely to occur for either large whales or smaller marine mammals.

Description of Marine Mammals and Their Habitat in the Area of Specified Activities

Marine mammal species and their associated stocks that have the potential to occur in the Study Area are presented in table 7 along with each stock's Endangered Species Act (ESA) and MMPA statuses, abundance estimate and associated coefficient of variation (CV) value, minimum abundance estimate, potential biological removal (PBR), annual mortality or serious injury (M/SI), and potential occurrence in the Study Area. The Action Proponents request authorization to take individuals of 27 species by Level B harassment and, for a subset of those species (19 species), Level A harassment, incidental to military readiness activities from the use of sonar and other transducers and in-water detonations in the Study Area. There are no areas of critical habitat designated under the ESA, National Marine Sanctuaries, or unusual mortality events for marine mammals in the Study Area. There are areas known to be important for humpback whale breeding and calving, which are described in the *Humpback Whale Reproductive Areas* section.

Sections 3 and 4 of the application and the ''Biological Resources Background Information Technical Report for the Mariana Islands Training and Testing Study Area'' (U.S. Department of the Navy, 2026b; hereafter referred to as the Biological Resources Technical Report) summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions instead of reprinting the information herein. 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 at: *https://www.fisheries.noaa.gov/find-species.* Table 7 incorporates the best available science, including data from the 2024 Pacific and Alaska Marine Mammal Stock Assessment Reports (Carretta *et al.,* 2026; Young *et al.,* 2026) (see *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), as well as monitoring data from the Navy's marine mammal research efforts (see *https://www.navymarinespeciesmonitoring.us/*).

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Table 7 -- Marine Mammal Occurrence within the Study Area [1]

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [2]	Stock abundance (CV, Nmin, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla – Cetacea – Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Blue whale	*Balaenoptera musculus*	Central North Pacific	E, D, Y	133 (1.09, 63, 2010)	0.1	0
Bryde's whale	*Balaenoptera edeni*	NSD	-, N/A, N/A	N/A	UNK	UNK
Fin whale	*Balaenoptera physalus*	NSD	E, N/A, N/A	N/A	UNK	UNK
Humpback whale	*Megaptera novaeangliae*	Western North Pacific	E, D, Y	1,084 (0.088, 1,007, 2006)	3.4 [5]	5.82
Minke whale	*Balaenoptera acutorostrata*	NSD	-, N/A, N/A	N/A	UNK	UNK
Omura's whale	*Balaenoptera omurai*	NSD	-, N/A, N/A	N/A	UNK	UNK
Sei whale	*Balaenoptera borealis*	NSD	E, N/A, N/A	N/A	UNK	UNK
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Sperm whale	*Physeter macrocephalus*	NSD	E, N/A, N/A	N/A	UNK	UNK
Family Kogiidae						
Dwarf sperm whale	*Kogia sima*	NSD	-, N/A, N/A	N/A	UNK	UNK
Pygmy sperm whale	*Kogia breviceps*	NSD	-, N/A, N/A	N/A	UNK	UNK
Family Ziphiidae (beaked whales)						
Blainville's beaked whale	*Mesoplodon densirostris*	NSD	-, N/A, N/A	N/A	UNK	UNK
Deraniyagala Beaked Whale	*Mesoplodon hotaula*	NSD	-, N/A, N/A	N/A	UNK	UNK
Ginkgo-toothed Beaked Whale	*Mesoplodon ginkgodens*	NSD	-, N/A, N/A	N/A	UNK	UNK
Goose-beaked whale	*Ziphius cavirostris*	NSD	-, N/A, N/A	N/A	UNK	UNK
Longman's beaked whale	*Indopacetus pacificus*	NSD	-, N/A, N/A	N/A	UNK	UNK
Family Delphinidae						
False killer whale	*Pseudorca crassidens*	NSD	-, N/A, N/A	N/A	UNK	UNK
Killer whale	*Orcinus orca*	NSD	-, N/A, N/A	N/A	UNK	UNK
Melon-headed whale	*Peponocephala electra*	NSD	-, N/A, N/A	N/A	UNK	UNK

Pygmy killer whale	*Feresa attenuata*	NSD	-, N/A, N/A	N/A	UNK	UNK
Short-finned pilot whale	*Globicephala macrorhynchus*	NSD	-, N/A, N/A	N/A	UNK	UNK
Bottlenose dolphin	*Tursiops truncatus*	NSD	-, N/A, N/A	N/A	UNK	UNK
Fraser's dolphin	*Lagenodelphis hosei*	NSD	-, N/A, N/A	N/A	UNK	UNK
Pantropical spotted dolphin	*Stenella attenuata*	NSD	-, N/A, N/A	N/A	UNK	UNK
Risso's dolphin	*Grampus griseus*	NSD	-, N/A, N/A	N/A	UNK	UNK
Rough-toothed dolphin	*Steno bredanensis*	NSD	-, N/A, N/A	N/A	UNK	UNK
Spinner dolphin	*Stenella longirostris*	NSD	-, N/A, N/A	N/A	UNK	UNK
Striped dolphin	*Stenella coeruleoalba*	NSD	-, N/A, N/A	N/A	UNK	UNK

Note: N/A = Not Applicable, NSD = No Stock Designated, UNK = Unknown. Abundance estimates and other data for the Central North Pacific stock of blue whale and Western North Pacific stock of humpback whale are from the Pacific (Carretta *et al.*, 2026) and Alaska SARs (Young *et al.*, 2026), respectively.

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock. MMPA status information is N/A to species for which no stock is designated.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. For populations that are not recognized stocks under the MMPA, stock abundance information is listed as N/A. Navy Marine Species Density Database estimates are presented in the **Preliminary Analysis and Negligible Impact Determination** section of this proposed rule.

[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, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] For this stock, PBR is currently set at 0.2 for U.S. waters and 3.4 for the stock's entire range. As the Study Area extends beyond U.S. waters, we present the analysis using the PBR for the stock's entire range.

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Species Not Included in the Analysis

The species carried forward for analysis (see table 7) are those likely to be found in the 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). These species include the North Pacific right whale (*Eubalaena japonica*), the western subpopulation of gray whale (*Eschrichtius robustus*), short-beaked common dolphin (*Delphinus delphis*), Indo-Pacific bottlenose dolphin (*Tursiops aduncus*), northern elephant seal (*Mirounga angustirostris*), and Hawaiian monk seal (*Monachus schauinslandi*). The reasons for not including each of these species are explained below, and these species are not discussed further beyond the explanation provided here. Additional details can be found in the 2015 MITT FEIS/OEIS.

The North Pacific right whale population is estimated to be 31 individuals (Young *et al.,* 2024). Contemporary sightings of North Pacific right whales have mostly occurred in the central North Pacific and Bering Sea. Sightings have been reported as far south as central Baja California in the eastern North Pacific, as far south as Hawaii in the central North Pacific, and as far north as the sub-Arctic waters of the Bering Sea and the Sea of Okhotsk

in the summer. Migration patterns of the North Pacific right whale are unknown, although it is thought the whales spend the summer in far northern feeding grounds and migrate south to warmer waters, such as southern California, during the winter. Due to their known home range, it is unlikely that a North Pacific right whale would occur in the Study Area. North Pacific right whales have not been previously documented in the Study Area.

There currently are no data that suggest the western subpopulation of gray whales would transit the Study Area when migrating from the western to eastern Pacific. Given the known range of this population (Carretta *et al.,* 2024), nearshore affinity, and extralimital occurrence in tropical waters, it is highly unlikely that this species would occur in the Study Area (Weller *et al.,* 2002; Wiles, 2005; Nambu *et al.,* 2010). In addition, no gray whales have been previously documented in the Study Area.

The short-beaked common dolphin occurs worldwide in temperate, tropical, and subtropical seas. The range of this species may extend entirely across the tropical and temperate north Pacific; however, this species prefers areas with large seasonal changes in surface temperature and thermocline depth (the point between warmer surface water and colder water) (Au and Perryman, 1985). In tropical waters, they are typically sighted in upwelling-modified waters such as those in the eastern tropical Pacific (Au and Perryman, 1985; Ballance and Pitman, 1998; Reilly, 1990). The absence of known areas of major upwelling in the western tropical Pacific suggests that common dolphins do not occur in the Study Area. In addition, no short-beaked common dolphins have been previously documented in the Study Area.

The Indo-Pacific bottlenose dolphin generally occurs over shallow coastal waters on the continental shelf. Although typically associated with continental margins, they do occur around oceanic islands; however, the Study Area is not included in their known geographic range, and there are no documented sightings there. In addition, no Indo-Pacific bottlenose dolphins have been previously documented in the Study Area.

The likelihood of a Hawaiian monk seal occurring in the Study Area is extremely low. There are no confirmed records of Hawaiian monk seals in the Micronesia region; although, Reeves *et al.* (1999) and Eldredge (2003) have noted occurrence records for unidentified seal species in the Marshall and Gilbert Islands. It is possible that Hawaiian monk seals wander from the Hawaiian Islands to appear at the Marshall or Gilbert Islands in the Micronesia region. However, the Marshall Islands are located approximately 1,900 km from Guam, and the Gilbert Islands are located even farther to the east. No Hawaiian monk seals have been previously documented in the Study Area.

Northern elephant seals spend several months at sea feeding and travel as far north as the Gulf of Alaska and forage in the mid-Pacific as far south as approximately 40 degrees north latitude. Vagrant individuals do sometimes range to the western north Pacific (*e.g.,* Kiyota *et al.,* 1992). Although northern elephant seals may wander great distances, it is very unlikely that they would travel to Japan and then continue traveling to the Study Area. No Northern elephant seals have been previously documented in the Study Area.

Below, we consider 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.

Humpback Whale Reproductive Areas

Humpback whales in the Mariana Islands/Ogasawara-Northern Pacific unit of the Western North Pacific stock winter off the Mariana Archipelago, Ogasawara, Japan, and other areas not yet identified. They migrate to summer feeding areas off the Commander Islands, the Bering Sea and Aleutian Islands (Oleson *et al.,* 2022).

Humpback whale breeding and calving have been documented in the Study Area, particularly in the shallow waters (mostly within the 200-m isobath) offshore of Saipan at Marpi Reef and Chalan Kanoa Reef. Surveys conducted by NMFS' Pacific Islands Fisheries Science Center during the winter months (January to March) from 2015–2020 included 22 encounters with mother/calf pairs with a total of 14 mother/calf pairs. All calves were considered born within the current season, and one was a neonate (Hill *et al.,* 2020a). Surveys and passive acoustic hydrophone recordings in the Mariana Islands have confirmed the presence of mother-calf pairs, non-calf whales, and singing males in the Study Area (Hill *et al.,* 2016a; Hill *et al.,* 2018; Munger *et al.,* 2014; Munger *et al.,* 2015; Norris *et al.,* 2012; Oleson and Hill, 2010a; Oleson *et al.,* 2015; Uyeyama *et al.,* 2012). These surveys have documented behaviors (*e.g.,* escorting, competitive groups) consistent with known humpback whale reproductive activities in other locations (Gabriele *et al.,* 2017; Pack *et al.,* 2017). In 2018, NMFS confirmed that the waters around Saipan are a newly identified ''breeding location'' for humpback whales (Hill *et al.,* 2018). In summary, the available data confirms the shallow waters surrounding Marpi Reef and Chalan Kanoa Reef are important to breeding and calving humpback whales.

Marine Mammal Hearing Groups

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. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995b; Wartzok and Ketten, 1999; Au and Hastings, 2008; Erbe *et al.,* 2025). To reflect this, Southall *et al.* (2007) and Southall *et al.* (2019c) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (*e.g.,* behavioral response data, anatomical modeling). NMFS (2024) generalized hearing ranges were chosen based on the approximately 65-dB threshold from the composite audiograms, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019c). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 8.

Table 8 -- Marine Mammal Hearing Groups (NMFS, 2024)

Hearing Group	Generalized Hearing Range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36** kHz
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* and *L. australis*)	200 Hz to 165 kHz

* 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 the ~65-dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019c). Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

** The Navy split the LF functional hearing group into LF and VLF based on Houser *et al.* (2024) while NMFS Updated Technical Guidance (NMFS, 2024) does not include these data. NMFS is aware of these data and data collected during a final field season by Houser *et al.* (in prep) have implications for the generalized hearing range for low-frequency cetaceans and their weighting function; however, as described in the 2024 Updated Technical Guidance, it is premature for us to propose any changes to our current Updated Technical Guidance. Mysticete hearing data is identified as a special circumstance that could merit reevaluating the acoustic criteria for low-frequency cetaceans in the 2024 Updated Technical Guidance once the data from the final field season is published. Therefore, we anticipate that once the data are published, it will likely necessitate updating this document (*i.e.*, likely after the data gathered in the summer 2024 field season and associated analysis are published).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Of note, the Navy adjusted the LF cetacean hearing group using data from recent hearing measurements in minke whales (Houser *et al.,* 2024). These data support separating mysticetes (the LF cetaceans marine mammal hearing group in table 8) into two hearing groups, which the Navy designates as ''very low-frequency (VLF) cetaceans'' and ''low-frequency (LF) cetaceans,'' which follows the recommendations of Southall *et al.* (2019c). Within the Navy's adjusted hearing groups, the VLF cetacean group contains the larger mysticetes (*i.e.,* blue, pygmy blue, fin, right, and bowhead whales) and the LF cetacean group contains the mysticete species not included in the VLF group (*e.g.,* minke, humpback, gray, pygmy right whales). Although there have been no direct measurements of hearing sensitivity in the larger mysticetes included in Navy's VLF hearing group, an audible frequency range of approximately 10 Hz to 30 kHz has been estimated from measured vocalization frequencies, observed responses to playback of sounds, and anatomical analyses of the auditory system. The upper frequency limit of hearing in Navy's LF hearing group has been estimated as 64 kHz, based on direct measurements of auditory evoked potentials in minke whales (Houser *et al.,* 2024).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Preliminary Analysis and Negligible Impact Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation Measures section to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts on individuals are likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

The Action Proponents have requested authorization for the take of marine mammals that may occur incidental to training and testing activities in the Study Area. The Action Proponents analyzed potential impacts to marine mammals from acoustic and explosive sources in the application. NMFS carefully reviewed the information provided by the Action Proponents and concurs with their synthesis of science, along with independently reviewing applicable scientific research and literature and other information to evaluate the potential effects of the Action Proponents' activities on marine mammals, which are presented in this section (see also appendix C in the 2026 MITT Draft SEIS/OEIS for additional information).

In this proposed rule, NMFS analyzes the potential effects on marine mammals from the activity components that may result in take of marine mammals: exposure to acoustic or explosive stressors including non-impulsive (*i.e.,* sonar and other transducers) and impulsive (*i.e.,* explosives) stressors.

For the purpose of MMPA ITAs, NMFS' effects assessments serve four primary purposes: (1) to determine whether the specified activities would have a negligible impact on the affected species or stocks of marine mammals (based on whether it is likely that the activities would adversely affect the species or stocks through effects on annual rates of recruitment or survival); (2) to determine whether the specified activities would have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses;

(3) to prescribe the permissible methods of taking, including identification of the number and types of take that could occur and to prescribe other means of effecting the least practicable adverse impact on the species or stocks and their habitat (*i.e.,* mitigation measures); and (4) to prescribe requirements pertaining to monitoring and reporting.

In this section, NMFS provides a description of the ways marine mammals may be generally affected by the specified activities in the form of mortality, physical injury, sensory impairment (permanent and temporary threshold shifts (TTS) and acoustic masking), physiological responses (particular stress responses), behavioral disturbance, or habitat effects. The Estimated Take of Marine Mammals section also discusses how the potential effects on marine mammals from non-impulsive and impulsive sources relate to the MMPA definitions of Level A Harassment and Level B Harassment and quantifies those effects that qualify as a take under the MMPA. The Preliminary Analysis and Negligible Impact Determination section assesses whether the proposed authorized take would have a negligible impact on the affected species and stocks.

Potential Effects of Underwater Sound on Marine Mammals

The marine soundscape is composed of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources, which may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ambient or background sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995b). The result is that, depending on the source type and its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can possibly result in one or more of the following: temporary or permanent hearing impairment, other auditory injury, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995b; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009; Southall *et al.,* 2019a; Erbe *et al.,* 2025). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high-level sounds can cause auditory injury, as can longer exposures to lower-level sounds. Temporary or permanent loss of hearing can occur after exposure to noise and occurs almost exclusively for noise within an animal's hearing range.

Richardson *et al.* (1995b) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We also describe more severe potential effects (*i.e.,* certain non-auditory physical or physiological effects). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or, in the case of explosives, more severe injuries or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high levels of underwater sound or as a secondary effect of extreme behavioral responses (*e.g.,* change in dive profile as a result of an avoidance response) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015).

Hearing

Marine mammals have adapted hearing based on their biology and habitat: amphibious marine mammals (*e.g.,* pinnipeds that spend time on land and underwater) have modified ears that allow them to hear both in-air and in-water, while fully aquatic marine mammals (*e.g.,* cetaceans that are always underwater) have specialized ear adaptations for in-water hearing (Wartzok and Ketten, 1999). These adaptations explain the variation in hearing ability and sensitivity among marine mammals and have led to the characterization of marine mammal functional hearing groups based on those sensitivities: very low-frequency cetaceans (VLF group: blue, fin, right, and bowhead whales), low-frequency cetaceans (LF group: minke, sei, Bryde's, Rice's, humpback, gray, and pygmy right whales), high-frequency (HF) cetaceans (HF group: sperm whales, beaked whales, killer whale, melon-headed whale, false/pygmy killer whale, pilot whales, and some dolphin species), very high-frequency (VHF) cetaceans (VHF group: some dolphin species, porpoises, Amazon River dolphin, *Kogia* species, Baiji, and La Plata dolphin), sirenians (SI) (SI group: manatees, dugongs), otariids (OCW) and other non-phocid marine carnivores (OCA) in water and in air (OCW and OCA groups: sea lion, fur seal, walrus, otter), and phocids in water (PCW) and in air (PCA) (PCW and PCA groups: true seals) (Southall *et al.,* 2019c). In Phase III, VLF and LF cetaceans were part of one, combined LF cetacean hearing group. However, as described in the Navy's report ''Criteria and Thresholds

for U.S. Navy Acoustic and Explosive Effects Analysis (Phase 4)'' (U.S. Department of the Navy, 2025), hereafter referred to as the Criteria and Thresholds Technical Report, Houser *et al.* (2024) recently reported obtaining hearing measurements for minke whales, the first direct measurements for a baleen whale species, using auditory evoked potential methodology. The Action Proponents incorporated these measurements, as well as Southall *et al.* (2019c), into their analysis. They determined that the data support dividing mysticetes into two separate hearing groups: VLF and LF cetaceans, and NMFS concurs (as described further in the Estimated Take of Marine Mammals section), that this approach is appropriate for this action.

The hearing sensitivity of marine mammals is also directional, meaning the angle between an animal's position and the location of a sound source impacts the animal's hearing threshold, thereby impacting an animal's ability to perceive the sound emanating from that source. This directionality is likely useful for determining the general location of a sound, whether for detection of prey, predators, or members of the same species, and can be dependent upon the frequency of the sound (Accomando *et al.,* 2020; Au and Moore, 1984; Byl *et al.,* 2016; Byl *et al.,* 2019; Kastelein *et al.,* 2005; Popov and Supin, 2009).

Acoustic Signaling

An acoustic signal refers to the sound waves used to communicate underwater, and marine mammals use a variety of acoustic signals for socially important functions, such as communicating, as well as biologically important functions, such as echolocating (Richardson *et al.,* 1995b; Wartzok and Ketten, 1999; Erbe *et al.,* 2025). Acoustic signals used for communication are lower frequency (*i.e.,* 20 Hz to 30 kHz) than those signals used for echolocation, which are high-frequency (approximately 10–200 kHz peak frequency) signals used by odontocetes to sense their underwater environment. Lower frequency vocalizations used for communication may have a specific, prominent fundamental frequency (Brady *et al.,* 2021) or have a wide frequency range, depending on the functional hearing group and whether the marine mammal is vocalizing in-water or in-air. Acoustic signals used for echolocation are high-frequency, high-energy sounds with patterns and peak frequencies that are often species-specific (Baumann-Pickering *et al.,* 2013).

Marine mammal species typically produce sounds at frequencies within their own hearing range, though auditory and vocal ranges do not perfectly align (*e.g.,* odontocetes may only hear a portion of the frequencies of an echolocation click). Because determining a species' vocal range is easier than determining a species' hearing range, vocal ranges are often used to infer a species' hearing range when species-specific hearing data are not available (*e.g.,* large whale species).

Hearing Loss and Auditory Injury (AUD INJ)

Marine mammals, like all mammals, lose their ability to hear over time due to age-related degeneration of auditory pathways and sensory cells of the inner ear. This natural, age-related hearing loss is distinct from acute noise-induced hearing loss (Møller, 2013). Noise-induced hearing loss can be temporary (*i.e.,* TTS) or permanent (permanent threshold shift (PTS)), with higher-level sound exposures more likely to cause PTS or other AUD INJ. For marine mammals, AUD INJ is considered to be possible when sound exposures are sufficient to produce 40 dB of TTS measured approximately 4 minutes after exposure (NMFS, 2024; U.S. Department of the Navy, 2025b). Numerous studies have directly examined noise-induced hearing loss in marine mammals by measuring an animal's hearing threshold before and after exposure to intense or long duration sounds. The difference between the post-exposure and pre-exposure hearing thresholds is then used to determine the amount of TTS (in dB) that was produced as a result of the sound exposure (see the Acoustic and Explosives Concepts Technical Report for additional details). The Navy used these studies to generate exposure functions, which are predictions of the onset of TTS or PTS or other AUD INJ based on sound frequency, level, and type (non-impulsive or impulsive), for each marine mammal hearing group (NMFS, 2024; U.S. Department of the Navy, 2025b).

TTS can last from minutes or hours to days (*i.e.,* there is complete recovery back to baseline/pre-exposure hearing threshold), can occur within a specific frequency range (*i.e.,* an animal might only have a temporary loss of hearing sensitivity within a limited frequency band of its auditory range), and can be of varying amounts (*e.g.,* an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). While there is no simple functional relationship between TTS and PTS or other AUD INJ (*e.g.,* neural degeneration), as TTS increases, the likelihood that additional exposure to increased SPL or duration will result in PTS or other injury also increases (see the Acoustic and Explosives Concepts Technical Report for additional discussion). Exposure thresholds for the occurrence of AUD INJ, which include the potential for PTS, as well as situations when AUD INJ occurs without PTS, can therefore be defined based on a specific amount of TTS; that is, although an exposure has been shown to produce only TTS, we assume that any additional exposure may result in some AUD INJ. The specific upper limit of TTS is based on experimental data showing amounts of TTS that have not resulted in AUD INJ. In other words, we do not need to know the exact functional relationship between TTS and AUD INJ; we only need to know the upper limit for TTS before some AUD INJ is possible. In severe cases of AUD INJ, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985; Finneran, 2015).

The following physiological mechanisms are thought to play a role in inducing auditory threshold shift: effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated threshold shift and the frequency range in which it occurs. Generally, the amount of threshold shift, and the time needed to recover from the effect, increase as amplitude and duration of sound exposure increases. Human non-impulsive noise exposure guidelines are based on the assumption that exposures of equal energy (the same cumulative SEL) produce equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH, 1998). Previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007; Finneran, 2015; Southall *et al.,* 2019). Cumulative SEL is used to predict TTS in marine mammals and is considered a good predictor of TTS for shorter duration exposures than longer duration exposures. The amount of TTS increases with exposure SPL and duration and is correlated with cumulative SEL, but

duration of the exposure has a more significant effect on TTS than would be predicted based on cumulative SEL alone (*e.g.,* Finneran *et al.,* 2010b; Kastak *et al.,* 2007; Kastak *et al.,* 2005; Kastelein *et al.,* 2014a; Mooney *et al.,* 2009a; Popov *et al.,* 2014; Gransier and Kastelein, 2024). These studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts.

Generally, TTS increases with cumulative SEL in a non-linear fashion, where lower SEL exposures will elicit a steady rate of TTS increase while higher SEL exposures will either increase TTS more rapidly or plateau (Finneran, 2015; U.S. Department of the Navy, 2025). Additionally, with sound exposures of equal energy, those that had lower SPL with longer duration were found to induce TTS onset at lower levels than those of higher SPL and shorter duration. Less threshold shift will occur from intermittent sounds than from a continuous exposure with the same energy (some recovery can occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997; Mooney *et al.,* 2009a, 2009b; Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015). For example, one short, higher SPL sound exposure may induce the same impairment as one longer lower SPL sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged or repeated exposure to sound loud enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause AUD INJ, at least in terrestrial mammals (Kryter, 1985; Lonsbury-Martin *et al.,* 1987).

Although TTS increases non-linearly in marine mammals, recovery from TTS typically occurs in a linear fashion with the logarithm of time (Finneran, 2015; Finneran *et al.,* 2010a; Finneran *et al.,* 2010b; Finneran and Schlundt, 2013; Kastelein *et al.,* 2012a; Kastelein *et al.,* 2012b; Kastelein *et al.,* 2013a; Kastelein *et al.,* 2014a; Kastelein *et al.,* 2014b; Kastelein *et al.,* 2014c; Popov *et al.,* 2014; Popov *et al.,* 2013; Popov *et al.,* 2011; Muslow *et al.,* 2023; Finneran *et al.,* 2023). Considerable variation has been measured in individuals of the same species in both the amount of TTS incurred from similar cumulative SELs (Kastelein *et al.,* 2012a; Popov *et al.,* 2013) and the time-to-recovery from TTS (Finneran, 2015; Kastelein *et al.,* 2019). Many of these studies relied on continuous sound exposures, but intermittent, impulsive sound exposures have also been tested. The sound resulting from an explosive detonation is considered an impulsive sound, but no direct measurements of hearing loss from exposure to explosive sources have been made. Few studies (Finneran *et al.,* 2002; Lucke *et al.,* 2009; Sills *et al.,* 2020; Muslow *et al.,* 2023) using impulsive sounds have produced enough TTS to make predictions about hearing loss due to this source type (see U.S. Department of the Navy, 2025). In general, predictions of TTS based on cumulative SEL for this type of sound exposure are likely to overestimate TTS because some recovery from TTS may occur in the quiet periods between impulsive or intermittent sounds—especially when the duty cycle is low. Peak SPL (unweighted) is also used to predict TTS due to impulsive sounds (Southall *et al.,* 2007; Southall *et al.,* 2019c; U.S. Department of the Navy, 2025).

In some cases associated with terrestrial mammal noise studies, intense noise exposures have caused AUD INJ (*e.g.,* loss of cochlear neuron synapses) despite thresholds eventually returning to normal (*i.e.,* it is possible to have AUD INJ without a resulting PTS (*e.g.,* Kujawa and Liberman, 2006, 2009; Fernandez *et al.,* 2015; Ryan *et al.,* 2016; Houser, 2021)). In these situations, however, threshold shifts were 30–50 dB measured 24 hours after the exposure (*i.e.,* there is no evidence that an exposure resulting in less than 40 dB TTS measured a few minutes after exposure can produce AUD INJ). Therefore, an exposure producing 40 dB of TTS, measured a few minutes after exposure, can also be used as an upper limit to prevent AUD INJ (*i.e.,* it is assumed that exposures beyond those capable of causing 40 dB of TTS have the potential to result in AUD INJ (which may or may not result in PTS)).

Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). When AUD INJ occurs, there is physical damage (typically mechanical) to the sound receptors in the ear, whereas TTS represents primarily tissue fatigue (typically metabolic) and is fully reversible (Southall *et al.,* 2007). AUD INJ is permanent (*i.e.,* there is incomplete recovery back to baseline/pre-exposure levels) but also can occur in a specific frequency range and amount as mentioned above for TTS. In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider less than 40 dB of TTS to constitute AUD INJ. The NMFS Acoustic Updated Technical Guidance (NMFS, 2024), which was used in the assessment of effects for this proposed rule, compiled, interpreted, and synthesized the best available scientific information for noise-induced hearing effects for marine mammals to derive updated thresholds for assessing the impacts of noise on marine mammal hearing.

While many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019c) for summaries), published data on the onset of TTS for cetaceans are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise, and for pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals, California sea lions, and bearded seals. These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds, which can then be used to determine the amount of threshold shift at various post-exposure times. NMFS has reviewed the available studies, which are summarized below (see also the Acoustic and Explosive Concepts Technical Report which includes additional discussion on TTS studies related to sonar and other transducers).

- The method used to test hearing may affect the resulting amount of measured TTS, with neurophysiological measures producing larger amounts of TTS compared to psychophysical measures (Finneran *et al.,* 2007; Finneran, 2015).
- The amount of TTS varies with the hearing test frequency. As the exposure SPL increases, the frequency at which the maximum TTS occurs also increases (Kastelein *et al.,* 2014b). For high-level exposures, the maximum TTS typically occurs one-half to one octave above the exposure frequency (Finneran *et al.,* 2007; Mooney *et al.,* 2009a; Nachtigall *et al.,* 2004; Popov *et al.,* 2011, 2013; Schlundt *et al.,* 2000). The overall spread of TTS from tonal exposures can therefore extend over a large frequency range (*i.e.,* narrowband exposures can produce broadband (greater than one octave) TTS).
- The amount of TTS increases with exposure SPL and duration and is correlated with cumulative SEL, especially if the range of exposure durations is relatively small (Kastak *et al.,* 2007; Kastelein *et al.,* 2014b; Popov

et al., 2014). As the exposure duration increases, however, the relationship between TTS and cumulative SEL begins to break down. Specifically, duration has a more significant effect on TTS than would be predicted on the basis of cumulative SEL alone (Finneran *et al.,* 2010a; Kastak *et al.,* 2005; Mooney *et al.,* 2009b). This means if two exposures have the same cumulative SEL but different durations, the exposure with the longer duration (thus lower SPL) will tend to produce more TTS than the exposure with the higher SPL and shorter duration. In most acoustic impact assessments, the scenarios of interest involve shorter duration exposures than the marine mammal experimental data from which impact thresholds are derived; therefore, use of cumulative SEL tends to overestimate the amount of TTS. Despite this, cumulative SEL continues to be used in many situations because it is relatively simple, more accurate than SPL alone, and lends itself easily to scenarios involving multiple exposures with different SPL (Finneran, 2015).

- Gradual increases of TTS may not be directly observable with increasing exposure levels, before the onset of PTS (Reichmuth *et al.,* 2019). Similarly, PTS can occur without measurable behavioral modifications (Reichmuth *et al.,* 2019).
- The amount of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of highest susceptibility, are less hazardous than those at higher frequencies, near the region of highest susceptibility (Finneran and Schlundt, 2013). The onset of TTS—defined as the exposure level necessary to produce 6 dB of TTS (*i.e.,* clearly above the typical variation in threshold measurements)—also varies with exposure frequency. At the low frequency end of a species' hearing curve (*i.e.,* audiogram), onset-TTS exposure levels are higher compared to those in the region of best sensitivity.
- TTS can accumulate across multiple intermittent exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same cumulative SEL (Finneran *et al.,* 2010a; Kastelein *et al.,* 2014b, 2015b; Mooney *et al.,* 2009b). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures such as sonars and impulsive sources.
- The amount of observed TTS tends to decrease with increasing time following the exposure; however, the relationship is not monotonic (*i.e.,* increasing exposure does not always increase TTS). The time required for complete recovery of hearing depends on the magnitude of the initial shift; for relatively small shifts recovery may be complete in a few minutes, while large shifts (*e.g.,* approximately 40 dB or greater) may require several days for recovery. Under many circumstances TTS recovers linearly with the logarithm of time (Finneran *et al.,* 2010a, 2010b; Finneran and Schlundt, 2013; Kastelein *et al.,* 2012a, 2012b, 2013a, 2014b, 2014c; Popov *et al.,* 2013, 2014). This means that for each doubling of recovery time, the amount of TTS will decrease by the same amount (*e.g.,* 6 dB recovery per doubling of time).

Nachtigall *et al.* (2018) and Finneran (2018) describe the measurements of hearing sensitivity of multiple odontocete species (*i.e.,* bottlenose dolphin, harbor porpoise, beluga, and false killer whale) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Finneran (2018) recommends further investigation of the mechanisms of hearing sensitivity reduction in order to understand the implications for interpretation of existing TTS data obtained from captive animals, notably for considering TTS due to short duration, unpredictable exposures.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious, similar to those discussed in auditory masking below. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that impeded communication. The fact that animals exposed to high levels of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is potentially more significant than the simple existence of a TTS. However, it is important to note that TTS could occur due to longer exposures to sound at lower levels so that a behavioral response may not be elicited.

Depending on the degree and frequency range, the effects of AUD INJ on an animal could also range in severity, although it is considered generally more serious than TTS because it is a permanent condition (Reichmuth *et al.,* 2019). Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without some cost to the animal.

As the amount of research on hearing sensitivity has grown, so, too, has the understanding that marine mammals may be able to self-mitigate, or protect, against noise-induced hearing loss. An animal may learn to reduce or suppress their hearing sensitivity when warned of an impending intense sound exposure, or if the duty cycle of the sound source is predictable, as has been demonstrated in some odontocete species (Finneran, 2018; Finneran *et al.,* 2024; Nachtigall and Supin, 2013, 2014, 2015; Nachtigall *et al.,* 2016a, 2016b, 2016c, 2018). This has been shown with several species, including the false killer whale (Nachtigall and Supin, 2013), bottlenose dolphin (Finneran, 2018; Nachtigall and Supin, 2014, 2015; Nachtigall *et al.,* 2016c), beluga whale (Nachtigall *et al.,* 2016a), and harbor porpoise (Nachtigall *et al.,* 2016b; Kastelein *et al.,* 2020). Additionally, Finneran *et al.* (2023, 2024) found that odontocetes that had participated in TTS experiments in the past could have learned from that experience and subsequently protected their hearing during new sound exposure experiments.

Behavioral Responses

Behavioral responses to sound are highly variable and context-specific (Nowacek *et al.,* 2007; Southall *et al.,* 2007, 2019). Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound or sound source affects whether it is less likely

(habituation, self-mitigation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007, 2016; Finneran, 2018; Finneran *et al.,* 2024; Nachtigall and Supin, 2013, 2014, 2015; Nachtigall *et al.,* 2015, 2016a, 2016b, 2018). Related to the sound itself, the perceived proximity of the sound, bearing of the sound (approaching vs. retreating), the similarity of a sound to biologically relevant sounds in the animal's environment (*i.e.,* calls of predators, prey, or conspecifics), familiarity of the sound, and navigational constraints may affect the way an animal responds to the sound (Curé *et al.,* 2025; DeRuiter *et al.,* 2013a; Ellison *et al.,* 2012; Southall *et al.,* 2007; Southall *et al.,* 2021; Wartzok *et al.,* 2003; Wensveen *et al.,* 2025). Individuals (of different age, sex, reproductive status, *etc.*) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Southall *et al.* (2007) and Southall *et al.* (2021) have developed and subsequently refined methods developed to categorize and assess the severity of acute behavioral responses, considering impacts to individuals that may consequently impact populations. Often, specific acoustic features of the sound and contextual variables (*i.e.,* proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

Studies by DeRuiter *et al.* (2013a) indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Another study by DeRuiter *et al.* (2013b) examined behavioral responses of goose-beaked whales to MF sonar and found that whales responded strongly at low received levels (89–127 dB re 1 µPa) by ceasing normal fluking and echolocation, swimming rapidly away, and extending both dive duration and subsequent non-foraging intervals when the sound source was 3.4–9.5 km away. Importantly, this study also showed that whales exposed to a similar range of received levels (78–106 dB re 1 µPa) from distant sonar exercises 118 km away did not elicit such responses, suggesting that context may moderate responses.

Ellison *et al.* (2012) outlined an approach to assessing the effects of sound on marine mammals that incorporates contextual-based factors. The authors recommend considering not just the received level of sound, but also the activity the animal is engaged in at the time the sound is received, the nature and novelty of the sound (*i.e.,* whether this is a new sound from the animal's perspective), and the distance between the sound source and the animal. They submit that this ''exposure context,'' as described, greatly influences the type of behavioral response exhibited by the animal. Forney *et al.* (2017) also point out that an apparent lack of response (*e.g.,* no displacement or avoidance of a sound source) may not necessarily mean there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing stress or hearing loss. Forney *et al.* (2017) recommend considering both the costs of remaining in an area of noise exposure such as TTS, PTS, or masking, which could lead to an increased risk of predation or other threats or a decreased capability to forage, and the costs of displacement, including potential increased risk of vessel strike, increased risks of predation or competition for resources, or decreased habitat suitable for foraging, resting, or socializing. This sort of contextual information is challenging to predict with accuracy for ongoing activities that occur over large spatial and temporal expanses. However, distance is one contextual factor for which data exist to quantitatively inform a take estimate, and the method for predicting Level B harassment in this proposed rule does consider distance to the source. Other factors are often considered qualitatively in the analysis of the likely consequences of sound exposure, where supporting information is available.

Friedlaender *et al.* (2016) provided the first integration of direct measures of prey distribution and density variables incorporated into across-individual analyses of behavior responses of blue whales to sonar, and demonstrated a five-fold increase in the ability to quantify variability in blue whale diving behavior. These results illustrate that responses evaluated without such measurements for foraging animals may be misleading, which again illustrates the context-dependent nature of the probability of response.

Exposure of marine mammals to sound sources can result in, but is not limited to, no response or any of the following observable responses: increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007). A review of marine mammal responses to anthropogenic sound was first conducted by Richardson *et al.* (1995b). More recent reviews (Nowacek *et al.,* 2007; DeRuiter *et al.,* 2013a, 2013b; Ellison *et al.,* 2012; Gomez *et al.,* 2016; Erbe *et al.,* 2025) address studies conducted since 1995 and focused on observations where the received sound level of the exposed marine mammal(s) was known or could be estimated. Gomez *et al.* (2016) conducted a review of the literature considering the contextual information of exposure in addition to received level and found that higher received levels were not always associated with more severe behavioral responses and vice versa. Southall *et al.* (2016) states that results demonstrate that some individuals of different species display clear yet varied responses, some of which have negative implications, while others appear to tolerate high levels, and that responses may not be fully predictable with simple acoustic exposure metrics (*e.g.,* received sound level). Rather, the authors state that differences among species and individuals along with contextual aspects of exposure (*e.g.,* behavioral state) appear to affect response probability (Southall *et al.,* 2019). The following parts provide examples of behavioral responses to stressors that provide an idea of the variability in responses that would be expected given the differential sensitivities of marine mammal species to sound and the wide range of potential acoustic sources to which a marine mammal may be exposed. Behavioral responses that could occur for a given sound exposure should be determined from the literature that is available for each species (see section 4.5 (Behavioral Reactions) of the Acoustic and Explosives Concepts Technical Report for a comprehensive list of behavioral studies and species-specific findings) or extrapolated from closely related species when no information exists, along with contextual factors.

Responses Due to Sonar and Other Transducers—

Mysticetes responses to sonar and other duty-cycled tonal sounds are

dependent upon the characteristics of the signal, behavioral state of the animal, sensitivity and previous experience of an individual, and other contextual factors including distance of the source, movement of the source, physical presence of vessels, time of year, and geographic location (Goldbogen *et al.,* 2013; Harris *et al.,* 2019a; Harris *et al.,* 2015; Martin *et al.,* 2015; Sivle *et al.,* 2015b). For example, a behavioral response study (BRS) in Southern California demonstrated that individual behavioral state was critically important in determining response of blue whales to Navy sonar. In this BRS, some blue whales engaged in deep (>50 m) feeding behavior had greater dive responses than those in shallow feeding or non-feeding conditions, while some blue whales that were engaged in shallow feeding behavior demonstrated no clear changes in diving or movement even when received levels were high (approximately 160 dB re 1 μPa) from exposures to 3–4 kHz sonar signals, while others showed a clear response at exposures at lower received level of sonar and pseudorandom noise (Goldbogen *et al.,* 2013). Generally, behavioral responses were brief and of low to moderate severity, and the whales returned to baseline behavior shortly after the end of the acoustic exposure (DeRuiter *et al.,* 2017; Goldbogen *et al.,* 2013; Southall *et al.,* 2019c). To better understand the context of these behavioral responses, Friedlaender *et al.* (2016) mapped the prey field of the deep-diving blue whales and found that the response to sound was more apparent for individuals engaged in feeding than those that were not. The probability of a moderate behavioral response increased when the source was closer for these foraging blue whales, although there was a high degree of uncertainty in that relationship (Southall *et al.,* 2019b). In the same BRS, none of the tagged fin whales demonstrated more than a brief or minor response regardless of their behavioral state (Harris *et al.,* 2019a). The fin whales were exposed to both mid-frequency simulated sonar and pseudorandom noise of similar frequency, duration, and source level. They were less sensitive to disturbance than blue whales, with no significant differences in response between behavioral states or signal types. The authors rated responses as low-to-moderate severity with no negative impact to foraging success (Southall *et al.,* 2023).

Similarly, while the rates of foraging lunges decrease in humpback whales due to sonar exposure, there was variability in the response across individuals, with one animal ceasing to forage completely and another animal starting to forage during the exposure (Sivle *et al.,* 2016). In addition, almost half of the animals that exhibited avoidance behavior were foraging before the exposure, but the others were not; the animals that exhibited avoidance behavior while not feeding responded at a slightly lower received level and greater distance than those that were feeding (Wensveen *et al.,* 2017). These findings indicate that the behavioral state of the animal plays a role in the type and severity of a behavioral response. Henderson *et al.* (2019) examined tagged humpback whale dive and movement behavior, including individuals incidentally exposed to Navy sonar during training activities, at the Pacific Missile Range Facility off Kaua'i, Hawaii. Tracking data showed that, regardless of exposure to sonar, individual humpbacks spent limited time, no more than a few days, in the vicinity of Kaua'i. Potential behavioral responses due to sonar exposure were limited and may have been influenced by breeding and social behaviors. Martin *et al.* (2015) found that the density of calling minke whales was reduced during periods of Navy training involving sonar relative to the periods before training began and increased again in the days following the completion of training activities. The responses of individual whales could not be assessed, so in this case it is unknown whether the decrease in calling animals indicated that the animals left the range or simply ceased calling. Harris *et al.* (2019b) utilized acoustically generated minke whale tracks to statistically demonstrate changes in the spatial distribution of minke whale acoustic presence before, during, and after surface ship MFAS training. The spatial distribution of probability of acoustic presence was different in the ''during'' phase compared to the ''before'' phase, and the probability of presence at the center of ship activity during MFAS training was close to zero for both years. The ''after'' phases for both years retained lower probabilities of presence suggesting the return to baseline conditions may take more than 5 days. The results show a clear spatial redistribution of calling minke whales during surface ship MFAS training; however, a limitation of passive acoustic monitoring (PAM) is that one cannot conclude if the whales moved away, went silent, or a combination of the two.

Building on this work, Durbach *et al.* (2021) used the same data and determined that individual minke whales tended to be in either a fast or slow movement behavior state while on the missile range, where whales tended to be in the slow state in baseline or before periods but transitioned into the fast state with more directed movement during sonar exposures. They also moved away from the area of sonar activity on the range, either to the north or east depending on where the activity was located; this explains the spatial redistribution found by Harris *et al.* (2019b). Minke whales were also more likely to stop calling when in the fast state, regardless of sonar activity, or when in the slow state during sonar activity (Durbach *et al.,* 2021). Similarly, minke whale detections were reduced or ceased altogether during periods of sonar use off Jacksonville, Florida (Norris *et al.,* 2012; Simeone *et al.,* 2015; U.S. Department of the Navy, 2013), especially with an increased ping rate (Charif *et al.,* 2015).

Odontocetes have varied, context-dependent behavioral responses to sonar and other transducers. Much of the research on odontocetes has been focused on understanding the impacts of sonar and other transducers on beaked whales because they were hypothesized to be more susceptible to behavioral disturbance after several strandings of beaked whales in which military MFAS was identified as a contributing factor (see *Stranding and Mortality* section). Subsequent BRSs have shown that beaked whales are likely more sensitive to disturbance than most other cetaceans. Many species of odontocetes have been studied during BRSs, including Blainville's beaked whale, goose-beaked whale, Baird's beaked whale, northern bottlenose whale, harbor porpoise, pilot whale, killer whale, sperm whale, false killer whale, melon-headed whale, bottlenose dolphin, rough-toothed dolphin, Risso's dolphin, Pacific white-sided dolphin, and Commerson's dolphin. Observed responses by Blainville's beaked whales, goose-beaked whales, Baird's beaked whales, and northern bottlenose whales (the largest of the beaked whales), to MF sonar sounds include cessation of clicking, decline in group vocal periods, termination of foraging dives, changes in direction to avoid the sound source, slower ascent rates to the surface, longer deep and shallow dive durations, and other unusual dive behaviors (DeRuiter *et al.,* 2013b; Hewitt *et al.,* 2022; Jacobson *et al.,* 2022; Martín López *et al.,* 2025; McCarthy *et al.,* 2011; Miller *et al.,* 2015; Moretti *et al.,* 2014;

Southall *et al.,* 2011; Stimpert *et al.,* 2014; Tyack *et al.,* 2011).

During a BRS in Southern California, a tagged Baird's beaked whale exposed to simulated MFAS within 3 km increased swim speed and modified its dive behavior (Stimpert *et al.,* 2014). One goose-beaked whale was also incidentally exposed to real Navy sonar located over 100 km away in addition to the source used in the controlled exposure study, and the authors did not detect similar responses at comparable received levels. Received levels from the MFAS signals from the controlled (3.4 to 9.5 km) exposures were calculated as 84–144 dB re 1 μPa, and incidental (118 km) exposures were calculated as 78–106 dB re 1 μPa, indicating that context of the exposures (*e.g.,* source proximity, controlled source ramp-up) may have been a significant factor in the responses to the simulated sonars (DeRuiter *et al.,* 2013b).

Long-term tagging work during the same BRS demonstrated that the longer duration dives considered a behavioral response by DeRuiter *et al.* (2013b) fell within the normal range of dive durations found for eight tagged goose-beaked whales on the Southern California Offshore Range (Schorr *et al.,* 2014). However, the longer inter-deep dive intervals found by DeRuiter *et al.* (2013b), which were among the longest found by Schorr *et al.* (2014) and Falcone *et al.* (2017), may indicate a response to sonar. During controlled exposure experiments in an area of the Atlantic Ocean with relatively infrequent sonar use, Southall *et al.* (2026) found a consistent pattern of longer inter-deep-dive intervals in goose-beaked whales exposed to simulated MF sonar beginning at received levels between 100–120 dB re 1 μPa. Williams *et al.* (2017) note that during normal deep dives or during fast swim speeds, beaked whales and other marine mammals use strategies to reduce their stroke rates (*e.g.,* leaping, wave surfing when swimming, interspersing glides between bouts of stroking when diving). The authors determined that in the post-exposure dives by the tagged goose-beaked whales described in DeRuiter *et al.* (2013b), the whales ceased gliding and swam with almost continuous strokes. This change in swim behavior was calculated to increase metabolic costs by about 30.5 percent and increase the amount of energy expending on fast swim speeds from 27–59 percent of their overall energy budget. This repartitioning of energy was detected in the model up to 1.7 hours after the single sonar exposure. Therefore, while the overall post-exposure dive durations were similar, the metabolic energy calculated by Williams *et al.* (2017) was higher. However, Southall *et al.* (2019a) found that prey availability was higher in the western area of the Southern California Offshore Range where goose-beaked whales preferentially occurred, while prey resources were lower in the eastern area and moderate in the area just north of the Range. This high prey availability may indicate that goose-beaked whales need fewer foraging dives to meet energy requirements than would be needed in another area with fewer resources.

During a BRS in Norway, northern bottlenose whales avoided a sonar sound source over a wide range of distances (0.8 to 28 km) and estimated avoidance thresholds ranging from received SPLs of 117 to 126 dB re 1 μPa. The behavioral response characteristics and avoidance thresholds were comparable to those previously observed in beaked whale studies; however, researchers did not observe an effect of distance on behavioral response and found that onset and intensity of behavioral response were better predicted by received SPL. There was one instance where an individual northern bottlenose whale approached the vessel, circled the sound source (source level was only 122 dB re 1 μPa), and resumed foraging after the exposure. Conversely, one northern bottlenose whale exposed to a sonar source was documented performing the longest and deepest dive on record for the species, and continued swimming away from the source for more than 7 hours (Miller *et al.,* 2015; Siegal *et al.,* 2022; Wensveen *et al.,* 2019).

Research on Blainville's beaked whales at the Atlantic Undersea Test and Evaluation Center (AUTEC) range has shown that individuals move off-range during sonar use, only returning after the cessation of sonar transmission (Boyd *et al.,* 2009; Henderson *et al.,* 2015; Jones-Todd *et al.,* 2021; Manzano-Roth *et al.,* 2022; Manzano-Roth *et al.,* 2016; McCarthy *et al.,* 2011; Tyack *et al.,* 2011). Five Blainville's beaked whales estimated to be within 2 to 29 km of the AUTEC range at the onset of active sonar were displaced a maximum of 28–68 km after moving away from the range, although one individual did approach the range during active sonar use. Researchers found a decline in deep dives at the onset of the training and an increase in time spent on foraging dives as whales moved away from the range. Predicted received levels at which presumed responses were observed were comparable to those previously observed in beaked whale studies. Acoustic data indicated that vocal periods were detected on the range within 72 hours after training ended (Joyce *et al.,* 2019). However, Blainville's beaked whales have been documented to remain on-range to forage throughout the year (Henderson *et al.,* 2016), indicating the AUTEC range may be a preferred foraging habitat regardless of the effects of active sonar noise, or it could be that there are no long-term consequences of the sonar activity. In the Southern California Range Complex, researchers conducting photo-identification studies have identified approximately 100 individual goose-beaked whales, with 40 percent having been seen in one or more prior years, with re-sightings up to 7 years apart, indicating a possible on-range resident population (Falcone and Schorr, 2014; Falcone *et al.,* 2009).

The probability of Blainville's beaked whale group vocal periods on the Pacific Missile Range Facility (PMRF) were modeled during periods of (1) no naval activity, (2) naval activity without hull-mounted MFAS, and (3) naval activity with hull-mounted MFAS (Jacobson *et al.,* 2022). At a received level of 150 dB re 1 μPa RMS SPL, the probability of detecting a group vocal period during MFAS use decreased by 77 percent compared to periods when general training activity was ongoing, and by 87 percent compared to baseline (no naval activity) conditions. Jacobsen *et al.* (2022) found a greater reduction in probability of a group vocal period with MFAS than observed in a prior study of the same species at the AUTEC range (Moretti *et al.,* 2014), which may be due to the baseline period in the AUTEC study including naval activity without MFAS, potentially lowering the baseline group vocal period activity in that study, or due to differences in the residency of the populations at each range.

Stanistreet *et al.* (2022) used passive acoustic recordings during a multinational navy activity to assess marine mammal acoustic presence and behavioral response to especially long bouts of sonar lasting up to 13 consecutive hours, occurring repeatedly over 8 days (median and maximum SPL = 120 dB and 164 dB). Goose-beaked whales and sperm whales substantially reduced how often they produced clicks during sonar, indicating a decrease or cessation in foraging behavior. Few previous studies have shown sustained changes in foraging or displacement of sperm whales, but there was an absence of sperm whale clicks for 6 consecutive days of sonar activity. Sperm whales returned to baseline levels of clicks within days after the activity, but beaked whale detection rates remained

low even 7 days after the exercise. In addition, there were no detections from a Mesoplodon beaked whale species within the area during, and at least 7 days after, the sonar activity. Clicks from northern bottlenose whales and Sowerby's beaked whales were also detected but were not frequent enough at the recording site used to compare clicks between baseline and sonar conditions.

Goose-beaked whale behavioral responses (*i.e.,* deep and shallow dive durations, surface interval durations, inter-deep dive intervals) on the Southern California Anti-Submarine Warfare Range were modeled against predictor values that included helicopter dipping sonar, mid-power MFAS and hull-mounted, high-power MFAS along with other non-MFAS predictors (Falcone *et al.,* 2017). Falcone *et al.* (2017) found both shallow and deep dive durations increased as the proximity to both mid- and high-powered sources decreased and found that surface intervals and inter-deep dive intervals increased in the presence of both types of sonars (helicopter dipping and hull-mounted), although surface intervals shortened during periods without MFAS. Proximity of source and receiver were important considerations, as the responses to the mid-power MFAS at closer ranges were comparable to the responses to the higher source level vessel sonar, as was the context of the exposure. Helicopter dipping sonars are shorter duration and randomly located, therefore more difficult to predict or track by beaked whales and potentially more likely to elicit a response, especially at closer distances (6–25 km) (Falcone *et al.,* 2017).

Sea floor depths and quantity of light (*i.e.,* lunar cycle) are also important variables to consider in BRSs, as goose-beaked whale foraging dive depth increased with sea floor depth (maximum 2,000 m) and the amount of time spent at foraging depths (and likely foraging) was greater at night (likely avoiding predation by staying deeper during periods of bright lunar illumination), although they spent more time near the surface during the night, as well, particularly on dark nights with little moonlight (Barlow *et al.,* 2020). Sonar occurred during 10 percent of the dives studied and had little effect on the resulting dive metrics. Watwood *et al.* (2017) found that the longer the duration of a sonar event, the greater the reduction in detected goose-beaked whale group dives and, as helicopter dipping events occurred more frequently but with shorter durations than periods of hull-mounted sonar, when looking at the number of detected group dives there was a greater reduction during periods of hull-mounted sonar than during helicopter dipping sonar. DiMarzio *et al.* (2019) also found that group vocal periods (*i.e.,* clusters of foraging pulses), on average, decreased during sonar events on the Southern California Anti-Submarine Warfare Range, though the decline from before the event to during the event was significantly less for helicopter dipping events than hull-mounted events, and there was no difference in the magnitude of the decline between vessel-only events and events with both vessels and helicopters. Manzano-Roth *et al.* (2022) analyzed long-term PAM data from the PMRF in Kaua'i, Hawaii, and found beaked whales reduced group vocal periods during submarine command course events and remained low for a minimum of 3 days after the MFAS activity.

Harbor porpoise behavioral responses have been researched extensively using acoustic deterrent and acoustic harassment devices; however, BRSs using sonar are limited. Kastelein *et al.* (2018) found harbor porpoises did not respond to low-duty cycle MF sonar tones (3.5–4.1 kHz at 2.7 percent duty cycle; *e.g.,* one tone per minute) at any received level, but one individual did respond (*i.e.,* increased jumping, increased respiration rates) to high-duty cycle sonar tones (3.5–4.1 kHz at 96 percent duty cycle; *e.g.,* continuous tone for almost a minute).

Behavioral responses by odontocetes (other than beaked whales and harbor porpoises) to sonar and other transducers include horizontal avoidance, reduced breathing rates, changes in behavioral state, changes in vocal behavior, changes in dive behavior (Antunes *et al.,* 2014; Isojunno *et al.,* 2018; Isojunno *et al.,* 2017; Isojunno *et al.,* 2020; Miller, 2012; Miller *et al.,* 2011; Miller *et al.,* 2014; Samarra *et al.,* 2025; Southall *et al.,* 2024), and, in one study, separation of a killer whale calf from its group (Miller *et al.,* 2011). Some species of dolphin (*e.g.,* bottlenose, spotted, spinner, Clymene, Pacific white-sided, rough-toothed) are frequently documented bowriding with vessels and the drive to engage in bowriding, whether for pleasure or energetic savings (Fiori *et al.,* 2024) may supersede the impact of associated sonar noise (Würsig *et al.,* 1998).

In controlled exposure experiments on captive odontocetes, Houser *et al.* (2013a) recorded behavioral responses from bottlenose dolphins with 3 kHz sonar-like tones between 115–185 dB re 1 μPa, and individuals across 10 trials demonstrated a 50 percent probability of response at 172 dB re 1 μPa. Multiple studies have been conducted on bottlenose dolphins and beluga whales to measure TTS (Finneran *et al.,* 2003a; Finneran *et al.,* 2001; Finneran *et al.,* 2005; Finneran and Schlundt, 2004; Schlundt *et al.,* 2000). During these studies, when individuals were presented with 1-second tones up to 203 dB re 1 μPa, responses included changes in respiration rate, fluke slaps, and a refusal to participate or return to the location of the sound stimulus, including what appeared to be deliberate attempts by animals to avoid a sound exposure or to avoid the location of the exposure site during subsequent tests (Finneran *et al.,* 2002; Schlundt *et al.,* 2000). Bottlenose dolphins exposed to more intense 1-second tones exhibited short-term changes in behavior above received levels of 178–193 dB re 1 μPa, and beluga whales did so at received levels of 180–196 dB re 1 μPa and above.

While several opportunistic observations of odontocete (other than beaked whales and harbor porpoises) responses have been recorded during previous Navy activities and BRSs that employed sonar and sonar-like sources, it is difficult to definitively attribute responses of non-focal species to sonar exposure. Responses range from no response to potentially impactful responses, such as the separation of a killer whale calf from its group (Miller *et al.,* 2011). This may be due, in part, to the variety of species and sensitivities of the odontocete taxonomic group, as well as the breadth of study types conducted and field observations, leading to the assessment of both contextually driven and dose-based responses. The available data indicate exposures to sonar in close proximity and with multiple vessels approaching an animal likely lead to higher-level responses by most odontocete species, regardless of received level or behavioral state. However, when sources are further away and moving in variable directions, behavioral responses are likely driven by behavioral state, individual experience, or species-level sensitivities, as well as exposure duration and received level, with the likelihood of response increasing with increased received levels. As such, it is expected odontocete behavioral responses to sonar and other transducers will vary by species, populations, and individuals, and long-term consequences or population-level effects are likely dependent upon the frequency and

duration of the exposure and resulting behavioral response.

Responses Due to Impulsive Noise—

Impulsive signals have a rapid rise time and higher instantaneous peak pressure than other signal types, particularly at close range, which means they are more likely to cause startle or avoidance responses. At long distances, however, the rise time increases as the signal duration lengthens (similar to a ''ringing'' sound), making the impulsive signal more similar to a non-impulsive signal (Hastie *et al.,* 2019; Martin *et al.,* 2020). Behavioral responses from explosive sounds are likely to be similar to responses studied for other impulsive noise, such as those produced by air guns and impact pile driving. Data on behavioral responses to impulsive sound sources are limited across all marine mammal groups, with only a few studies available for mysticetes and odontocetes.

Mysticetes have varied responses to impulsive sound sources, including avoidance, aggressive directed movement towards the source, reduced surface intervals, altered swimming behavior, and changes in vocalization rates (Gordon *et al.,* 2003; McCauley *et al.,* 2000a; Richardson *et al.,* 1985; Southall *et al.,* 2007). Studies have been conducted on many baleen whale species, including gray, humpback, blue, fin, and bowhead whales; it is assumed that these responses are representative of all baleen whale species. The behavioral state of the whale seems to be an integral part of whether the animal responds and how they respond, as does the location and movement of the sound source, more than the received level of the sound.

If an individual is engaged in migratory behavior, it may be more likely to respond to impulsive noise, and some species may be more sensitive than others. Migrating gray whales showed avoidance responses to seismic vessels at received levels between 164 and 190 dB re 1 µPa (Malme *et al.,* 1986,; Malme *et al.,* 1988). In one study, McCauley *et al.* (1998) found that migrating humpback whales in Australia showed avoidance behavior at ranges of 5–8 km from a seismic array during observational studies and controlled exposure experiments, and another study found humpback whales in Australia decreased their dive times and reduced their swimming speeds (Dunlop *et al.,* 2015). However, when comparing received levels and behavioral responses between air gun ramp-up versus constant noise level of air guns, humpback whales did not change their dive behavior but did deviate from their predicted heading and decreased their swim speeds, deviating more during the constant noise source trials but reducing swim speeds more during ramp-up trials (Dunlop *et al.,* 2016). In both cases, there was no dose-response relationship with the received level of the air gun noise, and similar responses were observed in control trials without air guns (vessel movement remained constant across trials), so some responses may have been due to vessel presence and not received level from the air guns. Social interactions between males and mother-calf pairs were reduced in the presence of vessels towing seismic air gun arrays, regardless of whether the air guns were active or not, which indicates that it was likely the presence of vessels (rather than the impulsive noise generated from active air guns) that affected humpback whale behavior (Dunlop *et al.,* 2020).

Proximity of the impulsive source is another important factor to consider when assessing the potential for behavioral responses in marine mammals. Dunlop *et al.* (2017) found that groups of humpback whales were more likely to avoid a smaller air gun array at closer proximity than a larger air gun array, despite the same received level, showing the difference in response between arrays has more to do with the combined effects of received level and source proximity. In this study, responses were varied and generally small, with short-term course deviations of about 500 m. Studies on bowhead whales have shown they may be more sensitive than other species to impulsive noise, as individuals have shown clear changes in diving and breathing patterns up to 73 km from seismic vessels with received levels as low as 125 dB re 1 µPa (Malme *et al.,* 1988). Richardson *et al.* (1995a) documented bowhead whales exhibiting avoidance behaviors at a distance of more than 20 km from seismic vessels when received levels were as low as 120 dB re 1 µPa, although most did not show active avoidance until 8 km from the source. Although bowhead whales may avoid the area around seismic surveys, from 6 to 8 km (Koski and Johnson, 1987, as cited in Gordon *et al.,* 2003) out to 20 or 30 km (Richardson *et al.,* 1999), a study by Robertson *et al.* (2013) supports the idea that behavioral responses are contextually dependent, and that during seismic operations, bowhead whales may be less ''available'' for counting due to alterations in dive behavior but that they may not have completely vacated the area.

In contrast, noise from seismic surveys was not found to impact feeding behavior or exhalation rates in western gray whales while resting or diving off the coast of Russia (Gailey *et al.,* 2007; Yazvenko *et al.,* 2007); however, the increase in vessel traffic associated with surveys and the proximity of the vessels to the whales did affect the orientation of the whales relative to the vessels and shortened their dive-surface intervals (Gailey *et al.,* 2016). They also increased their speed and distance from the noise source and have been documented in one case study swimming towards shore to avoid an approaching seismic vessel (Gailey *et al.,* 2022). Todd *et al.* (1996) found no clear short-term behavioral responses by foraging humpbacks to explosions associated with construction operations in Newfoundland but did see a trend of increased rates of net entanglement closer to the noise source, possibly indicating a reduction in net detection associated with the noise through masking or TTS. Distributions of fin and minke whales were modeled with multiple environmental variables and with the occurrence or absence of seismic surveys, and no evidence of a decrease in sighting rates relative to seismic activity was found for either species (Vilela *et al.,* 2016). Their distributions were driven entirely by environmental variables, particularly those linked to prey, including warmer sea surface temperatures, higher chlorophyll-a values, and higher photosynthetically available radiation (a measure of primary productivity). Sighting rates based on over 8,000 hours of baleen and toothed whale survey data were compared on regular vessel surveys versus both active and passive periods of seismic surveys (Kavanagh *et al.,* 2019). Models of sighting numbers were developed, and it was determined that baleen whale sightings were reduced by 88 percent during active and 87 percent during inactive phases of seismic surveys compared to regular surveys. These results seemed to occur regardless of geographic location of the survey; however, when only comparing active versus inactive periods of seismic surveys, the geographic location did seem to affect the change in sighting rates.

Mysticetes seem to be the most behaviorally sensitive taxonomic group of marine mammals to impulsive sound sources, with possible avoidance responses occurring out to 30 km and vocal changes occurring in response to sounds over 100 km away. However, they are also the most studied taxonomic group, yielding a larger sample size and greater chance of

finding behavioral responses to impulsive noise. Also, their responses appear to be behavior-dependent, with most avoidance responses occurring during migration behavior and little observed response during feeding behavior. These response patterns are likely to hold true for impulsive sources used by the Action Proponents; however, their impulsive sources would largely be stationary (*e.g.,* explosives fired at a fixed target, small air guns) and short term (hours rather than days or weeks) compared with the activities in the aforementioned studies, so responses would likely occur in closer proximity to animals or not at all.

Odontocete responses to impulsive noise are not well studied and the majority of data have come from seismic (*i.e.,* air gun) surveys, pile driving, and construction activities, while only a few studies have been done to understand how explosive sounds impact odontocetes. What data are available show they may be less sensitive than mysticetes to impulsive sound and that responses occur at closer distances. This may be due to the predominance of low-frequency sound associated with impulsive sources that propagates across long distances and overlaps with the range of best hearing for mysticetes but is below that range for odontocetes. Even harbor porpoises—shown to be highly sensitive to most sound sources, avoiding both stationary (*e.g.,* pile driving) and moving (*e.g.,* seismic survey vessels) impulsive sound sources out to approximately 20 km (*e.g.,* Haelters *et al.,* 2014; Pirotta *et al.,* 2014)—have short-term responses, returning to an area within hours upon cessation of the impulsive noise.

Although odontocetes are generally considered less sensitive, impulsive noise does impact toothed whales in a variety of ways. In one study, dolphin detections were compared during 30-second periods before, during, and after underwater detonations near naval mine neutralization exercises in Virginia Capes Operating Area. Lammers *et al.* (2017) found that within 30 seconds after an explosion, the immediate response was an increase in whistles compared to the 30 seconds before an explosion, and that there was a reduction in dolphin acoustic activity during the day of and day after the exercise within 6 km. This held true only during daytime, as nighttime activity did not appear different than before the exercise, and 2 days after the explosion there seemed to be an increase in daytime acoustic activity, indicating dolphins may have returned to the area or resumed vocalizations (Lammers *et al.,* 2017). Weaver (2015) documented potential sex-based differences in behavioral responses to impulsive noise during construction (including blasting) of a bridge over a waterway commonly used by bottlenose dolphins, where females decreased area use and males continued using the area, perhaps indicating differential habitat uses.

When exposed to multiple impulses from a seismic air gun, Finneran *et al.* (2015) noted some captive dolphins turned their heads away from the source just before the impulse, indicating they could anticipate the timing of the impulses and may be able to behaviorally mediate the exposure to reduce their received level. Kavanagh *et al.* (2019) found sightings of odontocete whales decreased by 53 percent during active phases of seismic air gun surveys and 29 percent during inactive phases compared to control surveys. Heide-Jorgensen *et al.* (2021) found that narwhals exposed to air gun noise in an Arctic fjord were sensitive to seismic vessels over 11 km away, even though the small air gun source reached ambient noise levels around 3 km (source level of 231 dB re 1 μPa at 1 m) and large air gun source reached ambient noise levels around 10 km (source level 241 dB re 1 μPa at 1 m). Behavioral responses included changes in swimming speed and swimming direction away from the impulsive sound source and towards the shoreline. Changes in narwhal swimming speed was context-dependent and usually increased in the presence of vessels but decreased (a ''freeze'' response) in response to closely approaching air gun pulses (Heide-Jorgensen *et al.,* 2021). A cessation of feeding was also documented when the impulsive noise was less than 10 km away, although received SELs were less than 130 dB re 1 μPa^2s for either air gun at this distance. However, because of this study's research methods and criteria, the long-distance responses of narwhals may be conservatively estimating narwhals' range to behavioral response.

Similarly, harbor porpoises seem to have an avoidance response to seismic surveys by leaving the area and decreasing foraging activity within 5–10 km of the survey, as evidenced by both a decrease in vocalizations near the survey and an increase in vocalizations at a distance (Pirotta *et al.,* 2014; Thompson *et al.,* 2013). The response was short-term, as the porpoises returned to the area within 1 day upon cessation of the air gun operation. Sarnocińska *et al.* (2020) placed autonomous recording devices near oil and gas platforms and control sites to measure harbor porpoise acoustic activity during seismic air gun surveys. They noted a dose-response effect, with the lowest amount of porpoise activity closest to the seismic vessel ($SEL_{single\ shot}$ = 155 dB re 1 μPa^2s) and increasing porpoise activity out to 8–12 km, and that distance to the seismic vessel, rather than sound level, was a better model predictor of porpoise activity. Overall porpoise activity in the seismic survey area was similar to the control sites (approximately 15 km apart), which may indicate the harbor porpoises were moving around the area to avoid the seismic vessel without leaving the area entirely.

Pile driving, another activity that produces impulsive sound, elicited a similar response in harbor porpoises. Benhemma-Le Gall *et al.* (2021) examined changes in porpoise presence and foraging at two offshore windfarms between control (102–104 dB) and construction periods (155–161 dB) and found decreased presence (8–17 percent) and decreased foraging activity (41–62 percent) during construction periods. Porpoises were displaced up to 12 km away from pile driving and 4 km from construction vessels. Multiple studies have documented strong avoidance responses by harbor porpoises out to 20 km during pile driving activity; however, animals returned to the area after the activity stopped (Brandt *et al.,* 2011; Dähne *et al.,* 2014; Haelters *et al.,* 2014; Thompson *et al.,* 2010; Tougaard *et al.,* 2005; Tougaard *et al.,* 2009). When bubble curtains were deployed around pile driving, the avoidance distance appeared to be reduced by half to 12 km, and the animals returned to the area after approximately 5 hours rather than 1 day later (Dähne *et al.,* 2017). Further, Bergström *et al.* (2014) found that although there was a high likelihood of acoustic disturbance during wind farm construction (including pile driving), the impact was short-term, and Graham *et al.* (2019) found that the distance at which behavioral responses of harbor porpoises occurred likely decreased over the course of a construction project, suggesting habituation to impulsive pile-driving noise. Kastelein *et al.* (2013b) exposed captive harbor porpoises to impact pile driving noise and found that respiration rates increased above 136 dB re 1 μPa (zero-to-peak), and at higher sound levels individuals jumped more frequently. When a single harbor porpoise was exposed to playbacks of impact pile driving noise with different bandwidths, Kastelein *et al.* (2022) found the animal's behavioral response (*i.e.,* swim

speed, respiration rate, jumping) decreased with bandwidth.

Overall, odontocete behavioral responses to impulsive sound sources are likely species- and context-dependent. Responses might be expected close to a noise source, under specific behavioral conditions such as females with offspring, or for sensitive species such as harbor porpoises, while many other species demonstrate little to no behavioral response.

Responses Due to Vessel Noise—

Mysticetes have varied responses to vessel noise and presence, from having no response to approaching vessels to exhibiting an avoidance response by both horizontal (swimming away) and vertical (increased diving) movement (Baker *et al.,* 1983; Fiori *et al.,* 2019; Gende *et al.,* 2011). Avoidance responses include changing swim patterns, speed, or direction (Jahoda *et al.,* 2003), remaining submerged for longer periods of time (Au and Green, 2000), and performing shallower dives with more frequent surfacing. Behavioral responses to vessels range from smaller-scale changes, such as altered breathing patterns (*e.g.,* Baker *et al.,* 1983; Jahoda *et al.,* 2003), to larger-scale changes, such as a decrease in apparent presence (Anderwald *et al.,* 2013). Other common behavioral responses include changes in vocalizations, surface time, feeding and social behaviors (Au and Green, 2000; Dunlop, 2019; Fournet *et al.,* 2018; Machernis *et al.,* 2018; Richter *et al.,* 2003; Williams *et al.,* 2002). For example, North Atlantic right whales (NARWs) have been reported to increase the amplitude or frequency of their vocalizations or call at a lower rate in the presence of increased vessel noise (Parks *et al.,* 2007; Parks *et al.,* 2011) but generally demonstrate little to no response to vessels or sounds from approaching vessels and often continue to use habitats in high vessel traffic areas (Nowacek *et al.,* 2004). This lack of response may be due to habituation to the presence and associated noise of vessels in NARW habitat or may be due to propagation effects that may attenuate vessel noise near the surface (Nowacek *et al.,* 2004; Terhune and Verboom, 1999).

Similarly, sei whales have been observed ignoring the presence of vessels entirely and even pass close to vessels (Reeves *et al.,* 1998). Ramesh *et al.* (2021) found that fin whale calls in Ireland were less likely to be detected for every 1 dB re 1 μPa/minute increase in shipping noise levels. In the presence of tour boats in Chile, fin whales were changing their direction of movement more frequently, with less linear movement than occurred before the boats arrived; this behavior may represent evasion or avoidance of the boats (Santos-Carvallo *et al.,* 2021). The increase in travel swim speeds after the vessels departed may be related to the rapid speeds at which the vessels traveled, sometimes in front of fin whales, leading to additional avoidance behavior post-exposure.

Mysticete behavioral responses to vessels may also be affected by vessel behavior (Di Clemente *et al.,* 2018; Fiori *et al.,* 2019). Avoidance responses occurred most often after J-type vessel approaches (*i.e.,* traveling parallel to the whales' direction of travel, then overtaking the whales by turning in front of the group) compared to parallel or direct approaches. Mother humpbacks were particularly sensitive to direct and J-type approaches and spent significantly more time diving in response (Fiori *et al.,* 2019). The presence of a passing vessel did not change the behavior of resting humpback whale mother-calf pairs, but fast vessels with louder low-frequency weighted source levels (173 dB re 1 μPa, equating to weighted received levels of 133 dB re 1 μPa) at an average distance of 100 m resulted in a decreased resting behavior and increases in dives, swim speeds, and respiration rates (Sprogis *et al.,* 2020). Humpback whale responses to vessel disturbance were dependent on their behavioral state. Di Clemente *et al.* (2018) found that when vessels passed within 500 m of humpback whales, individuals would continue to feed if already engaged in feeding behavior but were more likely to start swimming if they were surface active when approached. In response to an approaching large commercial vessel in an area of high ambient noise levels (125–130 dB re 1 μPa), a tagged female blue whale turned around mid-ascent and descended perpendicular to the vessel's path (Szesciorka *et al.,* 2019). The whale did not respond until the vessel's closest point of approach (100 m distance, 135 dB re 1 μPa RMS), which was 10 dB above the ambient noise levels. After the vessel passed, the whale ascended to the surface again with a 3-minute delay.

Overall, mysticete responses to vessel noise and traffic are varied, and habituation or changes to vocalization are predominant long-term responses. When baleen whales do avoid vessels, they seem to do so by altering their swim and dive patterns to move away from the vessel. Although a lack of response in the presence of a vessel may minimize potential disturbance from passing vessels, it does increase the whales' vulnerability to vessel strike, which may be of greater concern for mysticetes than vessel noise.

Odontocete responses due to vessel noise are varied and context-dependent, and it is difficult to separate the impacts of vessel noise from the impacts of vessel presence. Vessel presence has been shown to interrupt feeding behavior in delphinids in some studies (Meissner *et al.,* 2015; Pirotta *et al.,* 2015b) while a recent study by Mills *et al.* (2023) found that, in an important foraging area, bottlenose dolphins may continue to forage and socialize even while constantly exposed to high vessel traffic. Ng and Leung (2003) found that the type of vessel, approach, and speed of approach can all affect the probability of a negative behavioral response and, similarly, Guerra *et al.* (2014) documented varied responses in group structure and vocal behavior.

While most odontocetes have documented neutral responses to vessels, avoidance (Bejder *et al.,* 2006a; Würsig *et al.,* 1998) and attraction (Norris and Prescott, 1961; Ritter, 2002; Shane *et al.,* 1986; Westdal *et al.,* 2023; Würsig *et al.,* 1998) behaviors have also been observed (Hewitt, 1985). Archer *et al.* (2010) compared the responses of dolphin populations far offshore that were often targeted by tuna fisheries to populations closer (less than 185.2 km) to shore and found the fisheries-associated populations (spotted, spinner, and common dolphins) showed evasive behavior when approached by vessels while those nearshore species not associated with offshore fisheries (coastal spotted and bottlenose dolphins) tended to be attracted to vessels.

Arranz *et al.* (2021) used different engine types to determine whether behavioral responses of short-finned pilot whales were attributable to vessel noise, vessel presence, or both. Mother-calf pairs were approached by the same vessel outfitted with either quiet electric engines or noisy traditional combustion engines, controlling for approach speed and distance. Arranz *et al.* (2021) found mother pilot whales rested less and calves nursed less in response to both types of engines compared to control conditions, but only the noisy engine caused significant impacts (29 percent and 81 percent, respectively).

Smaller vessels tend to generate more noise in higher frequency bands, are more likely to approach odontocetes directly, and spend more time near an animal. Carrera *et al.* (2008) found tour boat activity can cause short-term displacement of dolphins, and Haviland-Howell *et al.* (2007) documented longer term or repetitive

displacement of dolphins due to chronic vessel noise. Delphinid behavioral states also change in the presence of small tour vessels that often approach animals: travel and resting increases, foraging and social behavior decreases, and animals move closer together (Cecchetti *et al.,* 2017; Clarkson *et al.,* 2020; Kassamali-Fox *et al.,* 2020; Meissner *et al.,* 2015). Most studies on behavioral responses of bottlenose dolphins to vessel traffic show at least short-term changes in behavior, activities, or vocalization patterns when vessels are nearby (Acevedo, 1991; Arcangeli and Crosti, 2009; Berrow and Holmes, 1999; Fumagalli *et al.,* 2018; Gregory and Rowden, 2001; Janik and Thompson, 1996; Lusseau, 2004; Marega *et al.,* 2018; Mattson *et al.,* 2005; Perez-Ortega *et al.,* 2021; Puszka *et al.,* 2021; Scarpaci *et al.,* 2000).

Information is limited on beaked whale responses to vessel noise, but Würsig *et al.* (1998) noted that most beaked whales seem to exhibit avoidance behaviors when exposed to vessels and beaked whales may respond to all anthropogenic noise (*i.e.,* sonar, vessel) at similar sound levels (Aguilar de Soto *et al.,* 2006; Tyack *et al.,* 2011; Tyack, 2009). The information available includes a disruption of foraging by a vocalizing goose-beaked whale in the presence of a passing vessel (Aguilar de Soto *et al.,* 2006) and restriction of group movement, or possibly reduction in the number of individuals clicking within the group, after exposure to broadband (received level of 135 dB re 1 µPa) vessel noise up to at least 5.2 km away from the source, though no change in duration of Blainville's beaked whale foraging dives was observed (Pirotta *et al.,* 2012).

Porpoises and small delphinids are known to be sensitive to vessel noise, as well. Frankish *et al.* (2023) found harbor porpoises more likely to avoid large commercial vessels via horizontal movement during the day and vertical movement at night, which supports previous research that the species routinely avoids large, motorized vessels (Polacheck and Thorpe, 1990). Harbor porpoises have also been documented responding to vessels with increased changes in behavioral state and significantly decreased feeding (Akkaya Bas *et al.,* 2017), fewer clicks (Sairanen, 2014), and fewer prey capture attempts and have disrupted foraging when vessels pass closely and noise levels are higher (Wisniewska *et al.,* 2018). Habituation to vessel noise and presence was observed for a resident population of harbor porpoises that was in regular proximity to vessel traffic (10 m to 1 km away); the population had no response in 74 percent of interactions and an avoidance response in 26 percent of interactions. It should be noted that fewer responses in populations of odontocetes regularly subjected to high levels of vessel traffic could be a sign of habituation, or it could be that the more sensitive individuals in the population have abandoned that area of higher human activity.

Most avoidance responses were the result of fast-moving or steady plane-hulling motorized vessels and the vessel type and speed were considered to be more relevant than vessel presence, as few responses were observed to non-motorized or stationary vessels (Oakley *et al.,* 2017). Similarly, Akkaya Bas *et al.* (2017) found that when fast moving vessels were within 50 m of harbor porpoises, there was an 80 percent probability of change in swimming direction but only a 40 percent probability of change when vessels were beyond 400 m. Frankish *et al.* (2023) found that harbor porpoises were most likely to avoid vessels less than 300 m away but, 5–10 percent of the time, they would also respond to vessels more than 2 km away, signifying that they were not just attuning to vessel presence, but to vessel noise as well.

Although most vessel noise is constrained to frequencies below 1 kHz, at close ranges vessel noise can extend into mid- and high frequencies (into the tens of kHz) (Hermannsen *et al.,* 2014; Li *et al.,* 2015) and it is these frequencies that harbor porpoises are likely responding to; the mean M-weighted received SPL threshold for a response at these frequencies is 123 dB re 1 µPa (Dyndo *et al.,* 2015). M-weighting functions are generalized frequency weightings for various groups of marine mammals that were defined by Southall *et al.* (2007) based on known or estimated auditory sensitivity at different frequencies and are used to characterize auditory effects of strong sounds. Hermannsen *et al.* (2019) estimated that noise in the 16 kHz frequency band resulting from small recreational vessels could cause behavioral directions in harbor porpoises and could be elevated up to 124 dB re 1 µPa and raise ambient noise levels by a maximum of 51 dB. The higher noise levels were associated with vessel speed and range, which exceeded the threshold levels found by Dyndo *et al.* (2015) and Wisniewska *et al.* (2018) by 49–85 percent of events with high levels of vessel noise.

Lusseau and Bejder (2007) have reported some long-term consequences of vessel noise on odontocetes, but, overall, there is little information on the long-term and cumulative impacts of vessel noise (National Academies of Sciences Engineering and Medicine, 2017; NMFS, 2007). Many researchers speculate that long-term impacts may occur on odontocete populations that experience repeated interruption of foraging behaviors (Stockin *et al.,* 2008), and Southall *et al.* (2021) indicates that, in many contexts, the localized and coastal home ranges typical of many species make them less resilient to this chronic stressor than mysticetes.

Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to produce, detect, recognize, interpret, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, or navigation) (Clark *et al.,* 2009; Richardson *et al.,* 1995b; Erbe and Farmer, 2000; Tyack, 2000; Erbe *et al.,* 2016; Branstetter and Sills, 2022; Erbe *et al.,* 2025). Masking occurs when the production or receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity and may occur whether the coincident sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin.

As described in detail in section 4.4 (Masking) of the Acoustic and Explosive Concepts Technical Report, the ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss) and/or the ability to produce a signal (communication masking), and existing ambient noise and propagation conditions. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Masking can lead to behavioral changes in both signalers and receivers in an attempt to compensate for noise levels, including vocal changes (*e.g.,* Lombard effect, increasing amplitude, or changing frequency or timing of vocalizations), cessation of foraging, and leaving an area, (Erbe *et al.,* 2016).

Most research on auditory masking is focused on energetic masking, or the ability of the receiver (*i.e.,* listener) to detect a signal in noise. However, from a fitness perspective, both signal

detection and signal interpretation are necessary for success. This type of masking is called informational masking and occurs when a signal is detected by an animal but the meaning of that signal has been lost. Few data exist on informational masking in marine mammals, but studies have shown that some recognition of predator cues might be missed by species that are preyed upon by killer whales if killer whale vocalizations are masked (Curé *et al.,* 2016; Curé *et al.,* 2015; Deecke *et al.,* 2002; Isojunno *et al.,* 2016; Visser *et al.,* 2016). Von Benda-Beckman *et al.* (2021) modeled the effect of pulsed and continuous active sonars (CAS) on sperm whale echolocation and found that sonar sounds could reduce the ability of sperm whales to find prey under certain conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (*i.e.,* masking) sound is man-made, it may be considered harassment when disrupting natural behavioral patterns to the point where the behavior is abandoned or significantly altered. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which only occurs during the sound exposure. Because masking (without resulting in threshold shift) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

Richardson *et al.* (1995b) argued that the maximum radius of influence of anthropogenic noise (including broadband low-frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity (including critical ratios, or the lowest signal-to-noise ratio in which animals can detect a signal) of the animal (Finneran and Branstetter, 2013; Johnson *et al.,* 1989; Southall *et al.,* 2000) or the background noise level present. Masking is most likely to affect some species' ability to detect communication calls and natural sounds (surf noise, prey noise, *etc.*) (Richardson *et al.,* 1995b; Erbe *et al.,* 2025).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009; Matthews *et al.,* 2016; Erbe *et al.,* 2016) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2009; Holt *et al.,* 2009; Tennessen *et al.,* 2024). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995b; Erbe *et al.,* 2025), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014; Erbe *et al.,* 2016; Branstetter and Sills, 2022). Masking can be tested directly in captive species, but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Cholewiak *et al.,* 2018; Branstetter and Sills, 2022; Branstetter *et al.,* 2024; Tennessen *et al.,* 2024).

High-frequency sounds may mask the echolocation calls of toothed whales. Human data indicate low-frequency sounds can mask high-frequency sounds (*i.e.,* upward masking). Studies on captive odontocetes by Au *et al.* (1974; 1985; 1993) indicate that some species may use various processes to reduce masking effects (*e.g.,* adjustments in echolocation call intensity or frequency as a function of background noise conditions). Odontocete hearing is highly directional at high frequencies, facilitating echolocation in masked conditions (Au and Moore, 1984). A study by Nachtigall *et al.* (2018) showed that false killer whales adjust their hearing to compensate for ambient sounds and the intensity of returning echolocation signals.

Impacts on signal detection, measured by masked detection thresholds, are not the only important factors to address when considering the potential effects of masking. As marine mammals use sound to recognize conspecifics, prey, predators, or other biologically significant sources (Branstetter *et al.,* 2016), it is also important to understand the impacts of masked recognition thresholds (*i.e.,* informational masking). Branstetter *et al.* (2016) measured masked recognition thresholds for whistle-like sounds of bottlenose dolphins and observed that they are approximately 4 dB above detection thresholds (energetic masking) for the same signals. Reduced ability to recognize a conspecific call or the acoustic signature of a predator could have severe negative impacts. Branstetter *et al.* (2016) observed that if ''quality communication'' is set at 90 percent recognition the output of communication space models (which are based on 50 percent detection) would likely result in a significant decrease in communication range.

As marine mammals use sound to recognize predators (Allen *et al.,* 2014; Cummings and Thompson, 1971; Curé *et al.,* 2015; Fish and Vania, 1971), the presence of masking noise may also prevent marine mammals from responding to acoustic cues produced by their predators, particularly if it occurs in the same frequency band. For example, harbor seals that reside in the coastal waters of British Columbia are frequently targeted by mammal-eating killer whales. The seals acoustically discriminate between the calls of mammal-eating and fish-eating killer whales (Deecke *et al.,* 2002), a capability that should increase survivorship while reducing the energy required to identify all killer whale calls. Similarly, sperm whales (Curé *et al.,* 2016; Isojunno *et al.,* 2016), long-finned pilot whales (Visser *et al.,* 2016), and humpback whales (Curé *et al.,* 2015) changed their behavior in response to killer whale vocalization playbacks. The potential effects of masked predator acoustic cues depend on the duration of the masking noise and the likelihood of a marine mammal encountering a predator during the time that detection and recognition of predator cues are impeded.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or anthropogenic noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a vessel or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio (Erbe *et al.,* 2016).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in some of the world's

ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009; Cholewiak *et al.,* 2018). All anthropogenic sound sources, but especially chronic, continuous, and lower-frequency signals (*e.g.,* from commercial vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking for marine mammals.

Masking Due to Sonar and Other Transducers—

The functional hearing ranges of mysticetes, odontocetes, and pinnipeds underwater overlap the frequencies of the sonar sources used in the Action Proponents' LFAS/MFAS/high-frequency active sonar (HFAS) training and the Navy's testing exercises. Additionally, almost all affected species' vocal repertoires span across the frequencies of these sonar sources used by the Action Proponents. Masking by LFAS or MFAS with relatively low-duty cycles is not anticipated (or would be of very short duration) for most cetaceans as sonar signals occur over a relatively short duration and narrow bandwidth (overlapping with only a small portion of the hearing range). LFAS could overlap in frequency with mysticete vocalizations, however LFAS does not overlap with vocalizations for most marine mammal species. For example, in the presence of LFAS, humpback whales were observed to increase the length of their songs (Fristrup *et al.,* 2003; Miller *et al.,* 2000), potentially due to the overlap in frequencies between the whale song and the LFAS. While dolphin whistles and MFAS are similar in frequency, masking is not anticipated (or would be of very short duration) due to the low-duty cycle and short durations of most sonars.

As described in additional detail in the 2026 MITT Draft SEIS/OEIS, high duty-cycle or CAS have more potential to mask vocalizations. These sonars transmit more frequently (greater than 80 percent duty cycle) than traditional sonars, but typically at lower source levels. HFAS, such as pingers that operate at higher repetition rates, also operate at lower source levels and have faster attenuation rates due to the higher frequencies used. These lower source levels limit the range of impacts; however, compared to traditional sonar systems, individuals close to the source are likely to experience masking at longer time scales. The frequency range at which high-duty cycle systems operate overlaps the vocalization frequency of many odontocetes. Continuous noise at the same frequency of communicative vocalizations may cause disruptions to communication, social interactions, and acoustically mediated cooperative behaviors (Sørensen *et al.,* 2023) such as foraging and mating. Similarly, because the high-duty cycle or CAS includes mid-frequency sources, there is also the potential for the MF sonar signals to mask important environmental cues (*e.g.,* predator or conspecific acoustic cues), possibly affecting survivorship for targeted animals. Spatial release from masking may occur with higher duty cycle or CAS.

While there are currently few studies of the impacts of high-duty cycle sonars on marine mammals, masking due to these systems is likely analogous to masking produced by other continuous sources (*e.g.,* vessel noise and LF cetaceans), and would likely have similar short-term consequences, though longer in duration due to the duration of the masking noise. These may include changes to vocalization amplitude and frequency (Brumm and Slabbekoorn, 2005; Hotchkin and Parks, 2013) and behavioral impacts such as avoidance of the area and interruptions to foraging or other essential behaviors (Gordon *et al.,* 2003). Long-term consequences could include changes to vocal behavior and vocalization structure (Foote *et al.,* 2004; Parks *et al.,* 2007), abandonment of habitat if masking occurs frequently enough to significantly impair communication (Brumm and Slabbekoorn, 2005), a potential decrease in survivorship if predator vocalizations are masked (Brumm and Slabbekoorn, 2005), and a potential decrease in recruitment if masking interferes with reproductive activities or mother-calf communication (Gordon *et al.,* 2003).

Von Benda-Beckmann *et al.* (2021) modeled the effect of pulsed and continuous 1 to 2 kHz active sonar on sperm whale echolocation clicks and found that the presence of upper harmonics in the sonar signal increased masking of clicks produced in the search phase of foraging compared to buzz clicks produced during prey capture. Different levels of sonar caused intermittent to continuous masking (120 to 160 dB re 1 μPa^2, respectively), but varied based on click level, whale orientation, and prey target strength. CAS resulted in a greater percentage of time that echolocation clicks were masked compared to pulsed active sonar. This means that sonar sounds could reduce the ability of sperm whales to find prey under certain conditions; however, echoes from prey are most likely spatially separated from the sonar source, and so spatial release from masking would be expected.

Masking Due to Impulsive Noise—

Impulsive sound sources, including explosions, are intense and short in duration. Since impulsive noise is intermittent, the length of the gap between sounds (*i.e.,* duty-cycle) and received level are relevant when considering the potential for masking. Impulsive sounds with lower duty cycles or lower received levels are less likely to result in masking than higher duty cycles or received levels. There are no direct observations of masking in marine mammals due to exposure to explosive sources. Potential masking from explosive sounds or weapon noise is likely similar to masking studied for other impulsive sounds, such as air guns.

Masking of mysticete calls could occur due to the overlap between their low-frequency vocalizations and the dominant frequencies of impulsive sources (Castellote *et al.,* 2012; Nieukirk *et al.,* 2012). For example, blue whale feeding/social calls increased when seismic exploration was underway (Di Lorio and Clark, 2010), indicative of a possible compensatory response to masking effects of the increased noise level. However, mysticetes that call at higher rates are less likely to be masked by impulsive noise with lower duty cycles (Clark *et al.,* 2009) because of the decreased likelihood that the noise would overlap with the calls, and because of dip listening. Field observations of masking effects such as vocal modifications are difficult to interpret because when recordings indicate that call rates decline, this could be caused by (1) animals calling less frequently (*i.e.,* actual noise-induced vocal modifications), (2) the calls being masked from the recording hydrophone due to the noise (*e.g.,* animals are not calling less frequently but are being detected less frequently), or (3) the animals moving away from the noise, or any combination of these causes (Blackwell *et al.,* 2013; Cerchio *et al.,* 2014).

Masking of pinniped communication sounds at 100 Hz center frequency is possible when vocalizations occur at the same time as an air gun pulse (Sills *et al.,* 2017). This might result in some percentage of vocalizations being masked if an activity such as a seismic survey is being conducted in the vicinity, even when the sender and receiver are near one another. Release from masking due to dip listening is likely in this scenario.

While a masking effect of impulsive noise can depend on the received level

(Blackwell *et al.,* 2015) and other characteristics of the noise, the vocal response of the affected animal to masking noise is an equally important consideration for inferring overall impacts to an animal. It is possible that the receiver would increase the rate and/or level of calls to compensate for masking or, conversely, cease calling.

In general, impulsive noise has the potential to mask sounds that are biologically important for marine mammals, reducing communication space or resulting in noise-induced vocal modifications that might impact marine mammals. Masking by close-range impulsive sound sources is most likely to impact marine mammal communication.

Masking Due to Vessel Noise—

Masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as vessels. Several studies have shown decreases in marine mammal communication space and changes in behavior as a result of the presence of vessel noise. For example, NARWs were observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007) as well as increasing the amplitude (intensity) of their calls (Parks, 2009; Parks *et al.,* 2011). Fournet *et al.* (2018) observed that humpback whales in Alaska responded to increasing ambient sound levels (natural and anthropogenic) by increasing the source levels of their calls (non-song vocalizations). Clark *et al.* (2009) also observed that right whales' communication space decreased by up to 84 percent in the presence of vessels (Clark *et al.,* 2009). Cholewiak *et al.* (2018) also observed loss in communication space in Stellwagen National Marine Sanctuary for NARWs, fin whales, and humpback whales with increased ambient noise and shipping noise. Gabriele *et al.* (2018) modeled the effects of vessel traffic sound on communication space in Glacier Bay National Park in Alaska and found that typical summer vessel traffic in Glacier Bay National Park causes losses of communication space to singing whales (reduced by 13–28 percent), calling whales (18–51 percent), and roaring seals (32–61 percent), particularly during daylight hours and even in the absence of cruise ships. Dunlop (2019) observed that an increase in vessel noise reduced modeled communication space and resulted in significant reduction in group social interactions in Australian humpback whales. However, communication signal masking did not fully explain this change in social behavior in the model, indicating there may also be an additional effect of the physical presence of the vessel on social behavior (Dunlop, 2019). Although humpback whales off Australia did not change the frequency or duration of their vocalizations in the presence of ship noise, their source levels were lower than expected based on source level changes to wind noise, potentially indicating some signal masking (Dunlop *et al.,* 2016). Multiple delphinid species have also been shown to increase the minimum or maximum frequencies of their whistles in the presence of anthropogenic noise and reduced communication space (*e.g.,* Holt *et al.,* 2009; Holt *et al.,* 2011; Gervaise *et al.,* 2012; Williams *et al.,* 2014; Hermannsen *et al.,* 2014; Papale *et al.,* 2015; Liu *et al.,* 2017).

Other Physiological Response

Physiological stress is a natural and adaptive process that helps an animal survive changing conditions. When an animal perceives a potential threat, whether or not the stimulus actually poses a threat, a stress response is triggered (Selye, 1950; Moberg, 2000; Sapolsky, 2005). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions. For example, when a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Selye, 1950) or ''allostatic loading'' (McEwen and Wingfield, 2003). This pathological state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

According to Moberg (2000), in the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classic fight or flight response, which includes the cardiovascular system, the gastrointestinal (commonly referred to as G.I.) system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with stress. These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal (HPA) system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior, are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier and Rivest, 1991), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance (Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.* (2004)) have been equated with stress for many years.

Marine mammals naturally experience stressors within their environment and as part of their life histories. Changing weather and ocean conditions, exposure to disease and naturally occurring toxins, lack of prey availability, and interactions with predators all contribute to the stress a marine mammal experiences (Atkinson *et al.,* 2015). Breeding cycles, periods of fasting, social interactions with members of the same species, and molting (for pinnipeds) are also stressors, although they are natural components of an animal's life history. Anthropogenic activities have the potential to provide additional stressors beyond those that occur naturally (*e.g.,*

fishery interactions, pollution, tourism, ocean noise) (Fair *et al.,* 2014; Meissner *et al.,* 2015; Rolland *et al.,* 2012).

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). However, it should be noted (and as is described in additional detail in the Acoustic and Explosives Concepts Technical Report) that our understanding of the functions of various stress hormones (*e.g.,* cortisol), is based largely upon observations of the stress response in terrestrial mammals. Atkinson *et al.* (2015) note that the endocrine response of marine mammals to stress may not be the same as that of terrestrial mammals because of the selective pressures marine mammals faced during their evolution in an ocean environment. For example, due to the necessity of breath-holding while diving and foraging at depth, the physiological role of epinephrine and norepinephrine (the catecholamines) in marine mammals might be different than in other mammals. Relatively little information exists on the linkage between anthropogenic sound exposure and stress in marine mammals, and even less information exists on the ultimate consequences of sound-induced stress responses (either acute or chronic). Most studies to date have focused on acute responses to sound either by measuring catecholamines, a neurohormone, or heart rate as a proxy for an acute stress response.

The ability to make predictions from stress hormones about impacts on individuals and populations exposed to various forms of natural and anthropogenic stressors relies on understanding the linkages between changes in stress hormones and resulting physiological impacts. Currently, the sound characteristics that correlate with specific stress responses in marine mammals are poorly understood, as are the ultimate consequences of these changes. Several research efforts have improved the understanding of, and the ability to predict, how stressors ultimately affect marine mammal populations (*e.g.,* King *et al.,* 2015; New *et al.,* 2013a; Pirotta *et al.,* 2015a; Pirotta *et al.,* 2022b). This includes determining how and to what degree various types of anthropogenic sound cause stress in marine mammals and understanding what factors may mitigate those physiological stress responses. Factors potentially affecting an animal's response to a stressor include life history, sex, age, reproductive status, overall physiological and behavioral adaptability, and whether they are naïve or experienced with the sound (*e.g.,* prior experience with a stressor may result in a reduced response due to habituation) (Finneran and Branstetter, 2013). Because there are many unknowns regarding the occurrence of acoustically induced stress responses in marine mammals, any physiological response (*e.g.,* hearing loss or injury) or significant behavioral response is assumed to be associated with a stress response.

Non-impulsive sources of sound can cause direct physiological effects including noise-induced loss of hearing sensitivity (or ''threshold shift'') or other auditory injury, nitrogen decompression, acoustically-induced bubble growth, and injury due to sound-induced acoustic resonance. Separately, an animal's behavioral response to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the *Stranding and Mortality* section.

Heart Rate Response—

Several experimental studies have measured the heart rate response of a variety of marine mammals. For example, Miksis *et al.* (2001) observed increases in heart rates of captive bottlenose dolphins to which known calls of other dolphins were played, although no increase in heart rate was observed when background tank noise was played back. However, it cannot be determined whether the increase in heart rate was due to stress or social factors, such as expectation of an encounter with a known conspecific. Similarly, a young captive beluga's heart rate increased during exposure to noise, with increases dependent upon the frequency band of noise and duration of exposure, and with a sharp decrease to normal or below normal levels upon cessation of the exposure (Lyamin *et al.,* 2011). Spectral analysis of heart rate variability corroborated direct measures of heart rate (Bakhchina *et al.,* 2017). This response might have been in part due to the conditions during testing, the young age of the animal, and the novelty of the exposure; a year later the exposure was repeated at a slightly higher received level and there was no heart rate response, indicating the beluga whale had potentially habituated to the noise exposure.

Kvadsheim *et al.* (2010) measured the heart rate of captive hooded seals during exposure to sonar signals and found an increase in the heart rate of the seals during exposure periods versus control periods when the animals were at the surface. When the animals dove, the normal dive-related heart rate decrease was not impacted by the sonar exposure. Similarly, Thompson *et al.* (1998) observed a rapid, short-lived decrease in heart rates in wild harbor and grey seals exposed to seismic air guns (cited in Gordon *et al.,* 2003).

Two captive harbor porpoises showed significant bradycardia (reduced heart rate), below that which occurs with diving, when they were exposed to pinger-like sounds with frequencies between 100–140 kHz (Teilmann *et al.,* 2006). The bradycardia was found only in the early noise exposures and the porpoises acclimated quickly across successive noise exposures. Elmegaard *et al.* (2021) also found that initial exposures to sonar sweeps produced bradycardia but did not elicit a startle response in captive harbor porpoises. As with Teilmann *et al.* (2006), the cardiac response disappeared over several repeat exposures suggesting rapid acclimation to the noise. In the same animals, 40-kHz noise pulses induced startle responses but without a change in heart rate. Bakkeren *et al.* (2023) found no change in the heart rate of a harbor porpoise during exposure to masking noise (⅓ octave band noise, centered frequency of 125 kHz, maximum received level of 125 dB re 1 μPa) during an echolocation task but showed significant bradycardia while blindfolded for the same task. The authors attributed the change in heart rate to sensory deprivation, although no strong conclusions about acoustic masking could be made since the animal was still able to perform the echolocation task in the presence of the masking noise. Williams *et al.* (2022) observed periods of increased heart rate variability in narwhals during seismic air gun impulse exposure, but profound bradycardia was not noted. Conversely, Williams *et al.* (2017) found that a profound bradycardia persisted in narwhals, even though exercise effort increased dramatically as part of their escape response following release from capture and handling.

Limited evidence across several different species suggests that increased heart rate might occur as part of the acute stress response of marine mammals that are at the surface. However, the decreased heart rate typical of diving marine mammals can be enhanced in response to an acute stressor, suggesting that the context of the exposure is critical to understanding the cardiac response. Furthermore, in

instances where a cardiac response was noted, there appears to be rapid habituation when repeat exposures occur. Additional research is required to understand the interaction of dive bradycardia, noise-induced cardiac responses, and the role of habituation in marine mammals.

Stress Hormone and Immune Response—

What is known about the function of the various stress hormones is based largely upon observations of the stress response in terrestrial mammals. The endocrine response of marine mammals to stress may not be the same as that of terrestrial mammals because of the selective pressures marine mammals faced during their evolution in an ocean environment (Atkinson *et al.,* 2015). For example, due to the necessity of breath-holding while diving and foraging at depth, the physiological role of epinephrine and norepinephrine (the catecholamines) might be different in marine versus other mammals.

Catecholamines increase during breath-hold diving in seals, co-occurring with a reduction in heart rate, peripheral vasoconstriction (*i.e.,* constriction of blood vessels), and an increased reliance on anaerobic metabolism during extended dives (Hance *et al.,* 1982; Hochachka *et al.,* 1995; Hurford *et al.,* 1996); the catecholamine increase is not associated with increased heart rate, glycemic release, and increased oxygen consumption typical of terrestrial mammals. Captive belugas demonstrated no catecholamine response to the playback of oil drilling sounds (Thomas *et al.,* 1990) but showed a small but statistically significant increase in catecholamines following exposure to impulsive sounds produced from a seismic water gun (Romano *et al.,* 2004). A captive bottlenose dolphin exposed to the same sounds did not demonstrate a catecholamine response but did demonstrate a statistically significant elevation in aldosterone (Romano *et al.,* 2004); however, the increase was within the normal daily variation observed in this species (St. Aubin *et al.,* 1996) and was likely of little biological significance. Aldosterone has been speculated to not only contribute to electrolyte balance, but possibly also the maintenance of blood pressure during periods of vasoconstriction (Houser *et al.,* 2011). In marine mammals, aldosterone is thought to play a role in mediating stress (St. Aubin and Geraci, 1989).

Yang *et al.* (2021) measured cortisol concentrations in two captive bottlenose dolphins and found significantly higher concentrations after exposure to 140 dB re 1 µPa impulsive noise playbacks. Two out of six tested indicators of immune system function underwent acoustic dose-dependent changes, suggesting that repeated exposures or sustained stress response to impulsive sounds may increase an affected individual's susceptibility to pathogens. Unfortunately, absolute values of cortisol were not provided, and it is not possible from the study to tell if cortisol rose to problematic levels (*e.g.,* see normal variation and changes due to handling in Houser *et al.* (2021) and Champagne *et al.* (2018)). Exposing dolphins to a different acoustic stressor yielded contrasting results. Houser *et al.* (2020) measured cortisol and epinephrine obtained from 30 captive bottlenose dolphins exposed to simulated Navy MFAS and found no correlation between SPL and stress hormone levels, even though sound exposures were as high as 185 dB re 1 µPa. In the same experiment (Houser *et al.,* 2013b), behavioral responses were shown to increase in severity with increasing received SPLs. These results suggest that behavioral responses to sonar signals are not necessarily indicative of a hormonal stress response.

Whereas a limited amount of work has addressed the potential for acute sound exposures to produce a stress response, almost nothing is known about how chronic exposure to acoustic stressors affects stress hormones in marine mammals, particularly as it relates to survival or reproduction. In what is probably the only study of chronic noise exposure in marine mammals associating changes in a stress hormone with changes in anthropogenic noise, Rolland *et al.* (2012) compared the levels of cortisol metabolites in NARW feces collected before and after September 11, 2001. Following the events of September 11, 2001, shipping was significantly reduced in the region where fecal collections were made, and regional ocean background noise declined. Fecal cortisol metabolites significantly decreased during the period of reduced ship traffic and ocean noise (Rolland *et al.,* 2012). Rolland *et al.* (2017) also compared acute (death by vessel strike) to chronic (entanglement or live stranding) stressors in NARW and found that whales subject to chronic stressors had higher levels of glucocorticoid stress hormones (cortisol and corticosterone) than either healthy whales or those killed by ships. It was presumed that whales subjected to acute stress may have died too quickly for increases in fecal glucocorticoids to be detected.

Considerably more work has been conducted in an attempt to determine the potential effect of vessel disturbance on smaller cetaceans, particularly killer whales (Bain, 2002; Erbe, 2002; Lusseau, 2006; Noren *et al.,* 2009; Pirotta *et al.,* 2015b; Read *et al.,* 2014; Rolland *et al.,* 2012; Williams *et al.,* 2006, 2009, 2014a, 2014b). Most of these efforts focused primarily on estimates of metabolic costs associated with altered behavior or inferred consequences of boat presence and noise but did not directly measure stress hormones. However, Ayres *et al.* (2012) investigated Southern Resident killer whale fecal thyroid hormone and cortisol metabolites to assess two potential threats to the species' recovery: lack of prey (salmon) and impacts from exposure to the physical presence of vessel traffic (but without measuring vessel traffic noise). Ayres *et al.* (2012) concluded from these stress hormone measures that the lack of prey overshadowed any population-level physiological impacts on Southern Resident killer whales due to vessel traffic. Lemos *et al.* (2022) investigated the potential for vessel traffic to affect gray whales. By assessing gray whale fecal cortisol metabolites across years in which vessel traffic was variable, Lemos *et al.* (2022) found a direct relationship between the presence/density of vessel traffic and fecal cortisol metabolite levels. Unfortunately, no direct noise exposure measurements were made on any individual making it impossible to tell if other natural and anthropogenic factors could also be related to the results. Collectively, these studies indicate the difficulty in determining which factors primarily influence the secretion of stress hormones, including the separate and additive effects of vessel presence and vessel noise. While vessel presence could contribute to the variation in fecal cortisol metabolites in NARWs and gray whales, there are other potential influences on fecal hormone metabolites, so it is difficult to establish a direct link between ocean noise and fecal hormone metabolites.

Non-Auditory Injury

Non-auditory injury, or direct injury, is considered less likely to occur in the context of the Action Proponents' activities than auditory injury, and the primary anticipated source of non-auditory injury for these activities is exposure to the pressure generated by explosive detonations, which is discussed in the *Potential Effects of Explosive Sources on Marine Mammals* section below. Here, we discuss less direct non-auditory injury impacts,

including acoustically induced bubble formation, injury from sonar-induced acoustic resonance, and behaviorally mediated injury.

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness. Acoustically induced (or mediated) bubble growth and other pressure-related physiological impacts are addressed below but are not expected to result from the Action Proponents' proposed activities.

It is unlikely that the short duration (in combination with the source levels) of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Recent research with ex vivo supersaturated bovine tissues suggested that, for a 37 kHz signal, a sound exposure of approximately 215 dB re 1 µPa would be required before microbubbles became destabilized and grew (Crum *et al.,* 2005). Assuming spherical spreading loss and a nominal sonar source level of 235 dB re 1 µPa at 1 m, a whale would need to be within 10 m of the sonar dome to be exposed to such sound levels. Furthermore, tissues in the study were supersaturated by exposing them to pressures of 400–700 kilopascals for periods of hours and then releasing them to ambient pressures. Assuming the equilibration of gases with the tissues occurred when the tissues were exposed to the high pressures, levels of supersaturation in the tissues could have been as high as 400–700 percent. These levels of tissue supersaturation are substantially higher than model predictions for marine mammals (Fahlman *et al.,* 2009; Fahlman *et al.,* 2014; Houser *et al.,* 2001; Saunders *et al.,* 2008). It is improbable that this mechanism is responsible for stranding events or traumas associated with beaked whale strandings because both the degree of supersaturation and exposure levels observed to cause microbubble destabilization are unlikely to occur, either alone or in concert.

Yet another hypothesis has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (*i.e.,* decompression sickness) (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Alternatively, Tyack *et al.* (2006) studied the deep diving behavior of beaked whales and concluded: ''Using current models of breath-hold diving, we infer that their natural diving behavior is inconsistent with known problems of acute nitrogen supersaturation and embolism.'' Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003; Cox *et al.,* 2006; Rommel *et al.,* 2006). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (*i.e.,* rectified diffusion). Work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, energy levels predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002). Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long-duration, repetitive dives may explain why beaked whales appear to be relatively vulnerable to MFAS/HFAS exposures. It has also been argued that traumas from some beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003); however, there is no conclusive evidence of this (Rommel *et al.,* 2006). Based on examination of sonar-associated strandings, Bernaldo de Quiros *et al.* (2019) list diagnostic features, the presence of all of which suggest gas and fat embolic syndrome for beaked whales stranded in association with sonar exposure.

As described in additional detail in the Behaviorally Mediated Injury section (4.7.1.2) of the Acoustic and Explosives Concepts Technical Report, marine mammals generally are thought to deal with nitrogen loads in their blood and other tissues, caused by gas exchange from the lungs under conditions of high ambient pressure during diving, through anatomical, behavioral, and physiological adaptations (Hooker *et al.,* 2012). Although not a direct injury, variations in marine mammal diving behavior or avoidance responses have been hypothesized to result in nitrogen off-gassing in super-saturated tissues, possibly to the point of deleterious vascular and tissue bubble formation (Hooker *et al.,* 2012; Jepson *et al.,* 2003; Saunders *et al.,* 2008) with resulting symptoms similar to decompression sickness; however, the process is still not well understood.

In 2009, Hooker *et al.* tested two mathematical models to predict blood and tissue tension N2 (P_{N2}) using field data from three beaked whale species: northern bottlenose whales, goose-beaked whales, and Blainville's beaked whales. The researchers aimed to determine if physiology (body mass, diving lung volume, and dive response) or dive behavior (dive depth and duration, changes in ascent rate, and diel behavior) would lead to differences in P_{N2} levels and thereby decompression sickness risk between species. In their study, they compared results for previously published time depth recorder data (Hooker and Baird, 1999; Baird *et al.,* 2006, 2008) from goose-beaked whale, Blainville's beaked whale, and northern bottlenose whale. They reported that diving lung volume and extent of the dive response had a large effect on end-dive P_{N2}. Also, results showed that dive profiles had a larger influence on end-dive P_{N2} than body mass differences between species. Despite diel changes (*i.e.,* variation that occurs regularly every day or most days) in dive behavior, P_{N2} levels showed no consistent trend. Model output suggested that all three species live with

tissue P_{N2} levels that would cause a significant proportion of decompression sickness cases in terrestrial mammals. The authors concluded that the dive behavior of goose-beaked whale was different from both Blainville's beaked whale and northern bottlenose whale and resulted in higher predicted tissue and blood N2 levels (Hooker *et al.,* 2009). They also suggested that the prevalence of goose-beaked whales stranding after naval sonar exercises could be explained by either a higher abundance of this species in the affected areas or by possible species differences in behavior and/or physiology related to MFAS (Hooker *et al.,* 2009).

Bernaldo de Quiros *et al.* (2012) showed that, among stranded whales, deep diving species of whales had higher abundances of gas bubbles compared to shallow diving species. Kvadsheim *et al.* (2012) estimated blood and tissue P_{N2} levels in species representing shallow, intermediate, and deep diving cetaceans following behavioral responses to sonar and their comparisons found that deep diving species had higher end-dive blood and tissue N2 levels, indicating a higher risk of developing gas bubble emboli compared with shallow diving species. Fahlmann *et al.* (2014) evaluated dive data recorded from sperm, killer, long-finned pilot, Blainville's, and goose-beaked whales before and during exposure to low-frequency (1–2 kHz), as defined by the authors, and mid-frequency (2–7 kHz) active sonar in an attempt to determine if either differences in dive behavior or physiological responses to sonar are plausible risk factors for bubble formation. The authors suggested that CO_2 may initiate bubble formation and growth, while elevated levels of N2 may be important for continued bubble growth. The authors also suggest that if CO_2 plays an important role in bubble formation, a cetacean escaping a sound source may experience increased metabolic rate, CO_2 production, and alteration in cardiac output, which could increase risk of gas bubble emboli. However, as discussed in Kvadsheim *et al.* (2012), the actual observed behavioral responses to sonar from the species in their study (sperm, killer, long-finned pilot, Blainville's beaked, and goose-beaked whales) did not imply any significantly increased risk of decompression sickness due to high levels of N2. Therefore, further information is needed to understand the relationship between exposure to stimuli, behavioral response (discussed in more detail below), elevated N2 levels, and gas bubble emboli in marine mammals. The hypotheses for gas bubble formation related to beaked whale strandings is that beaked whales potentially have strong avoidance responses to MFAS because they sound similar to their main predator, the killer whale (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Baird *et al.,* 2008; Hooker *et al.,* 2009). Further investigation is needed to assess the potential validity of these hypotheses.

To summarize, while there are several hypotheses, there is little data directly connecting intense, anthropogenic underwater sounds with non-auditory physical effects in marine mammals. The available data do not support identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. In addition, such effects, if they occur at all, would be expected to be limited to situations where marine mammals were exposed to high powered sounds at very close range over a prolonged period of time, which is not expected to occur based on the speed of the vessels operating sonar in combination with the speed and behavior of marine mammals in the vicinity of sonar.

An object exposed to its resonant frequency will tend to amplify its vibration at that frequency, a phenomenon called acoustic resonance. Acoustic resonance has been proposed as a potential mechanism by which a sonar or sources with similar operating characteristics could damage tissues of marine mammals. In 2002, NMFS convened a panel of government and private scientists to investigate the potential for acoustic resonance to occur in marine mammals (NOAA, 2002). They modeled and evaluated the likelihood that Navy MFAS (2–10 kHz) caused resonance effects in beaked whales that eventually led to their stranding. The workshop participants concluded that resonance in air-filled structures was not likely to have played a primary role in the Bahamas stranding in 2000. They listed several reasons supporting this finding including (among others): tissue displacements at resonance are estimated to be too small to cause tissue damage; tissue-lined air spaces most susceptible to resonance are too large in marine mammals to have resonant frequencies in the ranges used by MFAS or LFAS; lung resonant frequencies increase with depth, and tissue displacements decrease with depth so if resonance is more likely to be caused at depth it is also less likely to have an effect there; and lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales. The frequency at which resonance was predicted to occur in the animals' lungs was 50 Hz, well below the frequencies used by the MFAS systems associated with the Bahamas event. The workshop participants focused on the March 2000 stranding of beaked whales in the Bahamas as high-quality data were available, but the workshop report notes that the results apply to other sonar-related stranding events. For the reasons given by the 2002 workshop participants, we do not anticipate injury due to sonar-induced acoustic resonance from the Action Proponents' proposed activity.

Potential Effects of Explosive Sources on Marine Mammals

Explosive detonations that occur in water send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals, and the potential effects of an explosive injury to marine mammals would consist of primary blast injury, which refers to injuries resulting from the compression of a body exposed to a blast wave. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and are usually observed as barotrauma of gas-containing structures (*e.g.,* lung, gastrointestinal tract) and structural damage to the auditory system (Goertner, 1982; Greaves *et al.,* 1943; Hill, 1978; Office of the Surgeon General, 1991; Richmond *et al.,* 1973; Yelverton *et al.,* 1973). Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses or tolerance from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

The near instantaneous high magnitude pressure change near an explosion can injure an animal where tissue material properties significantly differ from the surrounding environment, such as around air-filled cavities in the lungs or gastrointestinal tract. Large pressure changes at tissue-air interfaces in the lungs and gastrointestinal tract may cause tissue rupture, resulting in a range of injuries depending on degree of exposure. The

lungs are typically the first site to show any damage, while the solid organs (*e.g.,* liver, spleen, and kidney) are more resistant to blast injury (Clark and Ward, 1943). Odontocetes can also incur hemorrhaging in the acoustic fats in the melon and jaw (Siebert *et al.,* 2022). Recoverable injuries would include slight lung injury, such as capillary interstitial bleeding, and contusions to the gastrointestinal tract. More severe injuries, such as tissue lacerations, major hemorrhage, organ rupture, or air in the chest cavity (pneumothorax), would significantly reduce fitness and likely cause death in the wild. Rupture of the lung may also introduce air into the vascular system, producing air emboli that can cause a stroke or heart attack by restricting oxygen delivery to critical organs.

Injuries resulting from a shock wave take place at boundaries between tissues of different densities. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe gastrointestinal tract injuries include contusions, petechiae (*i.e.,* small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Relatively little is known about auditory system trauma in marine mammals resulting from explosive exposure, although it is assumed that auditory structures would be vulnerable to blast injuries because the ears are the most sensitive to pressure and, therefore, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with sound energy from detonations can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If a noise is audible to an animal, it has the potential to damage the animal's hearing by causing decreased sensitivity (Ketten, 1995). Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sublethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995). Auditory trauma was found in two humpback whales that died after the detonation of an 5,000 kg explosive used off Newfoundland during demolition of an offshore oil rig platform (Ketten *et al.,* 1993), but the proximity of the whales to the detonation was unknown. Eardrum rupture was examined in submerged terrestrial mammals exposed to underwater explosions (Richmond *et al.,* 1973; Yelverton *et al.,* 1973); however, results may not be applicable to the anatomical adaptations for underwater hearing in marine mammals given differences in impedance (Wartzok and Ketten, 1999).

In general, models predict that an animal would be less susceptible to injury near the water surface because the pressure wave reflected from the water surface would interfere with the direct path pressure wave, reducing positive pressure exposure (Goertner, 1982; Yelverton and Richmond, 1981). This is shown in the records of humans exposed to blast while in the water, which show that the gastrointestinal tract was more likely to be injured than the lungs, likely due to the shallower exposure geometry of the lungs (*i.e.,* closer to the water surface) (Lance *et al.,* 2015). Susceptibility would increase with depth, until normal lung collapse (due to increasing hydrostatic pressure) and increasing ambient pressures again reduce susceptibility (Goertner, 1982). The only known occurrence of mortality or injury to a marine mammal due to a Navy training event involving explosives occurred in March 2011 in nearshore waters off San Diego, California, at the Silver Strand Training Complex (see Strandings Associated with Explosive Use section).

Controlled tests with a variety of lab animals (*i.e.,* mice, rats, dogs, pigs, sheep, and other species) are the best data sources on actual injury to mammals due to underwater exposure to explosions. In the early 1970s, the Lovelace Foundation for Medical Education and Research conducted a series of tests in an artificial pond at Kirtland Air Force Base, New Mexico, to determine the effects of underwater explosions on mammals, with the goal of determining safe ranges for human divers. The resulting data were summarized in two reports (Richmond *et al.,* 1973; Yelverton *et al.,* 1973). Specific physiological observations for each test animal are documented in Richmond *et al.* (1973). Gas-containing internal organs, such as lungs and intestines, were the principal damage sites in submerged terrestrial mammals; this is consistent with earlier studies of mammal exposures to underwater explosions in which lungs were consistently the first areas to show damage, with less consistent damage observed in the gastrointestinal tract (Clark and Ward, 1943; Greaves *et al.,* 1943).

In the Lovelace studies, the first positive acoustic impulse was found to be the metric most related to degree of injury, and size of an animal's gas-containing cavities was thought to play a role in blast injury susceptibility. For these shallow exposures of small terrestrial mammals (masses ranging from 3.4 to 50 kg) to underwater detonations, Richmond *et al.* (1973) reported that no blast injuries were observed when exposures were less than 6 pounds per square inch per millisecond (psi-ms) (40 pascal seconds (Pa-s)), no instances of slight lung hemorrhage occurred below 20 psi-ms (140 Pa-s), and instances of no lung damage were observed in some exposures at higher levels up to 40 psi-ms (280 Pa-s). An impulse of 34 psi-ms (230 Pa-s) resulted in about 50 percent incidence of slight lung hemorrhage. About half of the animals had gastrointestinal tract contusions (with slight ulceration, *i.e.,* some perforation of the mucosal layer) at exposures of 25–27 psi-ms (170–190 Pa-s). Lung injuries were found to be slightly more prevalent than gastrointestinal tract injuries for the same exposure. The anatomical differences between the terrestrial animals used in the Lovelace tests and marine mammals are summarized in Fetherston *et al.* (2019). Goertner (1982) examined how lung cavity size would affect susceptibility to blast injury by considering both marine mammal size and depth in a bubble oscillation model of the lung; however, the Goertner (1982) model did not consider how tissues surrounding the respiratory air spaces would reflect shock wave energy or constrain oscillation (Fetherston *et al.,* 2019).

Goertner (1982) suggested a peak overpressure gastrointestinal tract injury criterion because the size of gas bubbles in the gastrointestinal tract are variable, and their oscillation period could be short relative to primary blast wave exposure duration. The potential for gastrointestinal tract injury, therefore, may not be adequately modeled by the single oscillation bubble methodology used to estimate lung injury due to impulse. Like impulse, however, high instantaneous pressures may damage

many parts of the body, but damage to the gastrointestinal tract is used as an indicator of any peak pressure-induced injury due to its vulnerability.

Because gas-containing organs are more vulnerable to primary blast injury, adaptations for diving that allow for collapse of lung tissues with depth may make animals less vulnerable to lung injury with depth. Adaptations for diving include a flexible thoracic cavity, distensible veins that can fill space as air compresses, elastic lung tissue, and resilient tracheas with interlocking cartilaginous rings that provide strength and flexibility (Ridgway, 1972). Denk *et al.* (2020) found intra-species differences in the compliance of tracheobronchial structures of post-mortem cetaceans and pinnipeds under diving hydrostatic pressures, which would affect depth of alveolar collapse. Older literature suggested complete lung collapse depths at approximately 70 m for dolphins (Ridgway and Howard, 1979) and 20–50 m for phocid seals (Falke *et al.,* 1985; Kooyman *et al.,* 1972). Follow-on work by Kooyman and Sinnett (1982), in which pulmonary shunting was studied in harbor seals and sea lions, suggested that complete lung collapse for these species would be about 170 m and about 180 m, respectively. Evidence in sea lions suggests that complete collapse might not occur until depths as great as 225 m; although the depth of collapse and depth of the dive are related, sea lions can affect the depth of lung collapse by varying the amount of air inhaled on a dive (McDonald and Ponganis, 2012). This is an important consideration for all divers who can modulate lung volume and gas exchange prior to diving via the degree of inhalation and during diving via exhalation (Fahlman *et al.,* 2009); indeed, there are noted differences in pre-dive respiratory behavior, with some marine mammals exhibiting pre-dive exhalation to reduce the lung volume (*e.g.,* phocid seals) (Kooyman *et al.,* 1973).

Further Potential Effects of Behavioral Disturbance on Marine Mammal Fitness

The different ways in which marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, *etc.*) of an animal. The long-term consequences of disturbance, hearing loss, chronic masking, and acute or chronic physiological stress are difficult to predict because of the different factors experienced by individual animals, such as context of stressor exposure, underlying health conditions, and other environmental or anthropogenic stressors. Linking these non-lethal effects on individuals to changes in population growth rates requires long-term data, which is lacking for many populations. We summarize several studies below, but there are few quantitative marine mammal data relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals. Several authors have reported that disturbance stimuli may cause animals to abandon nesting and foraging sites (Sutherland and Crockford, 1993); may cause animals to increase their activity levels and suffer premature deaths or reduced reproductive success when their energy expenditures exceed their energy budgets (Daan *et al.,* 1996; Mullner *et al.,* 2004); or may cause animals to experience higher predation rates when they adopt risk-prone foraging or migratory strategies (Frid and Dill, 2002). Each of these studies addressed the consequences of animals shifting from one behavioral state (*e.g.,* resting or foraging) to another behavioral state (*e.g.,* avoidance or escape behavior) because of human disturbance or disturbance stimuli.

Lusseau and Bejder (2007) present data from three long-term studies illustrating the connections between disturbance from whale-watching boats and population-level effects in cetaceans. In Shark Bay Australia, the abundance of bottlenose dolphins was compared within adjacent control and tourism sites over three consecutive 4.5-year periods of increasing tourism levels. Between the second and third time periods, in which tourism doubled, dolphin abundance decreased by 15 percent in the tourism area and did not change significantly in the control area. In Fiordland, New Zealand, two populations (Milford and Doubtful Sounds) of bottlenose dolphins with tourism levels that differed by a factor of seven were observed and significant increases in travelling time and decreases in resting time were documented for both. Consistent short-term avoidance strategies were observed in response to tour boats until a threshold of disturbance was reached (average 68 minutes between interactions), after which the response switched to a longer-term habitat displacement strategy. For one population, tourism only occurred in a part of the home range. However, tourism occurred throughout the home range of the Doubtful Sound population and once boat traffic increased beyond the 68-minute threshold (resulting in abandonment of their home range/preferred habitat), reproductive success drastically decreased (*i.e.,* increased stillbirths) and abundance decreased significantly (from 67 to 56 individuals in a short period). Last, in a study of Northern Resident killer whales off Vancouver Island, exposure to boat traffic was shown to reduce foraging opportunities and increase traveling time. A simple bioenergetics model was applied to show that the reduced foraging opportunities equated to a decreased energy intake of 18 percent, while the increased traveling incurred an increased energy output of 3–4 percent, which suggests that a management action based on avoiding interference with foraging might be particularly effective.

An important variable to consider is duration of disturbance. Severity scales used to assess behavioral responses of marine mammals to acute sound exposures are not appropriate to apply to sustained or chronic exposures, which requires considering the health of a population over time rather than a focus on immediate impacts to individuals (Southall *et al.,* 2021). For example, short-term costs experienced over the course of a week by an otherwise healthy individual may be recouped over time after exposure to the stressor ends. These short-term costs would be unlikely to result in long-term consequences to that individual or to that individual's population. Comparatively, long-term costs accumulated by otherwise healthy individuals over an entire season, year, or throughout a life stage (*e.g.,* pup, juvenile, adult) would be less easily recouped and more likely to result in long-term consequences to that individual or population.

Marine mammals exposed to frequent or intense anthropogenic activities may leave the area, habituate to the activity, or tolerate the disturbance and remain in the area (Wartzok *et al.,* 2003). Highly resident or localized populations may also stay in an area of disturbance because the cost of displacement is higher than the cost of remaining in the area (Forney *et al.,* 2017). As such, an apparent lack of response (*e.g.,* no displacement or avoidance of a sound source) does not necessarily indicate there is no cost to the individual or population, as some resources or habitats may be of such high value that animals may choose to stay, even when experiencing the consequences of stress, masking, or hearing loss (Forney *et al.,* 2017).

Longer term displacement can lead to changes in abundance or distribution patterns of the species in the affected region (Bejder *et al.,* 2006b; Blackwell *et al.,* 2004; Teilmann *et al.,* 2006). For example, gray whales in Baja California, Mexico, abandoned a historical breeding lagoon in the mid-1960s due to an increase in dredging and commercial shipping operations, and only repopulated the lagoon after shipping activities had ceased for several years (Bryant *et al.,* 1984). Mysticetes in the northeast tended to adjust to vessel traffic over several years, trending towards more neutral behavioral responses to passing vessels, indicating that some animals may habituate to high levels of human activity. A study on bottlenose dolphin responses to vessel approaches found that lesser responses in populations of dolphins regularly subjected to high levels of vessel traffic could be a sign of habituation, or it could be that the more sensitive animals in this population previously abandoned the area of higher human activity (Bejder *et al.,* 2006a).

Population characteristics (*e.g.,* whether a population is open or closed to immigration and emigration) can influence sensitivity to disturbance as well; closed populations could not withstand a higher probability of disturbance compared to open populations with no limitation on food (New *et al.,* 2020). Predicting population trends or long-term displacement patterns due to anthropogenic disturbance is challenging due to limited information and survey data for many species over sufficient spatiotemporal scales, as well as a full understanding of how other factors, such as oceanographic oscillations, affect marine mammal presence (Moore and Barlow, 2013; Barlow, 2016; Moore and Barlow, 2017).

Population models are necessary to understand and link short-term effects to individuals from disturbance (anthropogenic impacts or environmental change) to long-term population consequences. Population models require inputs for the population size and changes in vital rates of the population (*e.g.,* the mean values for survival age, lifetime reproductive success, recruitment of new individuals into the population), to predict changes in population dynamics (*e.g.,* population growth rate). These efforts often rely on bioenergetic models, or energy budget models, which analyze energy intake from food and energy costs for life functions, such as maintenance, growth, and reproduction, either at the individual or population level (Pirotta, 2022), and model sensitivity analyses have identified the most consequential parameters, including prey characteristics, feeding processes, energy expenditure, body size, energy storage, and lactation capability (Pirotta, 2022). However, there is a high level of uncertainty around many parameters in these models (Hütt *et al.,* 2023).

The U.S. National Research Council (NRC) committee on Characterizing Biologically Significant Marine Mammal Behavior developed an initial conceptual model to link acoustic disturbance to population effects and inform data and research needs (NRC, 2005). This Population Consequences of Acoustic Disturbance, or PCAD, conceptual model linked the parameters of sound exposure, behavior change, life function immediately affected, vital rates, and population effects. In its report, the committee found that the relationships between vital rates and population effects were relatively well understood, but that the relationships between the other components of the model were not well-known or easily observed.

Following the PCAD framework (NRC, 2005), an ONR working group developed the Potential Consequences of Disturbance (PCoD), outlining an updated conceptual model of the relationships linking disturbance to changes in behavior and physiology, health, vital rates, and population dynamics. The PCoD model considers all types of disturbance, not solely anthropogenic or acoustic, and incorporates physiological changes, such as stress or injury, along with behavioral changes as a direct result of disturbance (National Academies of Sciences Engineering and Medicine, 2017). In this framework, behavioral and physiological changes can have direct (acute) effects on vital rates, such as when changes in habitat use or increased stress levels raise the probability of mother-calf separation or predation; they can have indirect and long-term (chronic) effects on vital rates, such as when changes in time/energy budgets or increased disease susceptibility affect health, which then affects vital rates; or they can have no effect to vital rates (New *et al.,* 2014; Pirotta *et al.,* 2018a). In addition to outlining this general framework and compiling the relevant literature that supports it, the authors chose four example species for which extensive long-term monitoring data exist (southern elephant seals, NARWs, *Ziphiidae* beaked whales, and bottlenose dolphins) and developed state-space energetic models that can be used to forecast longer-term, population-level impacts from behavioral changes. While these models cannot yet be applied broadly to project-specific risk assessments for the majority of species, as well as requiring significant resources and time to conduct (more than is typically available to support regulatory compliance for one project), they are a critical first step towards being able to quantify the likelihood of a population level effect. Since New *et al.* (2014), several publications have described models developed to examine the long-term effects of environmental or anthropogenic disturbance of foraging on various life stages of selected species (sperm whale, Farmer *et al.* (2018a); California sea lion, McHuron *et al.* (2018b); and blue whale, Pirotta, *et al.* (2018b)).

The PCoD model identifies the types of data that would be needed to assess population-level impacts. These data are lacking for many marine mammal species (Booth *et al.,* 2020). Southall *et al.* (2021) states that future modeling and population simulation studies can help determine population-wide long-term consequences and impact analysis. However, the method to do so is still developing, as there are gaps in the literature, possible sampling biases, and results are rarely ground-truthed, with a few exceptions (Booth *et al.,* 2022; Schwarz *et al.,* 2022). Nowacek *et al.* (2016) reviewed technologies such as PAM, tagging, and the use of unmanned aerial vehicles which can improve scientists' abilities to study these model inputs and link behavioral changes to individual life functions and ultimately population-level effects. Relevant data needed for improving analyses of population-level consequences resulting from disturbances will continue to be collected during the 7-year period of the LOAs through projects funded by the Navy's Marine Species Monitoring Program. Multiple case studies across marine mammal taxonomic groups have been conducted following the PCoD framework. From these studies, Keen *et al.* (2021) identified themes and contextual factors relevant to assessing impacts to populations due to disturbance, which have been considered in the context of the impacts of the Action Proponents' activities.

A population's movement ecology determines the potential for spatiotemporal overlap with a disturbance. Resident populations or populations that rely on spatially limited habitats for critical life functions (*i.e.,* foraging, breeding) would be at greater risk of repeated or chronic exposure to disturbances than populations that are wide-ranging

relative to the footprint of a disturbance (Keen *et al.,* 2021). Even for the same species, differences in habitat use between populations can result in different potential for repeated exposure to individuals for a similar stressor (Costa *et al.,* 2016a). The location and radius of disturbance can impact how many animals are exposed and for how long (Costa *et al.,* 2016b). While some models have shown the advantages of populations with larger ranges, namely the decreased chance of being exposed (Costa *et al.,* 2016b), it is important to consider that for some species, the energetic cost of a longer migration could make a population more sensitive to energy lost through disturbance (Villegas-Amtmann *et al.,* 2017). In addition to ranging patterns, a species' activity budgets and lunging rates can cause variability in their predicted cost of disturbance as well (Pirotta *et al.,* 2021).

Bioenergetics frameworks that examine the impact of foraging disruption on body reserves of individual whales found that rates of daily foraging disruption can predict the number of days to terminal starvation for various life stages (Farmer *et al.,* 2018b). Similarly, when a population is displaced by a stressor, and only has access to areas of poor habitat quality (*i.e.,* low prey abundance) for relocation, bioenergetic models may be more likely to predict starvation, longer recovery times, or extinction (Hin *et al.,* 2023). There is some debate over the use of blubber thickness as a metric of cetacean energy stores and health, as marine mammals may not use their fat stores in a similar manner to terrestrial mammals (Derous *et al.,* 2020).

Resource limitation can impact marine mammal population growth rate regardless of additional anthropogenic disturbance. Stochastic Dynamic Programming models have been used to explore the impact declining prey species has on focal marine mammal predators (McHuron *et al.,* 2023a; McHuron *et al.,* 2023b). A Stochastic Dynamic Programming model determined that a decrease in walleye pollock (*Gadus chalcogrammus*) availability increased the time and distance northern fur seal mothers had to travel offshore, which negatively impacted pup growth rate and wean mass, despite attempts to compensate with longer recovery time on land (McHuron *et al.,* 2023b). Prey is an important factor in long-term consequence models for many species of marine mammals. In disturbance models that predict habitat displacement or otherwise reduced foraging opportunities, populations are being deprived of energy dense prey or high quality areas which can lead to long-term impacts on fecundity and survival (Czapanskiy *et al.,* 2021; Hin *et al.,* 2019; McHuron *et al.,* 2023a; New *et al.,* 2013b). Prey density limits the energy available for growth, reproduction, and survival. Some disturbance models indicate that the immediate decrease in a portion of the population (*e.g.,* young lactating mothers) is not necessarily detrimental to a population, since as a result, prey availability increases and the population's overall improved body condition reduces the age at first calf (Hin *et al.,* 2021). The timing of a disturbance with seasonally available resources is also important; if a disturbance occurs during periods of low resource availability, the population-level consequences are greater and occur faster than if the disturbance occurs during periods when resource levels are high (Hin *et al.,* 2019). Further, when resources are not evenly distributed, populations with cautious strategies and knowledge of resource variation have an advantage (Pirotta *et al.,* 2020).

Even when modeled alongside several anthropogenic sources of disturbance (*e.g.,* vessel strike, vessel noise, chemical contaminants, sonar), several species of marine mammals are most influenced by lack of prey (Czapanskiy *et al.,* 2021; Murray *et al.,* 2021). Some species like killer whales are especially sensitive to prey abundance due to their limited diet (Murray *et al.,* 2021). The short-term energetic cost of 11 species of cetaceans and mysticetes exposed to MFAS was influenced more by lost foraging opportunities than increased locomotor effort during avoidance (Czapanskiy *et al.,* 2021). Additionally, the model found that mysticetes incurred more energetic cost than odontocetes, even during mild behavioral responses to sonar. These results may be useful in the development of future Population Consequences of Multiple Stressors and PCoD models since they should seek to qualify cetacean health in a more ecologically relevant manner.

PCoD models have been used to assess the impacts of multiple and recurring stressors. A marine mammal population that is already subject to chronic stressors will likely be more vulnerable to acute disturbances. Models that have looked at populations of cetaceans who are exposed to multiple stressors over several years have found that even one major chronic stressor (*e.g.,* epizootic disease, oil spill) has severe impacts on population size. A layer of one or more stressor (*e.g.,* seismic surveys) in addition to a chronic stressor (*e.g.,* an oil spill) can yield devastating impacts on a population. These results may vary based on species and location, as one population may be more impacted by chronic shipping noise, while another population may not. However, just because a population does not appear to be impacted by one chronic stressor (*e.g.,* shipping noise), does not mean they are not affected by others (*e.g.,* disease) (Reed *et al.,* 2020). Recurring or chronic stressors can impact population abundance even when instances of disturbance are short and have minimal behavioral impact on an individual (Farmer *et al.,* 2018a; McHuron *et al.,* 2018b; Pirotta *et al.,* 2019). Some changes to response variables like pup recruitment (survival to age one) are not noticeable for several years, as the impacts on pup survival does not affect the population until those pups are mature but impacts to young animals will ultimately lead to population-wide declines. The severity of the repeated disturbance can also impact a population's long-term reproductive success. Scenarios with severe repeated disturbance (*e.g.,* 95 percent probability of exposure, with 95 percent reduction in feeding efficiency) can severely reduce fecundity and calf survival, while a weaker disturbance (25 percent probability of exposure, with 25 percent reduction in feeding efficiency) had no population-wide effect on vital rates (Pirotta *et al.,* 2019).

Farmer *et al.* (2018a) modeled how an oil spill led to chronic declines in a sperm whale population over 10 years, and if models included even one more stressor (*i.e.,* behavioral responses to air guns), the population declined even further. However, the amount of additional population decline due to acoustic disturbance depended on the way the dose-response of the noise levels were modeled. A single step-function led to higher impacts than a function with multiple steps and frequency weighting. In addition, the amount of impact from both disturbances was mediated when the metric in the model that described animal resilience was changed to increase resilience to disturbance (*e.g.,* able to make up reserves through increased foraging).

Not all stressors have the same impact for all species and all locations. Another model analyzed the effect of a number of chronic disturbances on two bottlenose dolphin populations in Australia over 5 years (Reed *et al.,* 2020). Results indicated that disturbance from fisheries interactions and shipping noise had little overall impact on population abundances in

either location, even in the most extreme impact scenarios modeled. At least in this area, other factors (*e.g.,* epizootic scenarios) had the largest impact on population size and fecundity.

Recurring stressors can impact population abundance even when individual instances of disturbance are short and have minimal behavioral impact on an individual. A model on California sea lions introduced a generalized disturbance at different times throughout the breeding cycle, with their behavior response being an increase in the duration of a foraging trip by the female (McHuron *et al.,* 2018a). Very short duration disturbances or responses led to little change, particularly if the disturbance was a single event, and changes in the timing of the event in the year had little effect. However, with even relatively short disturbances or mild responses, when a disturbance was modeled as recurring there were resulting reductions in population size and pup recruitment (survival to age one). Often, the effects were not noticeable for several years, as the impacts on pup survival did not affect the population until those pups were mature.

Stranding and Mortality

The definition for a stranding under title IV of the MMPA is an event in the wild in which (A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance (see 16 U.S.C. 1421h(6)). This definition is useful for considering stranding events even when they occur beyond lands and waters under the jurisdiction of the United States.

Marine mammal strandings have been linked to a variety of causes, such as illness from exposure to infectious agents, biotoxins, or parasites; starvation; unusual oceanographic or weather events; or anthropogenic causes including fishery interaction, vessel strike, entrainment, entrapment, sound exposure, or combinations of these stressors sustained concurrently or in series. Historically, the cause or causes of most strandings have remained unknown (*e.g.,* Odell *et al.,* 1980), but the development of trained, professional stranding response networks and improved analyses have led to a greater understanding of marine mammal stranding causes (Simeone and Moore 2018).

Numerous studies suggest that the physiology, behavior, habitat, social relationships, age, or condition of cetaceans may cause them to strand or might predispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Bernaldo de Quiros *et al.,* 2019; Chroussos, 2000; Creel, 2005 Fair and Becker, 2000; Moberg, 2000; Relyea, 2005a, 2005b; Romero, 2004; Sih *et al.,* 2004).

Historically, stranding reporting and response efforts have been inconsistent, although significant improvements have occurred over the last 25 years. Reporting forms for basic (''Level A'') information, rehabilitation disposition, and human interaction have been standardized nationally are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/level-data-collection-marine-mammal-stranding-events.* However, data collected beyond basic information varies by region (and may vary from case to case) and are not standardized across the United States. Logistical conditions such as weather, time, location, and decomposition state may also affect the ability of the stranding network to thoroughly examine a specimen (Carretta *et al.,* 2023; Moore *et al.,* 2013). While the investigation of stranded animals provides insight into the types of threats marine mammal populations face, full investigations are only possible and conducted on a small fraction of the total number of strandings that occur, limiting our understanding of the causes of strandings (Carretta *et al.,* 2016). Additionally, and due to the variability in effort and data collected, the ability to interpret long-term trends in stranded marine mammals is complicated.

In the United States from 2006–2025, there were over 32,600 cetacean strandings (P. Onens, NMFS, *pers comm.,* August 2026). Several mass strandings (strandings that involve two or more individuals of the same species, excluding a single mother-calf pair) that have occurred over the past two decades have been associated with anthropogenic activities that introduced sound into the marine environment such as naval operations and seismic surveys. An in-depth discussion of strandings can be found in the Acoustic and Explosives Concepts Technical Report and in the Navy's Technical Report on Marine Mammal Strandings Associated with U.S. Navy Sonar Activities (U.S. Department of the Navy, 2017a).

Worldwide, there have been several efforts to identify relationships between cetacean mass stranding events and military active sonar (Cox *et al.,* 2006; Hildebrand, 2004; Taylor *et al.,* 2004). D'Amico *et al.* (2009) reviewed beaked whale stranding data compiled primarily from the published literature, which provides an incomplete record of stranding events, as many are not written up for publication, along with unpublished information from some regions of the world.

Most of the stranding events reviewed by the IWC involved beaked whales. A mass stranding of goose-beaked whales in the eastern Mediterranean Sea occurred in 1996 (Frantzis, 1998), and mass stranding events involving Gervais' beaked whales, Blainville's beaked whales, and goose-beaked whales occurred off the coast of the Canary Islands in the late 1980s (Simmonds and Lopez-Jurado, 1991). The stranding events that occurred in the Canary Islands and Kyparissiakos Gulf in the late 1990s and the Bahamas in 2000 have been the most intensively-studied mass stranding events and have been associated with naval maneuvers involving the use of tactical sonar. Other cetacean species with naval sonar implicated in stranding events include harbor porpoise (Norman *et al.,* 2004; Wright *et al.,* 2013) and common dolphin (Jepson *et al.,* 2013).

Strandings Associated With Active Sonar

Over the past 21 years, there have been five stranding events coincident with naval MFAS use in which exposure to sonar is believed to have been a contributing factor: Greece (1996); the Bahamas (2000); Madeira (2000); Canary Islands (2002); and Spain (2006) (Cox *et al.,* 2006; Fernandez, 2006; U.S. Department of the Navy, 2017a). These 5 mass strandings have resulted in about 40 known cetacean deaths consisting mostly of beaked whales and with close linkages to MFAS activity. In these circumstances, exposure to non-impulsive acoustic energy was considered a potential indirect cause of death of the marine mammals (Cox *et al.,* 2006). Only one of these stranding events, the Bahamas

(2000), was associated with exercises conducted by the U.S. Navy. Additionally, in 2004, during the Rim of the Pacific exercises, between 150 and 200 usually pelagic melon-headed whales occupied the shallow waters of Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that MFAS was a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of MFAS, including the death of beaked whales or other species (*i.e.,* minke whales, dwarf sperm whales, pilot whales), have been reported; however, the majority have not been investigated to the degree necessary to determine the cause of the stranding. Most recently, the Independent Scientific Review Panel investigating potential contributing factors to a 2008 mass stranding of melon-headed whales in Antsohihy, Madagascar released its final report suggesting that the stranding was likely initially triggered by an industry seismic survey (Southall *et al.,* 2013). This report suggests that the operation of a commercial high-powered 12 kHz multibeam echosounder during an industry seismic survey was a plausible and likely initial trigger that caused a large group of melon-headed whales to leave their typical habitat and then ultimately strand as a result of secondary factors such as malnourishment and dehydration. The report indicates that the risk of this particular convergence of factors and ultimate outcome is likely very low but recommends that the potential be considered in environmental planning. Because of the association between tactical MFAS use and a limited number of marine mammal strandings, the Navy and NMFS have been considering and addressing the potential for strandings in association with Navy activities for years. In addition to the proposed mitigation measures intended to more broadly minimize impacts to marine mammals, the Navy will abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or stranded marine mammals are detected in certain circumstances.

Greece (1996)—

Twelve goose-beaked whales stranded atypically (in both time and space) along a 38.2 km strand of the Kyparissiakos Gulf coast on May 12 and 13, 1996 (Frantzis, 1998). From May 11 through May 15, the North Atlantic Treaty Organization (NATO) research vessel Alliance was conducting sonar tests with signals of 600 Hz and 3 kHz and source levels of 228 and 226 dB re 1 µPa, respectively (D'Amico and Verboom, 1998; D'Spain *et al.,* 2006). The timing and location of the testing encompassed the time and location of the strandings (Frantzis, 1998).

Necropsies of eight of the animals were performed but were limited to basic external examination and sampling of stomach contents, blood, and skin. No ears or organs were collected, and no histological samples were preserved. No significant apparent abnormalities or wounds were found; however, examination of photos of the animals, taken soon after their death, revealed that the eyes of at least four of the individuals were bleeding (Frantzis, 2004). Stomach contents contained the flesh of cephalopods, indicating that feeding had recently taken place (Frantzis, 1998).

All available information regarding the conditions associated with this stranding event was compiled, and many potential causes were examined including major pollution events, prominent tectonic activity, unusual physical or meteorological events, magnetic anomalies, epizootics, and conventional military activities (International Council for the Exploration of the Sea, 2005). However, none of these potential causes coincided in time or space with the mass stranding or could explain its characteristics (International Council for the Exploration of the Sea, 2005). The robust condition of the animals, plus the recent stomach contents, is inconsistent with pathogenic causes. In addition, environmental causes can be ruled out as there were no unusual environmental circumstances or events before or during this time period and within the general proximity (Frantzis, 2004).

Because of the rarity of this mass stranding of goose-beaked whales in the Kyparissiakos Gulf (first one in historical records), the probability for the two events (the military exercises and the strandings) to coincide in time and location, while being independent of each other, was thought to be extremely low (Frantzis, 1998). However, because full necropsies had not been conducted, and no abnormalities were noted, the cause of the strandings could not be precisely determined (Cox *et al.,* 2006). A Bioacoustics Panel convened by NATO concluded that the evidence available did not allow them to accept or reject sonar exposures as a causal agent in these stranding events. The analysis of this stranding event provided support for, but no clear evidence for, the cause-and-effect relationship of tactical sonar training activities and beaked whale strandings (Cox *et al.,* 2006).

Bahamas (2000)—

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using MFAS as they passed through the Northeast and Northwest Providence Channels on March 15–16, 2000. The ships, which operated both AN/SQS–53C and AN/SQS–56 sonar, moved through the channel while emitting pings approximately every 24 seconds. Of the 17 cetaceans that stranded over a 36-hour period (goose-beaked whales, Blainville's beaked whales, minke whales, and a spotted dolphin), 7 animals died on the beach (5 goose-beaked whales, 1 Blainville's beaked whale, and 1 spotted dolphin), while the other 10 were returned to the water alive (though their ultimate fate is unknown). As discussed in the Bahamas report (U.S. Department of Commerce and U.S. Department of the Navy, 2001), there is no likely association between the minke whale and spotted dolphin strandings and the operation of MFAS.

Necropsies were performed on five of the stranded beaked whales. All five necropsied beaked whales were in good body condition, showing no signs of infection, disease, vessel strike, blunt trauma, or fishery related injuries, and three still had food remains in their stomachs. Auditory structural damage was discovered in four of the whales, specifically bloody effusions or hemorrhaging around the ears. Bilateral intracochlear and unilateral temporal region subarachnoid hemorrhage, with blood clots in the lateral ventricles, were found in two of the whales. Three of the whales had small hemorrhages in their acoustic fats (located along the jaw and in the melon, a fatty structure in the forehead of odontocetes).

A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. Based on the way in which the strandings coincided with ongoing naval activity involving tactical MFAS use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that MFAS aboard U.S. Navy ships that were in use during the active sonar exercise in question were the most plausible source of this acoustic or impulse trauma to beaked whales. This sound source was active in a complex environment that included

the presence of a surface duct, unusual and steep bathymetry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these active sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy MFAS and these contributory factors working together and further recommended that the Navy avoid operating MFAS in situations where these five factors would be likely to occur. This report did not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the operation of MFAS in situations where surface ducts exist, or in marine environments defined by steep bathymetry and/or constricted channels may increase the likelihood of producing a sound field with the potential to cause cetaceans (especially beaked whales) to strand, and therefore, suggests the need for increased vigilance while operating MFAS in these areas, especially when beaked whales (or potentially other deep divers) are likely present.

Madeira, Portugal (2000)—

From May 10–14, 2000, three goose-beaked whales were found stranded on two islands in the Madeira Archipelago, Portugal (Cox *et al.,* 2006). A fourth animal was reported floating in the Madeiran waters by fisherman but did not come ashore (Ketten, 2005). Joint NATO amphibious training peacekeeping exercises involving participants from 17 countries and 80 warships took place in Portugal during May 2–15, 2000.

The bodies of the three stranded whales were examined postmortem (Ketten, 2005), though only one of the stranded whales was fresh enough (24 hours after stranding) to be necropsied (Cox *et al.,* 2006). Results from the necropsy revealed evidence of hemorrhage and congestion in the right lung and both kidneys (Cox *et al.,* 2006). There was also evidence of intracochlear and intracranial hemorrhage similar to that which was observed in the whales that stranded in the Bahamas event (Cox *et al.,* 2006). There were no signs of blunt trauma, and no major fractures, and the cranial sinuses and airways were found to be clear with little or no fluid deposition, which may indicate good preservation of tissues.

Several observations on the Madeira stranded beaked whales, such as the pattern of injury to the auditory system, are the same as those observed in the Bahamas strandings. Blood in and around the eyes, kidney lesions, pleural hemorrhages, and congestion in the lungs are particularly consistent with the pathologies from the whales stranded in the Bahamas and are consistent with stress and pressure related trauma. The similarities in pathology and stranding patterns between these two events suggest that a similar pressure event may have precipitated or contributed to the strandings at both sites.

Even though no definitive causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004): Exercises were conducted in areas of at least 1,000 m depth near a shoreline where there is a rapid change in bathymetry on the order of 1,000 to 6,000 m occurring across a relatively short horizontal distance (Freitas, 2004); multiple ships were operating around Madeira, though it is not known if MFAS was used, and the specifics of the sound sources used are unknown (Cox *et al.,* 2006; Freitas, 2004); and exercises took place in an area surrounded by landmasses separated by less than 65 km and at least 19 km in length, or in an embayment. Exercises involving multiple ships employing MFAS near land may produce sound directed towards a channel or embayment that may cut off the lines of egress for marine mammals (Freitas, 2004).

Canary Islands, Spain (2002)—

The southeastern area within the Canary Islands is well known for aggregations of beaked whales due to its ocean depths of greater than 1,000 m within a few hundred meters of the coastline (Fernandez *et al.,* 2005). On September 24, 2002, 14 beaked whales were found stranded on Fuerteventura and Lanzarote Islands in the Canary Islands (International Council for the Exploration of the Sea, 2005). Seven whales died, while the remaining seven live whales were returned to deeper waters (Fernandez *et al.,* 2005). Four beaked whales were found stranded dead over the next 3 days either on the coast or floating offshore. These strandings occurred within close proximity of an international naval exercise that utilized MFAS and involved numerous surface warships and several submarines. Strandings began about 4 hours after the onset of MFAS activity (International Council for the Exploration of the Sea, 2005; Fernandez *et al.,* 2005).

Eight goose-beaked whales, one Blainville's beaked whale, and one Gervais' beaked whale were necropsied, six of them within 12 hours of stranding (Fernandez *et al.,* 2005). No pathogenic bacteria were isolated from the carcasses (Jepson *et al.,* 2003). The animals displayed severe vascular congestion and hemorrhage especially around the tissues in the jaw, ears, brain, and kidneys, displaying marked disseminated microvascular hemorrhages associated with widespread fat emboli (Jepson *et al.,* 2003; International Council for the Exploration of the Sea, 2005). Several organs contained intravascular bubbles, although definitive evidence of gas embolism in vivo is difficult to determine after death (Jepson *et al.,* 2003). The livers of the necropsied animals were the most consistently affected organ, which contained macroscopic gas-filled cavities and had variable degrees of fibrotic encapsulation. In some animals, cavitary lesions had extensively replaced the normal tissue (Jepson *et al.,* 2003). Stomachs contained a large amount of fresh and undigested contents, suggesting a rapid onset of disease and death (Fernandez *et al.,* 2005). Head and neck lymph nodes were enlarged and congested, and parasites were found in the kidneys of all animals (Fernandez *et al.,* 2005).

The association of NATO MFAS use close in space and time to the beaked whale strandings, and the similarity between this stranding event and previous beaked whale mass strandings coincident with sonar use, suggests that a similar scenario and causative mechanism of stranding may be shared between the events. Beaked whales stranded in this event demonstrated brain and auditory system injuries, hemorrhages, and congestion in multiple organs, similar to the pathological findings of the Bahamas and Madeira stranding events. In addition, the necropsy results of the Canary Islands stranding event lead to the hypothesis that the presence of disseminated and widespread gas bubbles and fat emboli were indicative of nitrogen bubble formation, similar to what might be expected in decompression sickness (Jepson *et al.,* 2003; Fernández *et al.,* 2005).

Hanalei Bay (2004)—

On July 3 and 4, 2004, approximately 150 to 200 melon-headed whales occupied the shallow waters of Hanalei Bay, Kaua'i, Hawaii for over 28 hours.

Attendees of a canoe blessing observed the animals entering Hanalei Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died following this event. The animal was noted alive and alone in Hanalei Bay on the afternoon of July 4, 2004, and was found dead in Hanalei Bay the morning of July 5, 2004. A full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Cause of death could not be definitively determined, but it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although it is not known when the calf was separated from its mother, the animals' movement into Hanalei Bay and subsequent milling and re-grouping may have contributed to the separation or lack of nursing, especially if the maternal bond was weak or this was an inexperienced mother with her first calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay (Southall *et al.,* 2006). The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution, occurrence of predator or prey species, or unusual harmful algal blooms, although Mobley (2007) suggested that the full moon cycle that occurred at that time may have influenced a run of squid into the Bay. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

The Hanalei Bay event was spatially and temporally correlated with the Rim of the Pacific Exercise (RIMPAC). Official sonar training and tracking exercises in the PMRF warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the bay. However, six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2 and reached Hanalei Bay on or before 7 a.m. on July 3. However, data limitations regarding the position of the whales prior to their arrival in Hanalei Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggests that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Hanalei Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in Hanalei Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3. Subsequent to the cessation of sonar use, the animals were herded out of Hanalei Bay.

While causation of this stranding event may never be unequivocally determined, NMFS considers the active sonar transmissions of July 2–3, 2004 a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on the following: (1) the evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kaua'i; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in Hanalei Bay.

A separate event involving melon-headed whales and rough-toothed dolphins took place over the same period of time in the Northern Mariana Islands (Jefferson *et al.,* 2006), which is several thousand miles from Hawaii. Some 500 to 700 melon-headed whales came into Sasanhaya Bay on July 4, 2004, near the island of Rota and then left of their own accord after 5.5 hours; no known active sonar transmissions occurred in the vicinity of that event. The Rota incident led to scientific debate regarding what, if any, relationship the event had to the simultaneous events in Hawaii and whether they might be related by some common factor (*e.g.,* there was a full moon on July 2, 2004, as well as during other melon-headed whale strandings and nearshore aggregations (Brownell *et al.,* 2009; Lignon *et al.,* 2007; Mobley, 2007)). Brownell *et al.* (2009) compared the two incidents, along with one other stranding incident at Nuka Hiva in French Polynesia and normal resting behaviors observed at Palmyra Island, in regard to physical features in the areas, melon-headed whale behavior, and lunar cycles. Brownell *et al.,* (2009) concluded that the rapid entry of the whales into Hanalei Bay, their movement into very shallow water far from the 100-m contour, their milling behavior (typical pre-stranding behavior), and their reluctance to leave the bay constituted an unusual event that was not similar to the events that occurred at Rota, which appear to be similar to observations of melon-headed whales resting normally at Palmyra Island. Additionally, there was no correlation between lunar cycle and the types of behaviors observed in the Brownell *et al.* (2009) examples.

Spain (2006)—

The Spanish Cetacean Society reported an atypical mass stranding of four beaked whales that occurred January 26, 2006, on the southeast coast of Spain, near Mojácar (Gulf of Vera) in the Western Mediterranean Sea. According to the report, two of the whales were discovered the evening of January 26 and were found to be still alive, though they later died. Two other whales were discovered during the day

on January 27 but had already died. The first three animals were located near the town of Mojácar and the fourth animal was found dead a few kilometers north of the first three animals. From January 25–26, 2006, Standing NATO Response Force Maritime Group Two (five of seven ships including one U.S. ship under NATO Operational Control) had conducted active sonar training against a Spanish submarine within 93 km of the stranding site.

Veterinary pathologists necropsied the two male and two female goose-beaked whales. According to the pathologists, the most likely primary cause of this type of beaked whale mass stranding event was anthropogenic acoustic activities, most probably anti-submarine MFAS used during the military naval exercises. However, no positive acoustic link was established as a direct cause of the stranding. Even though no causal link can be made between the stranding event and naval exercises, certain conditions may have existed in the exercise area that, in their aggregate, may have contributed to the marine mammal strandings (Freitas, 2004). Exercises were conducted in areas of at least 1,000 m depth near a shoreline where there is a rapid change in bathymetry on the order of 1,000 to 6,000 m occurring across a relatively short horizontal distance (Freitas, 2004). Multiple ships (in this instance, five) were operating MFAS in the same area over extended periods of time (in this case, 20 hours) in close proximity; and exercises took place in an area surrounded by landmasses, or in an embayment. Exercises involving multiple ships employing MFAS near land may have produced sound directed towards a channel or embayment that may have cut off the lines of egress for the affected marine mammals (Freitas, 2004).

Honaunau Bay (2022)—

On March 25, 2022, a beaked whale (species unknown) stranded in Honaunau Bay, Hawaii. The animal was observed swimming into shore and over rocks. Bystanders intervened to turn the animal off of the rocks, and it swam back out of Honaunau Bay on its own. Locals reported hearing a siren or alarm type of sound underwater on the same day, and a Navy vessel was observed from shore on the following day. The Navy confirmed it used CAS within 50 km and 48 hours of the time of stranding, though the stranding has not been definitively linked to the Navy's CAS use, and there is no evidence to determine whether the animal had any further short- or long-term effects.

Behaviorally Mediated Responses to MFAS That May Lead to Stranding

Although the confluence of Navy MFAS with the other contributory factors noted in the 2001 NMFS/Navy joint report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding (or the others) are not well understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is unclear whether beaked whales were directly injured by sound (*e.g.,* acoustically mediated bubble growth, as addressed above) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to be injured and strand.

Although causal relationships between beaked whale stranding events and active sonar remain unknown, several authors have hypothesized that stranding events involving these species in the Bahamas and Canary Islands may have been triggered when the whales changed their dive behavior in a startled response to exposure to active sonar or to further avoid exposure (Cox *et al.,* 2006; Rommel *et al.,* 2006). These authors proposed three mechanisms by which the behavioral responses of beaked whales upon being exposed to active sonar might result in a stranding event. These include the following: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. More specifically, beaked whales that occur in deep waters that are in close proximity to shallow waters (for example, the ''canyon areas'' that are cited in the Bahamas stranding event; see D'Spain *et al.,* 2006), may respond to active sonar by swimming into shallow waters to avoid further exposures and strand if they are not able to swim back to deeper waters. Second, beaked whales exposed to active sonar might alter their dive behavior. Changes in their dive behavior might cause them to remain at the surface or at depth for extended periods of time which could lead to hypoxia directly by increasing their oxygen demands or indirectly by increasing their energy expenditures (to remain at depth) and increase their oxygen demands as a result. If beaked whales are at depth when they detect a ping from an active sonar transmission and change their dive profile, this could lead to the formation of significant gas bubbles, which could damage multiple organs or interfere with normal physiological function (Cox *et al.,* 2006; Rommel *et al.,* 2006; Zimmer and Tyack, 2007). Baird *et al.* (2006) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both goose-beaked and Blainville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues during their frequent long dives (Baird *et al.,* 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen). In a review of the previously published data on the potential impacts of sonar on beaked whales, Bernaldo de Quirós *et al.* (2019) suggested that the effect of MFAS on beaked whales varies among individuals or populations, and that predisposing conditions such as previous exposure to sonar and individual health risk factors may contribute to individual outcomes (*e.g.,* decompression sickness).

Because many species of marine mammals make repetitive and prolonged dives to great depths, it has long been assumed that marine mammals have evolved physiological mechanisms to protect against the effects of rapid and repeated decompressions. Although several investigators have identified physiological adaptations that may protect marine mammals against nitrogen gas supersaturation (*i.e.,* alveolar collapse and elective circulation; Kooyman *et al.,* 1972; Ridgway and Howard, 1979), Ridgway and Howard (1979) reported that bottlenose dolphins that were trained to dive repeatedly had muscle tissues that were substantially supersaturated with nitrogen gas. Houser *et al.* (2001b) used these data to model the accumulation of nitrogen gas within the muscle tissue of other marine mammal species and concluded that cetaceans that dive deep and have slow ascent or descent speeds would have tissues that are more supersaturated with nitrogen gas than other marine mammals. Based on these data, Cox *et al.* (2006) hypothesized that a critical dive sequence might make beaked whales more prone to stranding in response to acoustic exposures. The sequence began with: (1) very deep (to depths as deep as 2 km) and long (as long as 90 minutes) foraging dives; (2) relatively slow, controlled ascents; and (3) a series of ''bounce'' dives between

100 and 400 m in depth (see Zimmer and Tyack, 2007). They concluded that acoustic exposures that disrupted any part of this dive sequence (for example, causing beaked whales to spend more time at surface without the bounce dives that are necessary to recover from the deep dive) could produce excessive levels of nitrogen supersaturation in their tissues, leading to gas bubble and emboli formation that produces pathologies similar to decompression sickness.

Zimmer and Tyack (2007) modeled nitrogen tension and bubble growth in several tissue compartments for several hypothetical dive profiles and concluded that repetitive shallow dives (defined as a dive where depth does not exceed the depth of alveolar collapse, approximately 72 m for goose-beaked whale), perhaps as a consequence of an extended avoidance response to sonar sound, could pose a risk for decompression sickness and that this risk should increase with the duration of the response. Their models also suggested that unrealistically rapid rates of ascent from normal dive behaviors are unlikely to result in supersaturation to the extent that bubble formation would be expected. Tyack *et al.* (2006) suggested that emboli observed in animals exposed to mid-frequency range sonar (Jepson *et al.,* 2003; Fernandez *et al.,* 2005) could stem from a behavioral response that involves repeated dives shallower than the depth of lung collapse. Given that nitrogen gas accumulation is a passive process (*i.e.,* nitrogen is metabolically inert), a bottlenose dolphin was trained to repetitively dive a profile predicted to elevate nitrogen saturation to the point that nitrogen bubble formation was predicted to occur. However, inspection of the vascular system of the dolphin via ultrasound did not demonstrate the formation of asymptomatic nitrogen gas bubbles (Houser *et al.,* 2010). Baird *et al.* (2008), in a beaked whale tagging study off Hawaii, showed that deep dives are equally common during day or night, but bounce dives are typically a daytime behavior, possibly associated with visual predator avoidance. This may indicate that bounce dives are associated with something other than behavioral regulation of dissolved nitrogen levels, which would be necessary day and night.

Additional predictive modeling conducted to date has been performed with many unknowns about the respiratory physiology of deep-diving breath-hold animals. For example, Denk *et al.* (2020) found intra-species differences in the compliance of tracheobronchial structures of post-mortem cetaceans and pinnipeds under diving hydrostatic pressures, which would affect depth of alveolar collapse. Although, as hypothesized by Garcia Parraga *et al.* (2018) and reviewed in Fahlman *et al.* (2021), mechanisms may exist that allow marine mammals to create a pulmonary shunt without the need for hydrostatic pressure-induced lung collapse (*i.e.,* by varying perfusion to the lung independent of lung collapse and degree of ventilation). If such a mechanism exists, then assumptions in prior gas models require reconsideration, the degree of nitrogen gas accumulation associated with dive profiles needs to be re-evaluated, and behavioral responses potentially leading to a destabilization of the relationship between pulmonary ventilation and perfusion should be considered. Costidis and Rommel (2016) suggested that gas exchange may continue to occur across the tissues of air-filled sinuses in deep diving odontocetes below the depth of lung collapse if hydrostatic pressures are high enough to drive gas exchange across into non-capillary veins.

If marine mammals respond to an Action Proponent vessel that is transmitting active sonar in the same way that they might respond to a predator, their probability of flight responses could increase when they perceive that Action Proponent vessels are approaching them directly, because a direct approach may convey detection and intent to capture (Burger and Gochfeld, 1981, 1990; Cooper, 1997; Cooper, 1998). The probability of flight responses could also increase as received levels of active sonar increase (and the ship is, therefore, closer) and as ship speeds increase (that is, as approach speeds increase). For example, the probability of flight responses in ringed seals (Born *et al.,* 1999), Pacific brant (*Branta bernicla nigricans*) and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft approached groups of these animals more directly (Ward *et al.,* 1999). Bald eagles (*Haliaeetus leucocephalus*) perched on trees alongside a river were also more likely to flee from a paddle raft when their perches were closer to the river or were closer to the ground (Steidl and Anthony, 1996).

Despite the many theories involving bubble formation (both as a direct cause of injury (see Non-Auditory Injury section) and an indirect cause of stranding), Southall *et al.* (2007) summarizes that there is either scientific disagreement or a lack of information regarding each of the following important points: (1) received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral responses (*e.g.,* atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Strandings Associated With Explosive Use

Silver Strand (2011)—

During a Navy training event on March 4, 2011, at the Silver Strand Training Complex in San Diego, California, three or possibly four dolphins were killed in an explosion. During an underwater detonation training event, a pod of 100 to 150 long-beaked common dolphins were observed moving towards the 640.1-m exclusion zone around the explosive charge, monitored by personnel in a safety boat and participants in a dive boat. Approximately 5 minutes remained on a time-delay fuse connected to a single 3.97 kg explosive charge (C–4 and detonation cord). Although the dive boat was placed between the pod and the explosive in an effort to guide the dolphins away from the area, that effort was unsuccessful and three long-beaked common dolphins near the explosion died. The Navy recovered those animals and transferred them to the local stranding network for necropsy. In addition to the three dolphins found dead on March 4, the remains of a fourth dolphin were discovered on March 7, 2011, near Oceanside, California (3 days later and approximately 68 km north of the detonation), which might also have been related to this event. Upon necropsy, all four animals were found to have sustained typical mammalian primary blast injuries (Danil and St. Leger, 2011). Association of the fourth stranding with the training event is uncertain because dolphins strand on a regular basis in the San Diego area. Details such as the dolphins' depth and distance from the explosive at the time of the detonation could not be estimated from the 228.6 m standoff point of the observers in the dive boat or the safety boat.

These dolphin mortalities are the only known occurrence of a Navy training or testing event involving impulsive energy (underwater detonation) that

caused mortality or injury to a marine mammal. Despite this being a rare occurrence, the Navy reviewed training requirements, safety procedures, and possible mitigation measures and implemented changes to reduce the potential for this to occur in the future. Discussions of procedures associated with underwater explosives training and other training events are presented in the Proposed Mitigation Measures section.

Kyle of Durness, Scotland (2011)—

On July 22, 2011, a mass stranding event involving long-finned pilot whales occurred at Kyle of Durness, Scotland. An investigation by Brownlow *et al.* (2015) considered unexploded ordnance detonation activities at a Ministry of Defense bombing range, conducted by the Royal Navy prior to and during the strandings, as a plausible contributing factor in the mass stranding event. While Brownlow *et al.* (2015) concluded that the serial detonations of underwater ordnance were an influential factor in the mass stranding event (along with the presence of a potentially compromised animal and navigational error in a topographically complex region), they also suggest that mitigation measures—which included observations from a zodiac only and by personnel not experienced in marine mammal observation, among other deficiencies—were likely insufficient to assess if cetaceans were in the vicinity of the detonations. The authors also cite information from the Ministry of Defense indicating ''an extraordinarily high level of activity'' (*i.e.,* frequency and intensity of underwater explosions) on the range in the days leading up to the stranding.

Strandings in the Study Area

Although records of marine mammal strandings exist as far back as 1878 in Guam, reporting of marine mammal strandings across the Mariana Islands has likely only become consistent in recent years. A variety of marine mammals have historically stranded in the Study Area and have been documented by agencies such as the Department of Lands and Natural Resources Division of Fish and Wildlife and by the Department of Agriculture Division of Aquatic and Wildlife Resources. NMFS' National Marine Mammal Stranding Database documents the following identified stranded animals in the Study Area through 2025:

- Bottlenose dolphin: One (2013)
- Bryde's whale: One (2014)
- Dwarf sperm whale: Four (1970, 1971, 1974, 2002)
- False killer whale: Three (2007, 2019, 2020)
- Fraser's dolphin: One (2021)
- Melon-headed whale: Two (1980, 2015)
- Pantropical spotted dolphin: Two (2009, 2021)
- Pygmy sperm whale: Two (1989, 1989)
- Short-finned pilot whale: Two (1980, 2025)
- Sperm whale: Six (1993, 2011, 2011, 2012, 2013, 2020)
- Spinner dolphin: Six (1993, 1994, 2007, 2019, 2021, 2024)
- Striped dolphin: One (1985)
- Goose-beaked whales: Nine (2007, 2008, 2011, 2011, 2012, 2015, 2015, 2016, 2019). A review of Navy records indicated that sonar use occurred within 72 hours or 148.2 km of three of these stranding events (2011, 2015, 2016) (C. Johnson, Navy, *pers. comm.* 2019).

In February 2020, Simonis *et al.* (2020) published a study titled ''Co-occurrence of beaked whale strandings and naval sonar in the Mariana Islands, Western Pacific.'' The authors compiled publicly available information regarding Navy training exercises from 2006–2019 (from press releases, *etc.*) and PAM data indicating sonar use that they collected at two locations on high-frequency acoustic recording packages (HARPs) over a shorter period of time and compared it to the dates of beaked whale strandings. Using this data, they reported that 6 of the 10 goose-beaked whales, from 4 of 8 events, stranded during or within 6 days of a naval ASW exercise using sonar. In a note to the article, the authors acknowledged additional information provided by the Navy while Simonis *et al.* (2020) was in press that one of the strandings occurred 1 day prior to sonar transmissions and should not be considered coincident with sonar. The authors' analysis examined the probability that the remaining three of eight random days would fall during, or within 6 days after, a naval event (utilizing the Navy training events and sonar detections of which the authors were aware). Their results indicated that the probability that three of eight stranding events were randomly associated with naval sonar was 1 percent.

The authors did not have access to the Navy's classified data (in the Note added to the article, Simonis *et al.* (2020) stated the Navy was working with NMFS to make the broader classified dataset available for further statistical analysis). Later reporting by the Navy indicated there were more than three times as many sonar days in the Marianas during the designated time period than Simonis *et al.* (2020) reported. Primarily for this reason, the Navy tasked the Center for Naval Analysis (CNA) with repeating the statistical examination of Simonis *et al.* (2020) using the full classified sonar record, including vessel movement information to document the precise times and locations of Navy sonar use throughout the time period of consideration (2006–2019).

CNA re-evaluated the relationship between the strandings and sonar activities using the entire classified data set in two ways. First, from their sonar database, CNA tabulated the number of sonar days for use in their analysis. The total number of sonar days from the classified database was 923 (approximately 19.5 percent of all days in the study timeframe). In comparison, Simonis *et al.* (2020) assumed only 293 days of sonar (approximately 6.1 percent of all days in the study timeframe). CNA conducted re-constructions for each stranding event to determine/confirm if Navy sonar use coincided in time and space with each stranding location. The Navy extended the analysis through the entire year of 2019 to capture both sonar use and stranding events. As a result, the CNA analysis included consideration of the November 2019 stranding of a single beaked whale on Rota, which was not addressed in Simonis *et al.* (2020).

NMFS uses a distance of 148.2 km in ITRs for military readiness activities to evaluate strandings in the context of MTEs although, of note, none of the Marianas stranding events occurred during an MTE. All strandings reported to have been coincident with sonar use in Simonis *et al.* (2020), as well as the additional stranding that occurred while Simonis *et al.* was in press, were confirmed to be coincident by CNA analysis (*i.e.,* within 148.2 km) and, for the first analysis, CNA examined the four strandings in relation to the total sonar days throughout the Study Area recorded in the classified data set. Based on the calculations conducted by CNA, when the analysis is conducted consistent with the Simonis *et al.* (2020) assumptions (*i.e.,* without considering proximity of sonar to strandings in counting sonar days), but with consideration of the accurate number of sonar days from the classified record and the additional stranding at Rota, the analysis suggests that the probability that four of nine stranding events were randomly associated with naval events is 10 percent, which the Navy interpreted as insufficient evidence, at $p<0.10$ threshold level, to claim a

relationship between sonar use and stranding in the Mariana Islands.

For the second CNA analysis, the same four coincident strandings were considered, but only sonar use within 148.2 km from a stranding location would be considered as possibly influencing a potential stranding event and, therefore, included in the sonar days for this analysis. This analysis resulted in the calculations being performed separately for Guam, Rota, and Saipan.

When the analysis was conducted specifically for Guam including only those sonar days within 148.2 km, the results suggested that the probability that the strandings were randomly associated with sonar was notably higher, at 26 percent (p=0.26). This is notable because this location had the highest number of overall stranding events (n=7), coincident stranding events (n=2), and sonar days (n=681) of all the locations within the Mariana Islands. The probability values for Saipan and Rota (p=0.06 and 0.14, respectively) should be viewed with caution given that statistical analyses considering single data points (*i.e.,* one stranding each) have low power and high uncertainty and, similarly, the Navy reported insufficient evidence to claim a relationship (p<0.05 and 0.10, respectively) between sonar use and strandings. NMFS has evaluated the Navy's analysis and results along with the analysis and results of Simonis *et al.* (2020) and has determined that both analyses are appropriate to consider in NMFS' assessment of whether beaked whale mortality is reasonably likely to occur as a result of the Navy's activities described in this 7-year rule.

Standard statistical significance thresholds of 0.05 and 0.1 are often used in the interpretation of the results of statistical tests, and the Navy stated that their results show that the data showing the relationship between sonar and stranding are not statistically significant and do not allow one to rule out a null hypothesis that there is no relationship. NMFS consulted guidance from the American Statistical Association, which cautions against strict interpretations of *p*-values and notes that ''researchers should bring many contextual factors into play to derive scientific inferences, including the design of a study, the quality of the measurements, the external evidence for the phenomenon under study, and the validity of assumptions that underlie the data analysis. Pragmatic considerations often require binary, 'yes-no' decisions, but this does not mean that *p*-values alone can ensure that a decision is correct or incorrect.'' Separately, we also note that the Navy strove to use identical methods as Simonis *et al.* (2020) to conduct their analysis. A miscommunication resulted in the Navy initially using a Poisson distribution, while Simonis *et al.* (2020) used a permutation test; however, additional tests were run to ensure an appropriate comparison. The tests were consistent and the results are reflected in the discussion above. Last, we note that correlation does not equate to causation.

In addition to examining the correlation (or lack thereof) of activities with strandings, necropsies of stranded animals can provide insight into the potential cause of death. The number of strandings that can be thoroughly investigated through necropsy, sample collection, and advanced diagnostics is limited to animals that are not returned to the sea and those that are found and accessible prior to extensive decomposition. In the case of beaked whale strandings that occurred in the Study Area during this time period, necropsy examinations were performed and high quality tissue samples were collected from three live-stranded or fresh dead individuals: (1) one of the whales from the August 2011 Saipan stranding; (2) the single whale from the March 2015 Guam stranding; and (3) the single whale from the January 2019 Guam stranding. Of these, only the 2011 and 2015 events were coincident with the use of Navy sonar.

None of the three beaked whales from the Mariana Islands had evidence of gas bubble formation in the organs examined grossly and histologically. Stranding response staff from the University of Hawaii conducted the examinations and compared the results to the diagnostic features of gas and fat embolic syndrome described by Bernaldo de Quiros *et al.* (2019). Bernaldo de Quiros *et al.* (2019) established that, to date, strandings which have a confirmed association with naval exercise have exhibited all seven of the following diagnostic features:

1. Individual or multiple animals stranded within hours or a few days of an exercise in good body condition;

2. Food remnants in the first gastric compartment ranging from undigested food to squid beaks;

3. Abundant gas bubbles widely distributed in veins (subcutaneous, mesenteric, portal, coronary, subarachnoid veins, *etc.*) composed primarily of nitrogen (N2) in fresh carcasses;

4. Gross subarachnoid and/or acoustic fat hemorrhages;

5. Microscopic multi-organ gas and fat emboli associated with bronchopulmonary shock;

6. Diffuse, mild to moderate, acute, monophasic myonecrosis (hyaline degeneration) with ''disintegration'' of the interstitial connective tissue and related structures, including fat deposits, and their replacement by amorphous hyaline material (degraded material) in fresh and well preserved carcasses; and

7. Multi-organ microscopic hemorrhages of varying severity in lipid-rich tissues such as the central nervous system, spinal cord, and the coronary and kidney fat when present.

Results from the necropsies for the 2011 and 2015 stranded animals indicate that they only exhibited one to three of the diagnostic features, but not all seven. Additionally, the necropsy results from both animals indicated severe parasite infestations. The 2015 specimen also had indication of myocardial fibrosis which could have impacted cardiac function. Results for the January 2019 Guam animal, which was a stranding that was not coincident with sonar, indicated that it exhibited up to three [2] of the seven diagnostic features. Overall, the results of these necropsies appear to align with evidence from single beaked whale strandings in the Canary Islands between 2002 and 2015 (n=45) which stranded with no known correlation in space or time with active sonar. These individuals had one or more diagnostic features of gas and fat embolic syndrome for beaked whales stranded in association with MFAS exercises, but not all seven (Bernaldo de Quiros *et al.,* 2019). NMFS acknowledges that situations could potentially occur in which beaked whales might strand as a result of sonar exposure and not exhibit all seven of the features of gas and fat embolic syndrome described above; however, taken as a whole, these necropsy and histopathology results do not support a conclusion that the 2011 and 2015 strandings resulted from exposure to naval sonar. Furthermore, the role of natural stressors or other non-Navy factors as they affect beaked

[2] One of the diagnostic features is ''individual or multiple animals stranded within hours or a few days of an exercise in good body condition,'' however, Bernaldo de Quiros *et al.* (2019) does not specify if the stranding had to occur after an exercise in which sonar use occurred though, presumably, it does since it investigated sonar's ability to cause strandings. The 2019 animal stranded close in time to the outset of a Navy training event; however, sonar use did not occur until the day after the stranding. Therefore, this event is not considered coincident, but due to the ambiguity in the description of this diagnostic factor, the 2019 stranding is conservatively assumed to be positive for this factor.

whale strandings is not understood. The majority of strandings in the Study Area occurred without the presence of Navy sonar.

NMFS has acknowledged it is possible for naval activities using hull-mounted tactical sonar to contribute to the death of marine mammals in certain circumstances via strandings resulting from behaviorally mediated physiological impacts or other gas-related injuries. Above, NMFS discussed these potential causes and outlined the few cases where active naval sonar (in the United States or, largely, elsewhere) had either potentially contributed to or (as with the Bahamas example) been more definitively causally linked with marine mammal mass strandings (more than two animals). There have been no documented mass strandings of beaked whales in the Marianas since stranding data was collected, and the first beaked whale stranding was documented in 2007, while the Navy has been using sonar in the Marianas since the 1960s. As also noted previously, there are a suite of factors that have been associated with the specific cases of strandings directly causally associated with sonar (steep bathymetry, multiple hull-mounted platforms using sonar simultaneously, constricted channels, strong surface ducts, *etc.*) that are not present together in the Study Area and during the specified activities (and which the Navy takes care across the world not to operate under without additional monitoring).

While the results of Simonis *et al.* (2020) and the fuller CNA analysis both suggest (the latter to a notably lesser degree) that it is more probable than not that there was some form of non-random relationship between sonar days and strandings in the Marianas during this period of time, the results of the Navy analysis (using the full dataset) allow, statistically, that the strandings and sonar use may not be related. Given the uncertainties and assumptions inherent in these correlation analyses, the small sample size (in terms of the strandings), and the fact that correlation does not equate to causation, these results, alone, do not indicate a reasonable likelihood that the Navy's proposed activities will result in serious injury or mortality of beaked whales. Further, the necropsies of the two animals stranded in the Study Area in 2011 and 2015 do not support a conclusion that these strandings resulted from exposure to naval sonar. NMFS considered this information in combination with the absence of mass beaked whale strandings in the Study Area and the absence of beaked whale strandings coinciding with any MTEs, despite Navy sonar training activity in the area since the 1960s, and NMFS has preliminarily concluded that serious injury or mortality of beaked whales is unlikely to result from the Navy activities covered under this 7-year rule.

Further, a growing body of research describes the emergence of new pathogens within Pacific Island odontocetes, including beaked whales (Clifton *et al.,* 2023; Silva-Krott *et al.,* 2025; West *et al.,* 2013; West *et al.,* 2021). Infectious disease has been reported as a significant pathological finding in 62 percent of cetaceans necropsied in the Pacific Islands between 2006 and 2024 (West *et al.,* in press). Beaked whale morbillivirus (BWMV) was first identified from a stranded Longman's beaked whale in Hawaii (West *et al.,* 2013) and, since that time, BWMV has been identified from archived Hawaiian stranding samples (Jacob *et al.,* 2016; West *et al.,* 2015; West *et al.,* 2024).

On a global scale, the first cetacean circovirus was identified in a stranded Hawaiian whale (Landrau-Giovannetti *et al.,* 2020) and Navy-funded research has since detected circovirus in archival tissues from 10 additional species previously stranded in Hawaii, Saipan, and American Samoa (Clifton *et al.,* 2023). Additionally, novel cetacean herpes virus from this region has been identified (West *et al.,* 2013; Waltzek, unpublished data). This research has included reports of other pathogens that threaten Pacific Islands cetaceans, including the fungal disease *Cryptococcus gatti* in a spinner dolphin (Rotstein *et al.,* 2010) and the discovery of lobomycosis-like disease for the first time in the central Pacific (West *et al.,* in press). Brucella cases include a neonate sperm whale co-infected with morbillivirus (West *et al.,* 2015) and the identification of a high susceptibility to Brucella among pygmy killer whales and striped dolphins (Silva-Krott *et al.,* 2025). Fatally disseminated toxoplasmosis has caused the death of a bottlenose dolphin and three stranded spinner dolphins that researchers project to represent at least 60 spinner dolphin deaths (Landrau-Giovannetti *et al.,* 2022; West *et al.,* in press).

While we have preliminarily found that serious injury or mortality are not likely to result from the activities covered by this rule, we note the number of beaked whale strandings in the Study Area (acknowledging the comparatively lower carcass recovery rate for offshore species), the paucity of beaked whale data in the region, and the Simonis *et al.* (2020) and Navy analysis results, all of which highlight the need for additional data-gathering and future analysis. Accordingly, as part of the monitoring and adaptive management requirements of the 2020 MITT final rule, the Navy funded and co-organized with NMFS an expert panel to provide recommendations addressing scientific data gaps and uncertainties to further inform consideration of future protective measures to minimize the impact of Navy training and testing activities on beaked whales in the Mariana Islands (U.S. Department of the Navy, 2025a), in addition to continuing to fund stranding investigations in the Marianas and other monitoring measures. The Navy's ''Beaked Whale Occurrence, Distribution, and Behavior in the Mariana Islands Training and Testing (MITT) Study Area: Summary of Current Knowledge'' report (hereafter referred to as the MITT Beaked Whale Report) summarizes the available information about beaked whales in the Study Area, including occurrence, distribution, abundance, stranding events, and behavioral responses to anthropogenic disturbance. It also discusses regional oceanographic and bathymetric conditions known to be potential contributing factors to beaked whale strandings. The Navy conducted an extensive literature search, yielding over 2,300 sources, and conducted an email data call to 69 research scientists requesting unpublished data or information not available to the general public, which resulted in 30 responses. As outlined in the MITT Beaked Whale Report, Blainville's, goose-beaked, Longman's, and the Cross Seamount (hypothesized to be the ginkgo-toothed) beaked whale have been documented in the Study Area. Acoustic data indicate beaked whale habitat preference is concentrated on the Mariana Ridge and the Mariana Trough in waters between 1,800 and 2,300 m deep, with more beaked whales occurring in the northern part of the archipelago, where oceanographic data suggest a richer food niche may exist. The report describes recently derived passive acoustic monitoring (PAM)-based abundance and density estimates (*e.g.,* Klinck *et al.,* 2020, 2024; Hill *et al.,* 2020c; Barlow *et al.,* 2021; McCullough *et al.,* 2021; Yano *et al.,* 2022; Badger *et al.,* 2024). The report also discusses beaked whale stranding events globally and within the Study Area and assesses whether there is a link in time and space to Navy activities that may have included the use of MFAS, as well as new diagnostic techniques to improve mortality diagnoses. As stated in the report, ''both NMFS and the Navy acknowledge the need for more information about where

beaked whales occur, how they occupy their habitat spatially and temporally, how they respond to anthropogenic impacts, including MFAS, what the causes of natural mortality are, and what factors contribute to the likelihood of a stranding occurrence, and continue to fund research in this area.'' The full report and a GeoPDF showing environmental factors in the Mariana Islands generally associated with an increased likelihood of strandings during Navy training events is available on the Navy's website at *https://www.navymarinespeciesmonitoring.us/reading-room/technical-reports/pacific/*.

Marine Mammal Habitat

The proposed training and testing activities could potentially affect marine mammal habitat through the introduction of impacts to the prey species of marine mammals, acoustic habitat (sound in the water column), water quality, and biologically important habitat for marine mammals. Each of these potential effects was considered in the 2026 MITT Draft SEIS/OEIS (see section C.7.7 (Secondary Stressors) of appendix C (Acoustic and Non-Acoustic Effects Supporting Information) and was determined not to have adverse effects on marine mammal habitat. Based on the information below and the supporting information included in the 2026 MITT Draft SEIS/OEIS, NMFS has determined that the proposed training and testing activities would not have adverse or long-term impacts on marine mammal habitat.

Effects to Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some species, is not well-documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fishes use the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). The most likely effects on fishes exposed to loud, intermittent, low-frequency sounds are behavioral responses (*i.e.,* flight or avoidance). Short duration, impulsive sounds (such as impact pile driving or seismic air guns) can cause overt or subtle changes in fish behavior and local distribution (*e.g.,* van der Knapp *et al.,* 2021; van der Knaap *et al.,* 2022; Jarriel *et al.,* 2025). The response of fish to acoustic sources depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Key impacts to fishes from exposure to underwater noise may include behavioral responses, hearing damage, barotrauma (*i.e.,* pressure-related injuries), and, in some cases, mortality. While it is clear that the behavioral responses of individual prey, such as displacement or other changes in distribution, can have direct impacts on the foraging success of marine mammals, the effects on marine mammals of individual prey that experience hearing damage, barotrauma, or mortality is less clear, though obviously population scale impacts that meaningfully reduce the amount of prey available could have more serious impacts.

Fishes, like other vertebrates, have a variety of different sensory systems to glean information from ocean around them (Astrup and Mohl, 1993; Astrup, 1999; Braun and Grande, 2008; Carroll *et al.,* 2017; Hawkins and Johnstone, 1978; Ladich and Popper, 2004; Ladich and Schulz-Mirbach, 2016; Mann, 2016; Nedwell *et al.,* 2004; Popper *et al.,* 2003; Popper *et al.,* 2005). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008; Popper *et al.,* 2022), while terrestrial vertebrates generally only detect pressure. Most marine fishes primarily detect particle motion using the inner ear and lateral line system, while some fishes possess additional morphological adaptations or specializations that can enhance their sensitivity to sound pressure, such as a gas-filled swim bladder (Braun and Grande, 2008; Popper and Fay, 2011; Popper *et al.,* 2022).

Hearing capabilities vary considerably between different fish species with data only available for just over 100 species out of the 34,000 marine and freshwater fish species (Eschmeyer and Fong, 2016). In order to better understand acoustic impacts on fishes, fish hearing groups are defined by species that possess a similar continuum of anatomical features which result in varying degrees of hearing sensitivity (Popper and Hastings, 2009a; Popper *et al.,* 2022). There are four hearing groups defined for all fish species (modified from Popper *et al.,* 2014) within this analysis and they include: fishes without a swim bladder (*e.g.,* flatfish, sharks, rays); fishes with a swim bladder not involved in hearing (*e.g.,* salmon, cod, pollock); fishes with a swim bladder involved in hearing (*e.g.,* sardines, anchovy, herring); and fishes with a swim bladder involved in hearing and high-frequency hearing (*e.g.,* shad and menhaden). Most marine mammal fish prey species would not be likely to perceive or hear mid- or high-frequency sonars. While hearing studies have not been done on sardines and northern anchovies, it would not be unexpected for them to possess hearing similarities to Pacific herring (up to 2–5 kHz) (Mann *et al.,* 2005). Currently, less data are available to estimate the range of best sensitivity for fishes without a swim bladder.

In terms of physiology, multiple scientific studies have documented a lack of mortality or physiological effects to fishes from exposure to LF and MF sonar and other sounds (Cox *et al.,* 2018; Halvorsen *et al.,* 2012b; Jørgensen *et al.,* 2005; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper *et al.,* 2016; Watwood *et al.,* 2016). Techer *et al.* (2017) exposed carp in floating cages for up to 30 days to low-power 23 and 46 kHz sources without any significant physiological response. Other studies have documented either a lack of TTS in species whose hearing range cannot perceive higher frequency military sonar, or for those species that could perceive sonar-like signals, any TTS experienced would be recoverable (Halvorsen *et al.,* 2012b; Ladich and Fay, 2013; Popper and Hastings, 2009a, 2009b; Popper *et al.,* 2014; Smith, 2016). Only fishes that have specializations that enable them to hear sounds above about 2,500 Hz (2.5 kHz) such as herring (Halvorsen *et al.,* 2012b; Mann *et al.,* 2005; Mann, 2016; Popper *et al.,* 2014) would have the potential to receive TTS or exhibit behavioral responses from exposure to MF sonar. In addition, any sonar-induced TTS to fishes whose hearing range could perceive sonar would only occur in the narrow spectrum of the mid-frequency source (*e.g.,* 3.5 kHz) compared to the species' total hearing range (*e.g.,* 0.01 kHz to 5 kHz). Overall, military sonar sources are much narrower in terms of source frequency compared to a given fish species full hearing range (Halvorsen *et al.,* 2012b; Jørgensen *et al.,* 2005; Juanes *et al.,* 2017; Kane *et al.,* 2010; Kvadsheim and Sevaldsen, 2005; Popper *et al.,* 2007; Popper and Hawkins, 2016; Watwood *et al.,* 2016).

In terms of behavioral responses, Juanes *et al.* (2017) discuss the potential for negative impacts from anthropogenic soundscapes on fishes, but the author's focus was on broader based sounds such as ship and boat noise sources. Watwood *et al.* (2016) also documented no behavioral responses by reef fish

after exposure to MFAS. Doksaeter *et al.* (2009, 2012) reported no behavioral responses to MF naval sonar by Atlantic herring; specifically, no escape responses (vertically or horizontally) were observed in free swimming herring exposed to MF sonar transmissions. Based on these results (Doksaeter *et al.,* 2009, 2012; Sivle *et al.,* 2012), Sivle *et al.* (2015a) created a model in order to report on the possible population-level effects on Atlantic herring from active naval sonar. The authors concluded that the use of naval sonar poses little risk to populations of herring regardless of season, even when the herring populations are aggregated and directly exposed to sonar. Finally, Bruintjes *et al.* (2016) commented that fishes exposed to any short-term noise within their hearing range might initially startle but would quickly return to normal behavior.

Occasional behavioral responses to intermittent explosions and impulsive sound sources are unlikely to cause long-term consequences for individual fish or populations. Fish that experience hearing loss as a result of exposure to explosions and impulsive sound sources may have a reduced ability to detect relevant sounds such as predators, prey, or social vocalizations. However, PTS has not been known to occur in fishes and any hearing loss in fish may be as temporary as the timeframe required to repair or replace the sensory cells that were damaged or destroyed (Popper *et al.,* 2005; Popper *et al.,* 2014; Smith *et al.,* 2006). It is not known if damage to auditory nerve fibers could occur, and if so, whether fibers would recover during this process.

It is also possible for fish to be injured or killed by an explosion in the immediate vicinity of the surface from dropped or fired ordnance, or near the bottom from shallow water bottom-placed underwater mine warfare detonations. Physical effects from pressure waves generated by underwater sounds (*e.g.,* underwater explosions) could potentially affect fish within proximity of training or testing activities. SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.,* 2014). The shock wave from an underwater explosion is lethal to fish at close range, causing massive organ and tissue damage and internal bleeding (Keevin and Hempen, 1997). At greater distance from the detonation point, the extent of mortality or injury depends on a number of factors including fish size, body shape, orientation, and species (Keevin and Hempen, 1997; Wright, 1982). At the same distance from the source, larger fish are generally less susceptible to death or injury, elongated forms that are round in cross-section are less at risk than deep-bodied forms, and fish oriented sideways to the blast suffer the greatest impact (Edds-Walton and Finneran, 2006; O'Keeffe, 1984; O'Keeffe and Young, 1984; Wiley *et al.,* 1981; Yelverton *et al.,* 1975). Species with gas-filled organs are more susceptible to injury and mortality than those without them (Gaspin, 1975; Gaspin *et al.,* 1976; Goertner *et al.,* 1994). Barotrauma injuries have been documented during controlled exposure to impact pile driving (an impulsive noise source, as are explosives and air guns) (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

Fish not killed or driven from a location by an explosion might change their behavior, feeding pattern, or distribution. Changes in behavior of fish have been observed as a result of sound produced by explosives, with effect intensified in areas of hard substrate (Wright, 1982). However, Navy explosive use avoids hard substrate to the best extent practical during underwater detonations or deep-water surface detonations. Stunning from pressure waves could also temporarily immobilize fish, making them more susceptible to predation. The abundances of various fish (and invertebrates) near the detonation point for explosives could be altered for a few hours before animals from surrounding areas repopulate the area. However, these populations would likely be replenished as waters near the detonation point are mixed with adjacent waters. Repeated exposure of individual fish to sounds from underwater explosions is not likely and exposures are expected to be short-term and localized. Long-term consequences for fish populations would not be expected. Several studies have demonstrated that air gun sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017).

For fishes exposed to military sonar, there would be limited sonar use spread out in time and space across large offshore areas such that only small areas are actually ensonified (tens of miles) compared to the total life history distribution of fish prey species. There would be no probability for mortality or physical injury from sonar exposure, and for most species, no or little potential for hearing or behavioral effects, except to a few select fishes with hearing specializations (*e.g.,* herring) that could perceive MF sonar. Training and testing exercises involving explosions are dispersed in space and time; therefore, repeated exposure of individual fishes is unlikely. Mortality and injury effects to fishes from explosives would be localized around the area of a given in-water explosion, but only if individual fish and the explosive (and immediate pressure field) were co-located at the same time. Fishes deeper in the water column or on the bottom would not be affected by water surface explosions. Repeated exposure of individual fish to sound and energy from underwater explosions is not likely given fish movement patterns, especially schooling prey species. Most acoustic effects, if any, are expected to be short-term and localized. Long-term consequences for fish populations, including key prey species within the Study Area, would not be expected.

Vessels and in-water devices do not normally collide with adult fishes, particularly those that are common marine mammal prey, most of which can detect and avoid them. Exposure of fishes to vessel strike stressors is limited to those fish groups that are large, slow-moving, and may occur near the surface, such as ocean sunfish, whale sharks, basking sharks, and manta rays. These species are distributed widely in offshore portions of the Study Area. Any isolated cases of a military vessel striking an individual could injure that individual, impacting the fitness of an individual fish. Vessel strikes would not pose a risk to most of the other marine fish groups, because many fish can detect and avoid vessel movements, making strikes rare and allowing the fish to return to their normal behavior after the ship or device passes. As a vessel approaches a fish, they could have a detectable behavioral or physiological response (*e.g.,* swimming away and increased heart rate) as the passing vessel displaces them. However, such responses are not expected to have lasting effects on the survival, growth, recruitment, or reproduction of these marine fish groups at the population level and therefore would not have an impact on marine mammal species as prey items.

In addition to fishes, prey sources such as marine invertebrates could potentially be impacted by sound stressors as a result of the proposed activities. However, most marine invertebrates' ability to sense sounds is very limited. In most cases, marine invertebrates would not respond to impulsive and non-impulsive sounds, although they may detect and briefly

respond to nearby low-frequency sounds. These short-term responses would likely be inconsequential to invertebrate populations.

Invertebrates appear to be able to detect sounds (Pumphrey, 1950; Frings and Frings, 1967) and are most sensitive to low-frequency sounds (Packard *et al.,* 1990; Budelmann and Williamson, 1994; Lovell *et al.,* 2005; Mooney *et al.,* 2010). Data on response of invertebrates such as squid, another marine mammal prey species, to anthropogenic sound is more limited (Aguilar de Soto, 2016; Solé *et al.,* 2017; Solé *et al.,* 2023). Data suggest that cephalopods are capable of sensing the particle motion of sounds and detect low frequencies up to 1–1.5 kHz, depending on the species, and so are likely to detect air gun noise (Kaifu *et al.,* 2008; Hu *et al.,* 2009; Mooney *et al.,* 2010; Samson *et al.,* 2014). Solé *et al.* (2017) reported physiological injuries to cuttlefish in cages placed at-sea when exposed during a controlled exposure experiment to low-frequency sources (315 Hz, 139 to 142 dB re 1 μPa^2 and 400 Hz, 139 to 141 dB re 1 μPa^2). Fewtrell and McCauley (2012) reported squids maintained in cages displayed startle responses and behavioral changes when exposed to seismic air gun sonar (136–162 re 1 μPa^2s). However, the sources Solé *et al.* (2017) and Fewtrell and McCauley (2012) used are not similar and were much lower than typical Navy sources within the Study Area. These studies do not address the issue of individual displacement outside of a zone of impact when exposed to sound. Jones *et al.* (2020) found that when squid (*Doryteuthis* (*Amerigo*) *pealeii*) were exposed to impulse pile driving noise, body pattern changes, inking, jetting, and startle responses were observed and nearly all squid exhibited at least one response. However, these responses occurred primarily during the first eight impulses and diminished quickly, indicating potential rapid, short-term habituation.

Cephalopods have a specialized sensory organ inside the head called a statocyst that may help an animal determine its position in space (orientation) and maintain balance (Budelmann, 1992). Packard *et al.* (1990) showed that cephalopods were sensitive to particle motion, not sound pressure, and Mooney *et al.* (2010) demonstrated that squid statocysts act as an accelerometer through which particle motion of the sound field can be detected. Auditory injuries (lesions occurring on the statocyst sensory hair cells) have been reported upon controlled exposure to low-frequency sounds, suggesting that cephalopods are particularly sensitive to low-frequency sound (Andre *et al.,* 2011; Sole *et al.,* 2013; Leedham *et al.,* 2026). Behavioral responses, such as inking and jetting, have also been reported upon exposure to low-frequency sound (McCauley *et al.,* 2000b; Samson *et al.,* 2014; Solé *et al.,* 2023). Squids, like most fishes species, are likely more sensitive to low frequency sounds (Mooney *et al.,* 2010), and may not perceive mid- and high-frequency sonars such as Navy sonars. Cumulatively for squid as a prey species, individual and population impacts from exposure to Navy sonar and explosives, like fishes, are not likely to be significant, and explosive impacts would be short-term and localized.

Explosions would likely kill or injure nearby marine invertebrates. Vessels also have the potential to impact marine invertebrates by disturbing the water column or sediments, or directly striking organisms (Bishop, 2008). The propeller wash (water displaced by propellers used for propulsion) from vessel movement and water displaced from vessel hulls can potentially disturb marine invertebrates in the water column and is a likely cause of zooplankton mortality (Bickel *et al.,* 2011). The localized and short-term exposure to explosions or vessels could displace, injure, or kill zooplankton, invertebrate eggs or larvae, and macro-invertebrates. However, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds of vessels in the Study Area.

Impacts to benthic communities from impulsive sound generated by active acoustic sound sources are not well documented. (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007, 2008; Boudreau *et al.,* 2009). There are no published data that indicate whether temporary or permanent threshold shifts, auditory masking, or behavioral effects occur in benthic invertebrates (Hawkins *et al.,* 2014) and some studies showed no short-term or long-term effects of air gun exposure (*e.g.,* Andriguetto-Filho *et al.,* 2005; Payne *et al.,* 2007, 2008; Boudreau *et al.,* 2009). Exposure to air gun signals was found to significantly increase mortality in scallops, in addition to causing significant changes in behavioral patterns during exposure (Day *et al.,* 2017). However, the authors state that the observed levels of mortality were not beyond naturally occurring rates. Explosions and pile driving could potentially kill or injure nearby marine invertebrates; however, mortality or long-term consequences for a few animals is unlikely to have measurable effects on overall populations.

There is little information concerning potential impacts of noise on zooplankton populations. However, one study (McCauley *et al.,* 2017) investigated zooplankton abundance, diversity, and mortality before and after exposure to air gun noise, finding that the mortality rate for zooplankton after air gun exposure was two to three times more compared with controls for all taxa. The majority of taxa present were copepods and cladocerans; for these taxa, the range within which effects on abundance were detected was up to approximately 1.2 km. In order to have significant impacts on *r*-selected species (*i.e.,* species that produce a large number of offspring and contribute few resources to each individual offspring) such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned (McCauley *et al.,* 2017).

Notably, a recently described study produced results inconsistent with those of McCauley *et al.* (2017). Researchers conducted a field and laboratory study to assess if exposure to air gun noise affects mortality, predator escape response, or gene expression of the copepod *Calanus finmarchicus* (Fields *et al.,* 2019). Immediate mortality of copepods was significantly higher, relative to controls, at distances of 5 m or less from the air guns. Mortality 1 week after the air gun blast was significantly higher in the copepods placed 10 m from the air gun but was not significantly different from the controls at a distance of 20 m from the air gun. The increase in mortality, relative to controls, did not exceed 30 percent at any distance from the air gun. Moreover, the authors caution that even this higher mortality in the immediate vicinity of the air guns may be more pronounced than what would be observed in free-swimming animals due to increased flow speed of fluid inside bags containing the experimental animals. There were no sublethal effects on the escape performance or the sensory threshold needed to initiate an escape response at any of the distances from the air gun that were tested. Whereas McCauley *et al.* (2017) reported an SEL of 156 dB at a range of 509–658 m, with zooplankton mortality observed at that range, Fields *et al.* (2019) reported an SEL of 186 dB at a range of 25 m, with no reported mortality at that distance. The large scale of effect observed here is of concern—particularly where repeated noise exposure is expected—and further study is warranted.

Military expended materials resulting from training and testing activities could potentially result in minor long-term changes to benthic habitat; however, the impacts of small amount of expended materials are unlikely to have measurable effects on overall populations. Military expended materials may be colonized over time by benthic organisms that prefer hard substrate and would provide structure that could attract some species of fish or invertebrates.

Overall, the combined impacts of sound exposure, explosions, vessel strikes, and military expended materials resulting from the proposed activities would not be expected to have measurable effects on populations of marine mammal prey species. Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. Mortality from decompression injuries is possible in close proximity to a sound, but only limited data on mortality in response to air gun noise exposure are available (Fields *et al.,* 2019; Hawkins *et al.,* 2014; McCauley *et al.,* 2017). The most likely impacts for most prey species in a given area would be temporary avoidance of the area. Surveys using towed air gun arrays move through an area relatively quickly, limiting exposure to multiple impulsive sounds. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly (McCauley *et al.,* 2000b). The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. While the potential for disruption of spawning aggregations or schools of important prey species can be meaningful on a local scale, the mobile and temporary nature of most surveys and the likelihood of temporary avoidance behavior suggest that impacts would be minor. Long-term consequences to marine invertebrate populations would not be expected as a result of exposure to sounds or vessels in the Study Area.

Acoustic Habitat

Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole, when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (*e.g.,* communication during feeding, mating, and other social activities), other animals (*e.g.,* finding prey or avoiding predators), and the physical environment (*e.g.,* finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (*e.g.,* the use of air gun arrays) or for military training and testing purposes (*e.g.,* the use of sonar and explosives and other acoustic sources). Anthropogenic noise varies widely in its frequency, content, duration, and SPL, and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please also see the previous discussion in the Masking section), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber, 2013). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2009; Pijanowski *et al.,* 2011; Lillis *et al.,* 2015.

The term ''listening area'' refers to the region of ocean over which sources of sound can be detected by an animal at the center of the space. Loss of communication space concerns the area over which a specific animal signal (used to communicate with conspecifics in biologically important contexts such as foraging or mating) can be heard, in noisier relative to quieter conditions (Clark *et al.,* 2009). Lost listening area concerns the more generalized contraction of the range over which animals would be able to detect a variety of signals of biological importance, including eavesdropping on predators and prey (Barber *et al.,* 2009). Such metrics do not, in and of themselves, document fitness consequences for the marine animals that live in chronically noisy environments. Long-term population-level consequences mediated through changes in the ultimate survival and reproductive success of individuals are difficult to study, and particularly so underwater. However, it is increasingly well documented that aquatic species rely on qualities of natural acoustic habitats, with researchers quantifying reduced detection of important ecological cues (*e.g.,* Francis and Barber, 2013; Slabbekoorn *et al.,* 2010) as well as survivorship consequences in several species (*e.g.,* Simpson *et al.,* 2015; Nedelec *et al.,* 2015).

The sounds produced during training and testing activities can be widely dispersed or concentrated in small areas for varying periods. Sound produced from training and testing activities in the Study Area is temporary and transitory. Any anthropogenic noise attributed to training and testing activities in the Study Area would be temporary and the affected area would be expected to immediately return to the original state when these activities cease.

Water Quality

Training and testing activities may introduce constituents into the water column. Based on the analysis of the 2026 MITT Draft SEIS/OEIS (see Section 3.1 (Sediments and Water Quality)), military expended materials (*e.g.,* undetonated explosive materials) would be released in quantities and at rates that would not result in a violation of any water quality standard or criteria. NMFS has reviewed this analysis and concurs that it reflects the best available science. High-order explosions consume most of the explosive material, creating typical combustion products. For example, in the case of Royal Demolition Explosive, 98 percent of the products are common seawater constituents and the remainder is rapidly diluted below threshold effect level. Explosion by-products associated with high order detonations present no secondary stressors to marine mammals through sediment or water. However, low order detonations and unexploded ordnance present elevated likelihood of impacts on marine mammals.

Indirect effects of explosives and unexploded ordnance to marine mammals via sediment is possible in the immediate vicinity of the ordnance. Degradation products of Royal Demolition Explosive are not toxic to marine organisms at realistic exposure levels (Rosen and Lotufo, 2010). Relatively low solubility of most explosives and their degradation products means that concentrations of

these contaminants in the marine environment are relatively low and readily diluted. Furthermore, while explosives and their degradation products were detectable in marine sediment approximately 0.15–0.3 m away from degrading ordnance, the concentrations of these compounds were not statistically distinguishable from background beyond 1–2 m from the degrading ordnance. Taken together, it is possible that marine mammals could be exposed to degrading explosives, but it would be within a very small radius of the explosive (0.3–2 m).

Equipment used by the Action Proponents within the Study Area, including ships and other marine vessels, aircraft, and other equipment, are also potential sources of by-products. All equipment is properly maintained in accordance with applicable Navy, Coast Guard, Army, Air Force, and legal requirements. All such operating equipment meets Federal water quality standards, where applicable.

Estimated Take of Marine Mammals

This section indicates the number of takes that NMFS is proposing to authorize, which is based on the number of take that NMFS anticipates is reasonably likely to occur. NMFS coordinated closely with the Action Proponents in the development of their incidental take application and preliminarily agrees that the methods the Action Proponents have put forth described herein to estimate take (including the model, thresholds, and density estimates) and the resulting numbers are based on the best available science and appropriate for authorization.

Takes would be in the form of harassment only. For this military readiness activity, the MMPA defines ''harassment'' as (1) 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 (2) 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 the behavioral patterns are abandoned or significantly altered (Level B harassment) (16 U.S.C. 1362(18)(B)).

Proposed authorized takes would primarily be in the form of Level B harassment, as use of the acoustic (*e.g.,* active sonar) and explosive sources are most likely to result in 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 disturbance) for marine mammals, either via direct behavioral disturbance or TTS. There is also the potential for Level A harassment, in the form of auditory and non-auditory injury to result from exposure to the sound sources and explosives utilized in military readiness 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 would experience behavioral disturbance or incur some degree of temporary or permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day or event; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities or events.

Acoustic Thresholds

Using the best available science, NMFS, in coordination with the Navy, has established acoustic thresholds that identify the most appropriate received level of underwater sound above which marine mammals exposed to these sound sources could be reasonably expected to directly incur a disruption in behavior patterns to a point where they are abandoned or significantly altered (equated to onset of Level B harassment), or to incur TTS onset (equated to Level B harassment via the indirect disruptions of behavioral patterns), or AUD INJ onset (equated to Level A harassment). Thresholds have also been developed to identify the pressure and impulse levels above which animals may incur non-auditory injury or mortality from exposure to explosive detonation.

Hearing Impairment (TTS/AUD INJ), Non-Auditory Injury, and Mortality

NMFS' 2024 Technical Guidance (NMFS, 2024) identifies dual criteria to assess AUD INJ (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 Updated Technical Guidance also identifies criteria to predict TTS, which is not considered injury and falls into the Level B harassment category. The Action Proponents' specified activities include the use of non-impulsive (*i.e.,* sonar) and impulsive (*i.e.,* explosives) sources.

For the consideration of impacts on hearing in Phase IV, marine mammals were divided into nine groups for analysis: VLF, LF, HF, VHF, SI, PCW and PCA, and OCW and OCA. For each group, a frequency-dependent weighting function and numeric thresholds for the onset of TTS and the onset of AUD INJ were estimated. The onset of TTS is defined as a TTS of 6 dB measured approximately 2–5 minutes after exposure. A TTS of 40 dB is used as a proxy for the onset of AUD INJ (*i.e.,* it is assumed that exposures beyond those capable of causing 40 dB of TTS have the potential to result in PTS or other auditory injury (*e.g.,* loss of cochlear neuron synapses)). Exposures just sufficient to cause TTS or AUD INJ are denoted as ''TTS onset'' or ''AUD INJ onset'' exposures. Onset levels are treated as step functions or all-or-nothing thresholds: exposures above the TTS or AUD INJ onset level are assumed to always result in TTS or AUD INJ, while exposures below the TTS or AUD INJ onset level are assumed to not cause TTS or AUD INJ. For non-impulsive exposures, onset levels are specified in frequency-weighted cumulative SEL; for impulsive exposures, dual metrics of weighted SEL and unweighted peak SPL are used.

To compare Phase IV weighting functions and TTS/AUD INJ SEL thresholds to those used in Phase III, both the weighting function shape and the weighted threshold values were considered; the weighted thresholds by themselves only indicate the TTS/AUD INJ threshold at the most susceptible frequency (based on the relevant weighting function). In contrast, the TTS/AUD INJ exposure functions incorporate both the shape of the weighting function and the weighted threshold value and provide the best means of comparing the frequency-dependent TTS/AUD INJ thresholds for Phase III and Phase IV.

The most significant differences between the Phase III and Phase IV functions and thresholds are the following:

- Mysticetes were divided into two groups (VLF and LF cetaceans), with the upper hearing limit for the LF cetacean group increasing from Phase III to match recent hearing measurements in minke whales (Houser *et al.,* 2024);
- Group names were changed from Phase III to be consistent with Southall *et al.* (2019c). Specifically, the Phase III MF cetacean group is now designated as the HF cetacean group, and the group previously designated as HF cetaceans is now the VHF cetacean group;
- For the HF group, Phase IV onset TTS/AUD INJ thresholds are lower

compared to Phase III at frequencies below approximately 10 kHz. This is a result of new TTS onset data for dolphins at low frequencies (Finneran *et al.,* 2023);

- For the PCW group, new TTS data for harbor seals (Kastelein *et al.,* 2020a, 2020b) resulted in slightly lower TTS/AUD INJ thresholds at high frequencies compared to Phase III; and
- For group OCW, new TTS data for California sea lions (Kastelein *et al.,* 2021b, 2022a, 2022b) resulted in significantly lower TTS/AUD INJ thresholds compared to Phase III.

Of note, the thresholds and weighting function for the LF cetacean hearing group in NMFS' 2024 Technical Guidance (NMFS, 2024) match the Navy's VLF cetacean hearing group; however, the weighting function for those hearing groups differs between the two documents (*i.e.,* the Navy's LF cetacean group has a different weighting function from NMFS) due to the Houser *et al.* (2024) minke whale data incorporated into Navy 2024 but not NMFS (2024). While NMFS' 2024 Technical Guidance differs from the criteria that the Action Proponents used to assess AUD INJ and TTS for LF cetaceans, NMFS concurs that the criteria the Action Proponents applied are appropriate for assessing the impacts of their proposed action. The criteria used by the Action Proponents are conservative in that those criteria show greater sensitivity at higher frequencies (*i.e.,* application of those criteria result in a higher amount of estimated take by higher frequency sonars than would result from application of NMFS' 2024 Technical Guidance), which is where more of the take is expected.

These thresholds (table 9 and table 10) were developed by compiling and synthesizing the best available science and soliciting input multiple times from both public and peer reviewers. The references, analysis, and methodology used in the development of the thresholds are described in Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

Table 9 -- Acoustic Thresholds Identifying the Onset of TTS and AUD INJ for Non-Impulsive Sound Sources by Functional Hearing Group

Group	TTS threshold SEL (weighted)	AUD INJ threshold SEL (weighted)
Very low-frequency (VLF)	177	197
Low-frequency (LF)	177	197
High-frequency (HF)	181	201
Very high-frequency (VHF)	161	181

Note: SEL thresholds in dB re 1 μPa^2 s underwater and dB re 20 μPa^2 s in air.

Based on the best available science, the Action Proponents (in coordination with NMFS) used the acoustic and pressure thresholds indicated in table 10 to predict the onset of behavioral harassment, AUD INJ, TTS, tissue damage, and mortality due to explosive sources.

For explosive activities using single detonations (*i.e.,* no more than one detonation within a day), NMFS uses TTS onset thresholds to assess the likelihood of behavioral harassment, rather than the Level B harassment threshold for multiple detonations indicated in table 10. While marine mammals may also respond to single explosive detonations, these responses are expected to more typically be in the form of startle response, rather than a more meaningful disruption of a behavioral pattern. On the rare occasion that a single detonation might result in a 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 criteria, which, as noted above, is 5 dB higher than the behavioral harassment threshold for multiple explosives.

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Table 10 -- Explosive Thresholds for Marine Mammals for AUD INJ, TTS, and Behavior (Multiple Detonations)

Hearing Group	AUD INJ Impulsive Threshold*	TTS Impulsive Threshold*	Behavioral Threshold (multiple detonations)
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 222 dB $L_{E,p,LF,24h}$: 183 dB	$L_{p,0\text{-}pk,flat}$: 216 dB $L_{E,LF,24h}$: 168 dB	$L_{E,LF,24h}$: 163 dB
High-Frequency (HF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 230 dB $L_{E,p,HF,24h}$: 193 dB	$L_{p,0\text{-}pk,flat}$: 224 dB $L_{E,HF,24h}$: 178 dB	$L_{E,HF,24h}$: 173 dB
Very High-Frequency (VHF) Cetaceans	$L_{p,0\text{-}pk,flat}$: 202 dB $L_{E,p,VHF,24h}$: 159 dB	$L_{p,0\text{-}pk,flat}$: 196 dB $L_{E,VHF,24h}$: 144 dB	$L_{E,VHF,24h}$: 139 dB
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-}pk,flat}$: 223 dB $L_{E,p,PW,24h}$: 183 dB	$L_{p,0\text{-}pk,flat}$: 217 dB $L_{E,PW,24h}$: 168 dB	$L_{E,PW,24h}$: 163 dB
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-}pk,flat}$: 230 dB $L_{E,p,OW,24h}$: 185 dB	$L_{p,0\text{-}pk,flat}$: 224 dB $L_{E,OW,24h}$: 170 dB	$L_{E,OW,24h}$: 165 dB
Phocid Pinnipeds (PA) (In-Air)	$L_{p,0\text{-}pk,flat}$: 162 dB $L_{E,p,PA,24h}$: 140 dB	$L_{p,0\text{-}pk,flat}$: 156 dB $L_{E,PA,24h}$: 125 dB	N/A
Otariid Pinnipeds (OA) (In-Air)	$L_{p,0\text{-}pk,flat}$: *177 dB* $L_{E,p,OA,24h}$: *163 dB*	$L_{p,0\text{-}pk,flat}$: *171 dB* $L_{E,OA,24h}$: *148 dB*	N/A

Note: N/A = Not Applicable. Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa^2s. In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017; ISO, 2020). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.*, 7 Hz to 165 kHz) or in air (*i.e.*, 42 Hz to 52 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

*Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

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The criterion for mortality is based on severe lung injury observed in terrestrial mammals exposed to underwater explosions as recorded in Goertner (1982). The criteria for non-auditory injury are based on slight lung injury or gastrointestinal tract injury observed in the same data set. Mortality and slight lung injury impacts to marine mammals are estimated using impulse thresholds based on both calf/pup/juvenile and adult masses (see the Criteria and Thresholds Technical Report). The peak pressure threshold applies to all species and age classes. Unlike the prior analysis (Phase III), this analysis relies on the onset rather than the mean estimated threshold for these effects. This revision results in a small increase in the predicted non-auditory injuries and mortalities for the same event versus prior analyses. Thresholds are provided in table 11 for use in non-auditory injury assessment for marine mammals exposed to underwater explosives.

Table 11 -- Non-Auditory Injury Thresholds for Underwater Explosives

Hearing Group	Mortality–Impulse*	Injury–Impulse*	Injury–Peak Pressure
All Marine Mammals	$103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s	$47.5M^{1/3}(1 + D/10.1)^{1/6}$Pa-s	$L_{p0\text{-}pk,flat}$: 237 dB

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa. In this table, thresholds are abbreviated to reflect American National Standards Institute (ANSI). However, ANSI defines peak sound pressure as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the overall marine mammal generalized hearing range.
* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: table C.9 from U.S. Department of the Navy (2017a) based on adult and/or calf/pup mass by species).

M animal (adult and/or calf/pup) mass (kg) (table C.9 in DoN 2017)
D animal depth (meters)

Level B Harassment by Behavioral Disturbance

Though significantly driven by received level and distance, the onset of Level B harassment by behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, marine mammal responses to sound (some of which are considered disturbances that qualify as take under the MMPA) are highly variable and context specific (*i.e.,* they are affected by differences in acoustic conditions; differences between species and populations; differences in sex, age, reproductive status, or social behavior; and other prior experience of the individuals). This means there is support for considering alternative approaches for estimating Level B behavioral harassment.

Despite the rapidly 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 criteria that identify Level B harassment by behavioral disturbance (referred to as ''behavioral harassment thresholds'') have been refined to better consider the best available science (*e.g.,* incorporating both received level and distance), they also still have some built-in factors to address the challenge noted. For example, while duration of observed responses in the data are now considered in the thresholds, some of the responses that are informing take thresholds are of a very short duration, such that it is possible some of these responses might not always rise to the level of disrupting behavior patterns to a point where they are abandoned or significantly altered. We describe the application of this 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 criteria are the most appropriate method for predicting Level B harassment by behavioral disturbance given the best available science and the associated uncertainty.

Sonar—

In its analysis of impacts associated with sonar acoustic sources, which was coordinated with NMFS, the Action Proponents used an updated approach, as described below. Many of the behavioral responses identified using the Action Proponents' quantitative analysis are most likely to be of moderate severity as described in the Southall *et al.* (2021) behavioral response severity scale. These moderate severity responses were considered significant if they were sustained for the duration of the exposure or longer. Within the Action Proponents' quantitative analysis, many responses are predicted from exposure to sound that may exceed an animal's Level B behavioral harassment threshold for only a single exposure (lasting a few seconds) to several minutes, and it is likely that some of the resulting estimated behavioral responses that are counted as Level B harassment would not constitute a significant alteration or abandonment of natural behavioral patterns (*i.e.,* the estimated number of takes by Level B harassment due to behavioral disturbance and response is likely somewhat of an overestimate).

As noted above, the Action Proponents coordinated with NMFS to develop behavioral harassment thresholds specific to their military readiness activities utilizing active sonar that identify at what received level and distance Level B harassment by behavioral disturbance would be expected to result. These behavioral harassment thresholds consist of behavioral response functions (BRFs) and associated distance cut-off conditions and are also referred to, together, as ''the criteria.'' These criteria are used to estimate the number of animals that may exhibit a behavioral response that qualifies as take under the MMPA when exposed to sonar and other transducers. The way the criteria were derived is discussed in detail in the Criteria and Thresholds Technical Report. Developing these behavioral harassment criteria involved multiple steps. All peer-reviewed published behavioral response studies conducted both in the field and on captive animals were examined in order to understand the breadth of behavioral responses of marine mammals to sonar and other transducers. Marine mammals were divided into four groups for analysis: (1) mysticetes (all baleen whales); (2) odontocetes (most toothed whales, dolphins, and porpoises); (3) sensitive species (beaked whales and harbor porpoise); and (4) pinnipeds and other marine carnivores (true seals, sea lions, walruses, sea otters, polar bears). These groups are like the groups used in the behavioral response analysis (Phase III), with the exception of combining beaked whales and harbor porpoise into a single curve. For each group, a biphasic BRF was developed using the best available data and Bayesian dose response models

developed at the University of St. Andrews. The BRF base probability of response on the highest RMS SPL received level.

The analysis of BRFs differs from the previous phase (Phase III) due to the addition of new data and the separation of some species groups. Figure 10 in the Criteria and Thresholds Technical Report indicates the changes in BRFs from Phase III to Phase IV. The sensitive species BRF is more sensitive at lower received levels but less sensitive at higher received levels than the prior beaked whale and harbor porpoise functions. The odontocete BRF is less sensitive overall due to additional behavioral response research, which will result in a lower number of behavioral responses than in the prior analysis for the same event, but also reduces the avoidance of auditory effects. The pinnipeds (in-water) BRF is more sensitive due to the inclusion of additional captive pinniped data (only three behavioral studies using captive pinnipeds were available for the derivation of the BRF). Behavioral studies of captive animals can be difficult to extrapolate to wild animals due to several factors (*e.g.,* use of trained subjects). This means the pinniped BRF likely overestimates effects compared to observed responses of wild pinnipeds to sound and anthropogenic activity. The mysticete BRF is less sensitive across most received levels due to including additional behavioral response research. This will result in a lower number of behavioral responses than in the prior analysis for the same event but also reduces the avoidance of auditory effects.

The BRFs only relate the highest received level of sound to the probability that an animal will have a behavioral response. The BRFs do not account for the duration or pattern of use of any individual sound source or of the activity as a whole, the number of sound sources that may be operating simultaneously, or how loud the animal may perceive the sonar signal to be based on the frequency of the sonar versus the animal's hearing range.

Criteria for assessing marine mammal behavioral responses to sonars use the metric of highest received sound pressure level (RMS SPL) to evaluate the risk of immediate responses by exposed animals. Currently, there are limited data to develop criteria that include the context of an exposure, characteristics of individual animals, behavioral state, duration of an exposure, sound source duty cycle, and the number of individual sources in an activity (although these factors certainly influence the severity of a behavioral response) and, further, even where certain contextual factors may be predictive where known, it is difficult to reliably predict when such factors will be present.

The BRFs also do not account for distance. At moderate to low received levels the correlation between probability of response and received level is very poor and it appears that other variables such as the distance between the animal and the sound source mediate behavioral responses (*e.g.,* Ellison *et al.,* 2012). For this analysis, distance between the animal and the sound source (*i.e.,* range) was initially included; however, range was too confounded with received level and, therefore, did not provide additional information about the possibility of response.

Data suggest that beyond a certain distance, significant behavioral responses are unlikely. At shorter ranges (less than 10 km), some behavioral responses have been observed at received levels below 140 dB re 1 µPa. Thus, proximity may mediate behavioral responses at lower received levels. Since most data used to derive the BRFs are within 10 km of the source, probability of response at farther ranges is not well-represented. Therefore, the source-receiver range must be considered separately to estimate likely significant behavioral responses.

This analysis applies behavioral cut-off conditions to responses predicted using the BRFs. Animals within a specified distance and above a minimum probability of response are assumed to have a significant behavioral response. The cut-off distance is based on the farthest source-animal distance across all known studies where animals exhibited a significant behavioral response. Animals beyond the cut-off distance but with received levels above the SPL associated with a probability of response of 0.5 on the BRF are also assumed to have a significant behavioral response. The actual likelihood of significant behavioral responses occurring beyond the distance cut-off is unknown. Significant behavioral responses beyond 100 km are unlikely based on source-animal distance and attenuated received levels. The behavioral cut-off conditions and additional information on the derivation of the cut-off conditions can be found in table 2.2–3 of the Criteria and Thresholds Technical Report.

The Action Proponents used cutoff distances beyond which the potential of significant behavioral responses (and therefore Level B harassment) is considered to be unlikely (see table 12). These distances were determined by examining all available published field observations of behavioral responses to sonar or sonar-like signals that included the distance between the sound source and the marine mammal. Behavioral effects calculations are based on the maximum SPL to which a modeled marine mammal is exposed. There is empirical evidence to suggest that animals are more likely to exhibit significant behavioral responses to moderate levels sounds that are closer and less likely to exhibit behavioral responses when exposed to moderate levels of sound from a source that is far away. To account for this, the Action Proponents have implemented behavioral cutoffs that consider both received sound level and distance from the source. These updated cutoffs conditions are unique to each behavioral hearing group and are outlined in table 12.

Table 12 -- Behavioral Cut-off Conditions for each Behavioral Hearing Group

Behavioral group	Received level associated with p(0.50) on the behavioral response function	Cut-off range
Sensitive Species	133 dB RMS SPL	40 km
Odontocetes	168 dB RMS SPL	15 km
Mysticetes	185 dB RMS SPL	10 km
Pinnipeds	156 dB RMS SPL	5 km
Note: Sensitive Species includes beaked whales and harbor porpoises.		

The Action Proponents and NMFS have used the best available science to address the challenging differentiation between significant and non-significant behavioral responses (*i.e.,* whether the behavior has been abandoned or significantly altered such that it qualifies as harassment). Where uncertainty exists, the Action Proponents and NMFS have made decisions that likely result in some degree of overestimation of Level B harassment by behavioral disturbance (*e.g.,* counting lower duration responses as take). We consider application of these behavioral harassment thresholds, therefore, as identifying the maximum number of instances in which marine mammals could be reasonably expected to experience a disruption in behavior patterns to a point where they are abandoned or significantly altered (*i.e.,* Level B harassment). NMFS has carefully reviewed the criteria (*i.e.,* BRFs and cutoff distances for the species) and agrees that it is the best available science and is the appropriate method to use at this time for determining impacts to marine mammals from military sonar and other transducers and for calculating take and to support the proposed determinations in this proposed rule. Because this is the most appropriate method for estimating Level B harassment given the best available science and uncertainty on the topic, it is these numbers of Level B harassment by behavioral disturbance that are analyzed in the Preliminary Analysis and Negligible Impact Determination section and would be authorized.

Explosives—

Based on best available science and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses generalized acoustic thresholds based on received level to estimate the onset of behavioral harassment for sources other than active sonar. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa (RMS) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (RMS) for non-explosive impulsive (*e.g.,* seismic air guns) or intermittent (*e.g.,* scientific sonar) sources. For the Action Proponents' activities, to estimate behavioral effects from explosives, the TTS onset threshold is used (table 13). The explosive behavioral threshold has shifted since the prior analysis (Phase III), corresponding to changes in the TTS thresholds (table 11).

Table 13 -- Behavioral Response Thresholds for Explosives

Sound source	Behavioral threshold
Single explosion (underwater)	TTS onset threshold (weighted SEL)
Multiple explosions (underwater)	5 dB less than the TTS onset threshold (weighted SEL)

While the best available science for assessing behavioral responses of marine mammals to impulsive sounds relies on data from seismic and pile driving sources, it is likely that these predicted responses using a threshold based on seismic and pile driving represent a more prolonged temporal scenario compared to behavioral responses to explosives used in military readiness activities, which would typically consist of single impulses or a cluster of impulses rather than long-duration, repeated impulses (*e.g.,* large-scale air gun arrays).

For single explosions at received sound levels below hearing loss thresholds, the most likely behavioral response is a brief alerting or orienting response. Since no further sounds follow the initial brief impulses, significant behavioral responses would not be expected to occur. If a significant response were to occur, the Action Proponents' analysis assumes it would be as a result of an exposure at levels within the range of auditory impacts (TTS and AUD INJ). Because of this approach, the number of auditory impacts is higher than the number of behavioral impacts in the quantified results for some stocks.

If more than one explosive event occurs within any given 24-hour period during a military readiness activity, behavioral disturbance is considered more likely to occur and specific criteria are applied to predict the number of animals that may have a behavioral response. For events with multiple explosions, the behavioral threshold used in this analysis is 5 dB less than the TTS onset threshold. This value is derived from observed onsets of behavioral response by test subjects (bottlenose dolphins) during non-impulse TTS testing (Schlundt *et al.,* 2000).

Navy Acoustic Effects Model

NAEMO is their standard model for assessing acoustic effects on marine mammals. NAEMO calculates sound energy propagation from sonar and other transducers and explosives during military readiness activities and the sound received by animat dosimeters (animats). Animats are virtual representations of marine mammals distributed in the area around the modeled activity, and each dosimeter records its individual sound dose. The model bases the distribution of animats over the Study Area on the density values in the Navy Marine Species Density Database (NMSDD) 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 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 NAEMO intentionally err on the side of overestimation when there are unknowns. The specified activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that the implementation of power downs or shutdowns are not modeled or, thereby, considered in the take estimates. For more information on this process, see the discussion in the Estimated Take from Acoustic Stressors section below. Many explosions from ordnance, such as bombs and missiles, actually occur upon impact with above-water targets; however, for this analysis, sources such as these were modeled as exploding underwater. This overestimates the amount of explosive and acoustic energy entering the water.

The model estimates the acoustic impacts caused by sonars and other transducers and explosives during individual military readiness 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 they represent a distribution of animals based on density and abundance data, which allows for a statistical analysis of the number of instances that marine mammals may be exposed to sound levels resulting in an effect. Therefore, the model estimates the number of instances in which an effect threshold was exceeded over the course of a year but does not estimate the number of individual marine mammals that may be impacted over a year (*i.e.,* some marine mammals could be impacted several times, while others would not experience any impact). A detailed explanation of NAEMO is provided in the Acoustic Impacts Technical Report and a summary of changes to the modeling of acoustic effects due to sonars is detailed in the Acoustic and Explosives Concepts Technical Report.

As NAEMO interrogates the simulation data in the Animat Processor, exposures that are both outside the distance cutoff and below the received level cutoff are omitted when determining the maximum SPL for each animat. This differs from Phase III, in which only distance cutoffs were applied, meaning that all exposures outside the distance cutoffs were omitted, with no consideration of received level.

The presence of the two cutoff criteria in Phase IV provides a more accurate and conservative estimation of behavioral effects because louder exposures that would have been omitted previously, when only a distance cutoff was applied, are considered in Phase IV, while the estimation of behavioral effects still omits exposures at distances and received levels that would be unlikely to produce a significant behavioral response. NAEMO retains the capability of calculating behavioral effects without the cutoffs applied, depending on user preference.

The impulsive behavioral criteria are not based on the probability of a behavioral response but rather on a single SPL metric. For consideration of impulsive behavioral effects, the cutoff conditions in table 12 are not applied.

Range to Effects

This section provides range (distance) to effects for sonar and other active acoustic sources as well as explosives to specific acoustic thresholds determined using NAEMO. Ranges are determined by modeling the distance that noise from a source will need to propagate to reach exposure level thresholds specific to a hearing group that will cause behavioral response, TTS, AUD INJ, non-auditory injury, and mortality. Ranges to effects (table 14 through table 22) are utilized to help predict impacts from acoustic and explosive sources and assess the benefit of mitigation zones. Marine mammals exposed within these ranges for the shown duration are predicted to experience the associated effect. Range to effects is important information in not only predicting acoustic impacts, but also in verifying the accuracy of model results against real-world situations and determining adequate mitigation ranges to avoid higher level effects, especially physiological effects, to marine mammals.

Sonar

Ranges to effects for sonar were determined by modeling the distance that sound would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response, TTS, and AUD INJ, as described in the Criteria and Thresholds Technical Report. The ranges do not account for an animal avoiding a source nor for the movement of the platform, both of which would influence the actual range to onset of auditory effects during an actual exposure.

Table 14 through table 17 below provide the ranges to TTS and AUD INJ for marine mammals from exposure durations of 1, 30, 60, and 120 seconds (s) for six sonar systems proposed for use (see also ''Acoustic and Explosive Effects Analysis for Marine Species in the Mariana Islands Training and Testing Study Area (Phase IV) Technical Report (U.S. Department of the Navy, 2026a) (hereafter referred to as the MITT Acoustic and Explosive Effects Analysis Technical Report). Due to the lower acoustic thresholds for TTS versus AUD INJ, ranges to TTS are larger. Successive pings can be expected to add together, further increasing the range to the onset of TTS and AUD INJ.

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Table 14 -- Very Low-Frequency Cetacean Ranges to Effects for Sonar

Sonar Type	Water Depth	Duration	Range to TTS (SD)	Range to AUD INJ (SD)
Dipping Sonar	>200 m	1 s	120 m (19 m)	0 m (0 m)
Dipping Sonar	>200 m	30 s	260 m (37 m)	6 m (8 m)
Dipping Sonar	>200 m	60 s	360 m (52 m)	23 m (9 m)
Dipping Sonar	>200 m	120 s	525 m (74 m)	35 m (14 m)
MF1 Ship Sonar	≤200 m	1 s	749 m (120 m)	90 m (1 m)
MF1 Ship Sonar	≤200 m	30 s	749 m (120 m)	90 m (1 m)
MF1 Ship Sonar	≤200 m	60 s	849 m (122 m)	140 m (2 m)
MF1 Ship Sonar	≤200 m	120 s	881 m (145 m)	176 m (5 m)
MF1 Ship Sonar	>200 m	1 s	1,000 m (42 m)	85 m (2 m)
MF1 Ship Sonar	>200 m	30 s	1,000 m (42 m)	85 m (2 m)
MF1 Ship Sonar	>200 m	60 s	1,750 m (162 m)	140 m (5 m)
MF1 Ship Sonar	>200 m	120 s	2,264 m (675 m)	170 m (5 m)
MF1C Ship Sonar	>200 m	1 s	1,000 m (44 m)	85 m (2 m)
MF1C Ship Sonar	>200 m	30 s	2,271 m (684 m)	170 m (5 m)
MF1C Ship Sonar	>200 m	60 s	5,250 m (800 m)	250 m (6 m)
MF1C Ship Sonar	>200 m	120 s	7,486 m (1,231 m)	370 m (6 m)
MF1K Ship Sonar	≤200 m	1 s	190 m (3 m)	13 m (0 m)
MF1K Ship Sonar	<200 m	30 s	341 m (30 m)	24 m (0 m)
MF1K Ship Sonar	≤200 m	60 s	422 m (51 m)	30 m (0 m)
MF1K Ship Sonar	≤200 m	120 s	529 m (89 m)	45 m (0 m)
MF1K Ship Sonar	>200 m	1 s	190 m (5 m)	6 m (6 m)
MF1K Ship Sonar	>200 m	30 s	330 m (7 m)	12 m (12 m)
MF1K Ship Sonar	>200 m	60 s	430 m (7 m)	28 m (3 m)
MF1K Ship Sonar	>200 m	120 s	625 m (15 m)	40 m (2 m)
Mine-Hunting Sonar	≤200 m	1 s	2 m (2 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	30 s	6 m (1 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	60 s	9 m (1 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	120 s	14 m (2 m)	0 m (1 m)
Mine-Hunting Sonar	>200 m	1 s	0 m (0 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	30 s	2 m (3 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	60 s	4 m (4 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	120 s	12 m (1 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	1 s	0 m (7 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	30 s	23 m (11 m)	0 m (0 m)

Sonobuoy Sonar	>200 m	60 s	35 m (12 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	120 s	50 m (6 m)	0 m (0 m)

Note: Median ranges are shown with standard deviation (SD) in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.* (2024). NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, MF1 = hull-mounted surface ship sonar, MF1C = >80 percent duty cycle, MF1K = kingfisher mode

Table 15 -- Low-Frequency Cetacean Ranges to Effects for Sonar

Sonar Type	Water Depth	Duration	Range to TTS (SD)	Range to AUD INJ (SD)
Dipping Sonar	>200 m	1 s	120 m (73 m)	0 m (6 m)
Dipping Sonar	>200 m	30 s	270 m (82 m)	0 m (10 m)
Dipping Sonar	>200 m	60 s	360 m (107 m)	23 m (12 m)
Dipping Sonar	>200 m	120 s	525 m (84 m)	35 m (17 m)
MF1 Ship Sonar	≤200 m	1 s	749 m (117 m)	92 m (3 m)
MF1 Ship Sonar	≤200 m	30 s	749 m (117 m)	92 m (3 m)
MF1 Ship Sonar	≤200 m	60 s	858 m (127 m)	140 m (5 m)
MF1 Ship Sonar	≤200 m	120 s	881 m (173 m)	180 m (2 m)
MF1 Ship Sonar	>200 m	1 s	1,000 m (98 m)	90 m (3 m)
MF1 Ship Sonar	>200 m	30 s	1,000 m (98 m)	90 m (3 m)
MF1 Ship Sonar	>200 m	60 s	1,944 m (267 m)	140 m (1 m)
MF1 Ship Sonar	>200 m	120 s	3,083 m (849 m)	180 m (1 m)
MF1C Ship Sonar	>200 m	1 s	1,000 m (102 m)	90 m (3 m)
MF1C Ship Sonar	>200 m	30 s	3,083 m (863 m)	180 m (1 m)
MF1C Ship Sonar	>200 m	60 s	5,694 m (881 m)	260 m (4 m)
MF1C Ship Sonar	>200 m	120 s	8,167 m (1,369 m)	380 m (7 m)
MF1K Ship Sonar	≤200 m	1 s	200 m (6 m)	14 m (0 m)
MF1K Ship Sonar	≤200 m	30 s	350 m (32 m)	25 m (0 m)
MF1K Ship Sonar	≤200 m	60 s	432 m (53 m)	30 m (0 m)
MF1K Ship Sonar	≤200 m	120 s	538 m (92 m)	45 m (0 m)
MF1K Ship Sonar	>200 m	1 s	190 m (5 m)	12 m (1 m)
MF1K Ship Sonar	>200 m	30 s	350 m (6 m)	24 m (0 m)
MF1K Ship Sonar	>200 m	60 s	450 m (10 m)	30 m (0 m)
MF1K Ship Sonar	>200 m	120 s	625 m (21 m)	45 m (0 m)
Mine-Hunting Sonar	≤200 m	1 s	0 m (4 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	30 s	0 m (7 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	60 s	19 m (3 m)	0 m (0 m)

Mine-Hunting Sonar	≤200 m	120 s	33 m (3 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	1 s	0 m (3 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	30 s	0 m (8 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	60 s	0 m (12 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	120 s	23 m (5 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	1 s	0 m (8 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	30 s	25 m (13 m)	0 m (1 m)
Sonobuoy Sonar	>200 m	60 s	35 m (20 m)	0 m (1 m)
Sonobuoy Sonar	>200 m	120 s	55 m (28 m)	0 m (2 m)

Note: Median ranges are shown with standard deviation (SD) in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.* (2024). NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, MF1 = hull-mounted surface ship sonar, MF1C = >80 percent duty cycle, MF1K = kingfisher mode

Table 16 -- High-Frequency Cetacean Ranges to Effects for Sonar

Sonar Type	Water Depth	Duration	Range to TTS (SD)	Range to AUD INJ (SD)
Dipping Sonar	>200 m	1 s	50 m (27 m)	0 m (2 m)
Dipping Sonar	>200 m	30 s	95 m (51 m)	0 m (4 m)
Dipping Sonar	>200 m	60 s	120 m (70 m)	0 m (5 m)
Dipping Sonar	>200 m	120 s	200 m (100 m)	0 m (8 m)
MF1 Ship Sonar	≤200 m	1 s	525 m (107 m)	45 m (8 m)
MF1 Ship Sonar	≤200 m	30 s	525 m (107 m)	45 m (8 m)
MF1 Ship Sonar	≤200 m	60 s	661 m (143 m)	65 m (12 m)
MF1 Ship Sonar	≤200 m	120 s	714 m (151 m)	85 m (16 m)
MF1 Ship Sonar	>200 m	1 s	600 m (93 m)	42 m (14 m)
MF1 Ship Sonar	>200 m	30 s	600 m (93 m)	42 m (14 m)
MF1 Ship Sonar	>200 m	60 s	875 m (138 m)	65 m (20 m)
MF1 Ship Sonar	>200 m	120 s	1,000 m (152 m)	85 m (20 m)
MF1C Ship Sonar	>200 m	1 s	600 m (93 m)	42 m (14 m)
MF1C Ship Sonar	>200 m	30 s	1,000 m (153 m)	85 m (20 m)
MF1C Ship Sonar	>200 m	60 s	1,500 m (329 m)	130 m (24 m)
MF1C Ship Sonar	>200 m	120 s	3,250 m (1,160 m)	200 m (34 m)
MF1K Ship Sonar	≤200 m	1 s	100 m (17 m)	7 m (3 m)
MF1K Ship Sonar	≤200 m	30 s	182 m (31 m)	13 m (2 m)
MF1K Ship Sonar	≤200 m	60 s	241 m (38 m)	17 m (3 m)
MF1K Ship Sonar	≤200 m	120 s	349 m (58 m)	25 m (4 m)

MF1K Ship Sonar	>200 m	1 s	100 m (30 m)	0 m (3 m)
MF1K Ship Sonar	>200 m	30 s	180 m (32 m)	10 m (6 m)
MF1K Ship Sonar	>200 m	60 s	240 m (40 m)	16 m (8 m)
MF1K Ship Sonar	>200 m	120 s	350 m (56 m)	24 m (11 m)
Mine-Hunting Sonar	≤200 m	1 s	9 m (5 m)	0 m (0 m)
Mine-Hunting Sonar	≤200 m	30 s	18 m (9 m)	1 m (0 m)
Mine-Hunting Sonar	≤200 m	60 s	25 m (13 m)	1 m (1 m)
Mine-Hunting Sonar	≤200 m	120 s	35 m (17 m)	2 m (1 m)
Mine-Hunting Sonar	>200 m	1 s	7 m (4 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	30 s	15 m (7 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	60 s	21 m (10 m)	0 m (0 m)
Mine-Hunting Sonar	>200 m	120 s	25 m (9 m)	0 m (1 m)
Sonobuoy Sonar	>200 m	1 s	0 m (4 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	30 s	0 m (9 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	60 s	0 m (13 m)	0 m (0 m)
Sonobuoy Sonar	>200 m	120 s	30 m (17 m)	0 m (1 m)

Note: Median ranges are shown with standard deviation (SD) in parentheses. TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, MF1 = hull-mounted surface ship sonar, MF1C = >80 percent duty cycle, MF1K = kingfisher mode

Table 17 -- Very High-Frequency Cetacean Ranges to Effects for Sonar

Sonar Type	Water Depth	Duration	Range to TTS (SD)	Range to AUD INJ (SD)
Dipping Sonar	>200 m	1 s	85 m (47 m)	0 m (0 m)
Dipping Sonar	>200 m	30 s	150 m (90 m)	0 m (1 m)
Dipping Sonar	>200 m	60 s	230 m (122 m)	14 m (7 m)
Dipping Sonar	>200 m	120 s	350 m (65 m)	24 m (12 m)
MF1 Ship Sonar	≤200 m	1 s	863 m (136 m)	150 m (3 m)
MF1 Ship Sonar	≤200 m	30 s	863 m (136 m)	150 m (3 m)
MF1 Ship Sonar	≤200 m	60 s	885 m (238 m)	220 m (8 m)
MF1 Ship Sonar	≤200 m	120 s	894 m (254 m)	271 m (18 m)
MF1 Ship Sonar	>200 m	1 s	1,785 m (400 m)	150 m (5 m)
MF1 Ship Sonar	>200 m	30 s	1,785 m (400 m)	150 m (5 m)
MF1 Ship Sonar	>200 m	60 s	4,451 m (830 m)	220 m (2 m)
MF1 Ship Sonar	>200 m	120 s	5,500 m (831 m)	270 m (2 m)
MF1C Ship Sonar	>200 m	1 s	1,778 m (407 m)	145 m (5 m)
MF1C Ship Sonar	>200 m	30 s	5,569 m (823 m)	270 m (2 m)
MF1C Ship Sonar	>200 m	60 s	8,028 m (1,355 m)	390 m (4 m)
MF1C Ship Sonar	>200 m	120 s	11,660 m (2,028 m)	550 m (7 m)
MF1K Ship Sonar	≤200 m	1 s	301 m (23 m)	20 m (0 m)
MF1K Ship Sonar	<200 m	30 s	478 m (68 m)	35 m (0 m)
MF1K Ship Sonar	≤200 m	60 s	557 m (99 m)	50 m (1 m)
MF1K Ship Sonar	≤200 m	120 s	673 m (140 m)	85 m (0 m)
MF1K Ship Sonar	>200 m	1 s	300 m (2 m)	16 m (0 m)
MF1K Ship Sonar	>200 m	30 s	525 m (6 m)	35 m (0 m)
MF1K Ship Sonar	>200 m	60 s	675 m (14 m)	50 m (3 m)
MF1K Ship Sonar	>200 m	120 s	975 m (19 m)	85 m (2 m)
Mine-Hunting Sonar	≤200 m	1 s	115 m (2 m)	10 m (0 m)
Mine-Hunting Sonar	≤200 m	30 s	281 m (4 m)	19 m (0 m)
Mine-Hunting Sonar	≤200 m	60 s	450 m (3 m)	25 m (0 m)
Mine-Hunting Sonar	≤200 m	120 s	606 m (3 m)	40 m (0 m)
Mine-Hunting Sonar	>200 m	1 s	80 m (0 m)	7 m (0 m)
Mine-Hunting Sonar	>200 m	30 s	140 m (0 m)	15 m (0 m)
Mine-Hunting Sonar	>200 m	60 s	210 m (1 m)	22 m (0 m)
Mine-Hunting Sonar	>200 m	120 s	300 m (5 m)	30 m (0 m)
Sonobuoy Sonar	>200 m	1 s	65 m (33 m)	0 m (2 m)
Sonobuoy Sonar	>200 m	30 s	110 m (61 m)	0 m (5 m)

Sonobuoy Sonar	>200 m	60 s	170 m (83 m)	10 m (7 m)
Sonobuoy Sonar	>200 m	120 s	280 m (50 m)	21 m (11 m)

Note: Median ranges are shown with standard deviation (SD) in parentheses. TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, MF1 = hull-mounted surface ship sonar, MF1C = >80 percent duty cycle, MF1K = kingfisher mode

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Explosives

This section provides the range (*i.e.,* distance) over which specific physiological or behavioral effects are expected to occur based on the explosive criteria (see section 6.2.1 (Impacts from Explosives) of the application and the Criteria and Thresholds Technical Report and the explosive propagation calculations from NAEMO. The range to effects are shown for a range of explosive bins from E1 (0.1–0.25 lb (0.045–0.113 kg) NEW) to E12 (>675–1,000 lb (306–454 kg) NEW) (table 18 through table 21). Ranges are determined by modeling the distance that noise from an explosion would need to propagate to reach exposure level thresholds specific to a hearing group that would cause behavioral response (to the degree of Level B behavioral harassment), TTS, and AUD INJ. NMFS has reviewed the range distance to effect data provided by the Action Proponents and concurs with the analysis. Range to effects is important information in not only predicting impacts from explosives but also in verifying the accuracy of model results against real-world situations and determining appropriate mitigation ranges to avoid higher level effects, especially injury to marine mammals. For additional information on how ranges to impacts from explosions were estimated, see the Acoustic Impacts Technical Report.

Table 18 through table 21 show the minimum, average, and maximum ranges to onset of auditory and likely behavioral effects that qualify as Level B harassment for all functional hearing groups based on the developed thresholds. Ranges are provided for a representative source depth and cluster size (*i.e.,* the number of rounds fired, or buoys dropped, within a very short duration) for each bin. Ranges for behavioral response are only provided if more than one explosive cluster occurs. As noted previously, single explosions at received sound levels below TTS and AUD INJ thresholds are most likely to result in a brief alerting or orienting response. 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. Modeled ranges to TTS and AUD INJ based on peak pressure for a single explosion generally exceed the modeled ranges based on SEL even when accumulated for multiple explosions. Peak pressure-based ranges are estimated using the best available science; however, data on peak pressure at far distances from explosions are very limited. The explosive ranges to effects for TTS and AUD INJ that are in the tables are based on the metric (*i.e.,* SEL or SPL) that produced larger ranges.

Table 22 shows ranges to non-auditory injury and mortality as a function of animal mass and explosive bin. For non-auditory injury, the larger of the ranges to slight lung injury or gastrointestinal tract injury was used as a conservative estimate, and the boxplots in the MITT Acoustic and Explosive Effects Analysis Technical Report present ranges for both metrics for comparison. For the non-auditory metric, ranges are only available for a cluster size of one. Animals within water volumes encompassing the estimated range to non-auditory injury 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.

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Table 18 -- Very Low-Frequency Cetacean Ranges to Effects for Explosives

Bin	Source Depth	Cluster Size	Range to behavioral disturbance (SD)	Range to TTS (SD)	Range to AUD INJ (SD)
E1	Near surface	1	NA	215 m (0 m)	100 m (0 m)
E2	Below surface	1	NA	420 m (1 m)	132 m (3 m)
E3	Near surface	1	NA	445 m (11 m)	222 m (2 m)
E3	Near surface	7	1,000 m (306 m)	775 m (109 m)	250 m (8 m)
E3	Near surface	15	1,000 m (251 m)	925 m (97 m)	340 m (11 m)
E4	Near surface	1	NA	526 m (3 m)	282 m (1 m)
E4	Below surface	1	NA	1,000 m (12 m)	282 m (1 m)
E5	Near surface	1	NA	601 m (24 m)	350 m (1 m)
E5	Near surface	5	1,000 m (377 m)	925 m (134 m)	350 m (1 m)
E5	Below surface	1	NA	1,688 m (108 m)	351 m (1 m)
E6	Near surface	1	NA	740 m (119 m)	436 m (4 m)
E6	Below surface	1	NA	854 m (162 m)	438 m (6 m)
E7	Near surface	1	NA	2,669 m (233 m)	528 m (14 m)
E7	Below surface	1	NA	2,844 m (309 m)	523 m (15 m)
E8	Near surface	1	NA	1,098 m (76 m)	649 m (21 m)
E9	Near surface	1	NA	1,271 m (428 m)	763 m (30 m)
E10	Near surface	1	NA	1,125 m (186 m)	847 m (36 m)
E11	Below surface	1	NA	40,882 m (6,708 m)	1,861 m (65 m)
E12	Near surface	1	NA	1,625 m (340 m)	951 m (38 m)

Note: N/A = Not Applicable. Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation (SD) in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.* (2024). NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. BEH = Significant Behavioral Response, TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, NA = not applicable, near surface explosives occur at or above the surface and are modeled at a depth of 0.1 meter. E1 (0.1-0.25 lb (0.045-0.113 kg)), E2 (>0.25-0.5 lb (0.113-0.23 kg)), E3 (>0.5-2.5 lb (0.23-1.13 kg)), E4 (>2.5-5 lb (1.13-2.27 kg)), E5 (>5-10 lb (2.27-4.54 kg)), E6 (>10-20 lb (4.54-9.07 kg)), E7 (>20-60 lb (9.07-27.2 kg)), E8 (>60-100 lb (27.2-45.4 kg)), E9 (>100-250 lb (45.4-113 kg)), E10 (>250-500 lb (113-227 kg)), E11 (>500-675 lb (227-306 kg)), E12 (>675-1,000 lb (306-454 kg)).

Table 19 -- Low-Frequency Cetacean Ranges to Effects for Explosives

Bin	Source Depth	Cluster Size	Range to behavioral disturbance (SD)	Range to TTS (SD)	Range to AUD INJ (SD)
E1	Near surface	1	NA	246 m (15 m)	100 m (8 m)
E2	Below surface	1	NA	437 m (7 m)	130 m (2 m)
E3	Near surface	1	NA	500 m (74 m)	166 m (17 m)
E3	Near surface	7	1,000 m (375 m)	890 m (161 m)	270 m (23 m)
E3	Near surface	15	1,250 m (391 m)	1,000 m (172 m)	380 m (47 m)
E4	Near surface	1	NA	509 m (8 m)	274 m (4 m)
E4	Below surface	1	NA	1,000 m (0 m)	275 m (3 m)
E5	Near surface	1	NA	700 m (114 m)	320 m (35 m)
E5	Near surface	5	1,250 m (505 m)	1,000 m (224 m)	370 m (46 m)
E5	Below surface	1	NA	1,597 m (190 m)	330 m (0 m)
E6	Near surface	1	NA	819 m (195 m)	413 m (56 m)
E6	Below surface	1	NA	861 m (207 m)	414 m (58 m)
E7	Near surface	1	NA	2,419 m (296 m)	530 m (85 m)
E7	Below surface	1	NA	2,600 m (354 m)	520 m (83 m)
E8	Near surface	1	NA	1,083 m (117 m)	660 m (115 m)
E9	Near surface	1	NA	1,250 m (231 m)	782 m (143 m)
E10	Near surface	1	NA	1,250 m (162 m)	862 m (170 m)
E11	Below surface	1	NA	16,847 m (3,681 m)	1,660 m (70 m)
E12	Near surface	1	NA	1,708 m (283 m)	962 m (177 m)

Note: N/A = Not Applicable. Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation (SD) in parentheses. The Action Proponents split the LF functional hearing group into LF and VLF based on Houser *et al.* (2024). NMFS updated acoustic technical guidance (NMFS, 2024) does not include these data but we have included the VLF group here for reference. BEH = Significant Behavioral Response, TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, NA = not applicable, near surface explosives occur at or above the surface and are modeled at a depth of 0.1 meter. E1 (0.1-0.25 lb (0.045-0.113 kg)), E2 (>0.25-0.5 lb (0.113-0.23 kg)), E3 (>0.5-2.5 lb (0.23-1.13 kg)), E4 (>2.5-5 lb (1.13-2.27 kg)), E5 (>5-10 lb (2.27-4.54 kg)), E6 (>10-20 lb (4.54-9.07 kg)), E7 (>20-60 lb (9.07-27.2 kg)), E8 (>60-100 lb (27.2-45.4 kg)), E9 (>100-250 lb (45.4-113 kg)), E10 (>250-500 lb (113-227 kg)), E11 (>500-675 lb (227-306 kg)), E12 (>675-1,000 lb (306-454 kg)).

Table 20 -- High-Frequency Cetacean Ranges to Effects for Explosives

Bin	Source Depth	Cluster Size	Range to behavioral disturbance (SD)	Range to TTS (SD)	Range to AUD INJ (SD)
E1	Near surface	1	NA	92 m (28 m)	44 m (4 m)
E2	Below surface	1	NA	129 m (39 m)	58 m (2 m)
E3	Near surface	1	NA	180 m (56 m)	98 m (5 m)
E3	Near surface	7	597 m (253 m)	380 m (145 m)	98 m (5 m)
E3	Near surface	15	794 m (368 m)	518 m (203 m)	140 m (40 m)
E4	Near surface	1	NA	228 m (3 m)	120 m (1 m)
E4	Below surface	1	NA	250 m (72 m)	121 m (1 m)
E5	Near surface	1	NA	270 m (85 m)	150 m (12 m)
E5	Near surface	5	824 m (356 m)	515 m (190 m)	150 m (12 m)
E5	Below surface	1	NA	363 m (100 m)	150 m (13 m)
E6	Near surface	1	NA	348 m (112 m)	176 m (13 m)
E6	Below surface	1	NA	341 m (114 m)	180 m (13 m)
E7	Near surface	1	NA	304 m (241 m)	157 m (107 m)
E7	Below surface	1	NA	303 m (228 m)	156 m (115 m)
E8	Near surface	1	NA	499 m (202 m)	279 m (39 m)
E9	Near surface	1	NA	637 m (278 m)	368 m (72 m)
E10	Near surface	1	NA	750 m (367 m)	434 m (109 m)
E11	Below surface	1	NA	1,653 m (871 m)	755 m (42 m)

Note: N/A = Not Applicable. Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation (SD) in parentheses. BEH = Significant Behavioral Response, TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, NA = not applicable, near surface explosives occur at or above the surface and are modeled at a depth of 0.1 meter. E1 (0.1-0.25 lb (0.045-0.113 kg)), E2 (>0.25-0.5 lb (0.113-0.23 kg)), E3 (>0.5-2.5 lb (0.23-1.13 kg)), E4 (>2.5-5 lb (1.13-2.27 kg)), E5 (>5-10 lb (2.27-4.54 kg)), E6 (>10-20 lb (4.54-9.07 kg)), E7 (>20-60 lb (9.07-27.2 kg)), E8 (>60-100 lb (27.2-45.4 kg)), E9 (>100-250 lb (45.4-113 kg)), E10 (>250-500 lb (113-227 kg)), E11 (>500-675 lb (227-306 kg)), E12 (>675-1,000 lb (306-454 kg)).

Table 21 -- Very High-Frequency Cetacean Ranges to Effects for Explosives

Bin	Source Depth	Cluster Size	Range to behavioral disturbance (SD)	Range to TTS (SD)	Range to AUD INJ (SD)
E1	Near surface	1	NA	1,375 m (21 m)	697 m (2 m)
E2	Below surface	1	NA	3,076 m (268 m)	1,000 m (0 m)
E3	Near surface	1	NA	2,000 m (57 m)	1,250 m (0 m)
E3	Near surface	7	5,764 m (2,284 m)	3,611 m (1,773 m)	1,500 m (123 m)
E3	Near surface	15	6,889 m (1,601 m)	3,806 m (1,268 m)	1,750 m (33 m)
E4	Near surface	1	NA	3,714 m (248 m)	1,853 m (30 m)
E4	Below surface	1	NA	3,757 m (368 m)	1,875 m (20 m)
E5	Near surface	1	NA	2,250 m (241 m)	1,528 m (214 m)
E5	Near surface	5	6,382 m (1,710 m)	3,681 m (1,179 m)	1,750 m (95 m)
E5	Below surface	1	NA	6,604 m (281 m)	1,514 m (16 m)
E6	Near surface	1	NA	2,944 m (396 m)	1,819 m (222 m)
E6	Below surface	1	NA	3,663 m (509 m)	2,108 m (333 m)
E7	Near surface	1	NA	5,236 m (290 m)	3,888 m (203 m)
E7	Below surface	1	NA	5,326 m (501 m)	4,056 m (297 m)
E8	Near surface	1	NA	4,264 m (297 m)	2,396 m (94 m)
E9	Near surface	1	NA	5,704 m (574 m)	2,611 m (234 m)
E10	Near surface	1	NA	6,444 m (587 m)	2,583 m (349 m)
E11	Below surface	1	NA	48,069 m (4,745 m)	18,590 m (2,562 m)
E12	Near surface	1	NA	8,035 m (917 m)	3,375 m (573 m)

Note: N/A = Not Applicable. Behavioral response criteria are applied to explosive clusters >1. The values listed for TTS and AUD INJ are the greater of the respective SPL and SEL ranges. Median ranges are shown with standard deviation (SD) in parentheses. BEH = Significant Behavioral Response, TTS = Temporary Threshold Shift, AUD INJ = Auditory Injury, NA = not applicable, near surface explosives occur at or above the surface and are modeled at a depth of 0.1 meter. E1 (0.1-0.25 lb (0.045-0.113 kg)), 10 lb (2.27-4.54 kg)), E6 (>10-20 lb (4.54-9.07 kg)), E7 (>20-60 lb (9.07-27.2 kg)), E8 (>60-100 lb (27.2-45.4 kg)), E9 (>100-250 lb (45.4-113 kg)), E10 (>250-500 lb (113-227 kg)), E11 (>500-675 lb (227-306 kg)), E12 (>675-1,000 lb (306-454 kg)).

Table 22 -- Explosive Ranges to Non-Auditory Injury and Mortality for all Marine Mammal Hearing Groups as a Function of Animal Mass

Bin	Effect	10 kg (SD)	250 kg (SD)	1,000 kg (SD)	5,000 kg (SD)	25,000 kg (SD)	72,000 kg (SD)
E1	Non-auditory injury	22 m (0 m)	20 m (3 m)	20 m (3 m)	22 m (4 m)	22 m (2 m)	20 m (2 m)
E1	Mortality	3 m (0 m)	1 m (1 m)	0 m (0 m)	0 m (0 m)	0 m (0 m)	0 m (0 m)
E2	Non-auditory injury	28 m (0 m)	28 m (1 m)	25 m (1 m)	25 m (1 m)	25 m (1 m)	25 m (0 m)
E2	Mortality	8 m (0 m)	3 m (2 m)	0 m (1 m)	0 m (0 m)	0 m (0 m)	0 m (0 m)
E3	Non-auditory injury	48 m (0 m)	45 m (3 m)	45 m (2 m)	45 m (4 m)	48 m (2 m)	45 m (0 m)
E3	Mortality	8 m (0 m)	3 m (2 m)	2 m (1 m)	1 m (0 m)	0 m (0 m)	0 m (0 m)
E4	Non-auditory injury	60 m (2 m)	60 m (2 m)	60 m (1 m)	60 m (0 m)	60 m (2 m)	60 m (0 m)
E4	Mortality	18 m (3 m)	8 m (4 m)	3 m (1 m)	0 m (0 m)	0 m (0 m)	0 m (0 m)
E5	Non-auditory injury	78 m (1 m)	78 m (4 m)	78 m (3 m)	77 m (3 m)	78 m (4 m)	78 m (0 m)
E5	Mortality	14 m (1 m)	6 m (3 m)	3 m (2 m)	2 m (1 m)	0 m (0 m)	0 m (0 m)
E6	Non-auditory injury	96 m (4 m)	98 m (5 m)	98 m (6 m)	98 m (2 m)	98 m (8 m)	98 m (0 m)
E6	Mortality	17 m (2 m)	8 m (3 m)	4 m (2 m)	2 m (1 m)	1 m (0 m)	0 m (0 m)
E7	Non-auditory injury	27 m (14 m)	31 m (41 m)	45 m (51 m)	31 m (43 m)	29 m (47 m)	29 m (15 m)
E7	Mortality	5 m (3 m)	3 m (2 m)	1 m (1 m)	1 m (1 m)	0 m (0 m)	0 m (0 m)
E8	Non-auditory injury	151 m (14 m)	156 m (11 m)	156 m (15 m)	165 m (4 m)	140 m (12 m)	165 m (1 m)
E8	Mortality	28 m (0 m)	15 m (5 m)	8 m (1 m)	5 m (2 m)	3 m (1 m)	1 m (1 m)
E9	Non-auditory injury	190 m (15 m)	190 m (16 m)	191 m (25 m)	225 m (10 m)	171 m (13 m)	225 m (0 m)
E9	Mortality	57 m (8 m)	21 m (10 m)	12 m (1 m)	8 m (2 m)	4 m (1 m)	2 m (1 m)
E10	Non-auditory injury	225 m (21 m)	230 m (25 m)	240 m (29 m)	275 m (21 m)	240 m (25 m)	282 m (3 m)
E10	Mortality	48 m (1 m)	25 m (6 m)	14 m (1 m)	10 m (2 m)	5 m (1 m)	3 m (0 m)
E11	Non-auditory injury	624 m (19 m)	345 m (17 m)	337 m (16 m)	349 m (20 m)	351 m (15 m)	335 m (16 m)
E11	Mortality	306 m (7 m)	166 m (41 m)	92 m (6 m)	65 m (5 m)	35 m (2 m)	26 m (4 m)
E12	Non-auditory injury	255 m (21 m)	305 m (41 m)	321 m (37 m)	345 m (39 m)	320 m (33 m)	353 m (1 m)
E12	Mortality	67 m (25 m)	38 m (17 m)	18 m (1 m)	12 m (1 m)	7 m (1 m)	5 m (0 m)

Note: Median ranges with standard deviation (SD) in parentheses. For non-auditory injury ranges, the greater of the respective ranges for 1 percent chance of gastro-intestinal tract injury and 1 percent chance of injury. E1 (0.1-0.25 lb (0.045-0.113 kg)), E2 (>0.25-0.5 lb (0.113-0.23 kg)), E3 (>0.5-2.5 lb (0.23-1.13 kg)), E4 (>2.5-5 lb (1.13-2.27 kg)), E5 (>5-10 lb (2.27-4.54 kg)), E6 (>10-20 lb (4.54-9.07 kg)), E7 (>20-60 lb (9.07-27.2 kg)), E8 (>60-100 lb (27.2-45.4 kg)), E9 (>100-250 lb (45.4-113 kg)), E10 (>250-500 lb (113-227 kg)), E11 (>500-675 lb (227-306 kg)), E12 (>675-1,000 lb (306-454 kg)).

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Marine Mammal Density

A quantitative analysis of impacts on a species or stock requires data on their abundance and distribution that may be affected by anthropogenic activities in the potentially impacted area. The most appropriate metric for this type of analysis is density, which is the number of animals present per unit area. Marine species density estimation requires a significant amount of effort to both collect and analyze data to produce a reasonable estimate. Unlike surveys for terrestrial wildlife, many marine species spend much of their time submerged and are not easily observed. In order to collect enough sighting data to make reasonable density estimates, multiple observations are required, often in areas that are not easily accessible (*e.g.,* far offshore). Ideally, marine mammal species sighting data would be collected for the specific area and time period (*e.g.,* season) of interest and density estimates derived accordingly. However, in many places, poor weather conditions and high sea states prohibit the completion of comprehensive visual surveys.

For most cetacean species, abundance is estimated using line-transect surveys or mark-recapture studies (*e.g.,* Barlow, 2010; Barlow and Forney, 2007; Bradford *et al.,* 2021; Calambokidis *et al.,* 2008). This is the general approach applied in estimating cetacean abundance in NMFS SARs. Although the single value provides a good average estimate of abundance (*i.e.,* 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 has been used to estimate cetacean densities (*e.g.,* Becker *et al.,* 2022a, Becker *et al.,* 2022b, Becker *et al.,* 2021, Becker *et al.,* 2020a; Becker *et al.,* 2020b). These models estimate cetacean density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth) 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 specified activities on marine species. However, in many places, vessel 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 the marine species density for large oceanic regions, the Action Proponents review, critically assess, and prioritize 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/stock, area, and season. The selection and compilation of the best available marine species density data resulted in the NMSDD, which includes seasonal density values for every marine mammal species and stock present within the Study Area. This database is described in the ''U.S. Navy Marine Species Density Database Phase IV for the Mariana Islands Training and Testing Study Area'' technical report (U.S. Department of the Navy, 2024c) (hereafter referred to as the Density Technical Report). NMFS reviewed all marine mammal densities provided by the Action Proponents prior to use in their acoustic analysis for the current rulemaking process.

A variety of density data and density models are needed to develop a density database that encompasses the entirety of the Study Area. Because these data are collected using different methods with varying amounts of accuracy and uncertainty, the Action Proponents have developed a hierarchy to ensure the most accurate data are used when available. The ''U.S. Navy Marine Species Density Database Phase IV for the Hawaii California Training and Testing Study Area'' technical report (U.S. Department of the Navy, 2024b) describes these models in detail and provides detailed explanations of the best available density estimate for each species. The list below describes possible sources of density data in order of preference:

1. Density spatial models are preferred and used when available because they provide spatially-explicit density estimates (typically at 10 km by 10 km spatial resolution) throughout the study area with the least amount of uncertainty. These models (see Becker *et al.,* 2019, 2021, 2020a, 2020b, 2022a, 2022b; Forney *et al.,* 2015) predict spatial variability of animal density based on habitat variables (*e.g.,* sea surface temperature, seafloor depth). Density spatial models are developed for areas, species, and, when available, specific timeframes (*e.g.,* months or seasons) with sufficient survey data; therefore, these models 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 (*i.e.,* stratified) into sub-regions, and a density is derived for each sub-region (see Barlow, 2016; Barlow and Forney, 2007; Bradford *et al.,* 2021). 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 collected from ship or aerial surveys designed to cover a specific geographic area (see Carretta *et al.,* 2024a). 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.

When interpreting the results of the quantitative analysis, as described in the Density Technical Report for the Phase III Atlantic Fleet Training and Testing Study Area (U.S. Department of the Navy, 2017b), ''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 species biodiversity, any single model method will not completely explain the actual distribution and abundance of marine

mammal species. It is expected that there would be anomalies in the results that need to be evaluated, with independent information for each case, to support if we might accept or reject a model or portions of the model.''

When calculating the proportion of a population affected by takes (*e.g.,* the number of takes divided by population abundance), which can also be helpful in estimating the number of days over which some individuals may be taken, it is important to choose an appropriate population estimate against which to make the comparison. The SARs, where available, provide the official population estimate for a given species or stock in U.S. waters in a given year (and are typically based solely on the most recent survey data). When the stock is known to range well outside of U.S. EEZ boundaries, population estimates based on surveys conducted only within the U.S. EEZ are known to be underestimates. For marine mammal populations in the Study Area, there have been no specific stocks assigned to those populations and there are no associated SARs, with the exception of the Western North Pacific stock of humpback whale and the Central North Pacific stock of blue whale. There is also no information on trends for any of these species. The information used to estimate take includes the best available survey abundance data to model density layers. Accordingly, in calculating the percentage of takes versus abundance for each species in order to assist in understanding both the percentage of the species affected, as well as how many days across a year individuals could be taken, we use the data most appropriate for the situation: the survey data used to estimate abundance in the Density Technical Report. Models may predict different population abundances for many reasons. The models may be based on different data sets or different temporal predictions may be made. For example, the SARs are often based on single years of NMFS surveys, whereas the models used by the Navy generally include multiple years of survey data from NMFS, the Navy, and other sources. To present a single, best estimate, the SARs often use a single season survey where they have the best spatial coverage (generally summer). Navy models often use predictions for multiple seasons, where appropriate for the species, even when survey coverage in non-Summer seasons is limited, to characterize impacts over multiple seasons as Navy activities may occur in any season. Predictions may be made for different spatial extents. Many different, but equally valid, habitat and density modeling techniques exist, and these can also be the cause of differences in population predictions.

NMFS coordinated with the Navy in the development of its take estimates and concurs that the Navy's approach for density appropriately utilizes the best available science. Later, in the Preliminary Analysis and Negligible Impact Determination section, we assess how the estimated take numbers compare to species and stock abundance in order to better understand the potential number of individuals impacted, and the rationale for which abundance estimate is used is included there.

Estimated Take From Acoustic Stressors

The 2026 MITT Draft SEIS/OEIS considered all military readiness activities proposed to occur in the Study Area that have the potential to result in the MMPA defined take of marine mammals. The Action Proponents determined that the two stressors below could result in the incidental taking of marine mammals. NMFS has reviewed the Action Proponents' data and analysis and determined that it is complete and accurate and agrees that the following stressors have the potential to result in takes by harassment of marine mammals from the specified activities:

- Acoustics (*i.e.,* sonars and other transducers); and
- Explosives (*i.e.,* explosive shock wave and sound, assumed to encompass the risk due to fragmentation).

Acoustic and explosive sources are likely to result in incidental takes of marine mammals by harassment.

The quantitative analysis process used for the 2026 MITT Draft SEIS/OEIS and the application to estimate potential exposures of marine mammals resulting from acoustic and explosive stressors is detailed in the Acoustic Impacts Technical Report.

Regarding how avoidance of loud sources is considered in the take estimation, NAEMO does not simulate horizontal animat (*i.e.,* a virtual animal) movement during an event. However, NAEMO approximates marine mammal avoidance of high sound levels due to exposure to sonars in a one-dimensional calculation that scales how far an animat would be from a sound source based on sensitivity to disturbance, swim speed, and avoidance duration. This process reduces the SEL, defined as the accumulation for a given animat, by reducing the received SPL of individual exposures based on a spherical spreading calculation from sources on each unique platform in an event. The onset of avoidance was based on the BRFs. Avoidance speeds and durations were informed by a review of available exposure and baseline data. This method captures a more accurate representation of avoidance by using the received sound levels, distance to platform, and species-specific criteria to calculate potential avoidance for each animat than the approach used in Phase III. However, this method may underestimate avoidance of long-duration sources with lower sound levels because it triggers avoidance calculations based on the highest modeled SPL received level exceeding p(0.5) on the BRF, rather than on cumulative exposure. Please see section 4.4.2.2 of the Acoustic Impacts Technical Report.

Regarding the consideration of mitigation effectiveness in the take estimation, during military readiness activities, there is typically at least one, if not numerous, support personnel involved in the activity (*e.g.,* range support personnel aboard a torpedo retrieval boat or support aircraft). In addition to the Lookout posted for the purpose of mitigation, these additional personnel observe and disseminate marine species sighting information amongst the units participating in the activity whenever possible as they conduct their primary mission responsibilities. However, unlike in previous phases of MITT, this quantitative analysis does not reduce model-estimated impacts to account for activity-based mitigation. While the activity-based mitigation is not quantitatively included in the take estimates (which, of note, would result in a reduction in the number of takes), table 2.3–1 of the MITT Acoustic and Explosive Effects Analysis Technical Report indicates the percentage of the instances of take where an animal's closest point of approach was within a mitigation zone and, therefore, AUD INJ could potentially be mitigated. Note that these percentages do not account for other factors, such as the sightability of a given species or viewing conditions.

While mitigation areas are not quantitatively included in the take estimates, the extent to which the mitigation areas reduce impacts on the affected species is addressed in the Preliminary Analysis and Negligible Impact Determination section.

For additional information on the quantitative analysis process, refer to the Acoustic Impacts Technical Report and sections 6 and 11 of the application.

As a general matter, NMFS does not prescribe the methods for estimating take for any applicant, but we review and ensure that applicants use the best available science and methodologies

that are logical and technically sound. Applicants may use different methods of calculating take (especially when using models) and still get to a result that is representative of the best available science and that allows for a rigorous and accurate evaluation of the effects on marine mammals. There are multiple pieces of the Navy's take estimation methods—propagation models, animat movement models, and behavioral thresholds, for example. NMFS evaluates the acceptability of these pieces as they evolve and are used in different rules and impact analyses. Some of the pieces of the Action Proponents' take estimation process have been used in Navy incidental take rules since 2009 and undergone multiple public comment processes; all of them have undergone extensive internal Navy review, and all of them have undergone comprehensive review by NMFS, which has sometimes resulted in modifications to methods or models.

The Navy uses rigorous review processes (verification, validation, and accreditation processes; peer and public review) to ensure the data and methodology it uses represent the best available science. For instance, NAEMO is the result of a NMFS-led Center for Independent Experts review of the components used in earlier models. The acoustic propagation component of NAEMO (titled CASS/GRAB) is accredited by the Oceanographic and Atmospheric Master Library (OAML), and many of the environmental variables used in NAEMO come from approved OAML databases and are based on in-situ data collection. The animal density components of NAEMO are base products of the NMSDD, which includes animal density components that have been validated and reviewed by a variety of scientists from NMFS Science Centers and academic institutions. Several components of the model (for example, habitat-based density model results for species off Hawaii and California) have been published in several peer-reviewed journals (Becker *et al.,* 2020b, 2021, 2022a, 2022b). Additionally, NAEMO simulation components underwent quality assurance and quality control (commonly referred to as QA/QC) review and validation for model parts (*e.g.,* scenario builder, acoustic builder, scenario simulator), conducted by qualified statisticians and modelers to ensure accuracy. Other models and methodologies have gone through similar review processes.

In summary, we conclude the Action Proponents' methods, including the method for incorporating avoidance, are the most appropriate methods for predicting AUD INJ, non-auditory injury, TTS, and behavioral disturbance. Even with the consideration of avoidance, given some of the more conservative components of the methodology (*e.g.,* the thresholds do not consider ear recovery between pulses), we would describe the application of these methods as identifying the maximum number of instances in which marine mammals would be reasonably expected to be taken through AUD INJ, non-auditory injury, TTS, or behavioral disturbance.

Based on the methods discussed in the previous sections and NAEMO, the Action Proponents provided their take estimates and request for authorization of takes incidental to the use of acoustic and explosive sources for military readiness activities annually (based on the maximum number of activities that could occur per 12-month period) and over the 7-year period covered by the application. NMFS has reviewed the Action Proponents' 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.

Table 23 and table 24 summarize the maximum annual and 7-year total amount and type of Level A harassment and Level B harassment that NMFS concurs is reasonably expected to occur by species and stock for training activities and testing activities, respectively.

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Table 23 -- Incidental Take Estimate by Species and Stock due to Acoustic and Explosive Sources during Training Activities

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	7-year total Level B harassment	7-year total Level A harassment
Blue Whale	Central North Pacific	40	1	264	3
Bryde's Whale	NSD	66	1	441	5
Fin Whale	NSD	33	1	223	1
Humpback Whale	Western North Pacific	1,491	21	10,364	136
Minke Whale	NSD	23	1	151	2
Omura's Whale	NSD	50	1	331	2
Sei Whale	NSD	35	1	236	2
Sperm Whale	NSD	212	0	1,461	0
Dwarf Sperm Whale	NSD	17,859	306	123,632	2,089
Pygmy Sperm Whale	NSD	20,083	353	139,007	2,402
Blainville's Beaked Whale	NSD	2,973	0	20,517	0
Deraniyagala Beaked Whale	NSD	4735	1	32,543	3
Ginkgo-toothed Beaked Whale	NSD	5,632	0	38,642	0
Goose-Beaked Whale	NSD	2,476	0	17,042	0
Longman's Beaked Whale	NSD	964	0	6,600	0
False Killer Whale	NSD	217	0	1,506	0
Killer Whale	NSD	50	0	349	0
Melon-Headed Whale	NSD	453	1	3,142	1
Pygmy Killer Whale	NSD	844	1	5,852	1
Short-Finned Pilot Whale	NSD	216	0	1,493	0
Bottlenose Dolphin	NSD	339	1	2,339	1
Fraser's Dolphin	NSD	10,912	5	75,612	22
Pantropical Spotted Dolphin	NSD	4,354	3	30,094	11
Risso's Dolphin	NSD	1,701	2	11,799	4
Rough-Toothed Dolphin	NSD	1,897	1	13,164	6
Spinner Dolphin	NSD	3,935	2	26,307	9
Striped Dolphin	NSD	1,497	1	10,391	3

Note: Mortality is neither anticipated nor proposed for authorization.

Table 24 -- Incidental Take Estimate by Species and Stock due to Acoustic and Explosive Sources during Testing Activities

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	7-year total Level B harassment	7-year total Level A harassment
Blue Whale	Central North Pacific	2	0	5	0
Bryde's Whale	NSD	2	0	8	0
Fin Whale	NSD	2	0	6	0
Humpback Whale	Western North Pacific	26	0	170	0
Minke Whale	NSD	2	0	3	0
Omura's Whale	NSD	2	0	5	0
Sei Whale	NSD	2	0	5	0
Sperm Whale	NSD	13	0	80	0
Dwarf Sperm Whale	NSD	857	17	5,946	67
Pygmy Sperm Whale	NSD	909	21	6,322	82
Blainville's Beaked Whale	NSD	147	0	1,018	0
Deraniyagala Beaked Whale	NSD	238	0	1,648	0
Ginkgo-toothed Beaked Whale	NSD	297	0	2,078	0
Goose-Beaked Whale	NSD	142	0	993	0
Longman's Beaked Whale	NSD	51	0	357	0
False Killer Whale	NSD	11	0	70	0
Killer Whale	NSD	4	0	17	0
Melon-Headed Whale	NSD	22	0	148	0
Pygmy Killer Whale	NSD	41	0	280	0
Short-Finned Pilot Whale	NSD	12	0	74	0
Bottlenose Dolphin	NSD	17	0	115	0
Fraser's Dolphin	NSD	513	1	3,567	1
Pantropical Spotted Dolphin	NSD	201	0	1,399	0
Risso's Dolphin	NSD	80	0	555	0
Rough-Toothed Dolphin	NSD	87	0	599	0
Spinner Dolphin	NSD	156	0	1,068	0
Striped Dolphin	NSD	66	0	451	0

Note: Mortality is neither anticipated nor proposed for authorization.

Estimated Take From Sonar and Other Transducers—

Table 25 and table 26 provide estimated effects from sonar and other transducers, including the comparative amounts of TTS and behavioral disturbance for each species and stock annually, noting that if a modeled marine mammal was taken through exposure to both TTS and behavioral disturbance in the model, it was recorded as a TTS.

The updated HF cetacean criteria reflect greater susceptibility to auditory effects at low and mid-frequencies than previously analyzed. Consequently, the predicted auditory effects due to sources under 10 kHz, including but not limited to MF1 hull-mounted sonar and other ASW sonars, are substantially greater for this auditory group than in prior analyses of the same activities. Thus, for activities with sonars, some modeled exposures that would previously have been categorized as significant behavioral responses may now instead be counted as auditory effects (TTS and AUD INJ). Similarly, the updated HF cetacean criteria reflect greater susceptibility to auditory effects at low and mid-frequencies in impulsive sounds. For VHF cetaceans, susceptibility to auditory effects has not changed substantially since the prior analysis.

Table 25 -- Annual and 7-Year Estimated Take of Marine Mammal Species and Stocks from Sonar and Other Active Transducers during Training Activities

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual ΛUD INJ	Maximum annual non-auditory injury	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year ΛUD INJ	Maximum 7-year non-auditory injury
Blue Whale	Central North Pacific	2	36	(1)	-	10	252	3	-
Bryde's Whale	NSD	2	62	1	-	11	428	5	-
Fin Whale	NSD	2	30	(1)	-	12	210	1	-
Humpback Whale	Western North Pacific	27	1,453	20	-	178	10,128	135	-
Minke Whale	NSD	(1)	21	(1)	-	3	147	2	-
Omura's Whale	NSD	2	46	(1)	-	10	318	2	-
Sei Whale	NSD	1	33	(1)	-	6	229	2	-
Sperm Whale	NSD	111	99	0	-	769	689	0	-
Dwarf Sperm Whale	NSD	936	16,328	247	-	6,269	113,665	1,720	-
Pygmy Sperm Whale	NSD	1,064	18,327	285	-	7,128	127,574	1,980	-
Blainville's Beaked Whale	NSD	2,948	23	-	-	20,354	160	-	-
Deraniyagala Beaked Whale	NSD	4,727	1	-	-	32,496	5	-	-
Ginkgo-toothed Beaked Whale	NSD	5,577	53	-	-	38,266	371	-	-
Goose-Beaked Whale	NSD	2,455	19	-	-	16,911	129	-	-
Longman's Beaked Whale	NSD	951	11	-	-	6,527	71	-	-
False Killer Whale	NSD	60	157	0	-	414	1,092	0	-
Killer Whale	NSD	11	39	0	-	76	273	0	-
Melon-Headed Whale	NSD	150	302	(1)	-	1,034	2,107	1	-

Pygmy Killer Whale	NSD	230	612	(1)	-	1,578	4,272	1	-
Short-Finned Pilot Whale	NSD	69	146	0	-	476	1,016	0	-
Bottlenose Dolphin	NSD	100	237	(1)	-	683	1,654	1	-
Fraser's Dolphin	NSD	3,728	7,169	3	-	25,525	49,998	18	-
Pantropical Spotted Dolphin	NSD	1,181	3,170	2	-	7,998	22,078	9	-
Risso's Dolphin	NSD	477	13	-	-	3,260	8,535	3	-
Rough-Toothed Dolphin	NSD	422	1,473	1	-	2,886	10,273	6	-
Spinner Dolphin	NSD	2,133	1,798	1	-	13,873	12,408	4	-
Striped Dolphin	NSD	370	1,125	(1)	-	2,540	7,847	3	-
Note: Mortality is neither anticipated nor proposed for authorization. Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in the MITT Acoustic and Explosive Effects Analysis Technical Report.									

Table 26 -- Annual and 7-Year Estimated Take of Marine Mammal Stocks from Sonar and Other Active Transducers During Testing Activities

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury
Blue Whale	Central North Pacific	1	(1)	-	-	4	1	-	-
Bryde's Whale	NSD	1	(1)	-	-	5	3	-	-
Fin Whale	NSD	1	(1)	-	-	5	1	-	-
Humpback Whale	Western North Pacific	15	10	0	-	104	65		-
Minke Whale	NSD	(1)	(1)	-	-	2	1	-	-
Omura's Whale	NSD	1	(1)	-	-	4	1	-	-
Sei Whale	NSD	(1)	(1)	0	-	3	2		
Sperm Whale	NSD	12	(1)	-	-	79	1	-	-
Dwarf Sperm Whale	NSD	150	686	7	-	1,044	4,796	48	-
Pygmy Sperm Whale	NSD	158	728	9	-	1,102	5,096	559	-
Blainville's Beaked Whale	NSD	146	(1)	-	-	1,017	1	-	-
Deraniyagala Beaked Whale	NSD	236	(1)	-	-	1,646	1	-	-
Ginkgo-toothed Beaked Whale	NSD	297	0	-	-	2,078	0	-	-
Goose-Beaked Whale	NSD	142	0	-	-	993	0	-	-
Longman's Beaked Whale	NSD	51	0	-	-	357	0	-	-

False Killer Whale	NSD	10	(1)	-	-	68	2	-	-
Killer Whale	NSD	3	(1)	-	-	16	1	-	-
Melon-Headed Whale	NSD	21	1	-	-	142	6	-	-
Pygmy Killer Whale	NSD	39	2	0	-	270	10	0	-
Short-Finned Pilot Whale	NSD	11	(1)	-	-	72	2	-	-
Bottlenose Dolphin	NSD	16	1	-	-	111	4	-	-
Fraser's Dolphin	NSD	499	12	-	-	3,487	78	-	-
Pantropical Spotted Dolphin	NSD	190	11	0	-	1,328	71	0	-
Risso's Dolphin	NSD	77	3	0	-	535	20	-	-
Rough-Toothed Dolphin	NSD	83	4	0	-	577	22	0	-
Spinner Dolphin	NSD	113	41	0	-	785	281	0	-
Striped Dolphin	NSD	63	3	-	-	435	16	-	-

Note: Mortality is neither anticipated nor proposed for authorization. Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in the MITT Acoustic and Explosive Effects Analysis Technical Report.

Estimated Take From Explosives

Table 27 and table 28 provide estimated effects from explosives during training and testing activities, respectively.

Table 27 -- Annual and 7-Year Estimated Take of Marine Mammal Species and Stocks from Explosives during Training Activities

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
Blue Whale	Central North Pacific	(1)	(1)	-	-	-	1	1	-	-	-
Bryde's Whale	NSD	(1)	(1)	0	-	-	1	1	0	-	-
Fin Whale	NSD	(1)	0	0	-	-	1	0	0	-	-
Humpback Whale	Western North Pacific	7	4	(1)	-	-	37	21	1	-	-
Minke Whale	NSD	(1)	0	-	-	-	1	0	-	-	-
Omura's Whale	NSD	(1)	(1)	-	-	-	1	2	-	-	-
Sei Whale	NSD	(1)	0	0	-	-	1	0	0	-	-
Sperm Whale	NSD	(1)	(1)	0	-	-	2	1	0	-	-
Dwarf Sperm Whale	NSD	302	293	59	0	0	1,855	1,843	369	0	0
Pygmy Sperm Whale	NSD	343	349	68	0	0	2,115	2,190	424	0	0
Blainville's Beaked Whale	NSD	(1)	(1)	0	0	-	2	1	0	0	-
Deraniyagala Beaked Whale	NSD	4	3	(1)	-	-	23	19	3	-	-
Ginkgo-toothed Beaked Whale	NSD	(1)	1	0	0	-	2	3	0	0	-
Goose-Beaked Whale	NSD	(1)	(1)	0	0	-	1	1	0	0	-
Longman's Beaked Whale	NSD	(1)	(1)	0	0	-	1	1	0	0	-

False Killer Whale	NSD	0	0	0	0	-	0	0	0	0	-
Killer Whale	NSD	-	-	-	-	-	-	-	-	-	
Melon-Headed Whale	NSD	(1)	0	0	0	-	1	0	0	0	-
Pygmy Killer Whale	NSD	(1)	(1)	0	0	0	1	1	0	0	0
Short-Finned Pilot Whale	NSD	(1)	0	0	0	0	1	0	0	0	0
Bottlenose Dolphin	NSD	(1)	(1)	0	0	0	1	1	0	0	0
Fraser's Dolphin	NSD	9	6	(1)	(1)	0	54	35	3	1	0
Pantropical Spotted Dolphin	NSD	2	1	(1)	0	0	11	7	2	0	0
Risso's Dolphin	NSD	1	0	0	(1)	-	4	0	0	1	-
Rough-Toothed Dolphin	NSD	1	(1)	0	0	0	3	2	0	0	0
Spinner Dolphin	NSD	1	3	1	0	-	5	21	5	0	-
Striped Dolphin	NSD	(1)	(1)	0	0	-	2	2	0	0	-

Note: Mortality is neither anticipated nor proposed for authorization. Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in the MITT Acoustic and Explosive Effects Analysis Technical Report.

Table 28 -- Annual and 7-Year Estimated Take of Marine Mammal Stocks from Explosives During Testing Activities

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
Blue Whale	Central North Pacific	-	-	-	-	-	-	-	-	-	-
Bryde's Whale	NSD	0	0	0	-	-	0	0	0	-	-
Fin Whale	NSD	-	0	-	-	-	-	0	-	-	-
Humpback Whale	Western North Pacific	0	(1)	-	-	-	0	1	-	-	-
Minke Whale	NSD	-	0	-	-	-	-	0	-	-	-
Omura's Whale	NSD	-	0	-	-	-	-	0	-	-	-
Sei Whale	NSD	-	0	-	-	-	-	0	-	-	-
Sperm Whale	NSD	0	0	0	-	-	0	0	0	-	-
Dwarf Sperm Whale	NSD	7	14	10	0	0	44	62	19	0	0
Pygmy Sperm Whale	NSD	7	16	12	-	-	45	79	23	-	-
Blainville's Beaked Whale	NSD	0	0	0	-	-	0	0	0	-	-
Deraniyagala Beaked Whale	NSD	0	(1)	-	-	-	0	1	-	-	-
Ginkgo-toothed Beaked Whale	NSD	0	-	-	-	-	0	-	-	-	-
Goose-Beaked Whale	NSD	0	0	0	-	-	0	0	0	-	-
Longman's Beaked Whale	NSD	0	0	0	-	-	0	0	0	-	-

False Killer Whale	NSD	-	0	0	-	-	-	0	0	-	-
Killer Whale	NSD	-	-	-	-	-	-	-	-	-	-
Melon-Headed Whale	NSD	0	0	-	-	-	0	0	-	-	-
Pygmy Killer Whale	NSD	0	0	0	0	0	0	0	0	0	0
Short-Finned Pilot Whale	NSD	0	0	-	-	-	0	0	-	-	-
Bottlenose Dolphin	NSD	0	0	0	0	-	0	0	0	0	-
Fraser's Dolphin	NSD	(1)	(1)	(1)	-	-	1	1	1	-	-
Pantropical Spotted Dolphin	NSD	0	0	0	0	-	0	0	0	0	-
Risso's Dolphin	NSD	0	-	0	-	-	0	-	0	-	-
Rough-Toothed Dolphin	NSD	0	0	0	0	0	0	0	0	0	0
Spinner Dolphin	NSD	(1)	(1)	0	-	-	1	1	0	-	-
Striped Dolphin	NSD	0	0	0	0	-	0	0	0	0	-

Note: Mortality is neither anticipated nor proposed for authorization. Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in the MITT Acoustic and Explosive Effects Analysis Technical Report.

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Summary of Requested Take From Military Readiness Activities

Table 29 and table 30 summarize the take requested by the Action Proponents and proposed for authorization by NMFS by harassment type and effect type, respectively.

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Table 29 -- Total Annual and 7-year Incidental Take Proposed for Authorization by Species and Stock During all Activities by Harassment Type

Species	Stock	Maximum annual Level B harassment	Maximum annual Level A harassment	7-year total Level B harassment	7-year total Level A harassment
Blue Whale	Central North Pacific	42	1	269	3
Bryde's Whale	NSD	68	1	449	5
Fin Whale	NSD	35	1	229	1
Humpback Whale	Western North Pacific	1,517	21	10,534	136
Minke Whale	NSD	25	1	154	2
Omura's Whale	NSD	52	1	336	2
Sei Whale	NSD	37	1	241	2
Sperm Whale	NSD	225	0	1,541	0
Dwarf Sperm Whale	NSD	18,716	323	129,578	2,156
Pygmy Sperm Whale	NSD	20,992	374	145,329	2,486
Blainville's Beaked Whale	NSD	3,120	0	21,535	0
Deraniyagala Beaked Whale	NSD	4,973	1	34,191	3
Ginkgo-toothed Beaked Whale	NSD	5,929	0	40,720	0
Goose-Beaked Whale	NSD	2,618	0	18,035	0
Longman's Beaked Whale	NSD	1,015	0	6,957	0
False Killer Whale	NSD	228	0	1,576	0
Killer Whale	NSD	54	0	366	0
Melon-Headed Whale	NSD	475	1	3,290	1
Pygmy Killer Whale	NSD	885	1	6,132	1
Short-Finned Pilot Whale	NSD	228	0	1,567	0
Bottlenose Dolphin	NSD	356	1	2,454	1
Fraser's Dolphin	NSD	11,425	6	79,179	23
Pantropical Spotted Dolphin	NSD	4,555	3	31,493	11
Risso's Dolphin	NSD	1,781	2	12,354	4
Rough-Toothed Dolphin	NSD	1,984	1	13,763	6
Spinner Dolphin	NSD	4,091	2	27,375	9
Striped Dolphin	NSD	1,563	1	10,842	3

Note: Mortality is neither anticipated nor proposed for authorization.

Table 30 -- Total Annual and 7-year Incidental Take Proposed by Species and Stock during all Activities by Effect Type

Species	Stock	Maximum annual behavioral	Maximum annual TTS	Maximum annual AUD INJ	Maximum annual non-auditory injury	Maximum annual mortality	Maximum 7-year behavioral	Maximum 7-year TTS	Maximum 7-year AUD INJ	Maximum 7-year non-auditory injury	Maximum 7-year mortality
Blue Whale	Central North Pacific	4	38	1	-	-	15	254	3	-	-
Bryde's Whale	NSD	4	64	1	-	-	17	432	5	-	-
Fin Whale	NSD	4	31	1	-	-	18	211	1	-	-
Humpback Whale	Western North Pacific	49	1,468	21	-	-	319	10,215	136	-	-
Minke Whale	NSD	3	22	1	-	-	6	148	2	-	-
Omura's Whale	NSD	4	48	1	-	-	15	321	2	-	-
Sei Whale	NSD	3	34	1	-	-	10	231	2	-	-
Sperm Whale	NSD	124	101	0	-	-	850	691	0	-	-
Dwarf Sperm Whale	NSD	1,395	17,321	323	0	0	9,212	120,366	2,156	0	0
Pygmy Sperm Whale	NSD	1,572	19,420	374	0	0	10,390	134,939	2,486	0	0
Blainville's Beaked Whale	NSD	3,095	25	0	0	-	21,373	162	0	0	-
Deraniyagala Beaked Whale	NSD	4,967	6	1	-	-	34,165	26	3	-	-
Ginkgo-toothed Beaked Whale	NSD	5,875	54	0	0	-	40,346	374	0	0	-
Goose-Beaked Whale	NSD	2,598	20	0	0	-	17,905	130	0	0	-
Longman's Beaked Whale	NSD	1,003	12	0	0	-	6,885	72	0	0	-
False Killer Whale	NSD	70	158	0	0	-	482	1,094	0	0	0
Killer Whale	NSD	14	40	0	-	-	92	274	0	-	-

Melon-Headed Whale	NSD	172	303	1	0	-	1,177	2,113	1	0	-
Pygmy Killer Whale	NSD	270	615	1	0	0	1,849	4,283	1	0	0
Short-Finned Pilot Whale	NSD	81	147	0	0	0	549	1,018	0	0	0
Bottlenose Dolphin	NSD	117	239	1	0	0	795	1,659	1	0	0
Fraser's Dolphin	NSD	4,237	7,188	5	1	0	29,067	50,112	22	1	-
Pantropical Spotted Dolphin	NSD	1,373	3,182	3	0	0	9,337	22,156	11	0	0
Risso's Dolphin	NSD	555	1,226	1	1	-	3,799	8,555	3	1	-
Rough-Toothed Dolphin	NSD	506	1,478	1	0	0	3,466	10,297	6	0	0
Spinner Dolphin	NSD	2,248	1,843	2	0	-	14,664	12,711	9	0	-
Striped Dolphin	NSD	434	1,129	1	0	-	2,977	7,865	3	0	-

Note: Mortality is neither anticipated nor proposed for authorization. Zero (0) impacts indicate total less than 0.5 and a dash (-) is a true zero. In some cases where the estimated take within a cell is equal to 1, that value has been rounded up from a value that is less than 0.5 to avoid underestimating potential impacts to a species or stock based on the 7-year rounding rules discussed in the MITT Acoustic and Explosive Effects Analysis Technical Report.

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Proposed Mitigation Measures

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable adverse impact on the species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. The 2004 NDAA amended the MMPA as it relates to military readiness activities and the ITA process such that a determination of least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. For additional discussion of NMFS' interpretation of the least practicable adverse impact standard, see the Mitigation Measures section of the Gulf of Alaska Study Area final rule (88 FR 604, January 4, 2023).

Implementation of Least Practicable Adverse Impact Standard

Here, we discuss 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 the Action Proponents' activities meets the negligible impact standard appears in the Preliminary Analysis and Negligible Impact Determination section below.

Our evaluation of potential mitigation measures includes consideration of two primary factors:

1. The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, or their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (*e.g.,* likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

2. The practicability of the measure(s) for applicant implementation. Practicability of implementation may consider such things as cost, impact on activities, and, in the case of a military readiness activity, specifically considers personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

While the language of the least practicable adverse impact standard calls for minimizing impacts to affected species or stocks, we recognize that the reduction of impacts to those species or stocks accrues through the application of mitigation measures that limit impacts to individual animals. Accordingly, NMFS' analysis focuses on measures that are designed to avoid or minimize impacts on individual marine mammals that are more likely to increase the probability or severity of population-level effects.

While direct evidence of impacts to species or stocks from a specified activity is rarely available, and additional study is still needed to understand how specific disturbance events affect the fitness of individuals of certain species, there have been improvements in understanding the process by which disturbance effects are translated to the population. With recent scientific advancements (both marine mammal energetic research and the development of energetic frameworks), the relative likelihood or degree of impacts on species or stocks may often be inferred given a detailed understanding of the activity, the environment, and the affected species or stocks, and the best available science has been used here. This same information is used in the development of mitigation measures and helps us understand how mitigation measures contribute to lessening effects (or the risk thereof) to species or stocks. We also acknowledge that there is always the potential that new information, or a new recommendation, could become available in the future and necessitate reevaluation of mitigation measures to see if further reductions of population impacts are possible and practicable.

In the evaluation of specific measures, the details of the specified activity will necessarily inform each of the two

primary factors discussed above (expected reduction of impacts and practicability) and are carefully considered to determine the types of mitigation that are appropriate under the least practicable adverse impact standard. Analysis of how a potential mitigation measure may reduce adverse impacts on a marine mammal stock or species, consideration of personnel safety, practicality of implementation, and consideration of the impact on effectiveness of military readiness activities are not issues that can be meaningfully evaluated through a yes/no lens. The manner in which, and the degree to which, implementation of a measure is expected to reduce impacts, as well as its practicability in terms of these considerations, can vary widely. For example, a time/area restriction could be of very high value for decreasing population-level impacts (*e.g.,* avoiding disturbance of feeding females in an area of established biological importance) or it could be of lower value (*e.g.,* decreased disturbance in an area of high productivity but of less biological importance). Regarding practicability, a measure might involve restrictions in an area or time that impede the Navy's ability to certify a strike group (higher impact on mission effectiveness), or it could mean delaying a small in-port training event by 30 minutes to avoid exposure of a marine mammal to injurious levels of sound (*i.e.,* lower impact). A responsible evaluation of least practicable adverse impact will consider the factors along these realistic scales. Accordingly, the greater the likelihood that a measure will contribute to reducing the probability or severity of adverse impacts to the species or stock or its habitat, the greater the weight that measure is given when considered in combination with practicability to determine the appropriateness of the mitigation measure and vice versa. We discuss consideration of these factors in greater detail below.

Reduction of Adverse Impacts to Marine Mammal Species or Stocks and Their Habitat

The emphasis given to a measure's ability to reduce the impacts on a species or stock considers the degree, likelihood, and context of the anticipated reduction of impacts to individuals (and how many individuals) as well as the status of the species or stock.

The ultimate impact on any individual from a disturbance event (which informs the likelihood of adverse species- or stock-level effects) is dependent on the circumstances and associated contextual factors, such as duration of exposure to stressors. Though any proposed mitigation needs to be evaluated in the context of the specific activity and the species or stocks affected, measures with the following types of effects have greater value in reducing the likelihood or severity of adverse species- or stock-level impacts: (1) avoiding or minimizing injury or mortality; (2) limiting interruption of known feeding, breeding, mother/young, or resting behaviors; (3) minimizing the abandonment of important habitat (temporally and spatially); (4) minimizing the number of individuals subjected to these types of disruptions; and (5) limiting degradation of habitat. Mitigating these types of effects is intended to reduce the likelihood that the activity will result in energetic or other types of impacts that are more likely to result in reduced reproductive success or survivorship. It is also important to consider the degree of impacts expected in the absence of mitigation in order to assess the added value of any potential measures. Finally, because the least practicable adverse impact standard gives NMFS discretion to weigh a variety of factors when determining appropriate mitigation measures and because the focus of the standard is on reducing impacts at the species or stock level, the least practicable adverse impact standard does not compel mitigation for every kind of take, or for every individual taken, if that mitigation is unlikely to meaningfully contribute to the reduction of adverse impacts on the species or stock and its habitat, even when practicable for implementation by the applicant.

The status of the species or stock is also relevant in evaluating the appropriateness of potential mitigation measures in the context of least practicable adverse impact. The following are examples of factors that may, alone or in combination, result in greater emphasis on the importance of a mitigation measure in reducing impacts on a species or stock: (1) the stock is known to be decreasing or status is unknown, but believed to be declining; (2) the known annual mortality (from any source) is approaching or exceeding the PBR level (as defined in MMPA section 3(20)); (3) the affected species or stock is a small, resident population; or (4) the stock is involved in an Unusual Mortality Event (UME) or has other known vulnerabilities (*e.g.,* recovering from an oil spill).

Habitat mitigation, particularly as it relates to rookeries, mating grounds, and areas of similar significance, is also relevant to achieving the standard and can include measures such as reducing impacts of the activity on known prey utilized in the activity area or reducing impacts on physical habitat. As with species- or stock-related mitigation, the emphasis given to a measure's ability to reduce impacts on a species or stock's habitat considers the degree, likelihood, and context of the anticipated reduction of impacts to habitat. Because habitat value is informed by marine mammal presence and use, in some cases there may be overlap in measures for the species or stock and for use of habitat.

We consider available information indicating the likelihood of any measure to accomplish its objective. If evidence shows that a measure has not typically been effective nor successful, then either that measure should be modified or the potential value of the measure to reduce effects should be lowered.

Practicability

Factors considered may include cost, impact on activities, and, in the case of a military readiness activity, will include personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity (see 16 U.S.C. 1371(a)(5)(A)(iii)).

Assessment of Mitigation Measures for the Study Area

NMFS has fully reviewed the specified activities and the mitigation measures included in the application and the 2026 MITT Draft SEIS/OEIS under the least practicable adverse impact standard. NMFS worked with the Action Proponents in the development of their initially proposed measures, which are informed by years of implementation and monitoring. A complete discussion of the Action Proponents' evaluation process used to develop, assess, and select mitigation measures, which was informed by input from NMFS, can be found in chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS. The process described in chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS supported NMFS' independent evaluation of whether the mitigation measures would meet the least practicable adverse impact standard. The Action Proponents would be required to implement the mitigation measures identified in this proposed rule for the full 7 years to avoid or reduce potential impacts from acoustic, explosive, and physical disturbance and 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 or habitat.

The Action Proponents have agreed to mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, vessel strike, and impacts to marine mammal habitat. Specifically, the Action Proponents would use a combination of delayed starts, powerdowns, and shutdowns to avoid mortality or serious injury, minimize the likelihood or severity of AUD INJ or non-auditory injury, and reduce instances of TTS or more severe behavioral disturbance caused by acoustic sources or explosives. The Action Proponents would also implement multiple time/area restrictions that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors (*e.g.,* calving), where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts.

The Action Proponents assessed the practicability of the proposed measures in the context of personnel safety, practicality of implementation, and their impacts on the Action Proponents' ability to meet their congressionally mandated requirements and found that the measures are supportable. As described in more detail below, NMFS has independently evaluated the measures the Action Proponents proposed in the manner described earlier in this section (*i.e.,* in consideration of their ability to reduce adverse impacts on marine mammal species and their habitat and their practicability for implementation). We have determined that the measures would significantly minimize impacts on the affected marine mammal species and stocks and their habitat and, further, be practicable for implementation by the Action Proponents. We have preliminarily determined that the mitigation measures satisfy the MMPA's least practicable adverse impact standard.

The Action Proponents also evaluated numerous measures in the 2026 MITT Draft SEIS/OEIS that were not included in the application, and NMFS independently reviewed and preliminarily concurs with the Action Proponents' analysis that their inclusion was not appropriate under the least practicable adverse impact standard based on our assessment. The Action Proponents considered these additional potential mitigation measures in the context of the potential benefits to marine mammals and whether they are practical or impractical.

Section 4.10 (Mitigation Considered but Eliminated) of chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS 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. These recommendations generally fall into three categories, discussed below: reduction of activity; activity-based operational measures; and time/area limitations.

As described in section 4.10 (Mitigation Considered but Eliminated) of the 2026 MITT Draft SEIS/OEIS, the Action Proponents considered reducing the overall amount of training, reducing explosive use, modifying sound sources, completely replacing live training with computer simulation, and including time of day restrictions. Many of these mitigation measures could potentially reduce the number of marine mammals taken via direct reduction of the activities or amount of sound energy put in the water. However, as described in chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS, the Action Proponents need to train in the conditions in which they fight, and these types of modifications fundamentally change the activity in a manner that would not support the purpose and need for the training (*i.e.,* are entirely impracticable) and, therefore, are not considered further. NMFS finds the Action Proponents' explanation of why adoption of these recommendations would unacceptably undermine the purpose of the training persuasive. After independent review, NMFS finds the Action Proponents' judgment on the impacts of these potential mitigation measures to personnel safety, practicality of implementation, and the effectiveness of training persuasive, and for these reasons, NMFS finds that these measures do not meet the least practicable adverse impact standard because they are not practicable.

In chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS, the Action Proponents also evaluated additional potential activity-based mitigation measures, including increased mitigation zones, ramp-up measures, additional passive acoustic and visual monitoring, and decreased vessel speeds. Some of these measures have the potential to incrementally reduce take to some degree in certain circumstances, though the degree to which this would occur is typically low or uncertain. However, as described in the Action Proponents' analysis, the measures would have significant direct negative effects on mission effectiveness and are considered impracticable. NMFS independently reviewed the Action Proponents' evaluation and concurs with this assessment, which supports NMFS' preliminary findings that the impracticability of this additional mitigation would greatly outweigh any potential minor reduction in marine mammal impacts that might result; therefore, these additional mitigation measures are not warranted.

Lastly, chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS also describes a comprehensive analysis of 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 an area for training, considering proximity to training ranges and emergency landing fields and other issues). In some cases, potential benefits to marine mammals were non-existent, while in others the consequences on mission effectiveness were too great.

NMFS has reviewed the Action Proponents' analysis in chapter 4 (Mitigation) and appendix A (Military Readiness Activities Descriptions) of 2026 MITT Draft SEIS/OEIS, which consider the same factors that NMFS considers to satisfy the least practicable adverse impact standard, and concurs with the analysis and conclusions. Therefore, NMFS is not proposing to include any of the measures that the Action Proponents ruled out in the 2026 MITT Draft SEIS/OEIS. Below are the mitigation measures that NMFS has preliminarily determined satisfy the MMPA's least practicable adverse impact standard, including the specific considerations for military readiness activities. Table 31 describes the information designed to aid Lookouts and other applicable personnel with their observation, environmental compliance, and reporting responsibilities. The following sections describe the mitigation measures that

would be implemented in association with the activities analyzed in this document. The mitigation measures are organized into two categories: activity-based mitigation and geographic mitigation areas.

Of note, according to the U.S. Navy, consistent with customary international law, when a foreign military vessel participates in a U.S. Navy exercise within the U.S. territorial sea (*i.e.,* 0 to 22.2 km from shore), the U.S. Navy will request that the foreign vessel follow the U.S. Navy's mitigation measures for that particular event. When a foreign military vessel participates in a U.S. Navy exercise beyond the U.S. territorial sea but within the U.S. EEZ, the U.S. Navy will encourage the foreign vessel to follow the U.S. Navy's mitigation measures for that particular event. In either scenario (*i.e.,* both within and beyond the territorial sea), U.S. Navy personnel will provide the foreign vessels participating with a description of the mitigation measures to follow.

Table 31 -- Environmental Awareness and Education

Stressor or Activity: All training and testing activities, as applicable.
Requirements: Navy personnel (including civilian personnel) involved in mitigation and training or testing activity reporting under the specified activities must 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 Afloat Environmental Compliance Training Series. The introductory module provides information on environmental laws (*e.g.*, ESA, MMPA) and the corresponding responsibilities that are relevant to military readiness activities. The material explains why environmental compliance is important in supporting the Action Proponents' commitment to environmental stewardship. • Marine Species Awareness Training. All bridge watch personnel, Commanding Officers, Executive Officers, maritime patrol aircraft aircrews, anti-submarine warfare and mine warfare rotary-wing aircrews, Lookouts, and equivalent civilian personnel must successfully complete the Marine Species Awareness Training prior to standing watch or serving as a Lookout. The Marine Species Awareness Training provides information on sighting cues, visual observation tools and techniques, and sighting notification procedures. Navy biologists developed Marine Species Awareness Training to improve the effectiveness of visual observations for biological resources, focusing on marine mammals and sea turtles, and including floating vegetation, jellyfish aggregations, and flocks of seabirds. • 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 (PMAP) software tool. • Sonar Positional Reporting System and Marine Mammal Incident Reporting. This module provides instruction on the procedures and activity reporting requirements for the Sonar Positional Reporting System and marine mammal incident reporting.

Activity-Based Mitigation

Activity-based mitigation is mitigation that the Action Proponents would implement whenever and wherever an applicable military readiness activity takes place within the Study Area. Previously referred to as ''procedural mitigation,'' the primary objective of activity-based mitigation is to reduce overlap of marine mammals with stressors that have the potential to cause injury or mortality in real time. Activity-based mitigations are fundamentally consistent across stressor activity, although specific variations account for differences in platform configuration, event characteristics, and stressor types. The Action Proponents customize mitigation for each applicable activity category or stressor. Activity-based mitigation generally involves: (1) the use of one or more trained Lookouts to diligently observe for marine mammals and other specific biological resources (*e.g.,* indicator species like floating vegetation, jelly aggregations, large schools of fish, and flocks of seabirds) within a mitigation zone; (2) requirements for Lookouts to immediately communicate sightings of marine mammals and other 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 remainder of the mitigation measures are activity-based mitigation measures (table 32 through table 45) organized by stressor type and activity category and include acoustic stressors (*i.e.,* active sonar, weapons firing noise), explosive stressors (*i.e.,* bombs, gunnery, mine counter-measure and neutralization activities, missiles and rockets, research-based sub-surface explosives, and sinking exercises), and physical disturbance and strike stressors (*i.e.,* aerial-deployed mines and non-explosive bombs, non-explosive gunnery, non-explosive torpedoes missiles and rockets, vessel movement, towed in-water devices).

The Action Proponents must implement the proposed mitigation measures described in table 32 through

table 45, as appropriate, in response to an applicable sighting of a marine mammal within, or entering into, the relevant mitigation zone for acoustic stressors, explosives, and non-explosive munitions. Each table describes the activities that the requirements apply to, the required mitigation zones in which the action proponents must take a mitigation action, the required number of Lookouts and observation platform, the required mitigation actions that the action proponents must take before, during, and/or after an activity, and a required wait period prior to commencing or recommencing an activity after a delay, power down, or shutdown of an activity.

The Action Proponents proposed wait periods because events cannot be delayed or ceased indefinitely for the purpose of mitigation due to impacts on safety, sustainability, and the ability to meet mission requirements. Wait periods are designed to allow animals the maximum amount of time practical to resurface (*i.e.,* become available to be observed) before activities resume. The action proponents factored in an assumption that mitigation may need to be implemented more than once when developing wait period durations. Wait periods are 10 minutes or 30 minutes depending on the fuel constraints of the platform and feasibility of implementation. NMFS concurs with these proposed wait periods.

If an applicable species (identified in the relevant mitigation tables) is observed within a required mitigation zone prior to the initial start of the activity, the Action Proponents must: (1) relocate the event to a location where applicable species are not observed; or (2) delay the initial start of the event (or stressor use) until one of the ''Mitigation Zone All-Clear Conditions'' (defined below) has been met. If an applicable stressor is observed within a required mitigation zone during the event (*i.e.,* during use of the indicated source), the Action Proponents must take the action described in the Mitigation Zones section of the table until one of the Mitigation Zone All-Clear Conditions has been met.

For all activities, an activity may not commence or recommence until one of the following Mitigation Zone All-Clear Conditions have been met: (1) a Lookout observes the applicable species exiting the mitigation zone; (2) a Lookout concludes that the animal has exited the mitigation zone based on its observed course, speed, and movement relative to the mitigation zone; (3) a Lookout affirms the mitigation zone has been clear from additional sightings for a designated wait period; or (4) for mobile events, the stressor has transited a distance equal to double the mitigation zone size beyond the location of the last sighting.

Activity-Based Mitigation for Active Acoustic Stressors

Mitigation measures for acoustic stressors are provided below and include active acoustic sources (table 32) and weapons firing noise (table 33). For this proposed action, the following ranges apply to the use of small, medium, and large caliber: (1) small is up to and including 50 caliber machine gun rounds; (2) medium is greater than 50 caliber and less than 57 millimeter (mm); and (3) large is 57 mm and larger. Small caliber items are solid projectiles (*i.e.,* bullets). Medium caliber items are 20–57 mm. Large caliber items are greater than or equal to 57 mm, and both medium and large caliber can be either inert non-explosive rounds or high explosive rounds. Activity-based mitigation for acoustic stressors does not apply to:

- Sources not operated under positive control (*e.g.,* moored oceanographic sources);
- Sources used for safety of navigation (*e.g.,* fathometers);
- Sources used or deployed by aircraft operating at high altitudes (*e.g.,* bombs deployed from high altitude (since personnel cannot effectively observe the surface of the water));
- Sources used, deployed, or towed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the source;
- Sources used by submerged submarines (*e.g.,* sonar (since they cannot conduct visual observation));
- De minimis sources (*e.g.,* those >200 kHz);
- Unattended sources (*e.g.,* moored buoys used for acoustic and oceanographic research); and
- Vessel-based, unmanned vehicle-based, or towed in-water sources when marine mammals (*e.g.,* dolphins) are determined to be intentionally swimming at the bow or alongside or directly behind the vessel, vehicle, or device (*e.g.,* to bow-ride or wake-ride).

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Table 32 -- Mitigation for Active Acoustic Sources

Stressor or Activity: Active acoustic sources with power down and shut down capabilities: • Low-frequency active sonar >200 dB • Mid-frequency active sonar sources that are hull mounted on a surface ship (including surfaced submarines) • Broadband and other active acoustic sources >200 dB

• Mitigation Zones
  ○ 1,000 yd (914.4 m) from active acoustic sources (power down of 6 dB total)
  ○ 500 yd (457.2 m) from active acoustic sources (power down of 10 dB total)
  ○ 200 yd (182.9 m) from active acoustic sources (shut down)
• Mitigation Requirements
  ○ One Lookout in/on one of the following:
  ▪ Aircraft
  ▪ Pierside, moored, or anchored vessel
  ▪ Underway vessel with space/crew restrictions (including small boats)
  ▪ Underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform
  ○ Two Lookouts on an underway vessel without space/crew restrictions
  ○ Lookouts would use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event
• Mitigation Requirement Timing
  ○ Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (*e.g.*, while maneuvering on station).
  ○ Action Proponent personnel must observe the applicable mitigation zone for marine mammals during use of active acoustic sources.
• Wait Period
  ○ 10 or 30 minutes (depending on fuel constraints of the platform)

Stressor or Activity: Active acoustic sources with shut down (but not power down) capabilities: • Low-frequency active sonar <200 dB • Mid-frequency active sonar sources that are not hull mounted on a surface ship (*e.g.*, dipping sonar, towed arrays) • High-frequency active sonar • Broadband and other active acoustic sources <200 dB

• Mitigation Zones
  • 200 yd (182.9 m) from active acoustic sources (shut down)
Mitigation Requirements
  • One Lookout in/on one of the following:
  • Aircraft
  • Pierside, moored, or anchored vessel
  • Underway vessel with space/crew restrictions (including small boats)
  • Underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform
  • Two Lookouts on an underway vessel without space/crew restrictions
  • Lookouts would use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event
Mitigation Requirement Timing

- Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (*e.g.*, while maneuvering on station).
- Action Proponent personnel must observe the mitigation zone for marine mammals during use of active acoustic sources.

Wait Period

- 10 or 30 minutes (depending on fuel constraints of the platform)

Table 33 -- Mitigation for Weapons Firing Noise

Stressor or Activity: Explosive and non-explosive large-caliber gunnery firing noise (surface-to-surface and surface-to-air)

- Mitigation Zone
  - 30 degrees on either side of the firing line out to 70 yd (64 m) from the gun muzzle (cease fire)

Mitigation Requirements

- One Lookout on a vessel

Mitigation Requirement Timing

- Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of large-caliber gun firing (*e.g.*, during target deployment).
- Action Proponent personnel must observe the mitigation zone for marine mammals during large-caliber gun firing.

Wait Period

- 30 minutes

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Activity-Based Mitigation for Explosive Stressors

Mitigation measures for explosive stressors are provided below and include explosive bombs (table 34), explosive gunnery (table 35), explosive mine countermeasure and neutralization without divers (table 36), explosive mine neutralization with divers (table 37), explosive missiles and rockets (table 38), research-based sub-surface explosives (table 39), explosive torpedoes (table 40), and sinking exercises (SINKEX) (table 41). After the event, the Action Proponents must observe the area for marine mammals. Post-event observations are intended to aid incident reporting requirements for marine mammals. Practicality and the duration of post-event observations will be determined on site by fuel restrictions and mission-essential follow-on commitments. For example, it is more challenging to remain on-site for extended periods of time for some activities due to factors such as distance from the target or altitude of an aircraft. For all activities involving explosives, if a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately. Activity-based mitigation for explosive stressors does not apply to explosives:

- Deployed by aircraft operating at high altitudes;
- Deployed by submerged submarines, except for explosive torpedoes;
- Deployed against aerial targets;
- During vessel-launched missile or rocket events;
- Used at or below the de minimis threshold; and
- Deployed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the explosive.

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Table 34 -- Mitigation for Explosive Bombs

Stressor or Activity: Any NEW

• Mitigation Zone
  • 2,500 yd (2,286 m) from the intended target (cease fire)
Mitigation Requirements
  • One Lookout in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of bomb delivery (*e.g.*, when arriving on station).
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals during bomb delivery.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 minutes

Table 35 -- Mitigation for Explosive Gunnery

Stressor or Activity: Air-to-surface medium-caliber, surface-to-surface medium-caliber, surface-to-surface large-caliber

• Mitigation Zones
  • Air-to-surface medium-caliber:
  • 200 yd (182.9 m) from the intended impact location (cease fire)
  • Surface-to-surface medium-caliber:
  • 600 yd (548.6 m) from the intended impact location (cease fire)
  • Surface-to-surface large-caliber:
  • 1,000 yd (914.4 m) from the intended impact location (cease fire)
Mitigation Requirements
  • One Lookout on a vessel or in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of gun firing (*e.g.*, while maneuvering on station).
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals during gunnery fire.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 36 -- Mitigation for Explosive Mine Countermeasure and Neutralization (No Divers)

Stressor or Activity: 0.1-5 lb (0.05-2.3 kg) NEW, >5 lb (2.3 kg) NEW

• Mitigation Zones
  • 0.1-5 lb (0.05-2.3 kg) NEW:
  • 600 yd (548.6 m) from the detonation site (cease fire)
  • >5 lb (2.3 kg) NEW:
  • 2,100 yd (1,920.2 m) from the detonation site (cease fire)
Mitigation Requirements
  • 0.1-5 lb (0.05-2.3 kg) NEW:
  • One Lookout on a vessel or in an aircraft
  • >5 lb (2.3 kg) NEW:
  • Two Lookouts: one on a small boat and one in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (*e.g.*, while maneuvering on station.
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 10 or 30 minutes (depending on fuel constraints) for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 37 -- Mitigation for Explosive Mine Neutralization (With Divers)

Stressor or Activity: any NEW under positive control, any NEW using time-delay fuses

• Mitigation Zones
  • Activities under positive control
  • 500 yd (457.2 m) from the detonation site (cease fire)
  • Activities using time-delay fuses
  • 1,000 yd (914.4 m) from the detonation site (cease fire)
Mitigation Requirements
  • Activities under positive control
  • Lookouts in two small boats (one Lookout per boat), or one small boat and one rotary-wing aircraft (with one Lookout each), and one Lookout on shore for shallow-water events
  • Activities using time-delay fuses
  • Four Lookouts in two small boats (two Lookouts per boat), and one additional Lookout in an aircraft (if used in the event)
Mitigation Requirement Timing
  • Time-delay devices must be set not to exceed 10 minutes
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations or fuse initiation for positive control events (*e.g.*, while maneuvering on station) or for 30 minutes prior for time-delay events.
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation.
  • When practical based on mission, safety, and environmental conditions:
  • Boats must observe from the mitigation zone radius mid-point
  • When two boats are used, boats must observe from opposite sides of the mine location
  • Platforms must travel a circular pattern around the mine location
  • Boats must have one Lookout observe inward toward the mine location and one Lookout observe outward toward the mitigation zone perimeter
  • Divers must be part of the Lookout Team
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 30 minutes for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 38 -- Mitigation for Explosive Missiles and Rockets

Stressor or Activity: 0.6-20 lb (0.3-9.1 kg) NEW (air-to-surface), >20-500 lb (9.1-226.8 kg) NEW (air-to-surface)

• Mitigation Zones
  • 0.6-20 lb (0.3-9.1 kg) NEW (air-to-surface)
  • 900 yd (823 m) from the intended impact location (cease fire)
  • >20-500 lb (9.1-226.8 kg) NEW (air-to-surface)
  • 2,000 yd (1,828.8 m) from the intended impact location (cease fire)
Mitigation Requirements
  • One Lookout in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of missile or rocket delivery (*e.g.*, during a fly-over of the mitigation zone).
  • Action Proponent personnel must observe the applicable mitigation zone for marine mammals during missile or rocket delivery.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 39 -- Mitigation for Research-based Sub-surface Explosives

Stressor or Activity: 0.1-5 lb (0.05-2.3 kg) NEW sub-surface explosives used in research applications

• Mitigation Zone
  • 600 yd (548.6 m) from the device or detonation sites (cease fire)
Mitigation Requirements
  • One Lookout on a small boat or in an aircraft
  • Conduct passive acoustic monitoring for marine mammals when passive acoustic devices are already being used prior to the initial start of detonations; use information from detections to assist visual observations
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations.
  • Action Proponent personnel must observe the mitigation zone for marine mammals during detonations.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 40 -- Mitigation for Explosive Torpedoes

Stressor or Activity: Any NEW

• Mitigation Zone
  • 2,100 yd (1,920.2 m) from the intended impact location (cease fire)
Mitigation Requirements
  • One Lookout in an aircraft
  • Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations immediately prior to the initial start of detonations (*e.g.*, during target deployment).
  • Action Proponent personnel must observe the mitigation zone for marine mammals during torpedo launches.
  • After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 41 -- Mitigation for Sinking Exercises (SINKEX)

Stressor or Activity: Any NEW

• Mitigation Zone
  • 2.5 nmi (4.6 km) from the target ship hull (cease fire)
Mitigation Requirements
  • Two Lookouts: one on a vessel and one in an aircraft
  • Lookouts would use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used during weapon firing
Mitigation Requirement Timing
  • During aerial observations for 90 minutes prior to the initial start of weapon firing, Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations.
  • From the vessel during weapon firing, and from the aircraft and vessel immediately after planned or unplanned breaks in weapon firing of more than 2 hours, Action Proponent personnel must observe the mitigation zone for marine mammals.
  • Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals for 2 hours after sinking the vessel or until sunset, whichever comes first. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.
Wait Period
  • 30 minutes

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Activity-Based Mitigation for Non-Explosive Ordnance

Mitigation measures for non-explosive ordnance are provided below and include aerial-deployed mines and non-explosive bombs (table 42), non-explosive gunnery (table 43), and non-explosive missiles and rockets (table

44). Explosive aerial-deployed mines do not detonate upon contact with the water surface and are therefore considered non-explosive when mitigating the potential for a mine shape to strike a marine mammal at the water surface. Activity-based mitigation for non-explosive ordnance does not apply to non-explosive ordnance:

- Deployed by aircraft operating at high altitudes;
- Deployed against aerial targets and land-based targets;
- Deployed during vessel-launched missile or rocket events; and
- Deployed by unmanned platforms except when escort vessels are already participating in the event and have positive control over ordnance deployment.

Table 42 -- Mitigation for Non-Explosive Aerial-Deployed Mines and Bombs

Stressor or Activity: Non-explosive aerial-deployed mines, non-explosive bombs

• Mitigation Zone
  • 1,000 yd (914.4 m) from the intended target (cease fire)
Mitigation Requirements
  • One Lookout in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of mine or bomb delivery (*e.g.*, when arriving on station).
  • Action Proponent personnel must observe the mitigation zone for marine mammals during mine or bomb delivery.
Wait Period
  • 10 minutes

Table 43 -- Mitigation for Non-explosive Gunnery

Stressor or Activity: Non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, non-explosive surface-to-surface and air-to-surface small-caliber ordnance

• Mitigation Zone
  • 200 yd (182.9 m) from the intended impact location (cease fire)
Mitigation Requirements
  • One Lookout on a vessel or in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of gun firing (*e.g.*, while maneuvering on station).
  • Action Proponent personnel must observe the mitigation zone for marine mammals during gunnery firing.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Table 44 -- Mitigation for Non-explosive Missiles and Rockets

Stressor or Activity: Non-explosive missiles and rockets (air-to-surface)

• Mitigation Zone
  • 900 yd (823 m) from the intended impact location (cease fire)
Mitigation Requirements
  • One Lookout in an aircraft
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of missile or rocket delivery (*e.g.*, during a fly-over of the mitigation zone).
  • Action Proponent personnel must observe the mitigation zone for marine mammals during missile or rocket delivery.
Wait Period
  • 10 or 30 minutes (depending on fuel constraints of the platform)

Activity-Based Mitigation for Physical Disturbance and Strike Stressors

Mitigation measures for physical disturbance and strike stressors are provided below and include crewed surface vessels (table 45), unmanned vehicles (table 46), and towed in-water devices (table 47). Activity-based mitigation for physical disturbance and strike stressors will not be implemented:

- By submerged submarines;
- By unmanned vehicles except when escort vessels are already participating in the event and have positive control over the unmanned vehicle movements;
- When marine mammals (*e.g.,* dolphins) are determined to be intentionally swimming at the bow, alongside the vessel or vehicle, or directly behind the vessel or vehicle (*e.g.,* to bow-ride or wake-ride); and
- When impractical based on mission requirements (*e.g.,* during certain aspects of amphibious exercises).

Table 45 -- Mitigation for Manned Surface Vessels

Stressor or Activity: Manned surface vessels, including surfaced submarines

• Mitigation Zones
  • Underway manned surface vessels must maneuver themselves (which may include reducing speed) to maintain the following distances as mission and circumstances allow:
  • 500 yd (457.2 m) from whales
  • 200 yd (182.9 m) from other marine mammals
Mitigation Requirements
  • One or more Lookouts on manned underway surface vessels in accordance with the most recent navigation safety instruction.
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to manned surface vessels getting underway and while underway.

Table 46 -- Mitigation for Unmanned Vehicles

Stressor or Activity: Unmanned Surface Vehicles and Unmanned Underwater Vehicles already being escorted (and operated under positive control) by a manned surface support vessel

• Mitigation Zones
  • A surface support vessel that is already participating in the event, and has positive control over the unmanned vehicle, must maneuver the unmanned vehicle (which may include reducing its speed) to ensure it maintains the following distances as mission and circumstances allow:
  • 500 yd (457.2 m) from whales
  • 200 yd (182.9 m) from other marine mammals
Mitigation Requirements
  • One Lookout on a surface support vessel that is already participating in the event and has positive control over the unmanned vehicle.
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to unmanned vehicles getting underway and while underway.

Table 47 -- Mitigation for Towed In-water Devices

Stressor or Activity: In-water devices towed by an aircraft, a manned surface vessel, or an Unmanned Surface Vehicle or Unmanned Underwater Vehicle already being escorted (and operated under positive control) by a manned surface vessel

• Mitigation Zone
  • Manned towing platforms, or surface support vessels already participating in the event that have positive control over an unmanned vehicle that is towing an in-water device, must maneuver itself or the unmanned vehicle (which may include reducing speed) to ensure towed in-water devices maintain the following distances as mission and circumstances allow:
  • 250 yd (228.6 m) from marine mammals
Mitigation Requirements
  • One Lookout on the manned towing vessel or aircraft, or on a surface support vessel that is already participating in the event and has positive control over an unmanned vehicle that is towing an in-water device.
Mitigation Requirement Timing
  • Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to and while in-water devices are being towed.

Geographic Mitigation Areas

In addition to activity-based mitigation, the Action Proponents would implement mitigation measures within mitigation areas to avoid or minimize potential impacts on marine mammals (see figure 11–1 of the application). A full technical analysis of the mitigation areas that the Action Proponents considered for marine mammals is provided in appendix I (Geographic Mitigation Assessment) of the 2020 MITT SEIS/OEIS.

Information on the mitigation measures that the Action Proponents propose to implement within mitigation areas (figure 2) is provided in table 48 through table 50. The mitigation applies year-round unless specified otherwise in the tables and does not apply to de minimis sources.

NMFS conducted an independent analysis of the mitigation areas that the Action Proponent proposed, which are described below. NMFS preliminarily concurs with the Action Proponents' analysis, which indicates that the measures in these mitigation areas are both practicable and will reduce the likelihood, magnitude, or severity of adverse impacts to marine mammals or their habitat in the manner described in the Action Proponents' analysis and this proposed rule. NMFS is heavily reliant on the Action Proponents' description of operational practicability, since the Action Proponents are best equipped to describe the degree to which a given mitigation measure affects personnel safety or mission effectiveness, and how practical it is to implement. The Action Proponents consider the measures in this proposed rule to be practicable, and NMFS concurs. We further discuss the manner in which the Geographic

Mitigation Areas in the proposed rule will reduce the likelihood, magnitude, or severity of adverse impacts to marine mammal species or their habitat in the Preliminary Analysis and Negligible Impact Determination section.

Table 48 details geographic mitigation related to the use of active sonar and explosives, as well as awareness messages in the Marpi Reef Mitigation Area.

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Table 48 -- Marpi Reef Mitigation Area

Category	Mitigation Requirements	Mitigation Benefit
Acoustic	From December 1 through April 30, the Action Proponents must not use more than 20 combined hours of MF1 and MF1C surface ship hull-mounted mid-frequency active sonar during training and testing within the Marpi Reef and Chalan Kanoa Reef mitigation areas. The Navy must report the total hours of active sonar (all bins, by bin) used in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area from December 1 through April 30 in its annual training and testing activity reports submitted to NMFS.	Mitigation is designed to reduce exposure of humpback whales in important seasonal reproductive habitat to levels of sound that have the potential to cause injurious or behavioral effects.
Explosives	The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area year-round.	Mitigation is designed to prevent exposure of humpback whales in important seasonal reproductive habitat to explosives that have the potential to cause injury, mortality, or behavioral disturbance.
Acoustic, Explosives, Physical disturbance and strike	The Navy must issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30. 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 humpback whales that, when concentrated seasonally, may become vulnerable to vessel strikes. Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of activity-based mitigation.	Mitigation is designed to minimize potential humpback whale vessel interactions and exposure to acoustic, explosive, and physical disturbance and strike stressors that have the potential to cause mortality, injury, or behavioral disturbance during the reproductive season.

Table 49 details geographic mitigation related to the use of active sonar and explosives, as well as awareness messages in the Chalan Kanoa Reef Mitigation Area.

Table 49 -- Chalan Kanoa Reef Mitigation Area

Category	Mitigation Requirements	Mitigation Benefits
Acoustic	From December 1 through April 30, the Action Proponents must not use more than 20 combined hours of MF1 and MF1C surface ship hull-mounted mid-frequency active sonar during training and testing within the Marpi Reef and Chalan Kanoa Reef mitigation areas. The Navy must report the total hours of active sonar (all bins, by bin) used in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area from December 1 through April 30 in its annual training and testing activity reports submitted to NMFS.	Mitigation is designed to avoid or reduce exposure of humpback whales in important seasonal reproductive habitat to levels of sound that have the potential to cause injurious or behavioral effects.
Explosives	The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area year-round.	Mitigation is designed to prevent exposure of humpback whales in important seasonal reproductive habitat to explosives that have the potential to cause injury, mortality, or behavioral disturbance.
Acoustic, Explosives, Physical disturbance and strike	The Navy must issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30. 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 humpback whales that, when concentrated seasonally, may become vulnerable to vessel strikes. Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of activity-based mitigation.	Mitigation is designed to minimize potential for humpback whale vessel strike and exposure to acoustic, explosive, and physical disturbance and strike stressors that have the potential to cause mortality, injury, or behavioral disturbance during the reproductive season.

Table 50 details geographic mitigation related to the use of active sonar and explosives, in the Agat Bay Nearshore Mitigation Area.

Table 50 -- Agat Bay Nearshore Mitigation Area

Category	Mitigation Requirements	Mitigation Benefits
Acoustic	The Action Proponents must not use MF1 or MF1C surface ship hull-mounted mid-frequency active sonar during training and testing within the mitigation area year-round.	Mitigation is designed to avoid or reduce exposure of spinner dolphins in important resting habitat to levels of sound that have the potential to cause injurious or behavioral effects.
Explosives	The Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within the mitigation area year-round.	Mitigation is designed to prevent exposure of spinner dolphins in important resting habitat to explosives that have the potential to cause injury, mortality, or behavioral disturbance.

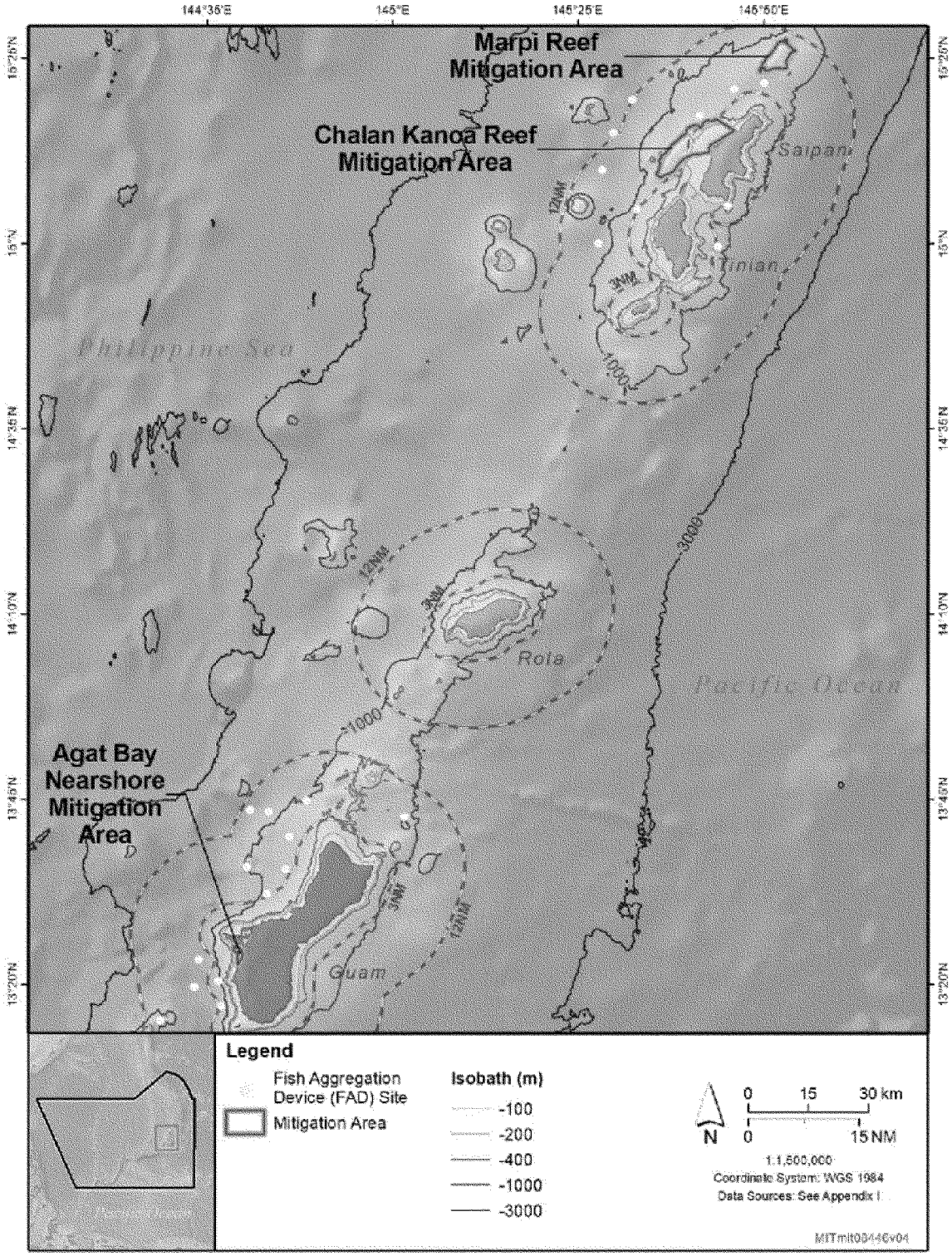


Figure 2 -- Geographic Mitigation Areas in the Study Area

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Mitigation Conclusions

NMFS has carefully evaluated the Action Proponents' proposed mitigation measures—many of which were developed with NMFS' input during the previous phases of MITT authorizations—and considered a broad range of other measures (*i.e.,* the measures considered but eliminated in the 2026 MITT Draft SEIS/OEIS, which reflect many of the comments that have arisen from public input or through discussion with NMFS in past years) in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and

their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: the manner in which, and the degree to which, the successful implementation of the mitigation measures is expected to reduce the likelihood and/or magnitude of adverse impacts to marine mammal species and their habitat; the proven or likely efficacy of the measures; and the practicability of the measures for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Action Proponents' proposed measures, as well as other measures considered by the Action Proponents and NMFS (see section 4.10 (Measures Considered but Eliminated) of chapter 4 (Mitigation) of the 2026 MITT Draft SEIS/OEIS), NMFS has preliminarily determined that these proposed mitigation measures are appropriate means of effecting the least practicable adverse impact on marine mammal species and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and considering specifically personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Additionally, an adaptive management component helps further ensure that mitigation is regularly assessed and provides a mechanism to improve the mitigation, based on the factors above.

The proposed rule comment period provides the public an opportunity to submit recommendations, views, and/or concerns regarding the Action Proponents' activities and the proposed mitigation measures. While NMFS has preliminarily determined that the Action Proponents' proposed mitigation measures would satisfy the least practicable adverse impact standard, NMFS will consider all public comments to help inform our final determination. Consequently, proposed mitigation measures may be refined, modified, removed, or added prior to NMFS making a final agency decision on issuance of the final rule based on public comments received and, as appropriate, analysis of additional potential mitigation measures.

Proposed Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to authorize incidental take for an activity, NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs 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.

The Navy has been conducting research and monitoring for over 20 years in areas where it has been training and testing, and it developed a formal marine species monitoring program in support of the Hawaii and Southern California range complexes MMPA and ESA processes in 2009 and subsequently implemented that program in the Study Area. Across all Navy training and testing study areas, the robust marine species monitoring program has resulted in hundreds of technical reports and publications on marine mammals that have informed Navy and NMFS analyses in environmental planning documents, rules, and Biological Opinions. The reports and data are made available to the public on the Navy's marine species monitoring website (*https://www.navymarinespeciesmonitoring.us*) and Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations (OBIS–SEAMAP) (*https://seamap.env.duke.edu*), respectively.

The Navy would continue collecting monitoring data to inform our understanding of the occurrence of marine mammals in the Study Area, the likely exposure of marine mammals to stressors of concern in the Study Area, the response of marine mammals to exposures to stressors, the consequences of a particular marine mammal response to their individual fitness and, ultimately, populations, and the effectiveness of implemented mitigation measures. Taken together, mitigation and monitoring comprise the Navy's integrated approach for reducing environmental impacts from the specified activities. The Navy's overall monitoring approach seeks to leverage and build on existing research efforts whenever possible.

As agreed upon between the Action Proponents 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 mammals and their habitat, and other 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 Action Proponents through the regulatory process for previous Navy at-sea training and testing activities.

Navy Marine Species Research and Monitoring Strategic Framework

The initial structure for the U.S. Navy's marine species monitoring efforts was developed in 2009 with the Integrated Comprehensive Monitoring Program (ICMP). The intent of the ICMP was to provide an overarching framework for coordination of the Navy's monitoring efforts during the early years of the program's establishment. A Strategic Planning Process (U.S. Department of the Navy, 2013b) was subsequently developed and together with the ICMP framework serves as a planning tool to focus marine species monitoring priorities defined by ESA and MMPA requirements and to coordinate monitoring efforts across regions based on a set of common objectives. Using an underlying conceptual framework incorporating a progression of knowledge from occurrence to exposure/response and ultimately consequences, the Strategic Planning Process was developed as a tool to help guide the investment of resources to address top level objectives and goals of the monitoring program most efficiently. The Strategic Planning Process identifies Intermediate Scientific Objectives (see *https://www.navymarinespeciesmonitoring.us/about/strategic-planning-process*), which form the basis of evaluating, prioritizing, and selecting new monitoring projects or investment topics and serve as the basis for developing and executing new monitoring projects across the Navy's training and testing ranges (both Atlantic and Pacific).

Monitoring activities relating to the effects of military readiness activities on marine species are generally designed to address one or more of the following top-level goals:

- An increase in the understanding of the likely occurrence of marine mammals and ESA-listed marine species in the vicinity of the action (*i.e.,* presence, abundance, distribution, and density);
- An increase in the understanding of the nature, scope, or context of the likely exposure of marine mammals and ESA-listed species to any of the potential stressors associated with the action (*e.g.,* sound, explosive detonation, or military expended materials), through better understanding of one or more of the following:

○ The nature of the action and its surrounding environment (*e.g.,* sound-source characterization, propagation, and ambient noise levels),
○ The affected species (*e.g.,* life history or dive patterns),
○ The likely co-occurrence of marine mammals and ESA-listed marine species with the action (in whole or part), or
○ The likely biological or behavioral context of exposure to the stressor for the marine mammal and ESA-listed marine species (*e.g.,* age class of exposed animals or known pupping, calving, or feeding areas).

• An increase in the 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 the understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either:
○ The long-term fitness and survival of an individual; or
○ The population, species, or stock (*e.g.,* through impacts on annual rates of recruitment or survival).
• An increase in the understanding of the effectiveness of mitigation and monitoring measures;
• A better understanding and record of the manner in which the authorized entity complies with the ITA and Incidental Take Statement;
• An increase in the probability of detecting marine mammals (through improved technology or methods), both specifically within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals; and
• Ensuring that adverse impact of activities remains at the least practicable level.

The Navy's Marine Species Monitoring Program investments are evaluated through the Adaptive Management Review process to: (1) assess overall progress; (2) review goals and objectives; and (3) make recommendations for refinement and evolution of the monitoring program's focus and direction. The Marine Species Monitoring Program has developed and matured significantly since its inception and now supports a portfolio of numerous active projects across a range of geographic areas and protected species taxa addressing both regional priorities (*i.e.,* particular species of concern) and Navy-wide needs such as the behavioral response of beaked whales to training and testing activities.

A Research and Monitoring Summit was held in early 2023 to evaluate the current state of the Marine Species Monitoring Program in terms of progress, objectives, priorities, and needs and to solicit valuable input from meeting participants including NMFS, Marine Mammal Commission, Navy, and scientific experts. The overarching goal of the summit was to facilitate updating the ICMP framework for guiding marine species research and monitoring investments and to identify data gaps and priorities to be addressed over the next 5–10 years across a range of basic research through applied monitoring. One of the outcomes of this summit meeting was a refreshed strategic framework effectively replacing the ICMP which will provide increased coordination and synergy across the Navy's protected marine species investment programs (see section 13 of the application). This will contribute to the collective goal of supporting improved assessment of effects from training and testing activities through development of first in class science and data.

For over a decade, the Navy has implemented the PMAP 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. PMAP includes the Marine Species Awareness Training (MSAT) module. This module was developed by civilian marine biologists employed by the Navy and was reviewed and approved by NMFS. It provides information on marine species sighting cues, visual observation tools and techniques, and sighting notification procedures. It is a video-based complement to the U.S. Navy Lookout Training Handbook or equivalent. Since 2007, this module has been required for commanding officers, executive officers, equivalent civilian personnel, and personnel who will stand watch as a Lookout.

Additionally, the U.S. Navy Lookout Training Handbook was updated in 2022 to include a more robust chapter on environmental compliance, mitigation, and marine species observation tools and techniques. Environmental awareness and education training is also provided to Navy personnel through the Afloat Environmental Compliance Training program or equivalent. Training is designed to help personnel gain an understanding of their personal environmental compliance roles and responsibilities (including mitigation implementation). Finally, the Navy's current generation of land-based ship bridge simulators now incorporate marine mammal response in team training scenarios for bridge watch standers and Lookouts.

Past and Current Action Proponent Monitoring in the Study Area

The Navy's monitoring program has undergone significant changes since the first rules were issued for the Study Area in 2009 through the process of adaptive management. The monitoring program developed for the first cycle of environmental compliance documents utilized effort-based compliance metrics that were somewhat limiting. Through adaptive management discussions, the Navy designed and conducted monitoring studies according to scientific objectives and eliminated specific effort requirements.

Progress has also been made on the conceptual framework categories from the Scientific Advisory Group for Navy Marine Species Monitoring (U.S. Department of the Navy, 2011), ranging from occurrence of animals, to their exposure, response, and population consequences. The Navy continues to manage the Atlantic and Pacific program as a whole, with monitoring in each range complex taking a slightly different but complementary approach. The Navy has continued to use the approach of layering multiple simultaneous components in many of the range complexes to leverage an increase in return of the progress toward answering scientific monitoring questions. In the Study Area, for example, this includes: (1) glider deployment in offshore areas; (2) analysis of existing PAM datasets; (3) small boat surveys using visual, biopsy and satellite tagging; (4) seasonal humpback whale-specific surveys; and (5) a PAM project that supports updated estimates of abundance and density of beaked whale species.

Numerous publications, dissertations, and conference presentations have resulted from research conducted under the marine species monitoring program (*https://www.navymarinespecies monitoring.us/reading-room*), leading to 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 analysis of behavioral response and consideration of mitigation measures.

Furthermore, collaboration between the monitoring program and the Navy's research and development (*e.g.,* the

ONR) and demonstration-validation (*e.g.,* Living Marine Resources (LMR)) 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, controlled exposure experiment behavioral response studies, acoustic sea glider surveys, and global positioning system-enabled satellite tags. Recent progress has been made with better integration with monitoring across all Navy at-sea study areas, including the Study Area and various other ranges. Publications from the LMR and ONR programs have also resulted in significant contributions to hearing, acoustic criteria used in effects modeling, exposure, and response, as well as in developing tools to assess biological significance (*e.g.,* consequences).

NMFS and the Navy also consider data collected during mitigations as monitoring. Data are collected by shipboard personnel on hours spent training and hours of sonar use. Additionally, during MTEs, data are collected when marine mammals are observed within the mitigation zones when mitigations are implemented. These data are provided to NMFS in both classified and unclassified annual exercise reports, which would continue under this proposed rule.

NMFS has received multiple years' worth of annual exercise and monitoring reports addressing active sonar use and explosive detonations within the 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 proposed military readiness activities within the Study Area. The Navy's annual 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/reporting.*

The Navy's marine species monitoring program supports several monitoring projects in the Study Area at any given time. Additional details on the scientific objectives for each project can be found at: *https://www.navymarinespeciesmonitoring.us/regions/pacific/current-projects/.* Some projects may only require 1 or 2 years of field effort. Other projects could entail multi-year field efforts (2–5 years).

Specific monitoring under the 2020–2027 regulations included the following projects:

- Small Boat Visual Survey for Humpback Whales at Farallon de Medinilla;
- Large Vessel Visual and Acoustic Cetacean Survey Mariana Archipelago Cetacean Survey (co-funded with NMFS);
- Acoustic Spar Buoy Recorders Analysis from 2021 Mariana Archipelago Survey for Beaked Whale Density Derivation;
- Assessment of Historical Stranding Patterns in the Mariana and Hawaiian Islands and Correlations with Environmental Factors;
- Deployment of Passive Acoustic Monitoring Devices around Guam for Beaked Whales;
- Navy Funding to University of Hawaii supporting Cetacean Stranding Analysis (Mariana Islands, Hawaiian Islands, Wake Island); and
- Pacific Marine Assessment Program for Protected Species (PACMAPPS) Survey.

Future monitoring efforts by the Action Proponents in the Study Area are anticipated to continue along the same objectives: establish the baseline habitat uses and movement patterns; establish the baseline behavior (*e.g.,* foraging, dive patterns); and evaluate potential exposure and behavioral responses of marine mammals exposed to training and testing activities.

The currently planned monitoring project for the 2027–2034 rule, which is a continuation of a project currently underway, and its Intermediate Scientific Objectives is listed below. Beaked whales and humpback whales are species of continued interest in the Study Area. Other than this ongoing project, monitoring projects are typically planned 1 year in advance; therefore, this list does not include all projects that will occur over the entire period of the rule.

- Pacific Islands Comprehensive Stranding Investigations (ongoing)—The objectives are: (1) conduct comprehensive investigations of stranded marine mammals throughout the Pacific Islands with emphasis on the Hawaiian and Mariana Island chains, including conducting necropsies of stranded animals, collecting and archiving samples, conducting disease screening, genetic testing, and analysis of historical data; and (2) examine stranding patterns and causes of death for marine mammals in the Pacific Islands.

Proposed Reporting

In order to issue an ITA 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 at: *https://www.navymarinespeciesmonitoring.us.*

There are several different reporting requirements for the Navy pursuant to the current regulations. All of these reporting requirements would be continued for the Navy under this proposed rule for the 7-year period.

Special Reporting for Geographic Mitigation Areas

The Action Proponents must report the total hours of active sonar (all bins, by bin) used in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area from December 1 through April 30 in its annual training and testing activity reports submitted to NMFS. Special reporting for this area is designed to aid the Action Proponents and NMFS in continuing to analyze potential impacts of training and testing in the mitigation areas. In addition to the mitigation area-specific requirement, for all mitigation areas, should national security require the Action Proponents to exceed the activity restrictions in a given mitigation area, Action Proponent personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours, explosives usage, or restricted area use) in its annual activity reports submitted to NMFS.

Notification of Injured, Live Stranded, or Dead Marine Mammals

The Action Proponents would consult and comply with the Notification and Reporting Plan, which sets out notification, reporting, and other requirements, when injured, live stranded, or dead marine mammals are detected. The Notification and Reporting Plan is available for review at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

Annual Study Area Marine Species Monitoring Report

The Action Proponents would submit an annual report of the Study Area marine species monitoring, which would be included in a Pacific-wide monitoring report, describing the implementation and results from the previous calendar year. Data collection

methods will be standardized across range complexes and the Study Area to allow for comparison in different geographic locations. The draft report must be submitted to the Director of the Office of Protected Resources of NMFS annually as specified in the LOA. NMFS will submit comments or questions on the report, if any, within 3 months of receipt. The report will be considered final after the Action Proponents have addressed NMFS' comments or 3 months after submittal of the draft if NMFS does not provide comments on the draft report. The report would describe progress of knowledge made with respect to intermediate scientific objectives within the Study Area associated with the ICMP. Similar study questions would be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

Annual MITT Training and Testing Report

In the event that the analyzed sound levels were exceeded, the Action Proponents would submit a preliminary report(s) detailing the exceedance within 21 days after the anniversary date of issuance of the LOA. Regardless of whether analyzed sound levels were exceeded, the Navy would submit a detailed report (MITT Annual Training Exercise Report and Testing Activity Report) to NMFS annually as specified in 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 Action Proponents have addressed NMFS' comments, or 1 month after submittal of the draft if NMFS does not provide comments on the draft report. The annual report shall contain information on MTEs, SINKEX events, and a summary of all sound sources used (total hours or quantity) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (*e.g.,* missiles, bombs, mine neutralization charge) for each explosive bin. The annual report will also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in the reporting year, or cumulatively, the report would include a discussion of why the change was made and include analysis to support how the change did or did not affect the analysis in the 2026 MITT Draft SEIS/OEIS and MMPA final rule. The annual report would also include the details regarding specific requirements associated with specific mitigation areas. The analysis in the detailed report would be based on the accumulation of data from the current year's report and data collected from previous annual reports.

The final annual report at the conclusion of the authorization period (year 7) will also serve as the comprehensive close-out report and include both the final year annual use compared to annual authorization as well as a cumulative 7-year annual use compared to 7-year authorization. NMFS must submit comments on the draft close-out report, if any, within 3 months of receipt. The report will be considered final after the Action Proponents have addressed NMFS' comments or 3 months after submittal of the draft if NMFS does not provide comments.

Other Reporting and Coordination

The Action Proponents would continue to report and coordinate with NMFS for the following:

- Annual marine species monitoring technical review meetings that include researchers and the Marine Mammal Commission; and
- Annual adaptive management meetings that include the Marine Mammal Commission (and could occur in conjunction with the annual marine species monitoring technical review meetings).

Preliminary Analysis and Negligible Impact Determination

General Negligible Impact Analysis

Introduction

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be taken by Level A harassment or Level B harassment (as presented in table 23 and table 24), NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration) and the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, other ongoing sources of human-caused mortality, and ambient noise levels).

In the Estimated Take of Marine Mammals section, we identified the subset of potential effects that would be expected to qualify as take under the MMPA both annually and over the 7-year period covered by this proposed rule and then identified the maximum number of takes we believe are reasonably expected to occur based on the methods described. The impact that any given take will have is dependent on many case-specific factors that need to be considered in the negligible impact analysis (*e.g.,* the context of behavioral exposures such as duration or intensity of a disturbance, the health of impacted animals, the status of a species that incurs fitness-level impacts on individuals). For this proposed rule, we evaluated the likely impacts of the enumerated maximum number of harassment takes that are proposed for authorization and reasonably expected to occur, in the context of the specific circumstances surrounding these predicted takes. Last, we collectively evaluated this information, as well as other more taxa-specific information and mitigation measure effectiveness, in group-specific assessments that support our preliminary negligible impact conclusions for each stock or species.

Harassment

The specified activities reflect representative levels of military readiness activities. The Description of Proposed Activity section describes annual activities. There may be some flexibility in the exact number of hours, items, or detonations that may vary from year to year, but take totals would not exceed the maximum annual totals and 7-year totals indicated in table 23 and table 24. We base our analysis and preliminary negligible impact determination on the maximum number of takes that would be reasonably expected to occur annually and are proposed to be authorized, although, as stated before, the number of takes are

only one part of the analysis, which includes extensive qualitative consideration of other contextual factors that influence the degree of impact of the takes on the affected individuals. To avoid repetition, we provide some general analysis immediately below that applies to all the species listed in table 7, given that some of the anticipated effects of the Action Proponents' military readiness activities on marine mammals are expected to be relatively similar in nature. Below that, we provide additional information specific to mysticetes and odontocetes and, finally, break our analysis into species (and/or stocks), or groups of species (and the 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 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 Action Proponents' 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 Action Proponents' incidental take request was calculated using a model (NAEMO) for all acoustic stressors, which NMFS reviewed and concurs appropriately estimates the maximum amount of harassment that is reasonably likely to occur. As described in more detail above, NAEMO calculates sound energy propagation from sonar and other transducers and explosives during military readiness 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. The effects of the specified activities are modeled as though they would occur regardless of proximity to marine mammals, meaning that no activity-based mitigation is considered (*e.g.,* no power down or shut down); however, the modeling does quantitatively consider the possibility that marine mammals would avoid continued or repeated sound exposures to some degree, based on a species' sensitivity to behavioral disturbance. NMFS provided input to, independently reviewed, and concurred with the Action Proponents on this process. The Action Proponents' analysis, which is described in detail in section 6 of the application, was used to quantify harassment takes for this proposed rule.

The Action Proponents 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 elicit a response of equal magnitude (Curé *et al.,* 2025; DeRuiter *et al.,* 2013b)). The estimated number of takes by Level A harassment and Level B harassment does not equate to the number of individual animals the Action Proponents expect 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 over the 7-year period. These instances may represent either brief exposures (*i.e.,* seconds or minutes) or, in some cases, longer durations of exposure within a day. In some cases, an animal that incurs a single take by AUD INJ or TTS may also experience a direct behavioral harassment from the same exposure. Some individuals may experience multiple instances of take (meaning over multiple days) over the course of the year, which means that the number of individuals taken is smaller than the total estimated takes. Generally speaking, the higher the number of takes as compared to the population abundance, the more repeated takes of individuals are likely and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric (number of takes to population abundance) to give us a relative sense of where a larger portion of a species is being taken by the specified activities, where there is a likelihood that the same individuals are being taken across multiple days, and whether the number of days might be higher or more likely sequential. Where the number of instances of take is less than 100 percent of the abundance, and there is no information to specifically suggest that some subset of animals is known to congregate in an area in which activities are regularly occurring (*e.g.,* a small resident population, takes occurring in a known important area such as a Biologically Important Area (BIA), or a large portion of the takes occurring in a certain region and season), the overall likelihood and number of repeated takes is generally considered low. It could, in theory, mean that every take represents a separate individual in the population being taken on 1 day (a minimal impact to an individual) or, more likely, that some smaller number of individuals are taken on 1 day annually and some are taken on a few, not likely sequential, days annually, and of course some are not taken at all.

In the ocean, the use of sonar and other active acoustic sources is often transient and is unlikely to repeatedly expose the same individual animals within a short period, for example within one specific exercise; however, for some individuals of some species, repeated exposures across different activities could occur over the year, especially where events occur in generally the same area with more resident species. In short, for some species, we expect that the total anticipated takes represent exposures of a smaller number of individuals of which some would be exposed multiple times, but based on the nature of the specified activities and the movement patterns of marine mammals, it is unlikely that individuals from most species or stocks would be taken over more than a few days within a given year. This means that even where repeated takes of individuals are likely to occur, they are more likely to result from non-sequential exposures from different activities, and, even if sequential, individual animals are not predicted to be taken for more than several days in a row, at most. As previously described, the nature of the majority of the exposures would be expected to be of a less severe nature, and based on the numbers, it is likely that any individual exposed multiple times is still only taken on a small percentage of the days of the year. The greater likelihood is that not every individual is taken, or perhaps a smaller subset is taken with a slightly higher average and larger variability of highs and lows, but still with no reason to think that, for most species or stocks, any individuals would be taken a significant portion of the days of the year.

Behavioral Response

The estimates calculated using the BRFs do not differentiate between the

different types of behavioral responses that qualify as Level B harassment. The Action Proponents identified, with NMFS' input, that moderate behavioral responses, as characterized in Southall *et al.* (2021), would be considered a take. The behavioral responses predicted by the BRFs are assumed to be moderate severity exposures (*e.g.,* altered migration paths or dive profiles, interrupted nursing, breeding or feeding, or avoidance) that may last for the duration of an exposure. The Action Proponents then compiled the available data indicating received levels and distances at which those responses have occurred and used the indicated literature to build biphasic behavioral response curves and cut-off conditions that are used to predict how many instances of Level B behavioral harassment occur in a day (see the Criteria and Thresholds Technical Report). Take estimates alone do not provide information regarding the potential fitness or other biological consequences of the responses on the affected individuals. We, therefore, consider the available activity-specific, environmental, and species-specific information to determine the likely nature of the modeled behavioral responses and the potential fitness consequences for affected individuals.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to individual animals from sonar and other active sound sources during military readiness activities would be primarily from ASW events. It is important to note that although ASW is one of the warfare areas of focus during MTEs, there are significant periods when active ASW sonars are not in use. Nevertheless, behavioral responses are assumed more likely to be significant during MTEs than during other ASW activities due to the duration (*i.e.,* multiple days), scale (*i.e.,* multiple sonar platforms), and use of high-power hull-mounted sonar in the MTEs. In other words, in the range of potential behavioral effects that might be expected as part of a response that qualifies as an instance of Level B behavioral harassment (which by nature of the way it is modeled/counted, occurs within 1 day), the less severe end might include exposure to comparatively lower levels of a sound, at a detectably greater distance from the animal, for a few or several minutes, and that 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 is close enough to the source to receive a comparatively higher level, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day; however, such severe behavioral effects are expected to occur infrequently.

To help assess this, for sonar (LFAS/MFAS/HFAS) used in the Study Area, the Action Proponents provided information estimating the instances of take by Level B harassment by behavioral disturbance under each BRF that would occur within 6-dB increments (discussed below in the *Group and Species-Specific Analyses* section) and by distance in 5-km bins in section 2.3.2 of the Explosive and Acoustic Analysis Technical Report. As mentioned above, all else being equal, an animal's exposure to a higher received level is more likely to result in a behavioral response that is more likely to lead to adverse effects, which could more likely accumulate to impacts on reproductive success or survivorship of the animal, but other contextual factors (*e.g.,* distance, duration of exposure, and behavioral state of the animals) are also important (Di Clemente *et al.,* 2018; Ellison *et al.,* 2012; Moore and Barlow, 2013; Southall *et al.,* 2019c; Wensveen *et al.,* 2017, *etc.*). The majority of takes by Level B harassment are expected to be in the form of comparatively milder responses (*i.e.,* lower-level exposures that still qualify as take under the MMPA but would likely be less severe along the continuum of responses that qualify as take) of a generally shorter duration. We anticipate more severe effects from takes when animals are exposed to higher received levels of sound or at closer proximity to the source. Because species belonging to taxa that share common characteristics are likely to respond and be affected in similar ways, these discussions are presented within each species group below in the *Group and Species-Specific Analyses* section. As noted previously in this proposed rule, behavioral response is likely highly variable across species, individuals within a species, and context of the exposure. Specifically, given a range of behavioral responses that may be classified as Level B harassment, to the degree that higher received levels of sound are expected to result in more severe behavioral responses, only a smaller percentage of the anticipated Level B harassment from the specified activities might result in more severe responses (see the *Group and Species-Specific Analyses* section below for more detailed information).

Physiological Stress Response

Some of the lower level physiological stress responses (*e.g.,* orientation or startle response, change in respiration, change in heart rate) discussed earlier would likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. Level B harassment takes, then, may have a stress-related physiological component as well; however, we would not expect the Action Proponents' generally short-term, intermittent, and (typically in the case of sonar) transitory activities to create conditions of long-term continuous noise leading to long-term physiological stress responses in marine mammals that could affect reproduction or survival.

Diel Cycle

Many animals perform vital functions such as feeding, resting, traveling, and socializing on a diel cycle (24-hour cycle). Behavioral responses 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 1 diel cycle or recur on subsequent days (Southall *et al.,* 2007). Henderson *et al.* (2016) found that ongoing smaller scale events had little to no impact on foraging dives for Blainville's beaked whale, while multi-day training events may decrease foraging behavior for Blainville's beaked whale (Manzano-Roth *et al.,* 2016). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multiple-day substantive behavioral responses and multiple-day anthropogenic activities. For example, just because an at-sea exercise lasts for multiple days does not necessarily mean that individual animals are either exposed to those exercises for multiple days or, further, exposed in a manner resulting in a sustained multiple day substantive behavioral response. Large multi-day Navy exercises, such as ASW activities, typically include vessels moving faster than while in transit (typically 18.5–27.8 km/hr or higher) and generally cover large areas that are

relatively far from shore (typically more than 5.6 km from shore) and in waters greater than 182.9 m deep. Marine mammals are moving as well, which would make it unlikely that the same animal could remain in the immediate vicinity of the ship for the entire duration of the exercise. Further, the Action Proponents do not necessarily operate active sonar the entire time during an exercise. While it is certainly possible that these sorts of exercises could overlap with individual marine mammals multiple days in a row at levels above those anticipated to result in a take, because of the factors mentioned above, it is considered unlikely for the majority of takes. However, it is also worth noting that the Action Proponents conduct many different types of noise-producing activities over the course of the year, and it is likely that some marine mammals will be exposed to more than one activity and taken on multiple days, even if they are not sequential.

Durations of Navy activities utilizing tactical sonar sources and explosives vary and are described in chapter 2 of the 2026 MITT Draft SEIS/OEIS. Sonar used during ASW would impart the greatest amount of acoustic energy of any category of sonar and other transducers analyzed in the application and include hull-mounted, towed, line array, sonobuoy, helicopter dipping, and torpedo sonars. Most ASW sonars are MFAS (1–10 kHz); however, some sources may use higher or lower frequencies. ASW training and testing activities using hull-mounted sonar proposed for the Study Area generally last for only a few hours. However, ASW training activities range from several hours to days or more than 10 days for large integrated ASW MTEs (see table 1 and table 2). For these multi-day exercises, there will typically be extended intervals of non-activity in between active sonar periods. Because of the need to train in a large variety of situations, the Navy conducts ASW activities in varying locations. Given the average length and dynamic nature of ASW activities (times of sonar use) and typical vessel speed, combined with the fact that the majority of the cetaceans would not likely remain in proximity to the sound source, it is unlikely that an animal would be exposed to LFAS/MFAS/HFAS at levels or durations likely to result in a substantive response that would then be carried on for more than 1 day or on successive days.

Most planned explosive events are instantaneous or scheduled to occur over a short duration (less than 2 hours), and the explosive component of these activities only lasts for minutes. Although explosive activities may sometimes be conducted in the same general areas repeatedly, because of their short duration and the fact that they are typically in the open ocean and animals can easily move away, it is similarly unlikely that animals would be exposed for long, continuous amounts of time, or demonstrate sustained behavioral responses. Although SINKEXs may last for up to 48 hours (4–8 hours typically, possibly 1–2 days), they are almost always completed in a single day and only one to two events are planned annually (see table 2). They are stationary and conducted in deep, open water (where fewer marine mammals would typically be expected to be randomly encountered), and they have rigorous monitoring (see table 41) and shutdown procedures, all of which make it unlikely that individuals would be exposed to the exercise for extended periods or on consecutive days, though some individuals may be exposed on multiple days.

Assessing the Number of Individuals Taken and the Likelihood of Repeated Takes

As described previously, Navy modeling uses the best available science to predict the instances of exposure above certain acoustic thresholds, which are equated, as appropriate, to harassment takes. As further noted, for active acoustics, it is more challenging to parse out the number of individuals taken by Level B harassment and the number of times those individuals are taken from this larger number of instances, though factors such as movement ecology (*e.g.,* is the species resident and more likely to remain in closer proximity to ongoing activities, versus nomadic or migratory; Keen *et al.* (2021)) or whether there are known BIAs where animals are known to congregate can help inform this. One method that NMFS uses to help better understand the overall scope of the impacts is to compare these total instances of take against the abundance of that species (or stock if applicable). For example, if there are 100 harassment takes in a population of 100, one can assume either that every individual was exposed above acoustic thresholds once per year or that some smaller number were exposed a few times per year and a few were not exposed at all. Where the instances of take exceed 100 percent of the population, multiple takes of some individuals are predicted and expected to occur within a year. Generally speaking, the higher the number of takes as compared to the population abundance, the more multiple takes of individuals are likely, and the higher the actual percentage of individuals in the population that are likely taken at least once in a year. We look at this comparative metric to give us a relative sense of where larger portions of the species are being taken by the Action Proponents' activities and where there is a higher likelihood that the same individuals are being taken across multiple days and where that number of days might be higher. It also provides a relative picture of the scale of impacts on each species.

In the ocean, unlike a modeling simulation with static animals, the transient nature of sonar use makes it unlikely to repeatedly expose the same individual animals within a short period, such as within one specific exercise. However, some repeated exposures across different activities could occur over the year with more resident species. In short, we expect the total anticipated takes represent exposures of a smaller number of individuals of which some could be exposed multiple times, but, based on the nature of the Action Proponents' activities and the movement patterns of marine mammals, it is unlikely that any particular subset would be taken over more than several sequential days. In other cases, such as activities that overlap biologically important habitat, repeated exposures of the same individuals may be more likely given the likelihood that a smaller number of animals would routinely use the affected habitat.

When calculating the proportion of a population taken (*e.g.,* the number of takes divided by population abundance), which can also be helpful in estimating the number of days over which some individuals may be taken, it is important to choose an appropriate population estimate against which to make the comparison. Herein, NMFS considers two estimates: (1) the SAR abundance estimates; and (2) the number of animals assumed to be in the Study Area during modeling. The latter estimates are either literature-based estimates (if available) (see section 3.4.2 of the 2026 MITT Draft SEIS/OEIS) or the predicted abundance within the Study Area boundary using the NMSDD (see the Density Technical Report). The SARs, where available (Western North Pacific humpback whale and Central North Pacific blue whale only), provide the official population estimate for a given species or stock in U.S. waters in a given year. These estimates are typically generated from the most recent shipboard and/or aerial surveys conducted, and in some cases, the estimates show substantial year-to-year

variability. When the stock is known to range well outside of U.S. EEZ boundaries, population estimates based on surveys conducted only within the U.S. EEZ are known to be underestimates. The NMSDD abundance estimates are abundance estimates for within the boundaries described for the Study Area only and, therefore, differ from SAR abundance estimates.

To estimate repeated impacts across large areas relative to species geographic distributions, comparing the impacts predicted in NAEMO to the number of animals assumed to be in the Study Area during modeling is usually preferable. By comparing estimated take to these abundance estimates, impacts and abundance estimates are based on the same underlying assumptions about a species' presence. NMFS has compared the estimated take to the number of animals assumed to be in the Study Area during modeling herein for all species and stocks. If the abundance information for a stock fit into one of the following scenarios, NMFS would have concluded that comparison to the SAR abundance estimate is more appropriate: (1) a species' or stocks' range extends beyond the U.S. EEZ and the SAR abundance estimate is greater than the number of animals assumed to be in the Study Area during modeling; or (2) when the current minimum population estimate in the SAR is greater than the number of animals assumed to be in the Study Area during modeling, regardless of whether the stock range extends beyond the EEZ. However, neither the Central North Pacific blue whale nor Western North Pacific humpback whale fit into these scenarios. The number of animals assumed to be in the Study Area during modeling are included in table 51, table 53, table 55, and table 57, and the SAR abundance estimate for Central North Pacific blue whale and Western North Pacific humpback whale are included in table 51.

Temporary Threshold Shift

NMFS and the Navy have estimated that all species of marine mammals that occur within the Study Area may incur some level of TTS from active sonar. As mentioned previously, in general, TTS can last from a few minutes to days, be of varying degree, and occur across various frequency bandwidths, all of which determine the severity of the impacts on the affected individual, which can range from minor to more severe. Table 25 through table 28 indicate the number of takes by TTS that may be incurred by different species from exposure to active sonar and explosives. The TTS incurred by an animal is primarily characterized by three characteristics:

1. Frequency—Available data 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) (Finneran, 2015; Southall *et al.,* 2019c). The Navy's MF ASW sources, which are the highest power and most numerous sources and the ones that cause the most take by TTS, utilize the 1–10 kHz frequency band, which suggests that if TTS were to be induced by any of these MF sources it would be in a frequency band somewhere between approximately 1 and 20 kHz, which is in the range of communication calls for many odontocetes, but below the range of the echolocation signals used for foraging. Sound from HF sources would attenuate more quickly compared to MF sources, and they typically have lower source levels, but if an animal were to incur TTS from these sources, it would cover a higher frequency range (sources are between 10 and 100 kHz, which means that TTS could range up to the highest frequencies audible to VHF cetaceans, approaching 200 kHz), which could overlap with the range in which some odontocetes communicate or echolocate. However, HF systems with higher source levels are typically used less frequently and for shorter time periods than surface ship and aircraft MF systems, so TTS from HF sources is less likely than from MF sources. There are fewer LF sources, the majority are used in the more readily mitigated testing environment, and TTS from LF sources would most likely occur below 2 kHz, which is in the range where many mysticetes communicate and also where other auditory cues are located (waves, snapping shrimp, fish prey). Also of note, the majority of sonar sources from which TTS may be incurred occupy a narrow frequency band, which means that the TTS incurred would also be across a narrower band (*i.e.,* it would not affect the majority of an animal's hearing range).

2. Degree of the shift (*i.e.,* by how many dB the sensitivity of hearing is reduced)—Generally, both the degree 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 SPL is higher or the duration is longer). The threshold for the onset of TTS was discussed previously in this proposed rule. An animal would have to approach closer to the source or remain in the vicinity of the sound source appreciably longer to increase the received SEL, which would be difficult considering the Lookouts and the nominal speed of an active sonar vessel (18.5–27.8 km/hr) and the relative motion between the sonar vessel and the animal. In the TTS studies discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section (some using exposures of almost an hour in duration or up to 217 SEL) most of the TTS induced was 15 dB or less, though Finneran *et al.* (2007) induced 43 dB of TTS with a 64-second exposure to a 20 kHz source measured via auditory steady-state response (auditory evoked potential measurement). The SQS–53 (MFAS) hull-mounted sonar (MF1) nominally emits a short (*i.e.,* 1-second) ping typically every 50 seconds, and incurring those levels of TTS due to this source is highly unlikely. Sources with higher duty cycles, such as MF1C (high duty cycle hull-mounted sonar) produce longer ranges to effects and contribute to auditory effects from this action. Since most hull-mounted sonar, such as the SQS–53, engaged in ASW training would be moving at between 18.5 and 27.8 km/hr and nominally pinging every 50 seconds, the vessel will have traveled a minimum distance of approximately 257 m during the time between those pings. For a Navy vessel moving at a nominal 18.5 km/hr, it is unlikely a marine mammal would track with the ship and could maintain speed parallel to the ship to receive adequate energy over successive pings to suffer TTS. In general, there is a higher potential for TTS associated with sources with higher duty cycles, like continuous hull-mounted sonars, compared to those sources that are intermittent or have lower duty cycles (Kastelein *et al.,* 2015a). Of note, high duty cycle or continuous hull-mounted sonars make up a small percentage of the Navy's overall MFAS activities.

In short, given the anticipated duration and levels of sound exposure, we do not expect marine mammals to incur more than relatively low levels of TTS in most cases for sonar exposure. To add context to this degree of TTS, individual marine mammals may regularly experience variations of 6 dB differences in hearing sensitivity in their lifetime (Finneran *et al.,* 2000; Finneran *et al.,* 2002; Schlundt *et al.,* 2000).

3. Duration of TTS (recovery time)—As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, in TTS laboratory studies using exposures of up to an hour in duration or up to 217 dB SEL, most individuals recovered within 1 day (or less, often in minutes) (Kastelein, 2020b). One study resulted in a recovery that took 4 days (Finneran

et al., 2015; Southall *et al.,* 2019c). However, there is evidence that repeated exposures resulting in TTS could potentially lead to residual threshold shifts that persist for longer durations and can result in PTS (Reichmuth *et al.,* 2019).

Compared to laboratory studies, marine mammals are likely to experience lower SELs from sonar used in the Study Area due to movement of the source and animals and because of the lower duty cycles typical of higher power sources (though some of the Navy MF1C sources have higher duty cycles). Therefore, TTS resulting from MFAS would likely be of lesser magnitude and duration compared to laboratory studies. Also, for the same reasons discussed in the Preliminary Analysis and Negligible Impact Determination—Diel Cycle section, and because of the short distance between the source and animals needed to reach high SELs, it is unlikely that animals would be exposed to the levels necessary to induce TTS in subsequent time periods such that hearing recovery is impeded. Additionally, though the frequency range of TTS that marine mammals might incur would overlap with some of the frequency ranges of their vocalization types, the frequency range of TTS from MFAS would not usually span the entire frequency range of one vocalization type, much less span all types of vocalizations or other critical auditory cues.

As a general point, the majority of the TTS takes are the result of exposure to hull-mounted MFAS, with fewer from explosives (broad-band lower frequency sources), and even fewer from LFAS or HFAS sources (narrower band). As described above, we expect the majority of these takes to be in the form of mild, short-term (minutes to hours), narrower band (only affecting a portion of the animal's hearing range) TTS. This means that for one to several times per year, for several minutes, maybe a few hours, or at most in limited circumstances, a few days, a taken individual will have diminished hearing sensitivity (*i.e.,* more than natural variation but not approaching total deafness). More often than not, such an exposure would occur within a narrower mid- to higher frequency band that may overlap part (but not all) of a communication, echolocation, or predator range, but sometimes the exposure would occur across a lower or broader bandwidth. The significance of TTS is also related to the auditory cues that are germane within the time period that the animal incurs the TTS. For example, if an odontocete has TTS at echolocation frequencies but incurs it at night when it is resting and not feeding, it may not be as impactful. In short, the expected results of any one of these limited 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 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, it is unlikely that individuals would experience repeated or high degree TTS overlapping in frequency and time with signals critical for behaviors that would impact overall fitness.

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, while TTS continues beyond the duration of the signal. Fundamentally, masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it occurs. 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. Further, this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency. As our analysis has indicated, because of the relative movement of vessels and the sound sources primarily involved in this proposed 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 with low frequency signals because they propagate significantly farther than higher frequencies and are more likely to overlap both the narrower LF calls of mysticetes, as well as many non-communication cues (*e.g.,* fish and invertebrate prey and geologic sounds that inform navigation). Masking is also more of a concern from continuous sources (versus intermittent sonar signals) where there is no quiet time between pulses and detection and interpretation of auditory signals is likely more challenging. For these reasons, dense aggregations of, and long exposure to, continuous LF activity are much more of a concern for masking, whereas comparatively short-term exposure to the predominantly intermittent pulses of often narrow frequency range MFAS or HFAS or explosions are not expected to result in a meaningful amount of masking. While the Action Proponents occasionally use LF and more continuous sources, that use does not reach the contemporaneous aggregate amounts that would be expected to accrue to degrees that would have the potential to affect reproductive success or survival. Additional detail is provided below.

Standard hull-mounted MFAS typically pings every 50 seconds. Some hull-mounted anti-submarine sonars can also be used in an object detection mode known as Kingfisher mode (*e.g.,* used on vessels when transiting to and from port) where pulse length is shorter but pings are much closer together in both time and space since the vessel goes slower when operating in this mode. During Kingfisher mode, an increased likelihood of masking in the vicinity of vessel could be expected. For the majority of other sources, the pulse length is significantly shorter than hull-mounted active sonar, on the order of several microseconds to tens of milliseconds. Some of the vocalizations that many marine mammals make are less than 1 second long, so, for example with hull-mounted sonar, there would be a 1 in 50 chance (only if the source was in close enough proximity for the sound to exceed the signal that is being detected) that a single vocalization might be masked by a ping. However, when vocalizations (or series of vocalizations) are longer than the 1 second pulse of hull-mounted sonar, or when the pulses are only several microseconds long, the majority of most animals' vocalizations would not be masked.

Most ASW sonars and countermeasures use MF frequencies and a few use LF and HF frequencies. Most of these sonar signals are limited in the temporal, frequency, and spatial domains. The duration of most individual sounds is short, lasting up to a few seconds each. A few systems operate with higher duty cycles or nearly continuously, but they typically use lower power, which means that an animal would have to be closer, or in the vicinity for a longer time, to be masked to the same degree as by a higher level source. Nevertheless,

masking could occasionally occur at closer ranges to these high-duty cycle and CAS systems, but, as described previously, it would be expected to be of a short duration. While data are lacking on behavioral responses of marine mammals to continuously active sonars, mysticete species are known to habituate to novel and continuous sounds (Nowacek *et al.,* 2004), suggesting that they are likely to have similar responses to high-duty cycle sonars. Furthermore, most of these systems are hull-mounted on surface ships with the ships moving at least 18.5 km/hr, and it is unlikely that the ship and the marine mammal would continue to move in the same direction such that the marine mammal is subjected to the same exposure due to that movement. Most ASW activities are geographically dispersed and last for only a few hours, often with intermittent sonar use even within this period. Most ASW sonars also have a narrow frequency band (typically less than one-third octave). These factors reduce the likelihood of sources causing significant masking. HF signals (above 10 kHz) attenuate more rapidly in the water due to absorption than do lower frequency signals, thus producing only a very small zone of potential masking. If masking or communication impairment were to occur briefly, it would more likely be in the frequency range of MFAS (the more powerful source), which overlaps with some odontocete vocalizations (but few mysticete vocalizations); however, it would likely not mask the entirety of any particular vocalization, communication series, or other critical auditory cue, because the signal length, frequency, and duty cycle of the MFAS/HFAS signal does not perfectly resemble the characteristics of any single marine mammal species' vocalizations.

Other sources used in the Action Proponents' training and testing that are not explicitly addressed above, many of either higher frequencies (meaning that the sounds generated attenuate even closer to the source) or used less frequently, are expected to contribute to masking over far smaller areas and/or times. For the reasons described here, any limited masking that could potentially occur would be minor and short-term.

In conclusion, masking is more likely to occur in the presence of broadband, relatively continuous noise sources such as from vessels; however, the duration of temporal and spatial overlap with any individual animal and the spatially separated sources that the Action Proponents use would not be expected to result in more than short-term, low-impact masking that would not affect reproduction or survival.

Auditory Injury From Sonar Acoustic Sources and Explosives and Non-Auditory Injury From Explosives

Table 25 through table 28 indicate the number of takes of each species by Level A harassment in the form of auditory injury resulting from exposure to active sonar and/or explosives is estimated to occur, and table 29 indicates the totals across all activities. The number of takes estimated to result from auditory injury annually from sonar and explosives for each species/stock from all activities combined ranges from 0 to 374 (the 374 is for pygmy sperm whale). Two species have the potential to incur non-auditory injury from explosives: Fraser's dolphin and Risso's dolphin, each with a maximum of one annual non-auditory injury. As described previously, the Navy's model likely overestimates the number of injurious takes to some degree. Nonetheless, these Level A harassment take numbers represent the maximum number of instances in which marine mammals would be reasonably expected to incur auditory and/or non-auditory injury, and we have analyzed them accordingly.

If a marine mammal is able to approach a surface vessel within the distance necessary to incur auditory injury in spite of the mitigation measures, the likely speed of the vessel (nominally 10–15 kn (18.5–27.8 km/hr)) and relative motion of the vessel would make it very difficult for the animal to remain in range long enough to accumulate enough energy to result in more than a mild case of auditory injury. As discussed previously in relation to TTS, the likely consequences to the health of an individual that incurs auditory injury can range from mild to more serious and is dependent upon the degree of auditory injury and the frequency band associated with auditory injury. The majority of any auditory injury incurred as a result of exposure to Navy sources would be expected to be in the 2–20 kHz range (resulting from the most powerful hull-mounted sonar) and could overlap a small portion of the communication frequency range of many odontocetes, whereas other marine mammal groups have communication calls at lower frequencies. Because of the broadband nature of explosives, auditory injury incurred from exposure to explosives would occur over a lower, but wider, frequency range. 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 and at younger ages, as the result of stressor exposure. While a small loss of hearing sensitivity may result in some degree of energetic costs for compensating or may mean some small loss of opportunities or detection capabilities, at the expected scale it would be unlikely to impact behaviors, opportunities, or detection capabilities to a degree that would interfere with reproductive success or survival.

The Action Proponents implement mitigation measures (described in the Proposed Mitigation Measures section) during explosive activities, including delaying detonations when a marine mammal is observed in the mitigation zone. Nearly all explosive events would occur during daylight hours, thereby improving the sightability of marine mammals and mitigation effectiveness. Observing for marine mammals during the explosive activities would include visual and passive acoustic detection methods (the latter when they are available and part of the activity) before the activity begins, in order to cover the mitigation zones that can range from 183 m to 2,286 m depending on the source (*e.g.,* explosive torpedo, explosive gunnery, explosive bombs) and 4.6 km for sinking exercises (see table 34 through table 41).

The type and amount of take by Level A harassment are indicated for all species and species groups in table 51, table 53, table 55, and table 57. Generally speaking, non-auditory injuries from explosives could range from minor lung injuries (which is the most sensitive organ and first to be affected) that consist of some short-term reduction of health and fitness immediately following the injury that heals quickly and will not have any discernible long-term effects, up to more impactful permanent injuries across multiple organs that may cause health problems and negatively impact reproductive success (*i.e.,* increase the time between pregnancies or even render reproduction unlikely) but fall just short of a ''serious injury'' by virtue of the fact that mortality is unexpected. Nonetheless, due to the Navy's mitigation and detection capabilities, we would not expect marine mammals to typically be exposed to a more severe blast located closer to the source—so the impacts likely would be less severe. In addition, the non-auditory injuries are predicted for two delphinid stocks with medium to large group sizes, which increases sightability. It is still difficult to evaluate how these injuries may or may not impact an animal's fitness; however, these effects are only seen in limited numbers (single instances for both stocks annually) and mostly in

species of moderate to high abundances. In short, it is unlikely that any, much less all, of the limited number of injuries accrued to any one stock would result in reduced reproductive success of any individuals. Even if a few injuries did result in reduced reproductive success of individuals, the status of the affected stocks are such that it would not be expected to adversely impact rates of reproduction, and auditory injury of the low severity anticipated here is not expected to affect the survival of any individual marine mammals.

Group and Species-Specific Analyses

In this section, we build on the general analysis that applies to all marine mammals in the Study Area from the previous sections. We first include information and analysis that applies to mysticetes or, separately, odontocetes and then, within those two sections, include more specific information that applies to smaller groups, where applicable, and the affected species or stocks. The specific take numbers proposed for authorization are also included in the analyses below, and we provide some additional context and discussion regarding how we consider the proposed authorized take numbers in those analyses.

The maximum amount and type of incidental take of marine mammals reasonably likely to occur and therefore proposed to be authorized from exposures to sonar and other active acoustic sources and explosions during the 7-year activity period are shown in table 23 and table 24.

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 Level A harassment takes are far more likely to be associated with separate individuals), and in some cases, individuals may be taken more than one time. As part of our evaluation of the magnitude and severity of impacts to marine mammal individuals and species, and specifically in an effort to better understand the degree to which the modeled and estimated takes likely represent repeated takes of the individuals of a given species/stock, we consider the total annual numbers of take by harassment (auditory injury, non-auditory injury, TTS, and behavioral disturbance) for species or stocks as compared to their associated abundance estimates. Specifically, take numbers higher than the stock abundance clearly indicate that some number of individuals are being taken on more than 1 day in the year, and broadly higher or lower ratios of take to abundance may reasonably be considered to equate to higher or lower likelihood of repeated takes, respectively, other potentially influencing factors being equal. In addition to the mathematical consideration of estimated take compared to abundance, we also consider other factors or circumstances that may influence the likelihood of repeated takes, where known, such as circumstances where activities resulting in take are focused in an area and time (*e.g.,* instrumented ranges or a homeport or long-duration activities such as MTEs) and/or where the same individual marine mammals are known to congregate over longer periods of time (*e.g.,* mysticetes in a known foraging area or resident odontocetes with smaller home ranges). Similarly, and all else being equal, estimated takes that are largely focused in one season (see table 51, table 53, table 55, and table 57) may indicate a higher likelihood of repeated takes of the same individuals.

Occasional, milder behavioral responses 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 response, if they are not expected to be repeated over a comparatively longer duration of 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.,* 2018b; Harris *et al.,* 2018; King *et al.,* 2015; NAS, 2017; New *et al.,* 2014; Southall *et al.,* 2007; Villegas-Amtmann *et al.,* 2015; Hoekendijk *et al.,* 2018; Wisniewska *et al.,* 2018; Czapanskiy *et al.,* 2021; Pirotta, 2022). Generally speaking, and in the case of most species impacted by the proposed activities, in the cases where some number of individuals may reasonably be expected to be taken on more than 1 day within a year, that number of days would be comparatively small, and we have no reason to expect that those takes would occur on sequential days.

To assist in understanding what this analysis means, we include a few clarifications related to estimated takes and the analysis here. An individual that incurs AUD INJ or TTS may sometimes, for example, also be subject to behavioral disturbance at the same time. As described above in this section, the degree of auditory injury and the degree and duration of TTS expected to be incurred from the Navy's activities are not expected to impact marine mammals such that their reproduction or survival could be affected. Similarly, data do not suggest that a single instance in which an animal accrues auditory injury or TTS and is also subjected to behavioral disturbance would result in impacts to reproduction or survival. Alternately, we recognize that if an individual is subjected to behavioral disturbance repeatedly for a longer duration and on consecutive days, effects could accrue to the point that reproductive success is impacted. Accordingly, in analyzing the number of takes and the likelihood of repeated and sequential takes, we consider the total takes, not just the takes by Level B harassment by behavioral disturbance, so that individuals potentially exposed to both threshold shift and behavioral disturbance are appropriately considered. The number of takes by Level A harassment by auditory injury are so low (and zero in some cases) compared to abundance numbers that it is considered highly unlikely that any individual would be taken at those levels more than once.

Use of sonar and other transducers would typically be transient and temporary. The majority of acoustic effects to most marine mammal stocks from sonar and other active sound sources during the specified military readiness activities would be primarily from ASW events. On the less severe end, exposure to comparatively lower levels of sound at a detectably greater distance from the animal, for a few or several minutes, could result in a behavioral response such as avoiding an area that an animal would otherwise have moved through or fed in or breaking off one or a few feeding bouts. More severe behavioral effects could occur when an animal gets close enough to the source to receive a comparatively higher level of sound, is exposed continuously to one source for a longer time, or is exposed intermittently to different sources throughout a day. Such effects might result in an animal having a more severe flight response and leaving a larger area for a day or more or potentially losing feeding opportunities for a day; however, such severe behavioral effects are expected to occur infrequently. In addition to the proximity to the source, the type of activity and the season and location during which an animal is exposed can inform the impacts. These factors, including the numbers and types of effects that are estimated in areas known to be biologically important for certain

species, are discussed in the group and species-specific sections below.

As described in the Proposed Mitigation Measures section, this proposed rule includes mitigation measures that would reduce the probability and/or severity of impacts expected to result from acute exposure to acoustic sources or explosives, and impacts to marine mammal habitat. Specifically, the Action Proponents would use a combination of delayed starts, power downs, and shutdowns to avoid mortality or serious injury, minimize the likelihood or severity of AUD INJ or non-auditory injury, and reduce instances of TTS or more severe behavioral disturbance caused by acoustic sources or explosives. The Action Proponents would also implement multiple time/area restrictions that would reduce take of marine mammals in areas or at times where they are known to engage in important behaviors, such as calving, where the disruption of those behaviors would have a higher probability of resulting in impacts on reproduction or survival of individuals that could lead to population-level impacts. Finally, the Action Proponents would implement measures to further reduce the already unlikely potential that a marine mammal would be struck by a vessel.

These time/area restrictions include a Marpi Reef Mitigation Area, a Chalan Kanoa Reef Mitigation Area, and an Agat Bay Nearshore Mitigation Area. The Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area are discussed in the humpback whale section below. The Agat Bay Nearshore Mitigation Area is discussed in the Dolphins and Small Whales section below. However, it is important to note that measures in that area, while developed to protect humpback whales and spinner dolphins, respectively, would also benefit other marine mammals in those areas. Therefore, they are discussed here also.

Within the Marpi Reef Mitigation Area and the Chalan Kanoa Reef Mitigation Area, from December 1 through April 30, the Action Proponents must not use more than 20 combined hours of MF1 and MF1C surface ship hull-mounted MFAS during training and testing annually. Further, the Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within either mitigation area year-round. These measures are designed to avoid or reduce exposure of humpback whales in important seasonal reproductive habitat to explosives that could cause mortality or levels of sound that have the potential to cause injury or behavioral disturbance, or, in the case of explosives, mortality. The Navy must also issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30. 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 humpback whales that, when concentrated seasonally, may become vulnerable to vessel strikes. Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of activity-based mitigation. These awareness messages and subsequent actions are designed to minimize the potential for vessel strike of humpback whales, as well as exposure to acoustic, explosive, and physical disturbance and strike stressors that have the potential to cause mortality, injury, or behavioral disturbance during the reproductive season.

Within the Agat Bay Nearshore Mitigation Area, the Action Proponents must not use MF1 or MF1C surface ship hull-mounted MFAS or detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) during training and testing year-round. These measures are designed to prevent exposure of spinner dolphins in important resting habitat to levels of sound and explosives that have the potential to cause injury, behavioral disturbance, or, in the case of explosives, mortality.

In addition to the nature and context of the disturbance, including whether take occurs in an area of known biological importance, species-specific factors affect the severity of impacts to individual animals and population consequences of disturbance. Keen *et al.* (2021) identifies three population consequences of disturbance themes: life history traits, environmental conditions, and disturbance source characteristics. Life history traits considered in Keen *et al.* (2021) include movement ecology (whether animals are resident, nomadic, or migratory), reproductive strategy (capital breeders, income breeders, or mixed), body size (based on size and life stage), and pace of life (slow or fast).

Regarding movement ecology, resident animals that have small home ranges relative to the size and duration of an impact zone would have a higher risk of repeated exposures to an ongoing activity. Animals that are nomadic over a larger range may have less predictable risk of repeated exposure. For resident and nomadic populations, overlap of a stressor with feeding or reproduction depends more on time of year rather than location in their habitat range. In contrast, migratory animals may have higher or reduced potential for exposure during feeding and reproduction based on location, time of the year, and duration of an activity. The risk of repeated exposure during individual events may be lower during migration as animals maintain directed transit through an area.

Reproduction is energetically expensive for female marine mammals, and reproductive strategy can influence an animal's sensitivity to disturbance. Mysticetes are capital breeders. Capital breeders rely on their capital, or energy stores, to migrate, maintain pregnancy, and nurse a calf. Capital breeders would be more resilient to short-term foraging disruption due to their reliance on built-up energy reserves but are vulnerable to prolonged foraging impacts during gestation. Most odontocetes are income breeders, which rely on some level of income, or regular foraging, to give birth and nurse a calf. Income breeders would be more sensitive to the consequences of disturbances that impact foraging during lactation. Some species exhibit traits of both, such as beaked whales.

Smaller animals require more food intake per unit body mass than large animals. They must consume food on a regular basis and are likely to be non-migratory and income breeders. The smallest odontocetes, the porpoises, must maintain high metabolisms to maintain thermoregulation and cannot rely on blubber stores for long periods of time, whereas larger odontocetes can more easily thermoregulate. The larger size of other odontocetes is an adaptation for deep diving that allows them to access high quality mesopelagic and bathypelagic prey. Both small and large odontocetes have lower foraging efficiency than the large whales. The filter-feeding large whales (*i.e.,* mysticetes) consume most of their food within several months of the year and rely on extensive lipid reserves for the remainder of the year. The metabolism of mysticetes allows for fasting while seeking prey patches during foraging season and prolonged periods of fasting outside of foraging season (Goldbogen *et al.,* 2023). Their energy stores support capital breeding and long migrations. The effect of a temporary feeding disturbance is likely to have

inconsequential impacts to a mysticete but may be consequential for small cetaceans. For purposes of this assessment, marine mammals were generally categorized as small (less than 3.05 m), medium (3.05–9.1 m), or large (more than 9.1 m) based on length.

Populations with a fast pace of life are characterized by early age of maturity, high birth rates, and short life spans, whereas populations with a slow pace of life are characterized by later age of maturity, low birth rates, and long life spans. The consequences of disturbance in these populations differ. Although reproduction in populations with a fast pace of life are more sensitive to foraging disruption, these populations are quick to recover. Reproduction in populations with a slow pace of life is resilient to foraging disruption, but late maturity and low birth rates mean that long-term impacts to breeding adults have a longer-term effect on population growth rates. Pace of life was categorized for each species in this analysis by comparing age at sexual maturity, birth rate interval, life span, body size, and feeding and reproductive strategy.

Southall *et al.* (2023) also identified factors that inform a population's vulnerability. The authors describe a framework to assess risk to populations from specific industry impact scenarios at different locations or times of year. While this approach may not be suitable for many military readiness activities, for which alternate spatial or seasonal scenarios are not usually feasible, the concepts considered in that framework's population vulnerability assessment are useful in this analysis, including population status (endangered or threatened), population trend (decreasing, stable, or increasing), population size, and chronic exposure to other anthropogenic or environmental stressors (*e.g.,* fisheries interactions, pollution). These factors are also considered when assessing the overall vulnerability of a stock to repeated effects from acoustic and explosive stressors.

In consideration of the factors outlined above, if impacts to individuals increase in magnitude or severity such that repeated and sequential higher-severity impacts occur (the probability of which goes up for an individual the higher total number of takes it has) or the total number of moderate to more severe impacts increases substantially, especially if occurring across sequential days, then it becomes more likely that the aggregate effects could potentially interfere with feeding enough to reduce energy budgets in a manner that could impact reproductive success via longer cow-calf intervals, terminated pregnancies, or calf mortality. It is important to note that these impacts accrue only to females, which comprise approximately 50 percent of the population. Based on energetic models, it takes energetic impacts of a significantly greater magnitude to cause the death of an adult marine mammal, and females will always terminate a pregnancy or stop lactating before allowing their health to deteriorate. Also, the death of an adult female has significantly more impact on population growth rates than reductions in reproductive success, while the death of an adult male has very little effect on population growth rates. However, as previously explained, such severe impacts from the specified activities for any species or stocks are not expected to occur. We note that the negligible impact analysis is inherently a two-tiered assessment that first evaluates the anticipated impacts of the activities on marine mammal individuals, and then if impacts are expected to affect reproduction or survival of any individuals, the analysis further evaluates the effects of those individual impacts on rates of reproduction and survival of the species or stock in the context of the status of the species or stock. The analyses below in some cases address species collectively if they occupy the same functional hearing group (*i.e.,* very-low, low, high, and very high-frequency cetaceans), share similar life history strategies, and/or are known to behaviorally respond similarly to acoustic stressors. Because some of these groups or species share characteristics that inform the impact analysis similarly, it would be duplicative to repeat the same analysis for each species. In addition, similar species typically have the same hearing capabilities and behaviorally respond in the same manner.

Thus, our analysis below considers the effects of the specified 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 a species or stock that would further differentiate the analysis, those differences are either described within the section or the discussion for those species or stocks. Specifically, we first give broad descriptions of the mysticete and odontocete groups and then differentiate into further groups as appropriate below.

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 or stocks will incur, the applicable mitigation for species or stocks, and the status and life history of the stocks to support the negligible impact determinations for each species or stock. We have already described above why we believe the incremental addition of the limited number of low-level auditory injury takes will not have any meaningful effect towards inhibiting reproduction or survival. We have also described above the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Action Proponents' activities. For mysticetes, there is no predicted non-auditory injury from explosives for any species or stock. Regarding the severity of individual takes by Level B harassment by behavioral disturbance for mysticetes, the majority of these responses are anticipated to occur at received levels below 172 dB and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects in areas known to be biologically important. Because there are multiple stock-specific factors in relation to the status of the species, at the end of the section, we break out stock-specific findings.

In table 51 below for mysticetes, we indicate the total annual Level A harassment and Level B harassment and a number indicating the instances of total take as a percentage of abundance, noting the Central North Pacific stock of blue whale and the Western North Pacific stock of humpback whale have SAR abundance estimates in addition to Study Area abundance estimates.

In table 52 below, we indicate the status, life history traits, important habitats, and threats that inform our analysis of the potential impacts of the estimated take on the affected mysticete stocks.

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Table 51 -- Annual Estimated Take by Level B harassment and Level A harassment and Related Information for Mysticetes in the Study Area

Marine Mammal Species	Stock	Study Area Abundance	Maximum Annual Level B Harassment	Maximum Annual Level A Harassment	Maximum Annual Take	Maximum Annual Harassment As Percentage of Abundance	Season with 70 Percent of Take or Greater **
Blue Whale	Central North Pacific	232*	42	1	43	19	Cold (73 percent)
Bryde's Whale	NSD	233	68	1	69	30	N/A
Fin Whale	NSD	309	35	1	36	12	Cold (74 percent)
Humpback Whale	Western North Pacific	5,287*	1,517	21	1,538	29	Cold (89 percent)
Minke Whale	NSD	91	25	1	26	29	Cold (75 percent)
Omura's Whale	NSD	154	52	1	53	34	N/A
Sei Whale	NSD	166	37	1	38	23	Cold (73 percent)

Note: NSD – No stock designated. N/A – Not Applicable.
*The stock abundance reported in the NMFS SAR for Central North Pacific blue whale is 133 (Carretta *et al.*, 2023) and for Western North Pacific humpback whale is 1,084 (Young *et al.*, 2023).
** The cold season includes the period from winter to spring.

Table 52 -- Life History Traits, Important Habitat[1], and Threats to Mysticetes in the Study Area

Marine Mammal Species	Stock	ESA Status	MMPA Status	Movement Ecology	Body Size	Reproductive Strategy	Pace of Life	Chronic Risk Factors	UME, Oil Spill, Other	Important Habitat	Population Trend
Blue Whale	Central North Pacific	Endangered	Depleted, Strategic	Migratory	Large	Capital	Slow	Vessel strikes, fisheries interactions, ingestion of marine debris, ocean noise, disease, predation by killer whales	No	No	Unknown
Bryde's Whale	NSD	Not listed	N/A	Nomadic	Large	Capital	Slow	Vessel strikes, fisheries interactions, ocean noise, predation by killer whales	No	No	Unknown
Fin Whale	NSD	Endangered	N/A	Migratory	Large	Capital	Slow	Vessel strikes, fisheries interactions, ocean noise, disease, parasites, predation by killer whales	No	No	Unknown
Humpback Whale	Western North Pacific	Not listed	Depleted, Strategic	Migratory	Large	Capital	Slow	Vessel strikes, fisheries interactions, ingestion of marine debris, disease, parasites, predation by (false) killer whales	No	Marpi Reef and Chalan Kanoa Reef	Unknown
Minke Whale	NSD	Not listed	N/A	Nomadic	Med-Large	Capital	Slow	Vessel strikes, fisheries interactions, prey availability	No	No	Unknown
Omura's Whale	NSD	Not listed	N/A	Unk, likely nomadic	Large	Capital	Slow	Vessel strike, fisheries interactions	No	No	Unknown
Sei Whale	NSD	Endangered	N/A	Migratory	Large	Capital	Slow	Vessel strikes, fisheries interactions, ocean noise, disease, parasites, predation by killer whales	No	No	Unknown

Note: NSD = No stock designated. N/A = Not Applicable.
[1] There are no areas of critical habitat designated under the ESA in the Study Area.

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Blue Whale (Central North Pacific Stock)—

Blue whales are listed as endangered under the ESA and as both depleted and strategic under the MMPA. The Central North Pacific stock of blue whales is a migratory population that can occur near the coast, over the continental shelf, and in oceanic waters. Blue whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ingestion of marine debris, ocean noise, disease, and predation by killer whales, among others. The Navy estimates the abundance as 232 animals in the Study Area, and NMFS' SAR states the PBR is 0.1 Central North Pacific blue whales per year and the annual M/SI (from other human activities) is 0 (note that the SAR abundance estimate, as noted

in table 51, is 133). There are no UMEs or other factors that cause particular concern for this stock, and there are no known biologically important areas for the Central North Pacific stock of blue whales in the Study Area. This stock migrates from their feeding grounds in the Gulf of Alaska to Hawaii in winter. While they occur in the Study Area, they are not sighted frequently or year-round. As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 42, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with blue whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Blue whales are large-bodied capital breeders with a slow pace of life and are, therefore, generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock abundance (see table 51) and their movement pattern, it is unlikely that any individual blue whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to the Central North Pacific stock of blue whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the total take (considering annual maximum and across 7 years) estimated and proposed for authorization would have a negligible impact on the Central North Pacific stocks of blue whale.

Bryde's Whale—

Little is known about the movements of Bryde's whales in the Study Area, but most survey efforts have observed Bryde's whales in deep waters (*e.g.,* the West Mariana Ridge and Mariana Trench), and some surveys have identified calves. In general, Bryde's whales occur primarily in offshore oceanic warm waters of the North Pacific. There are no UMEs or other factors that cause particular concern for this stock, and there are no known biologically important areas for Bryde's whales in the Study Area. Bryde's whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ocean noise, and predation by killer whales, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 68, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with Bryde's whale communication or other important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Bryde's whales are large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to the abundance (see table 51), it is likely that some portion of Bryde's whale individuals would be taken repeatedly over a moderate number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is likely to be impacted. Given the lower number of takes by harassment as compared to the species abundance (see table 51), their migratory movement pattern, and the absence of take concentrated in areas in

which animals are known to congregate, it is unlikely that any individual Bryde's whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to Bryde's whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on Bryde's whales.

Fin Whale—

Fin whales are listed as endangered under the ESA. Fin whales are not likely to occur in the Study Area in the summer due to low productivity, nor are they likely to occur near Guam at any time. There have been no recorded visual sightings of fin whales in the Study Area, although acoustic recordings of fin whale calls were identified around Tinian, Saipan, and in the Transit Corridor between Guam and Hawaii. The Study Area abundance estimate is 209 fin whales. There are no UMEs or other factors that cause particular concern for this stock, and there are no known biologically important areas for fin whales in the Study Area. Fin whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ocean noise, disease, parasites, and predation by killer whales, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 35, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with fin whale communication and other important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Fin whales are large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the abundance (see table 51), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual fin whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to fin whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on fin whales.

Humpback Whale (Western North Pacific Stock)—

The Western North Pacific stock of humpback whale is listed as endangered under the ESA and as both depleted and strategic under the MMPA. The Humpback whales in the Mariana Islands/Ogasawara-Northern Pacific unit of the Western North Pacific stock are migratory and expected to occur in the Study Area between December and April during their breeding season, with higher densities around the Northern Mariana Islands (*i.e.,* Saipan, Tinian, and Pagan). This stock will then migrate north to their feeding grounds in Russia and the Aleutian Islands/Bering Sea in the summer. The Study Area abundance estimate is 5,287 humpback whales, and NMFS' SAR states the PBR is 3.4 Western North Pacific humpback whales per year (the PBR for the whales that use U.S. waters (minimum population size of 75) is 0.2) and the annual M/SI (from other human activities) is 5.82 (0.06 in U.S. waters) (note that the SAR abundance estimate, as noted in table 51, is 1,084). There are no UMEs or other factors that cause particular concern for this stock, and no ESA-designated critical habitat in the Study Area. However, the areas of Marpi and Chalan Kanoa Reefs (out to the 400-m isobath) are known specifically to be used by mother/calf pairs of humpback whales (Hill *et al.,* 2016b, 2017, 2018, 2020b). Currently, no other areas have been identified for mother/calf pairs of humpback whales in the Mariana Islands. Humpback whales face several anthropogenic and non-anthropogenic risk factors, including vessel strikes, fisheries interactions, ingestion of marine debris, disease, parasites, and predation by false killer whales and killer whales, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 21 and 1,517, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with humpback whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact

reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Humpback whales are large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat. Within the Marpi Reef Mitigation Area and the Chalan Kanoa Reef Mitigation Area, from December 1 through April 30, the Action Proponents must not use more than 20 combined hours of MF1 and MF1C surface ship hull-mounted MFAS during training and testing annually. Further, the Action Proponents must not detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) within either mitigation area year-round. These measures are designed to avoid or reduce exposure of humpback whales in important seasonal reproductive habitat to explosives or levels of sound that have the potential to cause injury or behavioral disturbance, or, in the case of explosives, mortality. Additionally, the Navy must issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30 to minimize the potential for vessel strike of humpback whales, as well as exposure to acoustic, explosive, and physical disturbance and strike stressors that have the potential to cause mortality, injury, or behavioral disturbance during the reproductive season.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, for the Western North Pacific stock of humpback whale, given the number of takes by harassment as compared to the stock abundance (see table 51), that 89 percent of the takes are expected to occur during the cold season, and that a portion of the takes occur in an area known to be important for reproduction, it is likely that some portion of the individuals taken are taken repeatedly over a limited number of days. However, the reduction in exposure of humpback whales to sonar and explosive detonations in the Geographic Mitigation Areas and the short overall and daily exposure will reduce the likelihood of impacts that could affect reproduction or survival by minimizing impacts on calves during this sensitive life stage, avoiding the additional energetic costs to mothers of avoiding the area during explosive exercises, and minimizing the chances that important breeding behaviors are interrupted to the point that reproduction is inhibited or abandoned for the year or otherwise interfered with. The Navy expects current and future use of the geographic mitigation areas to remain low, but the sonar cap allows the Navy to engage in a small amount of necessary training and testing, most likely a Small Coordinated ASW Exercise or TRACKEX event(s), which could, for example, occur up to 5 days, but no more than 4 hours per day (or similar configuration totaling no more than 20 hours annually). However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is likely to be impacted.

Given the magnitude and severity of the impacts discussed above to the Western North Pacific stock of humpback whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals and, therefore, unlikely to affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on the Western North Pacific stock of humpback whales.

Minke Whale—

Minke whales in the Study Area are not listed as threatened or endangered under the ESA. Minke whales have not been visually observed in the Study Area, but they are one of the most common mysticetes acoustically detected in the area. Minke whales are presumed to be present in the Study Area from the fall through the spring and are not expected to be in the Study Area or associated Transit Corridor during summer months due to low productivity in the region. The Study Area abundance estimate is 91 minke whales. There are no UMEs or other factors that cause particular concern for either stock and there are no known biologically important areas for minke whales in the Study Area. Minke whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, and prey availability, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 25, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration, and mostly not in a frequency band that would be expected to interfere with minke whale communication or other important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Minke whales are medium-to-large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the abundance (see table 51), it is likely that some portion of the individuals taken are taken repeatedly over a limited number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is likely to be impacted. Further, this stock is nomadic, and there are no known foraging areas or other areas within which animals are known to congregate.

Given the magnitude and severity of the impacts discussed above to minke whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on minke whales.

Omura's Whale—

Omura's whales are not listed as threatened or endangered under the ESA. Omura's whales are nomadic across their range of the tropical and subtropical waters of the western Pacific and eastern Indian oceans where individuals tend to occur in nearshore waters (Jefferson *et al.,* 2015). While there is a lack of confirmed sightings, Omura's whales may be present in the Study Area year-round. The Study Area abundance estimate is 154 Omura's whales. There are no UMEs or other factors that cause particular concern for this species, and there are no known biologically important areas for Omura's whales in the Study Area. Omura's whales face chronic anthropogenic and non-anthropogenic risk factors, including vessel strike and fisheries interactions, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 52, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with Omura's whale communication or other important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Omura's whales are large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the abundance (see table 51) and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual Omura's whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to Omura's whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on Omura's whales.

Sei Whale—

Sei whales are listed as endangered under the ESA. They are migratory and are typically found in the open ocean, away from the coast. Sei whales generally have higher abundances in the cold temperate to subpolar latitudes and are therefore considered rare in this region, although they have been sighted in the Study Area. Since sei whales migrate between higher latitude summer feeding grounds to lower latitude breeding grounds in the winter, they are more likely to be around the Study Area in the cold season (winter to spring) and are not expected to be in the Study Area or associated Transit Corridor during summer months due to low productivity. The Study Area abundance estimate is 166 sei whales. There are no UMEs or other factors that cause particular concern for sei whales, and there are no known biologically important areas for sei whales in the Study Area. Sei whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ocean noise, disease, parasites, and predation by killer whales, among others.

As shown in table 51, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 1 and 37, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with sei whale communication or other important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 172 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Sei whales are large-bodied capital breeders with a slow pace of life and are therefore generally less susceptible to impacts from shorter duration foraging disruptions. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in high value habitat.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the abundance (see table 51), their migratory movement pattern, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual sei whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to sei whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on sei 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 stocks will incur, the applicable mitigation for each stock, and the status and life history of the stocks to support the negligible impact determinations for each stock. We have already described above why we believe the incremental addition of the limited number of low-level auditory injury takes will not have any meaningful effect towards inhibiting reproduction or survival on any marine mammal species or stock. We have also described above the unlikelihood of any masking or habitat impacts having effects that would impact the reproduction or survival of any of the individual marine mammals affected by the Action Proponents' activities. Two odontocete species have predicted non-auditory injury from explosives (Frasier's dolphin and Risso's dolphin), discussed further below. Regarding the severity of individual takes by Level B harassment by behavioral disturbance for odontocetes, the majority of these responses are anticipated to occur at received levels below 178 dB for most odontocete species and below 154 dB for sensitive species (*i.e.,* beaked whales, for which a lower behavioral disturbance threshold is applied), and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Much of the discussion below focuses on the behavioral effects and the mitigation measures that reduce the probability or severity of effects in biologically important areas or other habitats. Because there are multiple stock-specific factors in relation to the status of the species, at the end of the section we break out stock- or group-specific findings.

In table 53 (sperm whales, dwarf sperm whales, and pygmy sperm whales), table 55 (beaked whales), and table 57 (dolphins and small whales) below, we indicate the total annual Level A harassment and Level B harassment, and a number indicating the instances of total take as a percentage of abundance.

In table 54 (sperm whales, dwarf sperm whales, and pygmy sperm whales), table 56 (beaked whales), and table 58 (dolphins and small whales), below, we indicate the status, life history traits, important habitats, and threats that inform our analysis of the potential impacts of the estimated take on the affected odontocete stocks.

Table 53 -- Annual Estimated Take by Level B harassment and Level A harassment and Related Information for Sperm Whale, Dwarf Sperm Whale, and Pygmy Sperm Whale in the MITT Study

Marine Mammal Species	Stock	Study Area Abundance	Maximum Annual Level B Harassment	Maximum Annual Level A Harassment	Maximum Annual Take	Maximum Annual Harassment As Percentage of Abundance	Season with 70 Percent of Take or Greater
Sperm Whale	NSD	1,574	225	0	225	14	N/A
Dwarf Sperm Whale	NSD	59,040	18,716	323	19,039	32	N/A
Pygmy Sperm Whale	NSD	66,333	20,992	374	21,366	32	N/A

Note: NSD = No stock designated. N/A = Not Applicable.

Table 54 -- Life History Traits, Important Habitat[1], and Threats to Sperm Whale, Dwarf Sperm Whale, and Pygmy Sperm Whale in the Study Area

Marine Mammal Species	Stock	ESA Status	MMPA Status	Movement Ecology	Body Size	Reproductive Strategy	Pace of Life	Chronic Risk Factors	UME, Oil Spill, Other	Population Trend
Sperm Whale	NSD	Endangered	N/A	Nomadic	Large	Income	Slow	Vessel strikes, fisheries interactions, ingestion of marine debris, ocean noise, disease, parasites, predation by (false) killer whales and pilot whales, pollution	No	Unknown
Dwarf Sperm Whale	NSD	Not listed	N/A	Unknown, likely nomadic	Small-Med	Income	Fast	Vessel strike, fisheries interactions, ingestion of marine debris, ocean noise, disease	No	Unknown
Pygmy Sperm Whale	NSD	Not listed	N/A	Unknown, likely nomadic	Small-Med	Income	Fast	Vessel strike, fisheries interactions, ingestion of marine debris, ocean noise, disease	No	Unknown

Note: NSD = No stock designated. N/A = Not Applicable.
[1] There are no areas of critical habitat designated under the ESA or known important habitat for sperm whale, dwarf sperm whale, or pygmy sperm whale in the Study Area.

Sperm Whales, Dwarf Sperm Whales, and Pygmy Sperm Whales—

Sperm Whale

Sperm whales are listed as endangered under the ESA. Sperm whales are known to prefer deep water and steep topography. They can be somewhat migratory; however, sperm whales within the Study Area are more residential, have been observed with calves, and have been acoustically detected throughout the year in areas around the Study Area, including Guam, Saipan and Tinian. For modeling impacts, 1,574 sperm whales were assumed in the Study Area. There are no UMEs or other factors that cause particular concern for these stocks, and there are no known biologically important areas for the sperm whales in the Study Area. Sperm whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ingestion of marine debris, ocean noise, disease, parasites, predation by (false) killer whales and pilot whales, and pollution.

As shown in table 53, the maximum annual allowable instances of take under this proposed rule by Level B harassment is 225. No mortality is anticipated or proposed for authorization, nor is any non-auditory or auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with TTS, as described in the Temporary Threshold Shift section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with sperm whale communication or other important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Sperm whales are large-bodied income breeders with a slow pace of life and are likely more resilient to missed foraging opportunities due to acoustic disturbance than smaller odontocetes. However, they may be more susceptible to impacts due to lost foraging opportunities during reproduction, especially if they occur during lactation (Farmer *et al.,* 2018b). Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the abundance (see table 53), and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individual sperm whales would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to sperm whales (considering annual take maximum and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the proposed take by harassment is not expected to impact the reproduction or survival of any individuals and, therefore, unlikely to affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on sperm whales.

Dwarf Sperm Whale and Pygmy Sperm Whale

Neither dwarf sperm whales nor pygmy sperm whales are listed under the ESA. Dwarf sperm whales generally occur offshore and are found in warmer tropical waters more often than pygmy sperm whales. The Study Area abundance estimate is 59,040 dwarf sperm whales and 66,333 pygmy sperm whales. There are no UMEs or other factors that cause particular concern for these stocks, and no known BIAs in the Study Area. Dwarf and pygmy sperm whales face several chronic anthropogenic and non-anthropogenic risk factors, including vessel strike, fisheries interactions, ingestion of marine debris, ocean noise, and disease.

As shown in table 53, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B harassment is 323 and 18,716, respectively, for dwarf

sperm whale, and 374 and 20,922, respectively, for pygmy sperm whale. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with dwarf and pygmy sperm whale communication, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Dwarf and pygmy sperm whales are small-to-medium-bodied income breeders with a fast pace of life. They are generally more sensitive to missed foraging opportunities than larger odontocetes, especially during lactation, but would be quick to recover given their fast pace of life. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the lower number of takes by harassment as compared to the stock/species abundance (see table 53), their likely nomadic movement pattern, and the absence of take concentrated in areas in which animals are known to concentrate, it is unlikely that any individual dwarf or pygmy sperm whale would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to dwarf and pygmy sperm whales (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are unlikely to result in impacts on the reproduction or survival of any individuals and, therefore, unlikely to affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on the dwarf and pygmy sperm whales.

Beaked Whales—

This section builds on the broader odontocete discussion above (*i.e.,* that information applies to beaked whales as well), and brings together the discussion of the different types and amounts of take that different beaked whale species and stocks will likely incur, any additional applicable mitigation, and the status of the species and stocks to support the preliminary negligible impact determinations for each species or stock.

Table 55 -- Annual Estimated Take by Level B harassment and Level A Harassment and Related Information for Beaked Whales in the Study Area

Marine Mammal Species	Stock	Study Area Abundance	Maximum Annual Level B Harassment	Maximum Annual Level A Harassment	Maximum Annual Take	Maximum Annual Harassment As Percentage of Abundance	Season with 70 Percent of Take or Greater
Blainville's Beaked Whale	NSD	15,705	3,120	0	3,120	20	N/A
Deraniyagala Beaked Whale	NSD	4,592	4,973	1	4,974	108	N/A
Ginkgo-toothed Beaked Whale	NSD	4,592	5,929	0	5,929	129	N/A
Goose-Beaked Whale	NSD	6,007	2,618	0	2,618	44	N/A
Longman's Beaked Whale	NSD	730	1,015	0	1,015	139	N/A

Note: NSD – No stock designated. N/A – Not Applicable.

Table 56 -- Life History Traits, Important Habitat[1], and Threats to Beaked Whales in the Study Area

Marine Mammal Species	Stock	ESA Status	MMPA Status	Movement Ecology	Body Size	Reproductive Strategy	Pace of Life	Chronic Risk Factors	UME, Oil Spill, Other	Population Trend
Blainville's Beaked Whale	NSD	Not listed	N/A	Nomadic	Med	Mixed	Med	Fisheries interactions, ingestion of marine debris, ocean noise	No	Unknown
Deraniyagala Beaked Whale	NSD	Not listed	N/A	Unk, likely nomadic	Med	Mixed	Med	Fisheries interactions, ingestion of marine debris, ocean noise	No	Unknown
Ginkgo-toothed Beaked Whale	NSD	Not listed	N/A	Unknown, likely nomadic	Med	Mixed	Med	Fisheries interactions, ocean noise	No	Unknown
Goose-Beaked Whale	NSD	Not listed	N/A	Unknown, likely nomadic	Med	Mixed	Med	Fisheries interactions, ocean noise	No	Unknown
Longman's Beaked Whale	NSD	Not listed	N/A	Unknown, likely nomadic	Med	Mixed	Med	Fisheries interactions, ocean noise, disease, predation by killer whales	No	Unknown

Note: NSD = No stock designated. N/A = Not Applicable.

[1] There are no areas of critical habitat designated under the ESA or known BIAs for beaked whales in the Study Area.

These stocks are not listed as endangered or threatened under the ESA. The abundance estimates for the Study Area range from 730 (Longman's beaked whale) to 15,705 (Blainville's beaked whale). There are no UMEs or other factors that cause particular concern for these stocks in the Study Area. Beaked whales occur in deep, offshore waters, and all beaked whale stocks are assumed to occur in the Study Area year-round. Beaked whales face several chronic anthropogenic and non-anthropogenic risk factors, including fisheries interactions, ingestion of marine debris, predation by killer whales, and ocean noise, among others.

As shown in table 55, the maximum annual allowable instances of take under this proposed rule by Level A harassment and Level B Harassment range from 0 to 1 and 1,015 to 5,929, respectively. No mortality is anticipated or proposed for authorization, nor is any non-auditory injury. The total take allowable across all 7 years of the rule is indicated in table 29.

Regarding the potential takes associated with auditory impairment, as described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, any takes in the form of TTS are expected to be lower-level, of short duration (from minutes to, at most, several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival. For similar reasons, while auditory injury impacts last longer, the low anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to have any effect on fitness of Daeraniyagala beaked whales.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 154 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions, vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Beaked whales are medium-bodied odontocetes with a medium pace of life and likely moderately resilient to missed foraging opportunities due to acoustic disturbance. They are mixed breeders (*i.e.,* behaviorally income breeders), and they demonstrate capital breeding strategies during gestation and lactation (Keen *et al.,* 2021), so they may be more vulnerable to prolonged loss of foraging opportunities during gestation. Further, as described in the *Group and Species-Specific Analyses* section above and the Proposed Mitigation Measures section, mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures.

Beaked whales have also been found to respond to naval sonar, in certain circumstances, in a manner that can lead to stranding and in a few cases, globally, beaked whale strandings have been causally associated with active sonar operation. However, as discussed in the *Stranding and Mortality* section of the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, NMFS has determined that the activities included in this 7-year rule are not reasonably likely to result in the mortality of beaked whales.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case, given the number of takes by harassment as compared to abundance (see table 55), it is likely that some portion of the individuals taken are taken repeatedly over a limited number of days. However, given the variety of activity types that contribute to take across separate exercises conducted at different times and in different areas, and the fact that many result from transient activities conducted at sea, it is unlikely that repeated takes would occur either in numbers or clumped across sequential days in a manner likely to impact foraging success and energetics or other behaviors such that reproduction or survival of any individuals is likely to be impacted. Further, these species are nomadic or likely nomadic, there are no known foraging areas or other areas within which animals are known to congregate, nor are the takes concentrated within a specific season.

Given the magnitude and severity of the impacts discussed above to beaked whale stock/species (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information

presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on Blainville's beaked whale, Deraniyagala beaked whale, ginkgo-toothed beaked whale, goose-beaked whale, and Longman's beaked whale.

Dolphins and Small Whales—

Of the 12 stocks of dolphins and small whales (Delphinidae) for which incidental take is proposed for authorization (see table 57), none are listed under the ESA. As shown in table 57 and table 58, these delphinids vary in stock abundance, body size, and movement ecology from, for example, the small-bodied, nomadic Fraser's dolphin with a Study Area abundance estimate of 62,714, to the medium-sized killer whale with a Study Area abundance estimate of 285. There are no known UMEs or other factors that cause particular concern for these stocks. Agat Bay nearshore waters are known to provide important resting habitat for spinner dolphins. Delphinids face a number of chronic anthropogenic and non-anthropogenic risk factors including fishery interactions, ingestion of marine debris, prey availability, disease, predation, and ocean noise, the impacts of which vary depending whether the stock is more or less deep-diving (*e.g.,* entanglement more common in deep divers like pygmy killer whales and pilot whales) and other behavioral differences (*e.g.,* vessels strikes more concern for killer whales).

Table 57 -- Annual Estimated Take by Level B harassment and Level A harassment and Related Information for Dolphins and Small Whales in the Study Area

Marine Mammal Species	Stock	Study Area Abundance	Maximum Annual Level B Harassment	Maximum Annual Level A Harassment	Maximum Annual Take	Maximum Annual Harassment As Percentage of Abundance	Season with 70 Percent of Take or Greater
False Killer Whale	NSD	1,059	228	0	228	22	N/A
Killer Whale	NSD	285	54	0	54	19	N/A
Melon-Headed Whale	NSD	2,455	475	1	476	19	N/A
Pygmy Killer Whale	NSD	4,351	885	1	886	20	N/A
Short-Finned Pilot Whale	NSD	1,192	228	0	228	19	N/A
Bottlenose Dolphin	NSD	1,800	356	1	357	20	N/A
Fraser's Dolphin	NSD	62,714	11,425	6	11,431	18	N/A
Pantropical Spotted Dolphin	NSD	33,518	4,555	3	4,558	14	N/A
Risso's Dolphin	NSD	9,554	1,781	2	1,783	19	N/A
Rough-Toothed Dolphin	NSD	9,256	1,984	1	1,985	21	N/A
Spinner Dolphin	NSD	10,202	4,091	2	4,093	40	N/A
Striped Dolphin	NSD	7,676	1,563	1	1,564	20	N/A

Note: NSD = No stock designated. N/A = Not Applicable.

Table 58 -- Life History Traits, Important Habitat[1], and Threats to Dolphins and Small Whales in the Study Area

Marine Mammal Species	Stock	ESA Status	MMPA Status	Movement Ecology	Body Size	Reproductive Strategy	Pace of Life	Chronic Risk Factors	UME, Oil Spill, Other	Population Trend
False Killer Whale	NSD	Not listed	N/A	Nomadic	Med	Income	Med	Fisheries interactions, ingestion of marine debris, prey availability, disease, predation by killer whales	No	Unknown
Killer Whale	NSD	Not listed	N/A	Nomadic	Large	Income	Slow	Fisheries interactions, ocean noise, disease, pollution	No	Unknown
Melon-Headed Whale	NSD	Not listed	N/A	Nomadic	Small	Income	Med	Fisheries interactions, ocean noise, pollution, predation by killer whales	No	Unknown
Pygmy Killer Whale	NSD	Not listed	N/A	Nomadic	Small	Income	Med	Fisheries interactions, ocean noise, predation by killer whales	No	Unknown
Short-Finned Pilot Whale	NSD	Not listed	N/A	Nomadic	Med	Income	Slow	Vessel strikes, fisheries interactions, predation by killer whales	No	Unknown
Bottlenose Dolphin	NSD	Not listed	N/A	Resident-nomadic	Small-Med	Income	Med	Fisheries interactions, disease, pollution	No	Unknown
Fraser's Dolphin	NSD	Not listed	N/A	Nomadic	Small	Income	Fast	Fisheries interactions	No	Unknown
Pantropical Spotted Dolphin	NSD	Not listed	N/A	Nomadic	Small	Income	Med	Fisheries interactions, predation from (pygmy and false) killer whales, sharks, and short-finned pilot whales	No	Unknown
Risso's Dolphin	NSD	Not listed	N/A	Nomadic	Small-Med	Income	Med	Fisheries interactions, ocean noise, pollution, predation by killer whales and sharks	No	Unknown
Rough-Toothed Dolphin	NSD	Not listed	N/A	Resident, nomadic	Small	Income	Med	Fisheries interactions, ocean noise, predation by killer whales	No	Unknown
Spinner Dolphin	NSD	Not listed	N/A	Resident-nomadic	Small	Income	Fast	Fisheries interactions, ingestion of marine debris, ocean noise, disease, predation by (pygmy) killer whales, sharks, and short-finned pilot whales	No	Unknown
Striped Dolphin	NSD	Not listed	N/A	Nomadic	Small	Income	Med	Fisheries interactions, disease, predation by killer whales and sharks	No	Unknown

Note: NSD = No stock designated. N/A = Not Applicable.
[1]There are no areas of critical habitat designated under the ESA for dolphins or small whales in the Study Area.

As shown in table 57, the maximum annual allowable instances of take by Level B harassment for Delphinid stocks ranges from 54 (killer whale) to 11,425 for Fraser's dolphin, with 3 stocks below 300, 6 stocks above 1,000, and the remainder between 200 and 1,000. Take by Level A harassment is 0 for 12 of the 39 stocks, at or below 15 for 20 stocks, and above 15 for 10 stocks. No mortality is anticipated or proposed for authorization. The rule allows for one instance of take by non-auditory injury annually of both Fraser's dolphin and Risso's dolphin. As described above, given the limited number of potential exposures and the anticipated effectiveness of the mitigation measures in minimizing the pressure levels to which any individuals are exposed, these injuries are unlikely to impact reproduction or survival. The total take allowable across all 7 years of the rule is indicated in table 29.

All delphinid stocks are expected to incur some number of takes in the form of TTS. As described in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section above, these temporary hearing impacts are expected to be lower-level, of short duration (from minutes to at most several hours or less than a day), and mostly not in a frequency band that would be expected to interfere with delphinid echolocation, overlap more than a relatively narrow portion of the vocalization range of any single species or stock, or preclude detection or interpretation of important low-frequency cues. Any associated lost opportunities or capabilities individuals might experience as a result of TTS would not be at a level or duration that would be expected to impact reproductive success or survival.

Three-quarters of the affected delphinid stocks (9 of 12) will incur some number of takes by AUD INJ. Six stocks have single instances of AUD INJ proposed for authorization annually, and the remaining three stocks have two to five instances of AUD INJ proposed for authorization annually. For reasons similar to those discussed for TTS, while auditory injury impacts last longer, given the anticipated effectiveness of mitigation measures and the likelihood that individuals are expected to avoid higher levels associated with more severe impacts, the lower anticipated levels of AUD INJ that could be reasonably expected to result from these activities are unlikely to affect the fitness of any individuals. The rule would also allow for single instances of non-auditory injury annually of Fraser's dolphin and Risso's dolphin. As described above in the Auditory Injury from Sonar Acoustic Sources and Explosives and Non-Auditory Injury from Explosives section, given the limited number of potential exposures and the anticipated effectiveness of the mitigation measures in minimizing the pressure levels to which any individuals are exposed, these non-auditory injuries are unlikely to be of a nature or level that would impact reproduction or survival.

Regarding the likely severity of any single instance of take by behavioral disturbance, as described above, the majority of the predicted exposures are expected to be below 178 dB SPL and last from a few minutes to a few hours, at most, with associated responses most likely in the form of moving away from the source, foraging interruptions,

vocalization changes, or disruption of other social behaviors, lasting from a few minutes to several hours. Most delphinids are income breeders with a medium pace of life, meaning that while they can be sensitive to the consequences of disturbances that impact foraging during lactation, from a population standpoint, they can be moderately quick to recover. Further, as described in the *Group and Species-Specific Analyses* section (and the Proposed Mitigation Measures section), mitigation measures are expected to further reduce the potential severity of impacts through real-time operational measures that minimize higher level/longer duration exposures and time/area measures that reduce impacts in higher value habitat. Within the Agat Bay Nearshore Mitigation Area, the Action Proponents must not use MF1 or MF1C surface ship hull-mounted MFAS or detonate in-water explosives (including underwater explosives and explosives deployed against surface targets) during training and testing year-round. These measures are designed to prevent exposure of spinner dolphins in important resting habitat to levels of sound and explosives that have the potential to cause injury or behavioral disturbance or, in the case of explosives, mortality.

As described above, in addition to evaluating the anticipated impacts of the single instances of takes, it is important to understand the degree to which individual marine mammals may be disturbed repeatedly across multiple days of the year. In this case of all delphinid stocks, given the lower number of takes by harassment as compared to abundance (see table 57), the nomadic movement patterns of many species, and the absence of take concentrated in areas in which animals are known to congregate, it is unlikely that any individuals of any species would be taken on more than a limited number of days within a year and, therefore, the anticipated behavioral disturbance is not expected to affect reproduction or survival.

Given the magnitude and severity of the impacts discussed above to delphinid species (considering annual take maxima and the total across 7 years) and their habitat, and in consideration of the required mitigation measures and other information presented, the Action Proponents' activities are not expected to result in impacts on the reproduction or survival of any individuals, much less affect annual rates of recruitment or survival. For these reasons, we have determined that the take estimated and proposed for authorization would have a negligible impact on all delphinid stocks.

Preliminary Determination

Based on the analysis contained herein of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the specified activity would have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Letters of Authorization

Action Proponents seeking incidental take coverage under the proposed regulations must apply for LOAs (50 CFR 216.106, 50 CFR 217.186). LOAs may be issued for any time period that does not exceed the effective period of the regulations, provided that NMFS is able to make the relevant determinations. Such LOA requests must include, at minimum, the information described at 50 CFR 216.104(a)(1) and (2), and an affirmation of intent to adhere to the mitigation, monitoring, and reporting requirements described in the regulations.

Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, 40345, September 29, 1989), modifications to LOAs will be achieved through withdrawal of applicable LOAs and issuance of new LOAs consistent with 50 CFR 216.106 and 50 CFR 218.96. The proposed regulations governing the take of marine mammals incidental to military readiness activities allow for NMFS to adaptively manage mitigation, monitoring, or reporting measures, consistent with the regulations, at an LOA holder's request or NMFS' initiative in light of new information, including information collected through required reporting.

Some of the data sources that may be considered through adaptive management include: (1) monitoring and exercise reports, as required by the proposed regulations; (2) compiled results of Navy-funded research and development studies; (3) results of specific stranding investigations; (4) results of 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.*

Classification

Endangered Species Act

There are five marine mammal species under NMFS jurisdiction that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the Study Area: (1) blue whale; (2) fin whale; (3) humpback whale (Western North Pacific DPS); (4) sei whale; and (5) sperm whale. Details of the anticipated impacts to these species are as described in the Potential Effects of Specified Activities on Marine Mammals section of this proposed rule. The Proposed Mitigation Measures section describes the mitigation measures. We have preliminarily determined that the take estimated and proposed for authorization would have a negligible impact on these species. There are no areas of marine mammal critical habitat designated under the ESA in the Study Area.

The Action Proponents will consult with NMFS pursuant to section 7 of the ESA for the Study Area activities. NMFS will also consult internally on the issuance of these proposed regulations and three LOAs under section 101(a)(5)(A) of the MMPA.

National Marine Sanctuaries Act

There are no national marine sanctuaries in the Study Area. Therefore, no consultation under the National Marine Sanctuaries Act is required.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review its proposed actions with respect to potential impacts on the human environment. NMFS is a cooperating agency on the 2026 MITT Draft SEIS/OEIS and has worked extensively with the Navy in developing the document. Accordingly, NMFS plans to rely upon the 2026 MITT Draft SEIS/OEIS for the Study Area, provided our independent evaluation of the document finds that it includes adequate information analyzing the effects on the human environment of issuing regulations and

LOAs under the MMPA. The 2026 MITT Draft SEIS/OEIS was made available for public comment at: *https://www.nepa.navy.mil/mitteis/,* which also provides additional information about the NEPA process, from March 2, 2026, through May 1, 2026. We will review all comments prior to concluding our NEPA process and making a final decision on the MMPA rulemaking and request for LOAs.

Executive Order 12866

This proposed rule is significant under Executive Order 12866.

The Action Proponents initiated a request for a MMPA incidental take authorization, which suggests that the agencies are relying on NMFS' authorization to proceed with their proposed action. While a MMPA incidental take authorization is not a pre-condition for conducting the proposed action (the Action Proponents are ultimately responsible for this decision), it would provide the Action Proponents with two key benefits: (1) a legal exemption from the MMPA's general prohibition on the take of marine mammals (assuming the Action Proponents comply with the terms and conditions of their authorization); and (2) regulatory certainty because the Action Proponents will be fully cognizant of NMFS' expectations in regard to the steps needed to be taken to address risks to marine mammals and how to minimize its legal exposure under the statute. The Action Proponents will also incur costs to comply with certain mitigation and monitoring requirements, as required by the MMPA. Despite the additional costs of such measures, the costs related to MMPA compliance for the military readiness activities are small compared with expenditures on other aspects of military readiness, and direct compliance costs of the regulatory requirements are unlikely to result in material impacts to the activities.

In addition, cost savings may be generated by the reduced administrative effort required to obtain a LOA under the framework established by a rule compared to what would be required to obtain annual IHAs under section 101(a)(5)(D). Absent the rule, to attain equivalent compliance with the MMPA, the Action Proponents would need to apply for IHAs annually over the 7-year duration of the rule. Although not monetized, NMFS' analysis indicates that the upfront work associated with the rule (*e.g.,* analyses, modeling, process for obtaining LOA valid for 7 years) likely saves significant time and money.

Executive Order 14192

This proposed rule is not an E.O. 14192 regulatory action. It is expressly exempt because it is related to military readiness.

Paperwork Reduction Act

The Action Proponents are federal applicants and not subject to the PRA.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Action Proponents are the only entities that would be affected by this proposed rulemaking, and the Action Proponents are not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, would be applicable only to the Action Proponents. NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect only the Action Proponents and not any small entities, NMFS concludes that the action would not result in a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 218

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: November 16, 2026.

Samuel D. Rauch III,

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

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 218 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.*

■ 2. Revise subpart J of part 218 to read as follows:

Subpart J—Taking and Importing Marine Mammals; Military Readiness Activities in the Mariana Islands Training and Testing Study Area

Sec.

218.90 Specified activity and geographical region.
218.91 Effective dates.
218.92 Permissible methods of taking.
218.93 Prohibitions.
218.94 Mitigation requirements.
218.95 Requirements for monitoring and reporting.
218.96–218.99 [Reserved]

Subpart J—Taking and Importing Marine Mammals; Military Readiness Activities in the Mariana Islands Training and Testing Study Area

§ 218.90 Specified activity and geographical region.

(a) Regulations in this subpart apply to the U.S. Navy (including the U.S. Marine Corps; Navy), U.S. Coast Guard (Coast Guard), U.S. Air Force, and U.S. Army (collectively referred to as the ''Action Proponents'') for the taking of marine mammals that occurs in the area described in paragraph (b) of this section and that occurs incidental to the activities listed in paragraph (c) of this section. Requirements imposed on the Action Proponents must be implemented by those persons they authorize or funds to conduct activities on their behalf.

(b) The incidental taking of marine mammals by the Action Proponents under this subpart may be authorized in Letters of Authorization (LOAs) only if it occurs within the Mariana Island Training and Testing (MITT) Study Area. The Study Area comprises three components: the Mariana Islands Range Complex (MIRC); additional areas on the high seas; and a transit corridor between the MIRC and the Hawaii Range Complex (HRC). The MIRC contains the waters south of Guam to north of Pagan (Commonwealth of the

Northern Mariana Islands (CNMI)), and from the Pacific Ocean east of the Mariana Islands to the Philippine Sea to the west, encompassing 501,873 square nautical miles of open ocean. The additional areas of the high seas include the areas to the north of the MIRC that is within the U.S. Exclusive Economic Zone of the CNMI and the areas to the west of the MIRC. The transit corridor is outside the geographic boundaries of the MIRC and represents a great circle route (*i.e.,* the shortest distance) across the high seas for Navy ships transiting between the MIRC and the HRC. Additionally, the Study Area includes pierside locations in the Apra Harbor Naval Complex. Figure 1 to this paragraph (b) shows the location of the Study Area.

(c) The taking of marine mammals by the Action Proponents is only authorized if it occurs incidental to the Action Proponents conducting military readiness activities, including the following:

(1) Anti-submarine warfare;

(2) Mine warfare;

(3) Surface warfare;

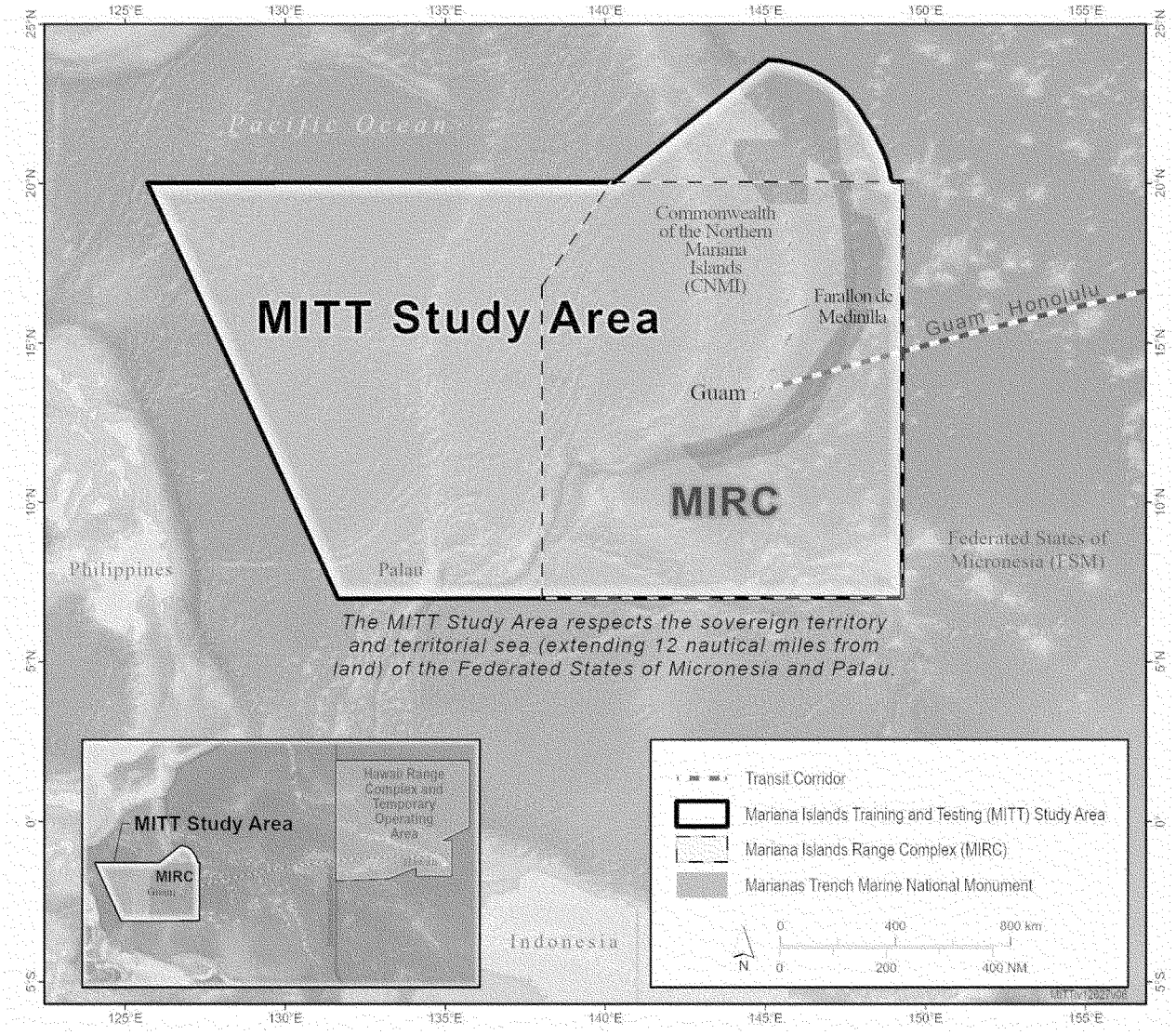
(4) Unmanned systems;

(5) Vessel evaluation; and

(6) Other training and testing activities.

BILLING CODE 3510–22–P

Figure 1 to Paragraph (b)—Study Area



BILLING CODE 3510–22–C

§ 218.91 Effective dates.

Regulations in this subpart are effective from July 31, 2027, through July 30, 2034.

§ 218.92 Permissible methods of taking.

(a) Under LOAs issued pursuant to § 216.106 of this chapter and this subpart, the Holder of the LOA (hereinafter ''Action Proponent'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.90(b) by Level A harassment and Level B harassment associated with the use of active sonar and other acoustic sources and explosives, provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the applicable LOA.

(b) The Action Proponents incidental take of marine mammals by the activities listed in § 218.90(c) is limited to the following species:

TABLE 1 TO PARAGRAPH (b)

Species	Stock
Blue Whale	Central North Pacific.
Bryde's Whale	No stock designation (NSD).
Fin Whale	NSD.
Humpback Whale	Western North Pacific.
Minke Whale	NSD.
Omura's Whale	NSD.
Sei Whale	NSD.
Sperm Whale	NSD.
Dwarf Sperm Whale	NSD.
Pygmy Sperm Whale	NSD.
Blainville's Beaked Whale	NSD.
Deraniyagala Beaked Whale	NSD.
Ginkgo-toothed Beaked Whale	NSD.
Goose-Beaked Whale	NSD.
Longman's Beaked Whale	NSD.
False Killer Whale	NSD.
Killer Whale	NSD.
Melon-Headed Whale	NSD.
Pygmy Killer Whale	NSD.
Short-Finned Pilot Whale	NSD.
Bottlenose Dolphin	NSD.
Fraser's Dolphin	NSD.
Pantropical Spotted Dolphin	NSD.
Risso's Dolphin	NSD.
Rough-Toothed Dolphin	NSD.
Spinner Dolphin	NSD.
Striped Dolphin	NSD.

§ 218.93 Prohibitions.

(a) Except incidental take described in § 218.92 and authorized by a LOA issued pursuant to § 216.106 of this chapter and this subpart, it shall be unlawful for any person to do the following in connection with the activities described in this subpart:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and this subpart;

(2) Take any marine mammal not specified in § 218.92(b);

(3) Take any marine mammal specified in § 218.92(b) in any manner other than as specified in § 218.92(a) and the LOAs; or

(4) Take a marine mammal specified in § 218.92(b) after NMFS determines such taking results in more than a negligible impact on the species or stock of such marine mammal.

(b) [Reserved]

§ 218.94 Mitigation requirements.

(a) When conducting the activities identified in § 218.90(c), the mitigation measures contained in this section and any LOA issued pursuant to § 216.106 of this chapter and under this subpart must be implemented by Action Proponent personnel or contractors who are trained according to the requirements in the LOA. If Action Proponent contractors are serving in a role similar to Action Proponent personnel, Action Proponent contractors must follow the mitigation applicable to Action Proponent personnel. These mitigation measures include, but are not limited to:

(1) *Activity-based mitigation.* Activity-based mitigation is mitigation that the Action Proponents must implement whenever and wherever an applicable military readiness activity takes place within the Study Area. The Action Proponents must implement the mitigation described in paragraphs (a)(1)(i) through (a)(1)(xviii) of this section, except as provided in paragraph (a)(1)(xix) through (a)(1)(xx) of this section.

(i) *Active acoustic sources with power down and shut down capabilities.* For active acoustic sources with power down and shutdown capabilities (low-frequency active sonar ≥200 dB, mid-frequency active sonar sources that are hull mounted on a surface ship (including surfaced submarines), and broadband and other active acoustic sources >200 dB):

(A) *Mitigation zones and requirements.* During use of active acoustic sources with power down and shutdown capabilities, the following mitigation zone requirements apply:

(*1*) At 1,000 yd (914.4 m) from a marine mammal, Action Proponent personnel must power down active acoustic sources by 6 decibels (dB) total.

(*2*) At 500 yd (457.2 m) from a marine mammal, Action Proponent personnel must power down active acoustic sources by an additional 4 dB (10 dB total).

(*3*) At 200 yd (182.9 m) from a marine mammal, Action Proponent personnel must shut down active acoustic sources.

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in or on one of the following: aircraft; pierside, moored, or anchored vessel; underway vessel with space/crew restrictions (including small boats); or underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.

(*2*) Two Lookouts on an underway vessel without space or crew restrictions.

(*3*) Lookouts must use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (*e.g.,* while maneuvering on station).

(*2*) Action Proponent personnel must observe the applicable mitigation zone

for marine mammals during use of active acoustic sources.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(ii) *Active acoustic sources with shut down capabilities only (no power down capability).* For active acoustic sources with shut down capabilities only (no power down capability) (low-frequency active sonar <200 dB, mid-frequency active sonar sources that are not hull mounted on a surface ship (*e.g.,* dipping sonar, towed arrays), high-frequency active sonar and broadband and other active acoustic sources <200 dB):

(A) *Mitigation zones and requirements.* During use of active acoustic sources with shut down capabilities only, the following mitigation zone requirements apply:

(*1*) At 200 yd (182.9 m) from a marine mammal, Action Proponent personnel must shut down active acoustic sources.

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in or on one of the following: aircraft; pierside, moored, or anchored vessel; underway vessel with space/crew restrictions (including small boats); or underway vessel already participating in the event that is escorting (and has positive control over sources used, deployed, or towed by) an unmanned platform.

(*2*) Two Lookouts on an underway vessel without space or crew restrictions.

(*3*) Lookouts must use information from passive acoustic detections to inform visual observations when passive acoustic devices are already being used in the event.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of using active acoustic sources (*e.g.,* while maneuvering on station).

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during use of active acoustic sources.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing or powering up active sonar transmission). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(iii) *Weapons firing noise.* For weapons firing noise:

(A) *Mitigation zones and requirements.* During explosive and non-explosive large-caliber (57 mm and larger) gunnery firing noise (surface-to-surface and surface-to-air), the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease weapons firing if a marine mammal is sighted within 30 degrees on either side of the firing line out to 70 yd (64 m) from the gun muzzle (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a vessel.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of large-caliber gun firing (*e.g.,* during target deployment).

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals during large-caliber gun firing.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing explosive and non-explosive large-caliber gunnery firing noise (surface-to-surface and surface-to-air)). The wait period for this activity is 30 minutes.

(iv) *Explosive bombs.* For explosive bombs:

(A) *Mitigation zones and requirements.* During the use of explosive bombs of any net explosive weight (NEW), the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease explosive bomb use if a marine mammal is sighted within 2,500 yd (2,286 m) from the intended target (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of explosive bomb delivery (*e.g.,* when arriving on station).

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during explosive bomb delivery. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive bombs of any NEW). The wait period for this activity is 10 minutes.

(v) *Explosive gunnery.* For explosive gunnery:

(A) *Mitigation zones and requirements.* During air-to-surface medium-caliber (larger than 50 caliber and less than 57 mm), surface-to-surface medium-caliber, and surface-to-surface large-caliber explosive gunnery, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease air-to-surface medium-caliber use if a marine mammal is sighted within 200 yd (182.9 m) of the intended impact location (cease fire).

(*2*) Action Proponent personnel must cease surface-to-surface medium-caliber use if a marine mammal is sighted

within 600 yd (548.6 m) of the intended impact location (cease fire).

(*3*) Action Proponent personnel must cease surface-to-surface large-caliber use if a marine mammal is sighted within 1,000 yd (914.4 m) of the intended impact location (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a vessel or in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of gun firing (*e.g.,* while maneuvering on station).

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during gunnery fire. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing air-to-surface medium-caliber, surface-to-surface medium-caliber, surface-to-surface large-caliber explosive gunnery). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(vi) *Explosive mine countermeasure and neutralization (no divers).* For explosive mine countermeasure and neutralization (no divers):

(A) *Mitigation zones and requirements.* During explosive mine countermeasure and neutralization using 0.1–5 pound (lb) (0.05–2.3 kilogram (kg)) NEW and >5 lb (2.3 kg) NEW, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease 0.1–5 lb (0.05–2.3 kg) NEW use if a marine mammal is sighted within 600 yd (548.6 m) from the detonation site (cease fire).

(*2*) Action Proponent personnel must cease >5 lb (2.3 kg) NEW use if a marine mammal is sighted within 2,100 yd (1,920.2 m) from the detonation site (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a vessel or in an aircraft during 0.1–5 lb (0.05–2.3 kg) NEW use.

(*2*) Two Lookouts, one on a small boat and one in an aircraft during >5 lb (2.3 kg) NEW use.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations (*e.g.,* while maneuvering on station; typically, 10 or 30 minutes depending on fuel constraints).

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 10 or 30 minutes (depending on fuel constraints) for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing explosive mine countermeasure and neutralization). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained.

(vii) *Explosive mine neutralization (with divers).* For explosive mine neutralization (with divers):

(A) *Mitigation zones and requirements.* During explosive mine neutralization (with divers) using any NEW under positive control and any NEW using time-delay fuses, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease use of any NEW under positive control if a marine mammal is sighted within 500 yd (457.2 m) of the detonation site (cease fire).

(*2*) Action Proponent personnel must cease use of any NEW using time-delay fuses if a marine mammal is sighted within 1,000 yd (914.4 m) of the detonation site (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) Lookouts in two small boats (one Lookout per boat) or one small boat and one rotary-wing aircraft (with one Lookout each), and one Lookout on shore for shallow-water events during use of any NEW under positive control.

(*2*) Four Lookouts in two small boats (two Lookouts per boat) and one additional Lookout in an aircraft, if used in the event, during use of any NEW using time-delay fuses.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Time-delay devices must be set not to exceed 10 minutes.

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations or fuse initiation for positive control events (*e.g.,* while maneuvering on station) or for 30 minutes prior to time-delay events.

(*3*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during detonations or fuse initiation. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*4*) When practical based on mission, safety, and environmental conditions:

(*i*) Boats must observe from the mitigation zone radius mid-point.

(*ii*) When two boats are used, boats must observe from opposite sides of the mine location.

(*iii*) Platforms must travel a circular pattern around the mine location.

(*iv*) Boats must have one Lookout observe inward toward the mine location and one Lookout observe outward toward the mitigation zone perimeter.

(*v*) Divers must be part of the Lookout Team.

(*5*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for 30 minutes for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action

Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing explosive mine neutralization (with divers) using any NEW under positive control and any NEW using time-delay fuses). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(viii) *Explosive missiles and rockets.* For explosive missiles and rockets:

(A) *Mitigation zones and requirements.* During the use of explosive missiles and rockets using 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) and >20–500 lb (9.1–226.8 kg) NEW (air-to-surface), the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) use if a marine mammal is sighted within 900 yd (823 m) of the intended impact location (cease fire).

(*2*) Action Proponent personnel must cease >20–500 lb (9.1–226.8 kg) NEW (air-to-surface) use if a marine mammal is sighted within 2,000 yd (1,828.8 m) of the intended impact location (cease fire).

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of missile or rocket delivery (*e.g.,* during a fly-over of the mitigation zone).

(*2*) Action Proponent personnel must observe the applicable mitigation zone for marine mammals during missile or rocket delivery. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive missiles and rockets using 0.6–20 lb (0.3–9.1 kg) NEW (air-to-surface) and >20–500 lb (9.1–226.8 kg) NEW (air-to-surface)). The wait period for this activity is 30 minutes for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(ix) *Research-based sub-surface explosives.* For research-based sub-surface explosives:

(A) *Mitigation zones and requirements.* During the use of 0.1–5 lb (0.05–2.3 kg) NEW sub-surface explosives used in research applications, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease use of 0.1–5 lb (0.05–2.3 kg) NEW sub-surface explosives used in research applications if a marine mammal is sighted within 600 yd (548.6 m) of the device or detonation sites (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a small boat or in an aircraft.

(*2*) Conduct passive acoustic monitoring for marine mammals when passive acoustic devices are already being used prior to the initial start of detonations; use information from detections to assist visual observations.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of detonations.

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals during detonations. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of 0.1–5 lb (0.05–2.3 kg) NEW sub-surface explosives used in research applications). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(x) *Explosive torpedoes.* For explosive torpedoes:

(A) *Mitigation zones and requirements.* During the use of explosive torpedoes of any NEW, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease use of explosive torpedoes of any NEW if a marine mammal is sighted within 2,100 yd (1,920.2 m) of the intended impact location (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in an aircraft.

(*2*) Conduct passive acoustic monitoring for marine mammals; use information from detections to assist visual observations.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations immediately prior to the initial start of detonations (*e.g.,* during target deployment).

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals and jellyfish aggregations during torpedo launches. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) After the event, when practical, Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of

the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of explosive torpedoes of any NEW). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(xi) *Sinking Exercises.* For Sinking Exercises (SINKEX):

(A) *Mitigation zones and requirements.* During SINKEX using any NEW, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease SINKEX of any NEW if a marine mammal is sighted within 2.5 nmi (4.6 km) of the target ship hull (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) Two Lookouts: one on a vessel and one in an aircraft.

(*2*) Conduct passive acoustic monitoring for marine mammals when passive acoustic devices are already being used prior to the initial start of detonations; use information from detections to assist visual observations.

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) During aerial observations for 90 minutes prior to the initial start of weapon firing, Action Proponent personnel must observe the mitigation zone for marine mammals, floating vegetation, and jellyfish aggregations.

(*2*) From the vessel during weapon firing, and from the aircraft and vessel immediately after planned or unplanned breaks in weapon firing of more than 2 hours, Action Proponent personnel must observe the mitigation zone for marine mammals. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(*3*) Action Proponent personnel must observe the detonation vicinity for injured or dead marine mammals for 2 hours after sinking the vessel or until sunset, whichever comes first. If any injured or dead marine mammals are observed, Action Proponent personnel must follow established incident reporting procedures.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing SINKEX). The wait period for this activity is 30 minutes.

(xii) *Aerial-deployed mines and non-explosive bombs.* For aerial-deployed mines and non-explosive bombs:

(A) *Mitigation zones and requirements.* During the use of non-explosive aerial-deployed mines and non-explosive bombs, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease using non-explosive aerial-deployed mines and non-explosive bombs if a marine mammal is sighted within 1,000 yd (914.4 m) of the intended target (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the initial start of mine or bomb delivery (*e.g.,* when arriving on station).

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals during mine or bomb delivery. If a marine mammal is visibly injured or killed as a result of detonation, explosives use in the event must be suspended immediately.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive aerial-deployed mines and non-explosive bombs). The wait period for this activity is 10 minutes.

(xiii) *Non-explosive gunnery.* For non-explosive gunnery:

(A) *Mitigation zones and requirements.* During the use of non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance, the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance use if a marine mammal is sighted within 200 yd (182.9 m) of the intended impact location (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a vessel or in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals and floating vegetation immediately prior to the start of gun firing (*e.g.,* while maneuvering on station).

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals during gunnery firing.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive surface-to-surface large-caliber ordnance, non-explosive surface-to-surface and air-to-surface medium-caliber ordnance, and non-explosive surface-to-surface and air-to-surface small-caliber ordnance). The wait period for this activity is 30 minutes for activities conducted from vessels and for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(xiv) *Non-explosive missiles and rockets.* For non-explosive missiles and rockets:

(A) *Mitigation zones and requirements.* During the use of non-explosive missiles and rockets (air-to-surface), the following mitigation zone requirements apply:

(*1*) Action Proponent personnel must cease non-explosive missile and rocket (air-to-surface) use if a marine mammal is sighted within 900 yd (823 m) of the intended impact location (cease fire).

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout in an aircraft.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine

mammals and floating vegetation immediately prior to the start of missile or rocket delivery (*e.g.,* during a fly-over of the mitigation zone).

(*2*) Action Proponent personnel must observe the mitigation zone for marine mammals during missile or rocket delivery.

(D) *Commencement or recommencement conditions.* Action Proponent personnel must ensure one of the commencement or recommencement conditions in paragraph (a)(1)(xviii) of this section is met prior to the initial start of the activity (by delaying the start) or during the activity (by not recommencing use of non-explosive missiles and rockets (air-to-surface)). The wait period for this activity is 30 minutes for activities conducted by aircraft that are not fuel constrained and 10 minutes for activities involving aircraft that are fuel constrained (*e.g.,* rotary-wing aircraft, fighter aircraft).

(xv) *Manned surface vessels.* For manned surface vessels:

(A) *Mitigation zones and requirements.* During the use of manned surface vessels, including surfaced submarines, the following mitigation zone requirements apply:

(*1*) Underway manned surface vessels must maneuver themselves (which may include reducing speed) to maintain the following distances as mission and circumstances allow:

(*i*) 500 yd (457.2 m) from whales.

(*ii*) 200 yd (182.9 m) from other marine mammals.

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One or more Lookouts on manned underway surface vessels in accordance with the most recent navigation safety instruction.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to manned surface vessels getting underway and while underway.

(*2*) [Reserved]

(xvi) *Unmanned vehicles.* For unmanned vehicles:

(A) *Mitigation zones and requirements.* During the use of unmanned surface vehicles and unmanned underwater vehicles already being escorted (and operated under positive control) by a manned surface support vessel, the following mitigation zone requirements apply:

(*1*) A surface support vessel that is already participating in the event and has positive control over the unmanned vehicle must maneuver the unmanned vehicle, which may include reducing its speed, to ensure it maintains the following distances as mission and circumstances allow:

(*i*) 500 yd (457.2 m) from whales.

(*ii*) 200 yd (182.9 m) from other marine mammals.

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on a surface support vessel that is already participating in the event and has positive control over the unmanned vehicle.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to unmanned vehicles getting underway and while underway.

(*2*) [Reserved]

(xvii) *Towed in-water devices.* For towed in-water devices:

(A) *Mitigation zones and requirements.* During the use of in-water devices towed by an aircraft, a manned surface vessel, or an Unmanned Surface Vehicle or Unmanned Underwater Vehicle already being escorted (and operated under positive control) by a manned surface vessel, the following mitigation zone requirements apply:

(*1*) Manned towing platforms or surface support vessels already participating in the event that have positive control over an unmanned vehicle that is towing an in-water device must maneuver itself or the unmanned vehicle, which may include reducing speed, to ensure towed in-water devices maintain the following distances as mission and circumstances allow:

(*i*) 250 yd (228.6 m) from marine mammals.

(*ii*) [Reserved]

(*2*) [Reserved]

(B) *Lookout requirements.* The following Lookout requirements apply:

(*1*) One Lookout on the manned towing vessel or aircraft or on a surface support vessel that is already participating in the event and has positive control over an unmanned vehicle that is towing an in-water device.

(*2*) [Reserved]

(C) *Mitigation zone observation.* Action Proponent personnel must observe the mitigation zones in accordance with the following:

(*1*) Action Proponent personnel must observe the mitigation zone for marine mammals immediately prior to and while in-water devices are being towed.

(*2*) [Reserved]

(xviii) *Commencement or recommencement conditions.* Action Proponents must not commence or recommence an activity after a marine mammal is observed within a relevant mitigation zone until one of the following conditions has been met:

(A) *Observed exiting.* A Lookout observes the animal exiting the mitigation zone;

(B) *Concluded to have exited.* A Lookout concludes that the animal has exited the mitigation zone based on its observed course, speed, and movement relative to the mitigation zone;

(C) *Clear from additional sightings.* A Lookout affirms the mitigation zone has been clear from additional sightings for the activity-specific wait period; or

(D) *Platform or target transit.* For mobile events, the platform or target has transited a distance equal to double the mitigation zone size beyond the location of the last sighting.

(xix) *Exceptions to activity-based mitigation for acoustic and explosive stressors and non-explosive ordnance.* Activity-based mitigation for acoustic and explosive stressors and non-explosive ordnance will not apply to:

(A) *Not operated under positive control.* Acoustic sources not operated under positive control (*e.g.,* moored oceanographic sources);

(B) *Safety of navigation.* Acoustic sources used for safety of navigation (*e.g.,* fathometers);

(C) *Aircraft operating at high altitudes.* Acoustic sources used or deployed by aircraft operating at high altitudes (*e.g.,* bombs deployed from high altitude (since personnel cannot effectively observe the surface of the water));

(D) *Unmanned platforms.* Acoustic sources used, deployed, or towed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the source;

(E) *Submerged submarines.* Acoustic sources used by submerged submarines (*e.g.,* sonar (since they cannot conduct visual observation));

(F) *De minimis sources.* De minimis acoustic sources (*e.g.,* those >200 kHz);

(G) *Unattended sources.* Unattended sources (*e.g.,* moored buoys used for acoustic and oceanographic research);

(H) *Bow- or wake-riding.* Vessel-based, unmanned vehicle-based, or towed in-water acoustic sources when marine mammals (*e.g.,* dolphins) are determined to be intentionally swimming at the bow or alongside or directly behind the vessel, vehicle, or device (*e.g.,* to bow-ride or wake-ride);

(I) *Aircraft operating at high altitudes.* Explosives deployed by aircraft operating at high altitudes;

(J) *Submerged submarines.* Explosives deployed by submerged submarines, except for explosive torpedoes;

(K) *Aerial targets.* Explosives deployed against aerial targets;

(L) *Vessel-launched missile or rocket events.* Explosives during vessel-launched or rocket events;

(M) *De minimis.* Explosives used at or below the de minimis threshold;

(N) *Unmanned platforms.* Explosives deployed by unmanned platforms except when escort vessels are already participating in the event and have positive control over the explosive;

(O) *Aircraft operating at high altitudes.* Non-explosive ordnance deployed by aircraft operating at high altitudes;

(P) *Aerial targets and land-based targets.* Non-explosive ordnance deployed against aerial targets and land-based targets;

(Q) *Vessel-launched missile or rocket events.* Non-explosive ordnance deployed during vessel-launched missile or rocket events; and

(R) *Unmanned platforms.* Non-explosive ordnance deployed by unmanned platforms except when escort vessels are already participating in the event and have positive control over ordnance deployment.

(xx) *Exceptions to activity-based mitigation for physical disturbance and strike stressors.* Activity-based mitigation for physical disturbance and strike stressors will not be implemented:

(A) *Submerged submarines.* By submerged submarines;

(B) *Unmanned vehicles.* By unmanned vehicles except when escort vessels are already participating in the event and have positive control over the unmanned vehicle movements;

(C) *Bow- or wake-riding.* When marine mammals (*e.g.,* dolphins) are determined to be intentionally swimming at the bow, alongside the vessel or vehicle, or directly behind the vessel or vehicle (*e.g.,* to bow-ride or wake-ride); and

(D) *Mission requirements.* When impractical based on mission requirements (*e.g.,* during certain aspects of amphibious exercises).

(2) *Geographic mitigation areas.* The Action Proponents must implement the geographic mitigation requirements of this section.

(i) *Marpi Reef mitigation area.* Figure 1 to paragraph (a)(2) shows the location of the mitigation areas. Within the Marpi Reef mitigation area, the following requirements apply:

(A) *Surface ship hull-mounted mid-frequency active sonar.* From December 1 through April 30, the Action Proponents must not use more than 20 combined hours of mid-frequency 1 (MF1) and MF1 continuous (MF1C) surface ship hull-mounted mid-frequency active sonar during training and testing within the Marpi Reef and Chalan Kanoa Reef mitigation area annually.

(B) *In-water explosives.* The Action Proponents must not detonate in-water explosives, including underwater explosives and explosives deployed against surface targets, within the mitigation area year-round.

(C) *Seasonal awareness notification message.* The Navy must issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Marpi Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy must instruct vessels to remain vigilant to the presence of humpback whales that, when concentrated seasonally, may become vulnerable to vessel strikes. Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of activity-based mitigation.

(ii) *Chalan Kanoa Reef mitigation area.* Figure 1 to paragraph (a)(2) shows the location of the mitigation areas. Within the Chalan Kanoa Reef mitigation area, the following requirements apply:

(A) *Surface ship hull-mounted mid-frequency active sonar.* From December 1 through April 30, the Action Proponents must not use more than 20 combined hours of MF1 and MF1C surface ship hull-mounted mid-frequency active sonar during training and testing within the Marpi Reef and Chalan Kanoa Reef mitigation area annually.

(B) *In-water explosives.* The Action Proponents must not detonate in-water explosives, including underwater explosives and explosives deployed against surface targets, within the mitigation area year-round.

(C) *Seasonal awareness notification message.* The Navy must issue an annual seasonal awareness notification message to alert ships and aircraft operating in the Chalan Kanoa Reef Mitigation Area to the possible presence of increased concentrations of humpback whales from December 1 through April 30. To maintain safety of navigation and to avoid interactions with large whales during transits, the Navy must instruct vessels to remain vigilant to the presence of humpback whales that, when concentrated seasonally, may become vulnerable to vessel strikes. Platforms must use the information from the awareness notification messages to assist their visual observation of applicable mitigation zones during training and testing activities and to aid in the implementation of activity-based mitigation.

(iii) *Agat Bay mitigation area.* Figure 1 to paragraph (a)(2) shows the location of the mitigation areas. Within the Agat Bay mitigation area, the following requirements apply:

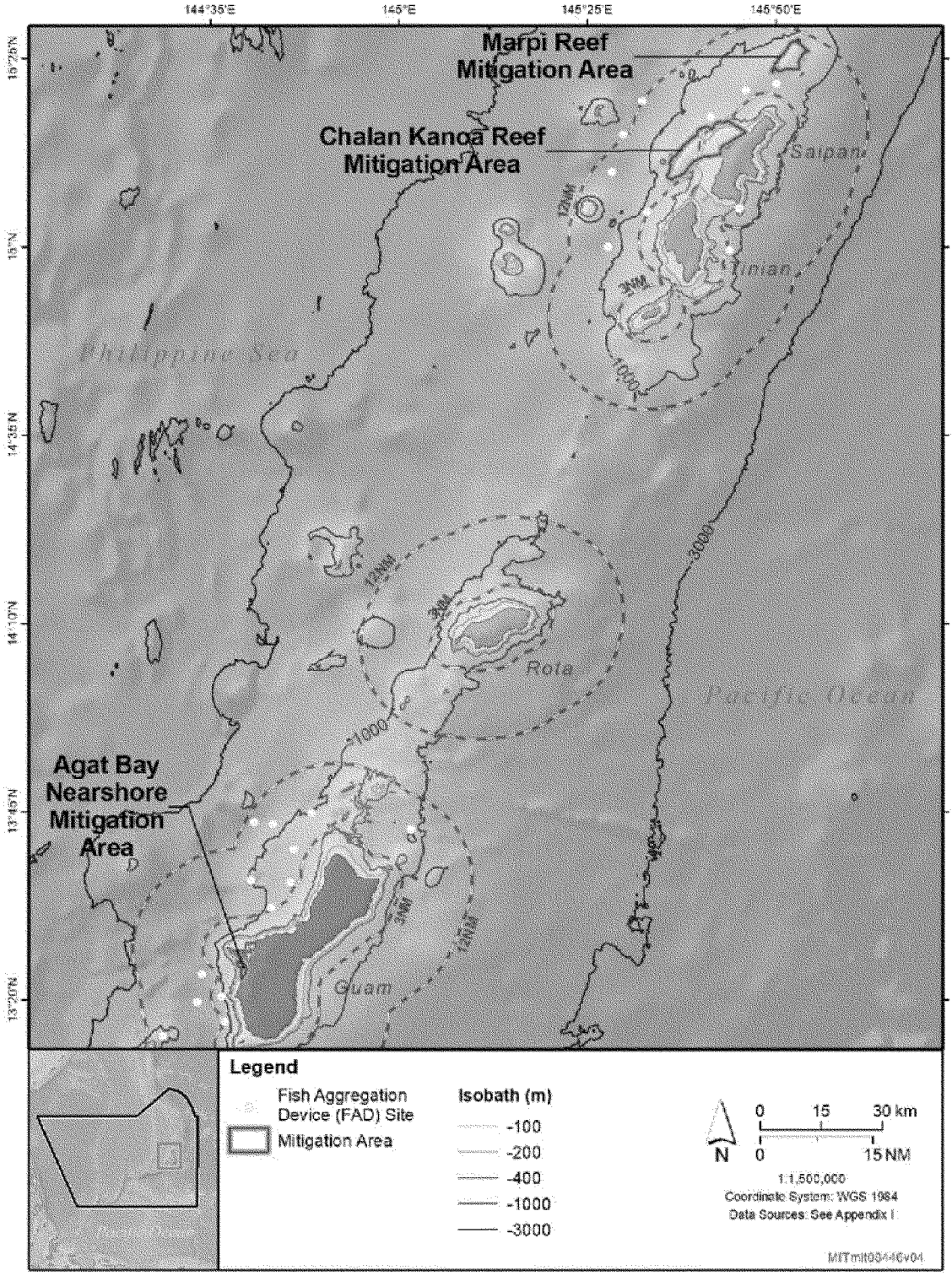
(A) *Surface ship hull-mounted mid-frequency active sonar.* The Action Proponents must not use MF1 or MF1C surface ship hull-mounted mid-frequency active sonar during training and testing annually within the mitigation area year-round.

(B) *In-water explosives.* The Action Proponents must not detonate in-water explosives, including underwater explosives and explosives deployed against surface targets, within the mitigation area year-round.

(iv) *National security requirement.* Should national security require the Action Proponents to exceed a requirement(s) in paragraph (a)(2) of this section, Action Proponent personnel must provide NMFS with advance notification and include the information (*e.g.,* sonar hours, explosives usage) in its annual activity reports submitted to NMFS.

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Figure 1 to Paragraph (a)(2)—Geographic Mitigation Areas for Marine Mammals in the Study Area



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(b) [Reserved]

§ 218.95 Requirements for monitoring and reporting.

The Action Proponents must implement the following monitoring and reporting requirements when conducting the specified activities:

(a) *Notification of take.* If the Action Proponent reasonably believes that the specified activity identified in § 218.90(c) resulted in the mortality or serious injury of any marine mammals or in any Level A harassment or Level B harassment of marine mammals not identified in this subpart, then the Action Proponent shall notify NMFS immediately or as soon as operational security considerations allow.

(b) *Monitoring and reporting under the LOAs.* The Action Proponents must conduct all monitoring needed to produce the reports in paragraphs (f) and (g) of this section consistent with the requirements in the LOA. The Action Proponents must also conduct

all reporting required in paragraphs (c) through (h) of this section consistent with requirements in the LOA.

(c) *Notification of injured, live stranded, or dead marine mammals.* Action Proponent personnel must abide by the Notification and Reporting Plan, which sets out notification, reporting, and other requirements when dead, injured, or live stranded marine mammals are detected. The Notification and Reporting Plan is available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.*

(d) *Annual MITT Study Area marine species monitoring report.* The Action Proponents must submit an annual Study Area marine species monitoring report describing the implementation and results from the previous calendar year. Data collection methods must be standardized across range complexes and the Study Area to allow for comparison in different geographic locations. The draft report must be submitted to the Director, Office of Protected Resources, NMFS, annually. NMFS will submit comments or questions on the report, if any, within 3 months of receipt. The report will be considered final after the Action Proponents have addressed NMFS' comments or 3 months after submittal of the draft if NMFS does not provide comments on the draft report. The report must describe progress of knowledge made with respect to intermediate scientific objectives within the Study Area associated with the Integrated Comprehensive Monitoring Program (ICMP). Similar study questions must be treated together so that progress on each topic can be summarized across all Navy ranges. The report need not include analyses and content that do not provide direct assessment of cumulative progress on the monitoring plan study questions.

(e) *Quick look reports.* In the event that the sound levels analyzed in promulgation of these regulations are exceeded within a given reporting year, the Action Proponents must submit a preliminary report(s) detailing the exceedance within 21 days after the anniversary date of issuance of the LOAs.

(f) *Annual MITT Training and Testing Reports.* Regardless of whether analyzed sound levels were exceeded, the Navy must submit a detailed report (MITT Annual Training Exercise Report and Testing Activity Report) to the Director, Office of Protected Resources, NMFS annually. NMFS will submit comments or questions on the reports, if any, within 1 month of receipt. The reports will be considered final after the Action Proponents have addressed NMFS' comments or 1 month after submittal of the drafts if NMFS does not provide comments on the draft reports. The annual reports must contain a summary of all sound sources used (total hours or quantity (per the LOA) of each bin of sonar or other non-impulsive source; total annual number of each type of explosive exercises; and total annual expended/detonated rounds (missiles, bombs, sonobuoys, *etc.*) for each explosive bin). The annual reports must also contain cumulative sonar and explosive use quantity from previous years' reports through the current year. Additionally, if there were any changes to the sound source allowance in the reporting year or cumulatively, the reports must 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 2026 MITT Draft EIS/OEIS and MMPA final rule. The annual reports must also include the details regarding specific requirements associated with the mitigation areas listed in paragraph (f)(4) of this section. The analysis in the detailed report must be based on the accumulation of data from the current year's report and data collected from previous annual reports. The detailed reports shall also contain special reporting for the Marpi Reef and Chalan Kanoa Reef Mitigation Area. The final annual/close-out reports at the conclusion of the authorization period (year 7) will also serve as the comprehensive close-out reports and include both the final year annual incidental take compared to annual authorized incidental take as well as a cumulative 7-year incidental take compared to 7-year authorized incidental take. The MITT Annual Training and Testing Reports must include the specific information described in the LOAs.

(1) *Major Training Exercises (MTEs).* This section of the report must contain the following information for MTEs completed that year in the Study Area.

(i) *Exercise information (for each MTE).* For exercise information (for each MTE):

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sonar sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, and other platforms participating in each exercise.

(G) Total hours of all active sonar source operation.

(H) Total hours of each active sonar source bin.

(I) Wave height (high, low, and average) during exercise.

(ii) *Individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented.* For individual marine mammal sighting information for each sighting in each exercise where mitigation was implemented:

(A) Date, time, and location of sighting.

(B) Species (if not possible, indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Initial Detection Sensor (*e.g.,* passive sonar, Lookout).

(E) Indication of specific type of platform observation was made from.

(F) Length of time observers maintained visual contact with marine mammal.

(G) Sea state.

(H) Visibility.

(I) Sound source in use at the time of sighting.

(J) Indication of whether animal was less than 200 yd (182.9 m), 200 to 500 yd (182.9 to 457.2 m), 500 to 1,000 yd (457.2 m to 914.4 m), 1,000 to 2,000 yd (914.4 m to 1,828.8 m), or greater than 2,000 yd (1,828.8 m) from sonar source.

(K) Whether operation of sonar sensor was delayed or sonar was powered or shut down and the length of the delay.

(L) If source in use was hull-mounted, true bearing of animal from the vessel, true direction of vessel's travel, and estimation of animal's motion relative to vessel (*i.e.,* opening, closing, parallel).

(M) Lookouts must report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*) and if any calves were present.

(iii) *An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed.* For an evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to minimize the received level to which marine mammals may be exposed:

(A) This evaluation must identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(B) [Reserved]

(2) *Sinking Exercises.* This section of the report must include the following

information for each SINKEX completed that year in the Study Area:

(i) *Exercise information.* For exercise information:

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by Lookouts before, during, and after exercise.

(D) Total number and types of explosive source bins detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, and other platforms participating in exercise.

(H) Wave height in feet (high, low, and average) during exercise.

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) *Individual marine mammal observation (by Action Proponent Lookouts) information for each sighting where mitigation was implemented.* For individual marine mammal observation (by Action Proponent Lookouts) information for each sighting where mitigation was implemented:

(A) Date/Time/Location of sighting.

(B) Species (if not possible, indicate whale, dolphin, or pinniped).

(C) Number of individuals.

(D) Initial detection sensor (*e.g.,* sonar or Lookout).

(E) Length of time observers maintained visual contact with marine mammal.

(F) Sea state.

(G) Visibility.

(H) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(I) Distance of marine mammal from actual detonations (or target spot if not yet detonated): Less than 200 yd (182.9 m), 200 to 500 yd (182.9 to 457.2 m), 500 to 1,000 yd (457.2 m to 914.4 m), 1,000 to 2,000 yd (914.4 m to 1,828.8 m), or greater than 2,000 yd (1,828.8 m).

(J) Lookouts must report the observed behavior of the animal(s) in plain language and without trying to categorize in any way (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, *etc.*), including speed and direction and if any calves were present.

(K) The report must indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(L) If observation occurred while explosives were detonating in the water, indicate munition type in use at time of marine mammal detection.

(3) *Summary of sources used.* This section of the report must include the following information summarized from the authorized sound sources used in all training and testing events:

(i) *Totals for sonar or other acoustic source bins.* Total annual hours or quantity (per the LOA) of each bin of sonar or other transducers; and

(ii) *Total for explosive bins.* Total annual expended/detonated ordnance (missiles, bombs, sonobuoys, *etc.*) for each explosive bin.

(4) *Special Reporting for Geographic Mitigation Areas.* This section of the report must contain the following information for activities conducted in geographic mitigation areas in the Study Area:

(i) *Marpi Reef and Chalan Kanoa Reef Mitigation Areas.* The Action Proponents must report the total hours of active sonar (all bins, by bin) used in the Marpi Reef Mitigation Area and Chalan Kanoa Reef Mitigation Area from December 1 through April 30.

(ii) *National security requirement.* If an Action Proponent(s) invokes the national security requirement described in § 218.94 (a)(2)(iv), the Action Proponent personnel must include information about the event in its Annual MITT Training and Testing Report.

(g) *Foreign military sonar and explosives.* Navy personnel must confirm that foreign military use of sonar and explosives, when such militaries are participating in a U.S. Navy-led exercise or event, combined with the Action Proponents' use of sonar and explosives, would not cause exceedance of the analyzed levels within each NAEMO modeled sonar and explosive bin used for estimating predicted impacts.

(h) *MTE sonar exercise notification.* The Action Proponents must submit to NMFS an electronic report within 15 calendar days after the completion of any MTE indicating:

(1) *Location.* Location of the exercise;

(2) *Dates.* Beginning and end dates of the exercise; and

(3) *Type.* Type of exercise.

§§ 218.96–218.99 [Reserved]

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Part III

Department of Labor

Employee Benefits Security Administration

29 Part 2550

Proposed QPAM Re-Eligibility Options After Disqualification (QROAD) Class Prohibited Transaction Exemption; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

[Application No. D–12126]

Z–RIN 1210–ZA37

Proposed QPAM Re-Eligibility Options After Disqualification (QROAD) Class Prohibited Transaction Exemption

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of proposed class prohibited transaction exemption.

SUMMARY: This document gives notice of a proposed class prohibited transaction exemption (PTE). This proposed QROAD class PTE (Proposed QROAD Class Exemption) would allow certain qualified professional asset managers (QPAMs) to continue relying on PTE 84–14, known as the QPAM Class Exemption, even after an event that would otherwise make them ineligible under Section I(g) of that exemption. To use this alternative path, the QPAM must comply with the protective conditions in this Proposed QROAD Class Exemption, if granted. This proposal does not change any fiduciary duties under ERISA section 404 or expand the relief available under the QPAM Class Exemption.

DATES:

Exemption date: If granted, this proposed exemption will be in effect 60 days after the date of publication of the final exemption in the **Federal Register**.

Comments due: Written comments and requests for a public hearing on the proposed exemption must be received by the Department by January 19, 2027.

ADDRESSES: All written comments and requests for a hearing concerning the proposed PTE should be sent electronically to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations (OED) through the Federal eRulemaking Portal and identified by Application No. D–12126 and/or Z–RIN 1210–ZA37:

Federal eRulemaking Portal: http://www.regulations.gov at Docket ID number: EBSA–2026–0397. Follow the instructions for submitting comments.

See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Brian Mica, telephone (202) 693–8540 or email at *ClassExemptions@dol.gov,* Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Comment Instructions

Comments should state the nature of the person's interest in the proposed exemption and how the person would be materially affected by the exemption, if granted. Any person who may be materially affected by an exemption can request a hearing on the exemption if their request includes: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be materially affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The U.S. Department of Labor (Department) will grant a hearing request made in accordance with the requirements above when it finds that a hearing is necessary to fully explore material factual issues identified by the requestor and will publish a hearing notice in the **Federal Register**. The Department may decline to hold a hearing if it finds that: (1) the hearing request does not meet the requirements stated above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified in the request can be fully explored through the submission of evidence in written (including electronic) form.[1]

Warning: The Department will include all comments received in the public record without change and make them available online at *https://www.regulations.gov.* The Department notes that it will include any personal information provided by the commenter in the public record and online, unless the commenter claims that any of the information included is confidential, or the disclosure of such information is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential or otherwise protected (such as a Social Security number or an unlisted phone number), or confidential business information that you do not want publicly disclosed. If EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide them in the body of your comment. EBSA encourages commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the materials referenced, including active hyperlinks. Likewise, commenters who reference materials that have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist EBSA in analyzing the comments. EBSA reemphasizes that materials provided will be part of the public record.

Background on Administrative Exemptions Under ERISA

A fiduciary's duties under the Employee Retirement Income Security Act of 1974, as amended (ERISA), are ''the highest known to the law.'' [2] To safeguard Plans [3] and their participants and beneficiaries from the potential for abuse that arises when Plans engage in transactions with closely connected parties, Congress enacted ERISA Section 406, which forbids ERISA fiduciaries from causing their Plans to engage in transactions with ''parties in interest'' to the Plans. In general terms, ''parties in interest'' are people or entities closely connected to a Plan, including, among others, ERISA fiduciaries and certain of their direct and indirect owners and subsidiaries.[4] Both ERISA and the Code provide statutory exemptions from these prohibited transactions, and the Department has the authority to grant administrative exemptions—either individually or by class—under ERISA Section 408(a) and Code Section 4975(c)(2). The Secretary of Labor may not grant an exemption unless he finds that such an exemption is: (1) administratively feasible, (2) in the interest of the plan and of its participants and beneficiaries, and (3)

[1] 29 CFR 2570.46(b).

[2] See *Donovan* v. *Bierwirth,* 680 F.2d 263, 272 n.8 (2d Cir. 1982).

[3] The term ''Plans'' includes plans and Individual Retirement Accounts (IRAs) described in Internal Revenue Code of 1986, as amended (Code) Section 4975(e)(1) and ERISA-covered employee benefit plans described in ERISA Section 3(3).

[4] See ERISA Section 3(14). Title II of ERISA, codified in the Code, includes prohibitions that parallel Title I of ERISA and are applicable to ''disqualified persons.'' The term ''disqualified person'' is defined in Code Section 4975(e)(2) and is similar to the definition of the term ''party in interest'' codified in ERISA Section 3(14). All references to ''party in interest'' herein include ''disqualified person.''

protective of the rights of participants and beneficiaries of such plan.[5]

Virtually all administrative exemptions granted by the Department have conditions. These conditions, which often utilize Independent Fiduciaries, as defined in Section I(h), independent auditors and/or compliance officers: (1) allow the Department to make its required findings under ERISA Section 408(a) with respect to transactions that violate ERISA Section 406; and (2) reflect the Department's view that the high standard to which ERISA fiduciaries are held is often, by itself, not sufficiently protective of affected Plans in the context of transactions prohibited by ERISA Section 406.

Background of the QPAM Class Exemption

DOL's QPAM Class Exemption[6] is an important, widely-used[7] class exemption that permits an Investment Fund, as defined in Section VI(b) of the QPAM Class Exemption, managed by a Qualified Professional Asset Manager (QPAM)[8] to engage in a broad range of transactions with parties in interest with respect to Plans that invest in the Investment Fund, subject to protective conditions. The QPAM Class Exemption also allows QPAMs to streamline compliance with the prohibited transaction provisions of Title I of ERISA and the Code. A QPAM relying on the QPAM Class Exemption does not need to keep and routinely check a list of parties in interest before engaging in a transaction to avoid inadvertently entering into a prohibited transaction with potentially hundreds, if not thousands, of parties in interest. The QPAM also does not have to seek an individual exemption or, alternatively, forgo investment opportunities that would be in the interest of Covered Plans, as defined in Section I(d), invested in the Investment Fund merely because a party in interest is involved.

In proposing the QPAM Class Exemption, the Department noted, ''A QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity. Accordingly, the proposed class exemption does not cover transactions if the QPAM or various 'affiliates' have been convicted of various crimes (outlined in section I(g) of the proposal), that involve abuse or misuse of a position of trust, or felonies generally described in ERISA section 411.'' [9] As granted, Section I(g) of the QPAM Class Exemption provides generally that a QPAM is ineligible to rely on the QPAM Class Exemption for a period of 10 years if the QPAM, its various Affiliates,[10] or five percent or more owners of the QPAM, engage in certain types of serious misconduct that is prohibited by the QPAM Class Exemption.[11] If an asset manager becomes ineligible to rely on the QPAM Class Exemption, its Covered Plans may miss out on investment opportunities or be required to find a new asset manager.

The preamble to the QPAM Class Exemption, as it was proposed, states that a QPAM must ''maintain a high standard of integrity.'' This is an important premise of the QPAM Class Exemption. Although under ERISA, the duties of fiduciaries are already high, for QPAMs, the added integrity requirement arises because: (1) the scope of Section I of the QPAM Class Exemption is expansive, permitting an Investment Fund managed by a QPAM to engage in all prohibited transactions described in ERISA Section 406(a) with virtually all parties in interest to Plans that invest in the Investment Fund (except the QPAM), with limited relief also from ERISA Section 406(b);[12] and (2) the QPAM Class Exemption is largely self-executing and requires no reporting to, or filing with, the Department, other than a one-time notification to the Department that the asset manager is relying on the QPAM Exemption. Therefore, the concept of QPAM ''integrity,'' as reinforced by Section I(g), is a critical underpinning for the exemptive relief provided in DOL's QPAM Class Exemption.

In addition, just as QPAMs are subject to a standard of integrity beyond the duties required of ERISA fiduciaries, QPAMs also must maintain their eligibility for the QPAM Class Exemption under a more demanding standard than that applied to fiduciaries under ERISA generally. As a result, while a person can be precluded from serving as an ERISA fiduciary due to committing violations specified in ERISA Section 411, a QPAM is also subject to the more stringent ineligibility provision in Section I(g) of the QPAM Class Exemption. However, unlike ERISA Section 411, which provides a mechanism to bar an entity that has been convicted of certain crimes from acting as an ERISA fiduciary, Section I(g) does not bar an entity from acting as an ERISA fiduciary. Section I(g) instead proactively ensures that the broad permission afforded under the QPAM Class Exemption for asset managers to engage in certain prohibited transactions does not extend to entities (or are related to entities) that have engaged (or that are related to entities that have engaged) in certain disqualifying events.

In 2024, DOL amended the QPAM Class Exemption. This amendment: (1) clarified the requirement that a QPAM have authority over investment decisions; (2) increased the required asset management and equity thresholds for all QPAMs; (3) added a new recordkeeping requirement, and (4) modified the integrity requirement in Section I(g). The 2024 amendment expanded the disqualification triggers in Section I(g) in three ways: (1) providing that certain foreign convictions are disqualifying; (2) adding certain deferred-prosecution agreements (DPAs) and non-prosecution agreements (NPAs) between QPAMs or their affiliates and Federal or State agencies; and (3) adding certain civil judgments and settlements with Federal and State agencies.

As defined in Section I(*l*) of this Proposed QROAD Class Exemption, the term Prohibited Misconduct has the same meaning as that same term is defined in Section VI(s) of the amended QPAM Class Exemption. It generally refers to when a QPAM, any Affiliate thereof, or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM enters into a domestic NPA or DPA or is found in a court's final judgment or court approved settlement to have participated in conduct that intentionally violated the QPAM Class Exemption's conditions or provided

[5] 29 U.S.C. 1108(a).

[6] 49 FR 9494 (Mar. 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), as amended at 89 FR 23090 (Apr. 3, 2024), and as corrected at 89 FR 65779 (Aug. 13, 2024).

[7] The Department notes that 1,063 entities have reported they rely on the QPAM Class Exemption as of July 1, 2026.

[8] ''QPAM'' is defined in Section VI(a) of the QPAM Class Exemption, 89 FR 65779, 65783 (Aug. 13, 2024).

[9] Proposed Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 47 FR 56945, 56947 (Dec. 21, 1982) (Proposed QPAM Class Exemption).

[10] ''Affiliate'' is defined in Section VI(d) of the QPAM Class Exemption, 89 FR 65779, 65784 (Aug. 13, 2024).

[11] Prohibited Transaction Class Exemption 84–14 for Transactions Determined by Independent Qualified Professional Asset Managers (the QPAM Exemption); Correction, 89 FR 65779 (Aug. 13, 2024).

[12] One applicant for a QPAM Section I(g) individual exemption represented to the Department that if its QPAMs could not use the QPAM Class Exemption for 10 years, retirement plans with assets managed by the QPAM might have to sell investments early, replace managers, or leave certain hedge fund, private credit, equity, and fixed income strategies. The applicant estimated direct liquidation losses of about $102.8 million, plus other costs for finding a new manager, moving assets, rebuilding portfolios, paying transaction fees, and losing access to closed or customized investments. See 89 FR 49213 (June 11, 2024).

misleading information in connection with the QPAM Class Exemption's conditions.

As defined in Section I(e), the term Criminal Conviction has the same meaning as the term is defined in Section VI(r) of the QPAM Class Exemption, except that, for purposes of this Proposed QROAD Class Exemption, a ''Criminal Conviction'' includes all Criminal Convictions that arise from the same incident in that they are the same in nature, and based on the same underlying facts, circumstances and conduct. A ''Criminal Conviction'' includes ''U.S. Convictions'' and ''Foreign Convictions,'' as those terms are described below and generally refers to when a QPAM, any Affiliate thereof, or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM is convicted in a U.S. Federal or State court for certain listed offenses described in ERISA section 411; or is convicted by a foreign court of competent jurisdiction of a crime that is substantially equivalent to the listed U.S. offenses.

Further, in the Department's view, the mere fact that an asset manager has not been barred from acting as a fiduciary under ERISA Section 411 does not equate to a demonstration that the asset manager has exhibited sufficient integrity to qualify for a self-executing class exemption that permits the asset manager to engage in a wide range of transactions that otherwise are prohibited by ERISA Section 406(a). For example, an ERISA fiduciary that admits to fraud against its Plan clients in a non-prosecution agreement with the U.S. Department of Justice would not be barred under ERISA Section 411 solely because of the non-prosecution agreement. Similarly, an ERISA fiduciary that engages in misconduct for which its corporate parent is criminally convicted would not be barred under ERISA Section 411 solely because of the Criminal Conviction of the corporate parent. Nonetheless, both instances could constitute an ineligibility event under the QPAM Class Exemption, as they would raise serious concerns regarding whether the asset manager can be expected to act with integrity if allowed to engage in a wide range of transactions otherwise prohibited under ERISA Section 406(a) essentially unsupervised by the Department. The Department was able to make its required findings under ERISA Section 408(a) when granting such relief to QPAMs under the QPAM Class Exemption, in part, by holding QPAMs to a higher standard of integrity.

Overview of This Proposed QPAM Re-Eligibility Options After Disqualification (QROAD) Class Exemption

Over the years, the Department has reviewed more than 50 requests for individual exemptions submitted on behalf of QPAMs facing ineligibility under Section I(g) of the QPAM Class Exemption. The requestors sought individual PTEs that would allow the QPAMs to continue to rely on the QPAM Class Exemption, notwithstanding violations of Section I(g) that would otherwise make the QPAMs ineligible to rely on the relief in the QPAM Class Exemption. Based on this experience that the Department has had in considering and granting such individual exemptions, the Department now is proposing the Proposed QROAD Class Exemption. Discussed in the preamble below are the reasons why the Department is proposing this exemption.

In requests for individual exemptions from ineligibility under the QPAM Class Exemption, the factual records supporting them include a detailed exemption application, which typically contains, among other things, court-approved pleadings, comments from interested parties, reports, and audits associated with the application. The Department reviews the nature of the underlying conduct and works with applicants and their attorneys to determine the nature of the criminal conduct or other Prohibited Misconduct. The Department has recently granted individual PTEs that do not provide relief for the full ten years of ineligibility under the QPAM Class Exemption. The QPAM then relies on an individual PTE for one, three, or five years, and must hire an independent auditor to conduct an audit of its compliance with the individual PTE. The Department receives a copy of that audit and uses it to determine whether to grant another exemption to cover more of the initial ten-year period. A few QPAMs have faced multiple convictions over a ten-year period, and the Department has granted new individual PTEs to provide relief for the additional ineligibility events, as they arose, and to impose new conditions.

The experience the Department gained from processing this type of exemption request, and from reviewing the subsequent audits performed in connection therewith, has led the Department to tentatively conclude that it would be appropriate to grant a class exemption that conditionally permits, in certain instances, an asset manager facing ineligibility under Section I(g) of the QPAM Class Exemption to continue to rely on the QPAM Class Exemption. As discussed below, this Proposed QROAD Class Exemption also reflects the view that, in certain other instances, exemptive relief for asset managers facing ineligibility under Section I(g) of the QPAM Class Exemption is more appropriately considered under the Department's individual exemption process.

The Department believes that this Proposed QROAD Class Exemption will remove a great deal of the uncertainty affecting Covered Plan [13] fiduciaries whose prudently selected asset manager of choice is subject to potential ineligibility under Section I(g) of the QPAM Class Exemption. In this regard, when the Department receives an individual exemption application involving a potential ineligibility event, the Department must consider the entire record attributable to the application prior to granting the requested exemption, including comments received following publication of a proposed exemption. The Department granted 30 Section I(g) individual exemptions during the period 2016 through 2025. During the same period, the Department denied 4 additional applications for relief from the ineligibility provision in Section I(g) and another 5 applications were withdrawn by the applicants. Withdrawals in these circumstances typically occur in anticipation of an impending denial of an application during review. Accordingly, until the application is reviewed, the proposed individual exemption is published for comment, the comments are reviewed and the proposed exemption is finalized, the Department cannot guarantee that an exemption request ultimately will be granted. Therefore, Covered Plan fiduciaries will not know with certainty whether their asset manager will continue to have relief until the individual exemption is granted. Even where the record indicates a likelihood that the Department will grant an individual exemption the Department cannot typically guarantee that the exemption will be granted prior to a lapse in the relief afforded by the QPAM Class Exemption. Under the QPAM Class Exemption, the timing of ineligibility is

[13] The term ''Covered Plan'' is defined in Section I(d) and generally means a plan or Investment Fund subject to Part4 of Title I of ERISA (an ''ERISA-covered plan'') or a plan or Investment Fund subject to Code Section 4975 (an ''IRA''), in each case, with respect to which the QPAM relies on the QPAM Class Exemption, or with respect to which the QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM Class Exemption.

generally set by a court. Section I(h) provides that a QPAM becomes ineligible upon the judgment of a court or the date of an NPA or DPA. Section I(i) provides a One-Year Transition Period,[14] which allows a QPAM continued relief for up to one year, subject to additional conditions. However, an exemption is not granted until it is published in the **Federal Register**, and the timing for publication depends on when the application is submitted, the completeness of that application, the public comments the Department receives, and various other factors. This creates additional uncertainty for QPAMs facing even a short-term lapse of relief. It is the Department's understanding that these uncertainties are disruptive to Covered Plans. This Proposed QROAD Class Exemption would remove many of these uncertainties by providing a clear, reliable path to exemptive relief in applicable cases.

Further, the Department believes that, under the circumstances described in this Proposed QROAD Class Exemption, a procedurally streamlined approach designed to reduce costs and administrative friction to allow QPAMs to continue relying on the QPAM Class Exemption is appropriate. Based on the Department's consideration of its experience with individual exemption applications from QPAMs otherwise facing ineligibility under the QPAM Class Exemption, as described below, the conditions of this Proposed QROAD Class Exemption are more carefully tailored to the ineligibility events and arrangements that give rise to QPAM ineligibility under the QPAM Class Exemption than the conditions found in the Department's individual exemptions, which, for the most part, have applied a more ''one size fits all'' approach to these sorts of exemption requests. If this largely self-executing Proposed QROAD Class Exemption is granted, eligible QPAMs will be saved the time and expense of submitting a detailed exemption application, thus alleviating the uncertainty of the individual exemption process.

As noted above, Section I(g) of the QPAM Class Exemption provides generally that a QPAM is ineligible to rely on the QPAM Class Exemption for a period of 10 years if the QPAM, its Affiliates, or five percent or more owners of the QPAM, engage in serious misconduct that is prohibited by the QPAM Class Exemption. As explained further below, Section VI(d) of the QPAM Class Exemption defines the term ''Affiliates'' for purposes of Section I(g) to include: entities that Control or are Controlled [15] by the QPAM; and certain entities that do not Control or are not Controlled by the QPAM. This distinction is relevant to this proposal because the existence of Control or lack thereof between a QPAM and an entity that is the subject of a Criminal Conviction or Prohibited Misconduct (a Misconduct Entity) will determine what Section of this Proposed QROAD Class Exemption a QPAM may rely on for conditional relief.

Under the terms of this proposal, an arrangement involving a QPAM that Controls or is Controlled by a Misconduct Entity will generally be subject to more conditions than an arrangement involving a QPAM that neither Controls nor is Controlled by a Misconduct Entity. The Department believes that imposing additional conditions when there is direct control is appropriate and also aligns with the expressly stated essential premise of the QPAM Class Exemption noted above, that ''a QPAM, and those who may be in a position to influence its policies, are expected to maintain a high standard of integrity.'' This also reflects the Department's view that the mandate in ERISA Section 408(a) with respect to exemptions that provide expansive self-executing relief from ERISA's prohibited transaction provisions, for QPAMs that Control or are Controlled by an entity that has engaged in serious misconduct, requires greater oversight (audits and compliance officers, for example) than the same relief for QPAMs that do not Control or are not Controlled by such Misconduct Entity.

Moreover, since the relief in both the QPAM Class Exemption and the relief proposed herein is mostly self-executing, the Department believes that, with respect to arrangements involving QPAMs that Control or are Controlled by a Misconduct Entity, the requirements of Section 408(a) warrant not only conditions that are similar to the conditions set forth in the Department's recent individual exemptions, but also warrant Independent Fiduciary oversight, as discussed below. This oversight is important, given that the Department will not be reviewing an exemption application.

Department's Note: As noted above, the Department developed the definitions and conditions in this Proposed QROAD Class Exemption based on its experience processing numerous individual exemption applications involving QPAMs facing ineligibility under Section I(g) of the QPAM Class Exemption. The Department is aware that comments on the associated individual exemptions have stated that the conditions contained in those exemptions are burdensome, unnecessary, and/or expensive. This proposal addresses many of those concerns with respect to the relief described herein for QPAMs that do not Control or are not Controlled by a Misconduct Entity, because the conditions in this proposal applicable to those circumstances do not include many of the conditions required by the Department's recent individual exemptions.

However, as noted above, this proposal does include many of the conditions set forth in the Department's recent QPAM Section I(g) individual exemptions with respect to QPAMs that Control or are Controlled by a Misconduct Entity. The Department continues to believe that the conditions described below, such as requiring a compliance officer and an auditor to confirm compliance with this Proposed QROAD Class Exemption and the QPAM Class Exemption, are necessary for the Department to make its required findings under ERISA Section 408(a), including that the Proposed QROAD Class Exemption is sufficiently protective of Plans, given that this proposal would provide relief in circumstances where, for example, a Misconduct Entity that Controls a QPAM has engaged in fraudulent activity against its own clients.

Commenters to the Department's recent QPAM Section I(g) individual exemptions have suggested that such exemptions are not ''administratively feasible'' for the QPAMs and Covered Plans. However, the conditions proposed herein were developed with due consideration of whether this Proposed QROAD Class Exemption would be administratively feasible for the Department, consistent with the meaning of ERISA Section 408(a).[16] Nearly all the exemption conditions described herein are largely self-executing and do not pose an unreasonable burden to the Department.

Some commenters to the Department's recent QPAM Section I(g) individual exemptions have further

[14] The term ''One-Year Transition Period'' is defined in Section I(i) of the QPAM Class Exemption, 89 FR 65779, 65781 (Aug. 13, 2024).

[15] The terms ''Control,'' ''Controlling,'' ''Controlled by,'' and ''Controls'' are defined in Section I(c) of this Proposed QROAD Class Exemption to mean the power to exercise a controlling influence over the management or policies of a person other than an individual.

[16] See 29 CFR part 2570.48(a)(1); Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications—Decision to Grant Exemptions (89 FR 4662, at 4703, Jan. 24, 2024).

suggested that the conditions contained therein provide no benefit to affected Covered Plans.[17] However, in the Department's view, conditions requiring maintenance and adherence to a QPAM's policies, specialized QPAM training, checks on QPAM compliance, and among other things, the provision of information to Covered Plans so that ERISA fiduciaries can make prudent decisions regarding their retention of their asset manager of choice, are protective of the rights of the participants and beneficiaries of the Covered Plans. The conditions described in this Proposed QROAD Class Exemption help to further empower Covered Plan fiduciaries to make prudent fiduciary decisions, by requiring, in certain situations, their QPAM to indemnify the Covered Plans against any actual losses resulting directly from, among other things, a violation of the conditions of this Proposed QROAD Class Exemption. The indemnification and hold harmless conditions permit Covered Plan fiduciaries to exercise prudence when deciding to retain a new asset manager, without fear of incurring substantial charges, lock-ups, or other disincentives that could otherwise impair their ability to exercise prudence.

However, the indemnification provisions in this proposal are narrower and more targeted than the indemnification provisions in the Department's recent QPAM Section I(g) individual exemptions. This Proposed QROAD Class Exemption limits the QPAM's indemnification obligations to plan losses resulting directly from: the QPAM's violation of this Proposed QROAD Class Exemption; loss of QPAM relief due to failure to satisfy Section I(g) of the QPAM Class Exemption; or prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to the need for reliance on this Proposed QROAD Class Exemption. Recent individual exemptions have had a larger indemnification scope than this, and include plan losses resulting from the QPAM's violation of its ERISA fiduciary duties and the prohibited transaction provisions of ERISA and the Code, whether or not such violations are tied to a violation of this Proposed QROAD Class Exemption, failure to satisfy Section I(g), or prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to the need for reliance on this Proposed QROAD Class Exemption.

This proposal would require confirmation from an Independent Fiduciary that certain requirements of this Proposed QROAD Class Exemption have been met. The Department believes that the broad self-executing relief afforded by this Proposed QROAD Class Exemption warrants independent oversight of certain of its terms, not merely representations by a QPAM. Equally, the Department believes that Independent Fiduciary oversight reduces the likelihood that Covered Plans would incur substantial harm in situations where the conditions of this Proposed QROAD Class Exemption subsequently were determined not to have been met, following their QPAM's reliance on the relief in this exemption. Further, the Department considers the Independent Fiduciary requirement more efficient than the process it would replace (application analysis by the Department) because the Independent Fiduciary requirement described herein would involve coordination between the Independent Fiduciary and a senior QPAM officer who is knowledgeable of the misconduct that necessitated reliance on this Proposed QROAD Class Exemption, if granted.

The Department is aware that stakeholders view Section I(g) of the QPAM Class Exemption as too broad. The Department believes this proposal addresses many of these concerns and does so in a streamlined fashion. As discussed below, the alternative route to relief that the Department proposes here is closely tied to the Department's experience with individual exemption applications, and it will more quickly and effectively address stakeholder concerns than would amending the QPAM Class Exemption itself. The Department invites comments on whether the relief afforded by the Proposed QROAD Class Exemption, if granted, offers sufficiently streamlined paths to relief from stakeholder concerns about the breadth of Section I(g) of the QPAM Class Exemption, while doing so in a manner still sufficiently protective of Plans. This Proposed QROAD Class Exemption does not require an amendment to the QPAM Class Exemption generally, nor Section I(g) in particular, because it does not change the terms of ineligibility; rather, for QPAMs otherwise facing ineligibility under the existing QPAM Class Exemption, the Proposed QROAD Class Exemption offers egress from such ineligibility along two clearly navigable paths. The two alternative paths to relief, each with protections and requirements that were developed in careful consideration of whether control existed between a Reliance QPAM and a Misconduct Entity, are designed to deliver the highest level of protections to Plans. Moreover, under this Proposed QROAD Class Exemption, any QPAM remains free to submit an individual exemption application.

Further, the records attributable to, and the Department's experience with, several individual PTE requests appear to support a wide scope to Section I(g) of the QPAM Class Exemption, by clearly demonstrating that misconduct even by a ''far flung'' affiliate of a QPAM with no apparent Control over the QPAM, may nonetheless involve numerous personnel spread across the QPAM's organizational structure.

Given the gravity, prolonged duration, and complex nature of misconduct associated with many Criminal Convictions, the Department believes the protections described in this proposal are warranted. However, nothing in this proposal precludes a QPAM from submitting an exemption request with fewer conditions than those described herein. Such a request should clearly demonstrate why an exemption with fewer conditions would be in the interest of, and protective of, Covered Plans, and administratively feasible, as required under ERISA Section 408(a).

The Department understands that interested parties may have unique insight as to how the Department could revise the terms of this Proposed QROAD Class Exemption to strengthen its protections for Covered Plans and/or lessen unnecessary burdens on Covered Plans, their fiduciaries, and/or their asset managers of choice. The Department welcomes these comments and also welcomes comments from QPAMs that currently rely on individual exemptions due to ineligibility under Section I(g) of the QPAM Class Exemption. In this regard, this proposal requires that QPAMs that have received current individual exemptions, in order to continue relying on the QPAM Class Exemption, must continue to comply with those individual exemptions until the date they are in compliance with all applicable conditions of this exemption. The Department welcomes comments regarding QPAMs' ability to coordinate their individual exemption compliance with the conditions outlined in this Proposed QROAD Class Exemption, if granted, including any difficulties they may anticipate. Additionally, the Department welcomes comments regarding the regulatory alternatives it considered, as discussed in section 10 of the Regulatory Impact Analysis below.

[17] Other commenters expressed support for conditions included in the QPAM Class Exemption, including the indemnification requirements and the expansion of Section I(g) to cover DPAs and NPAs.

Importantly, all comments should clearly articulate why requested revision(s) to the Proposed QROAD Class Exemption would be administratively feasible and protective of, and in the interest of, affected Covered Plans.

Layout and Structure of This Proposed QROAD Class Exemption

In general terms, QPAMs that do not Control and are not Controlled by a Misconduct Entity (that itself is not a QPAM) may rely on the relief in Section II of this Proposed QROAD Class Exemption, if the conditions in Section II are met. QPAMs that Control or are Controlled by a Misconduct Entity may generally rely on the relief in Section III of this Proposed QROAD Class Exemption, if the conditions in Section III are met. However, in certain instances, if the applicable conditions are met, QPAMs that do not Control and are not Controlled by a Misconduct Entity, and that are not eligible for the relief in Section II of this Proposed QROAD Class Exemption, may nonetheless be eligible for the relief in Section III.

The Proposed QROAD Class Exemption has four other sections: a definitions section (Section I); a phase-out section (Section IV); a recordkeeping section (Section V); and a date section (Section VI). This preamble summarizes those sections; however, it does not fully describe all the Proposed QROAD Class Exemption's definitions and conditions. See the specific sections below to view all of the proposal's governing terms and conditions.

Section I: Definitions

QPAM

For purposes of this proposal, the term ''QPAM'' has the same meaning as in the QPAM Class Exemption, and means an Independent Fiduciary that is a bank, savings and loan association, insurance company, or investment adviser registered under the Investment Advisers Act of 1940 (Advisers Act) that meets certain equity, net worth, and assets under management requirements, and acknowledges in a written management agreement its ERISA fiduciary status with respect to each Plan that retains it as a QPAM. Upon the occurrence of a triggering event, Section I(g) imposes ineligibility on a QPAM based on the misconduct by (1) the QPAM itself, (2) any Affiliate, and (3) any owner, direct or indirect, of a five (5) percent or more interest in the QPAM.

Misconduct Entity

The term ''Misconduct Entity'' means an entity that is the subject of a Criminal Conviction or Prohibited Misconduct, each as defined in the QPAM Class Exemption. Except as expressly allowed, relief in this exemption does not extend to any QPAM that is the subject of a Criminal Conviction or Prohibited Misconduct.

Affiliated QPAMs

Section I(b) of the Proposed QROAD Class Exemption provides that a QPAM is an ''Affiliated QPAM'' if it is an Affiliate of the Misconduct Entity. The definition of ''Affiliate'' is the same as the definition of ''Affiliate'' in Section VI(d) of the QPAM Class Exemption. Thus, for purposes of this Proposed QROAD Class Exemption, a QPAM is defined as an ''Affiliated QPAM'' with respect to a Misconduct Entity, if the Misconduct Entity:

(1) directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is Under Common Control with the QPAM;

(2) is any director of, Relative of, or partner in, the QPAM; [18]

(3) is a corporation, partnership, trust or unincorporated enterprise of which the QPAM is an officer, director, or a five percent or more partner or owner; or

(4) is any employee or officer of the QPAM who:

a. is a highly compensated employee (as defined in Code Section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or

b. has direct or indirect authority, responsibility, or control regarding the custody, asset management or disposition of Plan assets.

The term ''Affiliated QPAM'' has been used regularly in individual exemptions for QPAMs ineligible under the QPAM Class Exemption. Notably, the definition of Affiliated QPAM is not limited to entities that Control or are Controlled by a Misconduct Entity. Whereas some Affiliated QPAMs may Control or be Controlled by the Misconduct Entity and may be eligible for the relief in Section III, others will not have that specific Control relationship and may be eligible for the relief in Section II.

Related QPAM

The term ''Related QPAM'' has been used regularly in individual exemptions for QPAMs ineligible under the QPAM Class Exemption. The term refers to QPAMs with respect to which a Misconduct Entity directly or indirectly owns a five percent or more interest in the QPAM but does not ''Control'' the QPAM.[19] These QPAMs are not Affiliated QPAMs because they do not meet any part of the definition of Affiliate.

As further described below, Related QPAMs are generally subject to fewer conditions than Affiliated QPAMs because of the Misconduct Entity's more attenuated relationship to a Related QPAM and limited ability to influence a Related QPAM's policies and management of plan assets. The Department understands that a Misconduct Entity's investments in Related QPAMs are often passive investments, and Related QPAMs maintain their own information and technology infrastructure and are operationally separate and distinct from the Misconduct Entity. In fact, various applicants for individual exemptions have represented that a Misconduct Entity's relationship to a Related QPAM may be so minimal that the Misconduct Entity does not know if the Related QPAM is relying on the QPAM Class Exemption. These factors provide comfort to the Department that different, less robust, conditions are needed to protect Covered Plans of Related QPAMs from a Misconduct Entity. Nonetheless, because a Misconduct Entity's Criminal Conviction [20] or Prohibited Misconduct [21] causes a

[18] QPAM Class Exemption Section VI(g) provides ''The term 'Relative' means a relative as that term is defined in ERISA Section 3(15), or a brother, a sister, or a spouse of a brother or sister.''

[19] QPAM Class Exemption Section VI(g)(1) ''Ineligibility due to a Criminal Conviction or Prohibited Misconduct. Subject to the Ineligibility Date provision set forth in Section I(h), a QPAM is ineligible to rely on this exemption for 10 years following: (A) A Criminal Conviction, as defined in Section VI(r), of the QPAM or any Affiliate thereof (as defined in Section VI(d)), *or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM;* or (B) The QPAM, any Affiliate thereof (as defined in Section VI(d)), *or any owner, direct or indirect, of a five (5) percent or more interest in the QPAM Participates In Prohibited Misconduct as defined in Section VI(s) and VI(t).*'' (emphasis added)

[20] As defined in the QPAM Class Exemption Section VI(r), Criminal Conviction generally means a conviction in a U.S. Federal or State court or conviction by a foreign court of competent jurisdiction.

[21] As defined in the QPAM Class Exemption Section VI(s), Prohibited Misconduct generally means when an entity (1) enters into a non-prosecution or deferred prosecution agreement with a U.S. Federal or State prosecutor's office or regulatory agency where the factual allegations would have constituted a crime under the definition of Criminal Conviction in the QPAM Class Exemption, or (2) is found or determined in a final judgment or court-approved settlement by a Federal or State criminal or civil court to have engaged in a systematic pattern or practice of conduct or intentionally engaged in conduct that violates the conditions of the QPAM Class

Continued

Related QPAM to become ineligible under Section I(g) of the QPAM Class Exemption, this Proposed QROAD Class Exemption would provide relief to those Related QPAMs, subject to the special rule for Related QPAMs described below.

Reliance QPAM

A single Criminal Conviction or instance of Prohibited Misconduct could cause several QPAMs (Affiliated QPAMs and/or Related QPAMs) to be ineligible, and each of those QPAMs may seek to rely on the relief in this Proposed QROAD Class Exemption. Historically, in requests for individual exemptions for relief from Section I(g), the applicants have requested an exemption on behalf of all Affiliated QPAMs and Related QPAMs located within an affected corporate family. However, Proposed QROAD Class Exemption is structured such that a QPAM that relies on the relief in this exemption (a Reliance QPAM) is generally responsible only for its own compliance with the terms of the exemption. In other words, if a Related QPAM and an Affiliated QPAM each reside within the same corporate organizational structure as a Misconduct Entity, and the Related QPAM fully complies with the terms of this exemption but the Affiliated QPAM does not, the Related QPAM will remain eligible for the relief provided by this exemption notwithstanding the non-compliance of the Affiliated QPAM.

However, there is one condition in the Proposed QROAD Class Exemption that requires compliance by all QPAMs under the same corporate organizational structure. Under Section II(b)(3) of this Proposed QROAD Class Exemption, if any QPAM in the corporate organizational structure exercised authority over the assets of any plan in a manner that it knew, or should have known, would further the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct, then no Affiliated QPAM or Related QPAM can rely on Proposed QROAD Class Exemption. Each QPAM connected to that Misconduct Entity would need an individual exemption to continue operating as a QPAM. This requirement protects Plans and IRAs by ensuring that no QPAM assets within the same organizational structure are used in conduct underlying a Criminal Conviction or Prohibited Misconduct.

Reliance Date

A QPAM that becomes ineligible under the QPAM Class Exemption does not become a Reliance QPAM under this Proposed QROAD Class Exemption until the ''Reliance Date.'' The Proposed QROAD Class Exemption defines Reliance Date as the date on which a QPAM first relies on this exemption with respect to a Criminal Conviction or Prohibited Misconduct.

The Reliance Date may not be earlier than the associated Ineligibility Date [22] under the QPAM Class Exemption. This provides Affiliated and Related QPAMs with flexibility to determine when they will begin complying with the Proposed QROAD Class Exemption. An Affiliated QPAM or Related QPAM, for instance, could first rely on the One-Year Transition Period in Section I(i) of the QPAM Class Exemption for 10 months and then rely on the Proposed QROAD Class Exemption for the remaining 9 years and 2 months of its ineligibility period.

The conditions in the Proposed QROAD Class Exemption must be complied with as of the QPAM's Reliance Date, not its Ineligibility Date. Thus, an Affiliated QPAM or Related QPAM that does not immediately come into compliance with this exemption as of its Ineligibility Date will not inadvertently miss its opportunity to rely on this exemption.

Independent Fiduciary

This Proposed QROAD Class Exemption would require the oversight of a prudently selected Independent Fiduciary. The term ''Independent Fiduciary'' has the same meaning as in the Department's Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications,[23] and generally means an individual or entity that has appropriate training, experience, and facilities to act on behalf of the Plan regarding the exemption transaction in accordance with the fiduciary duties and responsibilities prescribed by ERISA, and that is independent of and unrelated to any party in interest engaging in the exemption transaction.

Criminal Conviction

Under this Proposed QROAD Class Exemption, multiple convictions are treated as one single ''Criminal Conviction'' if the convictions arise from the same incident in that they are based on the same underlying facts, circumstances, and conduct, and were perpetrated by the same person (or group of people) during the same time frame or where the same defective control function enabled the same type of misconduct to occur during the same general time frame. For example, if a Misconduct Entity is convicted in U.S. district court on two charges that are part of the same scheme, such as embezzlement and fraudulent concealment directly related to said embezzlement, then these would be treated as one single ''Criminal Conviction'' if the convictions are based on the same underlying facts, circumstances, and conduct, and were perpetrated by the same person (or group of people) during the same time frame or where the same defective control function enabled the same type of misconduct to occur during the same general time frame. Likewise, if a Misconduct Entity is convicted in U.S. district court and separately in a State court, and both charges stem from the same incident in that they are based on the same underlying conduct, those two convictions would be treated as one for purposes of this exemption. However, if the charges underlying the State conviction were brought because the Misconduct Entity continued engaging in the illegal conduct after the Federal conviction, the Federal and State convictions would be considered two separate convictions.

Two convictions also would not be treated as one when the types of misconduct are distinct and/or there is no direct connection between the misconduct underlying the two separate convictions. For example, if a Misconduct Entity is convicted for fraud in U.S. district court and for tampering with a witness with respect to the fraud proceedings, the two convictions will be treated as distinct. In that example, while some of the facts associated with the two convictions might be the same, the charged conduct underlying each conviction is different. For purposes of this proposal, a Criminal Conviction includes U.S. Convictions and Foreign Convictions, as those terms are described below.

The Department invites comments on whether this approach towards counting Criminal Convictions is appropriately calibrated and whether the proposed

Exemption in connection with otherwise non-exempt prohibited transactions, or provided materially misleading information to the Department, or other regulators, in connection with the conditions of the QPAM Class Exemption.

[22] As defined in QPAM Class Exemption Section I(h), the Ineligibility Date is the date the QPAM becomes ineligible to rely on the QPAM Class Exemption. This date is either the Conviction Date (the date of the judgment of the court), the date the Misconduct Entity executes a non-prosecution agreement or deferred prosecution agreement, or the date that a final judgment or court-approved settlement is ordered.

[23] See 29 CFR 2570.31(j) (89 FR 4662 at 4692).

approach should be modified in the final exemption.

Section II: Exemptive Relief Where No Control Relationship Exists Between the Reliance QPAM and the Misconduct Entity

Section II relief extends to an Affiliated QPAM or Related QPAM that is ineligible under the QPAM Class Exemption as a result of: (1) a single Criminal Conviction described in Section VI(r)(1) of the QPAM Class Exemption [24] (a U.S. Conviction); and/or (2) one or more Criminal Convictions described in Section VI(r)(2) of the QPAM Class Exemption [25] (Foreign Convictions); and/or (3) one or more instances of Prohibited Misconduct. The Misconduct Entity must neither Control nor be Controlled by the Reliance QPAM and must not itself be a QPAM. Importantly, relief in this Section (and Section III below) is not available if the conduct that is the subject of a Criminal Conviction or the Prohibited Misconduct involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975.

The Department acknowledges that the Proposed QROAD Class Exemption takes a different approach to Foreign Convictions than the Department has historically taken in granting individual exemptions from the QPAM Class Exemption's ineligibility provision. The Department continues to believe that Foreign Convictions for substantially equivalent crimes raise serious integrity concerns. However, the Department believes this different treatment is warranted given that foreign criminal justice systems may differ from the U.S. system with respect to procedural rules, evidentiary standards, prosecutorial practices, judicial independence, appellate review, and other due process safeguards. Although Foreign Convictions remain relevant to QPAM integrity and continue to trigger ineligibility under Section I(g), the Department preliminarily believes these cross-jurisdictional differences support a more tailored approach for class-wide relief, including permitting relief for one or more Foreign Convictions under Sections II and III subject to the exemption's protective conditions. The Department invites comments on whether this treatment of Foreign Convictions is appropriately calibrated, whether additional safeguards are needed, and whether the proposed distinction between Foreign Convictions and U.S. Convictions should be modified in the final exemption.

Similarly, the Department acknowledges that this Proposed QROAD Class Exemption takes a different approach to NPAs and DPAs than the Department has historically taken in connection with the QPAM Class Exemption's ineligibility provision. The Department continues to believe that conduct underlying NPAs and DPAs can raise serious integrity concerns relevant to whether a QPAM should be able to rely on the broad, self-executing relief provided by the QPAM Class Exemption. However, the Department believes this different treatment is warranted given that, unlike Criminal Conviction, an NPA or DPA may not involve an adjudication of guilt and may include no admission of culpability by the relevant entity, even though the agreement may describe serious misconduct and impose meaningful obligations. Although NPAs and DPAs remain relevant to QPAM integrity and continue to trigger ineligibility when they constitute Prohibited Misconduct under Section I(g), the Department preliminarily believes the distinctions between NPAs and DPAs and Criminal Conviction support a more tailored approach for class-wide relief, including permitting relief for one or more instances of Prohibited Misconduct under Sections II and III, subject to the exemption's protective conditions. The Department invites comments on whether this treatment of NPAs and DPAs is appropriately calibrated, whether additional safeguards are needed, and whether the proposed distinction between U.S. Convictions and Prohibited Misconduct should be modified in the final exemption.

Section II Examples

Example 1: [26] Misconduct Entity A (not a QPAM) receives a U.S. Conviction for fraud in U.S. district court. The fraud conviction did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Misconduct Entity A is an Affiliate of Bank B, a QPAM, but does not Control Bank B and is not Controlled by Bank B. Bank B would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Example 2: Assume the same facts as in Example 1 above except that Misconduct Entity A subsequently (but within ten years of the U.S. Conviction) receives a Foreign Conviction and enters into a Non-Prosecution Agreement (NPA) with the U.S. Department of Justice (DOJ). Neither the Foreign Conviction nor the Prohibited Misconduct (reflected in the NPA) involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Despite the additional instances of misconduct, Bank B, the QPAM, would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Example 3: Assume the same facts as Example 1 above, except that Misconduct Entity A subsequently (but within ten years of the first U.S. Conviction) receives an additional U.S. Conviction in U.S. State court in which the crime is the same in nature and the underlying facts and circumstances are the same as in Misconduct Entity A's U.S. Conviction. Assume neither U.S. Conviction involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Because the two U.S. Convictions were the same in nature and involved the same underlying facts and circumstances, Bank B, the QPAM, would be eligible to rely on the relief in Section II of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section II are met.

Department's Note: Each definition in Section I and each condition in Section II must be met with respect to each Criminal Conviction and instance of Prohibited Misconduct in order for the Affiliated QPAM or Related QPAM to

[24] This section refers to a conviction in a U.S. Federal or State court or released from imprisonment, whichever is later, as a result of any felony involving abuse or misuse of such person's Plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any crime that is identified or described in ERISA Section 411.

[25] This section refers to a conviction by a foreign court of competent jurisdiction or released from imprisonment, whichever is later, as a result of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense described in PTE 84–14 Section VI(r)(1) (excluding convictions and imprisonment that occur within a foreign country that is included on the Department of Commerce's list of ''foreign adversaries'').

[26] All examples in this proposal assume the granted class exemption will have the same terms as the proposed class exemption.

rely on this Proposed QROAD Class Exemption.

Section II Conditions

Section II(b) Eligibility

Relief under Section II(b)(1) and (2) requires that, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity), or employee of the Reliance QPAM or a party engaged on behalf of the Reliance QPAM, who had responsibility for, or exercised authority in connection with, the management of plan assets, knew of or had reason to know of,[27] or Participated In,[28] received direct compensation, or knowingly received indirect compensation, in connection with the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct. In other words, by the Reliance Date, there must no longer be any association between the Reliance QPAM and any individuals who were aware of the misconduct during the time the misconduct was ongoing or profited from the misconduct. The Department considered whether, when a person at the Reliance QPAM knew or had reason to know of the misconduct at the time the misconduct was ongoing, or profited from the misconduct, meeting this threshold should require removal of the chief compliance officer regardless of that individual's direct involvement in the misconduct or whether the officer knew of it. The Department notes that, by virtue of their duties and purview, key management leaders can often set the stage for misconduct whether or not they are directly culpable. Moreover, it can be difficult to establish a direct causal link between misconduct conducted at lower levels and key management leaders. The Department is concerned that, ultimately, it may be immaterial if a key management leader like a chief compliance officer is unaware of misconduct, since their role is to establish controls and oversight to prevent such misconduct, and the existence of misconduct may be proof of failure in that regard. Accordingly, the Department is seeking comment regarding whether meeting the Section II eligibility threshold should require the automatic removal of the chief compliance officer or other compliance officials responsible for overseeing the conduct of the Reliance QPAM, regardless of whether they knew of the misconduct or were directly involved.

Section II(b)(3) requires that neither the Reliance QPAM nor any Related QPAM or Affiliated QPAM of the Misconduct Entity exercised authority over any ERISA-covered plan or IRA assets in a manner that it knew or should have known would further the misconduct, or caused the Reliance QPAM or its Affiliates, or any officers, employees or partners to directly or indirectly profit from the misconduct.

Further, Section II(b)(4) through (6) require that, as of the Reliance Date: the Reliance QPAM must not use its authority to direct an Investment Fund to enter into any transaction with a Misconduct Entity; the Reliance QPAM's asset management decisions must be independent of the management and business activities of the Misconduct Entity; and the Misconduct Entity may not act as a fiduciary under ERISA or the Code with respect to ERISA-covered Plan and IRA assets, except that it may act as an ERISA fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an Affiliate. Section II(b)(7) requires that the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct must not have involved assets of any Plan or fund subject to ERISA Title 1, Part 4 and/or Code Section 4975. Finally, Section II(b)(8) requires ongoing compliance by the Reliance QPAM with the applicable conditions of the Proposed QROAD Class Exemption, if granted, and of the QPAM Class Exemption.

Section II(c)(1) Policies

Section II(c)(1) requires the Reliance QPAM to implement, maintain (with necessary adjustments), and follow written policies (the Policies) requiring that: (1) the asset management decisions of the Reliance QPAM are conducted independently of the asset management and business activities of the Misconduct Entity; (2) the Reliance QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions; (3) any filings or statements made by the Reliance QPAM to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (4) the Reliance QPAM does not make material misrepresentations or omissions in its communications with regulators with respect to Covered Plans or in its communications with Covered Plans; (5) the Reliance QPAM adheres to the Training requirements specified in the exemption; and (6) the Reliance QPAM complies with the terms of this exemption and corrects violations promptly upon discovery by the Reliance QPAM in accordance with the applicable terms of this exemption.

Section II(c)(2) Training

Section II(c)(2) requires the Reliance QPAM to conduct at least annually a program of training (the Training) for all relevant Reliance QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must be set forth in the Policies and conducted by a professional who has been prudently selected. At a minimum, the Training must cover the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption, and prompt reporting of wrongdoing (including resources on how to report suspected wrongdoing within the Reliance QPAM, and to EBSA and other relevant Federal oversight agencies).

The purpose of this Training is twofold. First, it ensures that everyone working in the above-identified job categories understands their obligations under relevant law. Second, it reinforces a culture of compliance by ensuring relevant Reliance QPAM personnel understand the importance of ethical conduct, the consequences of noncompliance with applicable rules, and the need to promptly report instances of noncompliance.

Section II(d) Independent Fiduciary

Section II(d) of this Proposed QROAD Class Exemption requires the Reliance QPAM to prudently select an Independent Fiduciary to review the Reliance QPAM's eligibility for relief under Section II and determine whether the Reliance QPAM has developed the Policies required under this section. The Reliance QPAM must select an Independent Fiduciary that has appropriate technical training and proficiency with ERISA and the Code and must grant the Independent Fiduciary unfettered access to all the information that the Independent Fiduciary deems necessary in its sole discretion to make its required findings. Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM that details its processes and procedures and certifies that, to the best of the Independent Fiduciary's knowledge and belief, all of the representations made in such report are true and correct and whether the Reliance QPAM is in

[27] Facts that a person ''knew of or had reason to know of'' include facts that are known to the individual or facts that should be known to the individual based on the individual's possession of sufficient information or circumstances to reasonably infer such facts; and, with respect to an entity other than a natural person, includes facts that are known to the directors and officers of the entity or should be known to such individuals based on their possession of sufficient information or circumstances to reasonably infer such facts.

[28] The term Participated In is defined in Section I(k) of this Proposed QROAD Class Exemption.

compliance with the conditions in Section II(a) and (b)(1) through (7) and all of the Policies required by Section II(c) have been established.

Relief in this exemption is contingent on the Independent Fiduciary report containing clear, unambiguous statements that: the Independent Fiduciary has prudently performed its duties as an ERISA fiduciary on behalf of all affected Covered Plans; and all of the conditions in Section II(a) and (b)(1) through (7) have been met and the Policies required by Section II(c) have been established. Given the importance of the requirement that no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption, whether or not such person was ultimately convicted for participating in the crime, the report must contain an express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the QPAM or any party engaged on behalf of the Reliance QPAM. The Independent Fiduciary's report must be made publicly available on the Reliance QPAM's website upon completion. It is the Department's expectation that the Independent Fiduciary's report will not contain privileged or confidential business information, however under the narrow circumstance where such information may exist in the report, the Reliance QPAM may redact such information for purposes of posting on the website. In accordance with the Recordkeeping condition in Section V, the Reliance QPAM must retain an unredacted copy of the Independent Fiduciary's report which can be reviewed by the Department upon request. The Independent Fiduciary's report also must include a certification by the head of compliance of the Reliance QPAM stating that to the best of their knowledge and belief, such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g), shared all material information regarding that investigation with the Independent Fiduciary, and avers that the Independent Fiduciary's report is accurate and complete.

Section II(e) Notice to the Department and Covered Plan Fiduciaries

Section II(e) requires the Reliance QPAM to send notices to the Department and to its Covered Plan clients. This condition is based on notice conditions that the Department has consistently included in recent individual exemptions involving violations of Section I(g) of the QPAM Class Exemption. However, unlike such individual exemptions, Section II of this Proposed QROAD Class Exemption requires that Reliance QPAMs provide a one-time notice within 90 calendar days of the Reliance Date, rather than repeatedly providing notices throughout the Exemption Period.

The Department notes that some in the regulated community have suggested that disclosures from ineligible QPAMs to Covered Plan fiduciaries would be sufficiently protective of Covered Plans. The Department disagrees. It is the Department's responsibility, not that of Covered Plan fiduciaries, to ensure that the QPAM Class Exemption is in the interest of, and protective of, affected Covered Plans, and administratively feasible. Disclosures to Covered Plan fiduciaries by asset managers interested in retaining their clients are not, by themselves, sufficient grounds for the Department to allow those asset managers to continue to engage in prohibited transactions covered by the QPAM Class Exemption. The conditions in this Proposed QROAD Class Exemption, taken as a whole, are intended to strike the appropriate balance that ensures Covered Plans are informed and protected while also ensuring QPAMs place their ERISA fiduciary responsibilities and integrity at the forefront of their compliance structure.

Under Section II(e), the notice must include a representation from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief, the Reliance QPAM is compliant with the eligibility requirements of Section II(a) and (b) and has established the Policies and Training required by Section II(c). In addition, to ensure all Covered Plans understand why the QPAM became ineligible under the QPAM Class Exemption, the notice must include a detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct. Lastly, the notice must include instructions on how to retrieve the certified written report of the Independent Fiduciary required by Section II(d) and the Policies required by Section II(c) from the Reliance QPAM's website once available. The Reliance QPAM must send the notices to the Department via email to *QPAM@dol.gov,* and to Covered Plans, in a manner that ensures receipt by the ERISA fiduciary of each Covered Plan.

Section II(f) Subsequent Criminal Convictions or Prohibited Misconduct Events

Section II(f) requires that the Reliance QPAM comply with each condition of Section II for each Criminal Conviction or instance of Prohibited Misconduct that otherwise qualifies for relief under Section II, beginning on the Reliance Date corresponding to each ineligibility event. This means that under the facts in Example 2 above, when Misconduct Entity A receives a Foreign Conviction, Bank B is still eligible for the relief in Section II (as stated in Example 2), but has a new Reliance Date and will need to make sure all conditions are met for the new Reliance Date, including that notices be sent within 90 days of the Reliance Date. If the Misconduct Entity enters into the NPA with DOJ on yet another date, the Reliance QPAM will have a third Reliance Date. In other words, each ineligibility event begins a new 10-year ineligibility period.

Section II(g) Special Rule for Related QPAMs That Are Reliance QPAMs

Related QPAMs that are Reliance QPAMs can rely on the relief in Section II, subject to fewer conditions. Specifically, a Related QPAM that is a Reliance QPAM must satisfy the eligibility conditions in Section II(b)(1) through (8) requiring independence, and, if any additional Criminal Conviction or instance of Prohibited Misconduct occurs, the Related QPAM must follow the requirements of Section II(f) described above.

Section III: Exemptive Relief Under a Control Relationship Between the Reliance QPAM and the Misconduct Entity

Section III extends relief to an Affiliated QPAM or Related QPAM that is ineligible under the QPAM Class Exemption, where ineligibility is the result of: (1) a single U.S. Conviction of a Misconduct Entity that is not a QPAM, where the Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (2) collectively, up to two U.S. Convictions by one or more Misconduct Entities, if no Misconduct Entity is a QPAM and where no more than one U.S. Conviction involves a Misconduct Entity that, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (3) one or more Foreign Convictions, including where the Misconduct Entity is a QPAM; and/or (4) one or more instances of Prohibited

Misconduct, including where the Misconduct Entity is a QPAM.

Section III Examples

Example 4: Assume the same facts as in Example 2 above, except that subsequently (but within ten years of the original U.S. Conviction) Misconduct Entity A receives a second U.S. Conviction for tax evasion that also did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. The underlying facts and circumstances of the second Criminal Conviction are unrelated to Misconduct Entity A's previous Convictions or Prohibited Misconduct. Under these facts, Bank B, the QPAM, is not eligible to rely on Section II due to the second U.S. Conviction of Entity A. However, Bank B would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 5: Misconduct Entity C (not a QPAM) receives a Foreign Conviction for fraud that did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Bank D (a QPAM) is an Affiliate of and Controlled by Misconduct Entity C. Notwithstanding the misconduct, Bank D would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 6: Assume the same facts as in Example 5 above. Bank D, the QPAM, subsequently (but within ten years of the Foreign Conviction) enters into a deferred prosecution agreement (DPA) with the DOJ (thereby becoming itself a Misconduct Entity) that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, and the underlying facts and circumstances are unrelated to Misconduct Entity C's Foreign Conviction. Notwithstanding the collective misconduct, Bank D, now a Misconduct Entity, would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Example 7: Assume the same facts as in Example 6 above. Misconduct Entity C subsequently (but within ten years of the original Foreign Conviction) is convicted of criminal tax evasion in the U.S., and that U.S. Conviction does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975 and the facts and circumstances are unrelated to either of Misconduct Entity C's Foreign Conviction or Bank D's Prohibited Misconduct. Notwithstanding the collective misconduct, Bank D (the QPAM) would be eligible to rely on the relief in Section III of the Proposed QROAD Class Exemption, if granted, as a Reliance QPAM if the definitions in Section I and the conditions in Section III are met.

Department's Note: A Reliance QPAM must meet each definition in Section I and each condition in Section III for each Criminal Conviction and instance of Prohibited Misconduct to obtain relief under this Proposed QROAD Class Exemption.

Section III Conditions

Section III(b) Eligibility

This section generally imposes the same eligibility conditions as in Section II(b) on the Reliance QPAM with regards to: knowledge of, and participation and compensation in connection with, the misconduct; the use of authority over any ERISA-covered plan or IRA assets; profiting from the misconduct; the independence of its asset management decisions; and the Misconduct Entity's ability to act as an ERISA fiduciary. This Section also requires that misconduct did not involve assets of any Plan or fund subject to ERISA Title 1, Part 4 and/or Code Section 4975 and requires ongoing compliance with the applicable conditions of the Proposed QROAD Class Exemption, if granted, and of the QPAM Class Exemption.

Section III(c) Policies and Training

This section generally imposes the same conditions as Section II(c). The policies and training conditions are similar to conditions in the Department's recent individual exemptions involving violations of Section I(g) of the QPAM Class Exemption.

Section III(d) Independent Fiduciary

To ensure the Reliance QPAM is eligible to rely on Section III and in compliance with the Proposed QROAD Class Exemption, this section imposes the same requirement that is in Section II(d) to engage an Independent Fiduciary to submit a written report certifying to the Reliance QPAM's eligibility and compliance with Sections II(b)(1)-(7), III(a), and establishment of Policies under Section III(c).

Section III(e) Audit Requirement

This section requires the Reliance QPAM to prudently select an independent auditor who has appropriate technical training and proficiency with ERISA and the Code to perform an audit every two years during the Exemption Period to evaluate the adequacy of, and the Reliance QPAM's compliance with, the Policies, Training, and eligibility conditions required by the exemption.[29] The Reliance QPAM and any Affiliate must grant the independent auditor unfettered access to its businesses, and the independent auditor's engagement must specifically require the auditor to test the QPAM's operational compliance with the Policies, Training, and eligibility conditions set forth in Section II(a), (b) and (c) of this exemption.[30]

For each audit, the auditor must issue a written report (the Audit Report) to the Reliance QPAM that describes the procedures performed by the auditor during the course of its examination [31] and includes the auditor's specific determinations regarding, among other things, the adequacy of, the need to strengthen, and any identified instances of noncompliance with the Policies and Training.[32] Further, the Reliance QPAM must promptly address any instance of noncompliance identified by the auditor [33] and promptly address or prepare a written plan of action to address the auditor's determinations and recommendations. Any action or plan of action must be included in an addendum to the Audit Report.

Section III of this exemption also requires the general counsel or one of the three most senior executive officers of the Reliance QPAM to certify in writing that they have reviewed the Audit Report and the exemption, and that to the best of their knowledge and belief, the Reliance QPAM has addressed, corrected, or remedied (or has an appropriate written plan to address) any identified instance of noncompliance regarding the Policies

[29] The Reliance QPAM and the auditor must submit any executed auditor engagement agreement to the Department via email to *QPAM@dol.gov* no later than 60 calendar days after execution. Further, the Reliance QPAM must notify the Department of a change in the independent auditor no later than 60 calendar days after the engagement of a substitute or subsequent auditor and explain the reason for the substitution.

[30] The auditor must provide the Department, upon request, with access to all the workpapers it created and utilized in the course of the audit.

[31] At its discretion, the auditor may issue a single consolidated Audit Report that covers all Affiliated QPAMs.

[32] Any determination by the auditor that the Reliance QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance.

[33] The auditor must notify the Reliance QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor.

and Training identified in the Audit Report. The signatory must also certify that the Policies and Training are adequate to ensure compliance with this exemption, ERISA, and the Code.

The Reliance QPAM must provide the Audit Report to the Department within forty-five (45) calendar days of completion, and the Department will make the Audit Report available to the public upon request. At the Department's request, the Reliance QPAM and the auditor must provide the Department with updates on the progress of the audit. Further, the Reliance QPAM must make its Audit Report unconditionally available, electronically or otherwise, to all other relevant regulators and any ERISA fiduciary of a Covered Plan upon request. The Department invites comment on the extent to which proactive disclosure rather than reactive disclosure to the public upon request, would be warranted.

Section III(f) Warranties

With respect to any arrangement, agreement, or contract between the Reliance QPAM and a Covered Plan (or in an addendum thereto), the Reliance QPAM must agree and warrant: (1) to comply with ERISA and the Code, including the standards of prudence and loyalty set forth in ERISA Section 404, as applicable, and refrain from engaging in non-exempt prohibited transactions; (2) to indemnify and hold harmless the Covered Plan for any ''actual losses'' [34] resulting directly from: the Reliance QPAM's violation of the conditions of the Proposed QROAD Class Exemption; loss of QPAM relief due to failure to satisfy Section I(g); and prohibited transactions or fiduciary breaches connected to the misconduct that gave rise to reliance on this exemption, if granted; (3) to not require (or otherwise cause) the Covered Plan to waive, limit, or qualify the Reliance QPAM's liability from violating ERISA or the Code, or engaging in prohibited transactions; (4) with narrow exceptions, to not restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM; (5) with narrow exceptions, to not impose any fees, penalties, or charges for such termination or withdrawal; and (6) to not include exculpatory provisions disclaiming or otherwise limiting the liability of the Reliance QPAM for a violation of such agreement's terms. Separately, the Reliance QPAM must, within 60 calendar days after the Reliance Date, send a notice of these obligations to each Covered Plan, including a copy of its process to identify, quantify, and recover ''actual losses.''

Section III(g) Notice to the Department and Covered Plan Fiduciaries

As with Section II(e), this Section requires the Reliance QPAM to send notices to the Department and to its Covered Plan clients. These notices are based on notice conditions that the Department has consistently included in recent individual exemptions involving violations of Section I(g) of the QPAM Class Exemption. The one-time notice must include a representation from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief, the Reliance QPAM is compliant with the eligibility requirements of Section III(a) and (b), and has established the Policies and Training required by Section III(c). The notice also must include a detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and must include instructions on how to retrieve the certified written report of the Independent Fiduciary required by Section III(d) and the Policies required by Section III(c) from the Reliance QPAM's website once available. The Reliance QPAM must send the notices to the Department via email to *QPAM@dol.gov,* and to Covered Plans in a manner that ensures receipt by the ERISA fiduciaries of the Covered Plans.

Section III(h) Compliance Officer

Each Reliance QPAM must designate a senior compliance officer (the Compliance Officer) to be responsible for the Reliance QPAM's compliance with the Policies and Training requirements.[35] The Compliance Officer must have extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code, and must have a reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management. In this role, the Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period to determine the adequacy and effectiveness of the Reliance QPAM's Policies and Training requirements, and issue a written report on the findings.

Section III(i) Subsequent Criminal Convictions or Prohibited Misconduct Events

Like Section II(f), Section III(i) requires that the Reliance QPAM comply with each condition of Section III for each Criminal Conviction or instance of Prohibited Misconduct beginning on the Reliance Date corresponding to each ineligibility event.

Section IV: Phase Out Period Due to Noncompliance

This section provides a phase out period (the QROAD Phase Out Period) to prevent the QPAM from immediately losing exemptive relief if a Reliance QPAM fails to comply with a condition of the Proposed QROAD Class Exemption. The Department designed the QROAD Phase Out Period to mitigate the costs, disruptions, and uncertainties to Covered Plans, their participants and beneficiaries, and IRA owners that can occur when a Reliance QPAM becomes ineligible for relief under this Proposed QROAD Class Exemption.

The QROAD Phase Out Period lasts for a period of one year and begins on the date the Reliance QPAM knew or reasonably should have known of the noncompliance (Noncompliance Date). QPAMs that are not compliant with this exemption may find it beneficial to utilize the QROAD Phase Out Period while seeking exemptive relief under the Department's individual exemption process, as described below. Relief under the QROAD Phase Out Period requires the Reliance QPAM to, among other things, provide a notice of noncompliance to each of its Covered Plan clients and the Department at *QPAM@dol.gov* within 60 calendar days after the Noncompliance Date, and manage Covered Plan assets prudently and loyally during the QROAD Phase Out Period.

After the QROAD Phase Out Period expires, the QPAM will cease to be a Reliance QPAM, and will once again be ineligible to rely on the QPAM Class Exemption until the expiration of its 10-year ineligibility period, unless it obtains an individual exemption (or the applicable Criminal Conviction or

[34] The term ''actual losses'' includes, but is not limited to, losses and related costs arising from prudently unwinding transactions with third parties and from prudently transitioning Plan assets to an alternative asset manager as well as costs associated with exposure to excise taxes under Code Section 4975 as a result of a Reliance QPAM's inability to rely on the relief in the QPAM Class Exemption. Pursuant to Section III(f)(2)(B) of this Proposed QROAD Class Exemption, the Reliance QPAM must develop and maintain written processes that clearly describe: (i) how the Reliance QPAM identifies and quantifies ''actual losses;'' and (ii) how Covered Plans may recover or avoid incurring the ''actual losses.''

[35] The Proposed QROAD Class Exemption does not require the designated individual to have the organizational title of ''compliance officer.''

Prohibited Misconduct is reversed on appeal).[36]

Individual Exemption Option

As noted above, nothing in this exemption would preclude a QPAM that is ineligible for the relief described in this proposal from seeking an individual exemption from the Department.

Individual Exemption Examples

Example 8: Assume the same facts as in Examples 5, 6, and 7. Misconduct Entity C subsequently (but within 10 years of the original Foreign Conviction) is convicted of fraud in the U.S. that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, and the facts and circumstances are unrelated to either of Misconduct Entity C's or Bank D's previous misconduct. Because Misconduct Entity C is a Controlling Entity of Bank D and has received a second U.S. Conviction, Bank D would not be eligible to rely on the relief in Section II or III of the Proposed QROAD Class Exemption, if granted. However, Bank D could apply for an individual exemption that, if granted, would allow Bank D to continue to rely on the QPAM Class Exemption.

Example 9: Misconduct Entity E, a QPAM, is convicted of fraud in the U.S. that does not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975. Because Misconduct Entity E is a QPAM, Misconduct Entity E and its Affiliated and Related QPAMs would not be eligible to rely on the relief in Section II or III of the Proposed QROAD Class Exemption, if granted. However, Misconduct Entity E could apply for an individual exemption that, if granted, would allow Misconduct Entity E and its Affiliates to continue to rely on the QPAM Class Exemption.

Example 10: Misconduct Entity F engaged in Prohibited Misconduct involving Plan assets. Misconduct Entity F and its Affiliated and Related QPAMs would not be eligible to rely on the relief under Section II or III of the Proposed QROAD Class Exemption, if granted. However, Misconduct Entity F could apply for an individual exemption that, if granted, would permit the QPAMs to continue relying on the QPAM Class Exemption.

Section V: Recordkeeping

Reliance QPAMs must maintain records demonstrating compliance with this exemption, if granted, for six years following the date of any transaction for which the Reliance QPAM relies upon the relief in this exemption.[37] The Department generally imposes recordkeeping requirements in exemptions so that parties relying on the exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption. Under this exemption, the Reliance QPAM must make the records available upon request, to the extent permitted by law, to any authorized employee of the Department or the Internal Revenue Service or another State or Federal regulator; any ERISA fiduciary of a Covered Plan; any contributing employer and any employee organization whose members are covered by a Covered Plan; and any participant or beneficiary of a Covered Plan.

No party other than the Reliance QPAM would be subject to the civil penalty that may be assessed under ERISA Section 502(i) or the excise tax imposed by Code Section 4975(a) and (b), if applicable, if the Reliance QPAM did not maintain or make available the records as required by the exemption. A Reliance QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met would result in the Reliance QPAM losing relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained.

Section VI: Dates

If granted, under Section VI(a), the Proposed QROAD Class Exemption will be effective 60 calendar days after publication of the final exemption in the **Federal Register**, consistent with other class exemptions.

An Affiliated QPAM or Related QPAM that currently relies on an individual exemption to engage in transactions described in the QPAM Class Exemption notwithstanding a violation of Section I(g) of the QPAM Class Exemption may continue to rely on that individual exemption. Under Section VI(b), if that QPAM prefers instead to rely on this exemption, if granted, it can do so, provided it satisfies all applicable terms and conditions of this exemption based on the circumstances of the original ineligibility. However, as discussed above, many conditions described in this Proposed QROAD Class Exemption are based on conditions included in existing individual exemptions. Therefore, an Affiliated QPAM or Related QPAM currently relying upon an individual exemption already may be performing tasks that satisfy the conditions of this exemption. For instance, a QPAM may have already appointed an auditor who is conducting regular audits, incorporated warranty provisions into written management agreements, and appointed a compliance officer.

If a QPAM that is not a Misconduct Entity is acquired by a Misconduct Entity or an Affiliate of a Misconduct Entity and thus becomes an Affiliated QPAM or Related QPAM after the Misconduct Entity's Ineligibility Date as a result of that acquisition, Section VI(c) of this exemption would give the newly acquired QPAM six months after the acquisition to become a Reliance QPAM by coming into full compliance with the conditions of this exemption, if granted. If a newly acquired QPAM becomes an Affiliate of another Reliance QPAM that is subject to an ongoing audit under Section III(e) of this Proposed QROAD Class Exemption, this exemption permits the newly acquired QPAM to have the same audit period as that other Reliance QPAM. For the first audit, the auditor's review of the newly acquired QPAM must cover the period that begins six months after the acquisition date and continues to the end of the audit period. The Department believes that this six-month period would provide sufficient time for newly acquired QPAMs to adjust their internal processes and bring them into compliance with the requirements of this exemption as a Reliance QPAM, while also providing important protections to their Covered Plan participants and beneficiaries.

QROAD Decision Analysis Flow Chart

Attached to this notice of proposed class exemption in Appendix A is a preliminary flow chart that illustrates the compliance methods that are available under various circumstances of QPAM ineligibility. This flow chart is meant to assist the reader only as a supplemental guide, and is subject to change or removal from this exemption, if granted; and it in no way or manner supersedes, replaces, or modifies the operative language of the Proposed QROAD Class Exemption, if granted. In the event that any portion of the flow chart conflicts with the operative language of the Proposed QROAD Class Exemption, if granted, such operative language shall control.

[36] Prohibited Transaction Class Exemption 84–14, 89 FR 65779, 65781 (Aug. 13, 2024).

[37] This information collection requirement is included in the revised PRA package, OMB control number 1210–0128.

Regulatory Impact Analysis

Summary

The Department has examined the impacts of this proposed exemption as required by Executive Order 12866,[38] Executive Order 13563,[39] Executive Order 14192,[40] the Paperwork Reduction Act of 1995,[41] the Regulatory Flexibility Act,[42] section 202 of the Unfunded Mandates Reform Act of 1995,[43] and Executive Order 13132.[44]

1. Executive Orders 12866 and 13563

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

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant'');

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Based on the Department's estimates, OMB's Office of Information and Regulatory Affairs (OIRA) has determined this exemption is significant under section 3(f). Below, in the Regulatory Impact Analysis (RIA), the Department has provided an assessment of the potential costs and benefits associated with this proposed exemption, which OIRA has reviewed.

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action. As discussed in the analysis below, the Department expects that this proposal would result in cost savings. Therefore, if finalized as proposed, this action would be considered deregulatory under Executive Order 14192.

2. Introduction and Need for Regulation

Section 408(a) of ERISA permits the Department to grant exemptions from certain prohibited transaction provisions. Under the current framework, QPAMs that are ineligible to rely on the QPAM Class Exemption due to noncompliance with Section I(g) of the QPAM Class Exemption may seek individual exemptions. This process can be time-consuming and costly for QPAMs. The individual exemption application process typically involves consulting outside legal counsel, internal legal review, preparing and submitting a detailed exemption application, Department review and potential revisions, and possible operational disruptions during the review period.

The Department proposes to create a complementary exemption framework that provides an alternative to the individual exemption process that also promotes greater regulatory clarity, reduces uncertainty and reliance on individual exemptions, and improves administrative efficiency. The proposed exemption is intended to establish clear eligibility criteria and compliance obligations that will reduce the burdens applicable to certain otherwise ineligible QPAMs.

3. Baseline

Under the baseline, QPAMs must comply with the conditions of the QPAM Class Exemption to maintain eligibility (except for the Section I(g) condition that necessitated reliance on this exemption). If a QPAM becomes ineligible under Section I(g) of the QPAM Class Exemption but does not qualify for (or elects not to rely on) the relief in this proposed exemption, it may apply for an individual exemption. If granted, QPAMs relying on an individual exemption generally must also be subject to an independent audit.

4. Proposed Class Exemption

The Department is proposing a new class exemption, as an alternative to an individual exemption, for QPAMs experiencing ineligibility events under Section I(g) of the QPAM Class Exemption. Rather than amending the QPAM Class Exemption, the proposal establishes a new, complementary framework that creates two compliance methods that depend on, among other things, whether a relationship with Control exists between the Misconduct Entity and the Reliance QPAM. This approach is intended to standardize relief while tailoring conditions based on: the number and/or type of triggering events; the type of assets involved in the misconduct; and/or the relationship between the Misconduct Entity and the Reliance QPAM. Benefits and costs presented in the analysis reflect the compliance methods contained in the proposed exemption relative to the existing framework in which QPAMs must seek an individual exemption. The proposed compliance methods and how they differ from the requirements for an individual exemption are summarized below.

4.1. Misconduct Entity Is Not a QPAM and Is an Affiliate That Does Not Control nor Is Controlled by the QPAM (Section II of the Proposed QROAD Class Exemption)

First, in the case where a Misconduct Entity is not a QPAM but is an Affiliate that does not Control nor is Controlled by the Reliance QPAM, the proposed exemption would require the Reliance QPAM to establish and maintain certain policies and procedures, provide a one-time notice to the Department and the Reliance QPAM's clients, and obtain a certification from an Independent Fiduciary of the QPAM's compliance with Section II compliance method, which is not required by the Department's QPAM Section I(g) individual exemptions. The one-time notice must include representations

[38] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[39] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[40] Unleashing Prosperity Through Deregulation, 90 FR 9065 (Jan. 31, 2025).

[41] 44 U.S.C. 3506(c)(2)(A) (1995).

[42] 5 U.S.C. 601–612 (1980).

[43] 2 U.S.C. 1531–38 (1995).

[44] Federalism, 64 FR 43255 (Aug. 10, 1999).

from the Reliance QPAM regarding the Reliance QPAM's compliance with Section II and information on how to obtain the certification report of the Independent Fiduciary. The Department notes that under the baseline, QPAMs in this group seeking an individual exemption would have been required to notify their clients and perform audits. Under this Proposed QROAD Class Exemption, while QPAMs must still notify their clients, they are no longer required to perform audits, which results in a burden reduction for QPAMs qualifying to use this compliance method. More information about the notice content in the Proposed QROAD Class Exemption can be found in the preamble.

4.2. Misconduct Entity Is Not a QPAM and Is an Affiliate That Controls or Is Controlled by the QPAM; or Is an Affiliate Without a Control Relationship but With Certain Multiple Convictions; or Is the QPAM but no U.S. Conviction (Section III of the Proposed QROAD Class Exemption)

Section III addresses where there is: (1) A single U.S. Conviction of a Misconduct Entity that is not a QPAM, where the Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (2) collectively, up to two U.S. Convictions by one or more Misconduct Entities, if no Misconduct Entity is a QPAM and where no more than one U.S. Conviction involves a Misconduct Entity that, at any time, either Controls or is Controlled by the Reliance QPAM; and/or (3) one or more Foreign Convictions, including where the Misconduct Entity is a QPAM; and/or (4) one or more instances of Prohibited Misconduct, including where the Misconduct Entity is a QPAM.

Under any of these circumstances, the Reliance QPAM must comply with certain conditions under the Section III compliance method that are structured similarly to current individual Section I(g) exemptions. These conditions include: (1) notifying clients and the Department; (2) making certain warranties in any agreement with a Covered Plan that the Reliance QPAM will comply with ERISA and Code and protect Covered Plans from harm due to the ineligibility; (3) establishing and maintaining Policies; and (4) designating a Compliance Officer to be responsible for compliance with the Proposed QROAD Class Exemption.

Under the baseline, QPAMs relying on an individual exemption also would be subject to audits conducted on an annual or biennial basis. Alternatively, under the Proposed QROAD Class Exemption, all QPAMs using this compliance method would undergo biennial audits performed by an independent auditor. The proposed exemption would therefore result in a burden reduction for QPAMs that previously were subject to an annual audit.

4.3. Misconduct Entity Is the QPAM With a U.S. Conviction; or Certain Subsequent/Multiple Ineligibility Events by Affiliates; or Misconduct Involves Plan Assets

As detailed in the discussions above on Section II and III of the proposed exemption and as illustrated in the above individual exemption examples, where the Misconduct Entity is the QPAM with a U.S. Conviction, and for certain subsequent/multiple ineligibility events by an Affiliate of the QPAM, and/or where the misconduct involved assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975, the Reliance QPAM is not eligible to use the Proposed QROAD Class Exemption, though QPAMs may apply for an individual exemption. This group is unimpacted by the Proposed QROAD Class Exemption.

5. Summary of Impacts

In accordance with OMB Circular A–4, Table 1 depicts an accounting statement summarizing the Department's assessment of the costs and benefits associated with these regulatory actions. The Department is unable to quantify all costs and benefits of the Proposed QROAD Class Exemption, but has sought, where possible, to describe these non-quantified impacts.

The effects in Table 1 reflect non-quantified impacts and estimated direct monetary costs resulting from the provisions of the Proposed QROAD Class Exemption.

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TABLE 1. Accounting Statement

Benefits:				
• Reduced reliance on individual exemptions for QPAMs. • Greater regulatory certainty for QPAMs. • Reduced operational disruption for Covered Plans.				
Cost:	**Estimate**	**Year Dollar**	**Discount Rate**	**Period Covered**
Annualized Monetized ($million/year)	-$0.046	2026	7 percent	2026 - 2035
	-$0.048	2026	3 percent	2026 - 2035
The estimated net cost savings reflect multiple components, including the costs associated with rule familiarization and preparing required notices, as well as the cost savings resulting from reduced reliance on individual exemptions. Quantified Costs: • Rule familiarization: o Total cost of $48,755. • Preparing the certification for Section II compliance method: o Total cost of $40,625. • Preparing the certification for Section III compliance method: o Total cost of $40,625. Quantified Cost Savings: • The proposed exemption will result in a total cost savings of $621,649. This is comprised of: o Total cost savings of approximately $559,347 from reduction in applying for individual exemptions for entities using the Section II and Section III compliance methods. o Total cost savings of approximately $62,302 from reduction in audits for entities using the Section III compliance method.				
Perpetual Time Horizon Costs:				
• Annualized Cost (in 2024 dollars) (EO 14192 accounting): -$0.49 million/year				

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6. Request for Comments

The Department invites comments on:

- The estimated number of affected QPAMs;
- The estimated number of client plans serviced by each affected QPAM;
- The extent to which each affected QPAM relies on outside legal counsel;
- The cost of individual exemption applications under the baseline;
- The potential impact on small entities;
- Any data that would improve the Department's cost or benefit estimates.

7. Affected Entities

Table 2 summarizes the number of QPAMs, plan clients, and IRA clients that would be affected by the proposed exemption. These estimates and their sources are discussed in greater detail later in this section of the RIA.

TABLE 2. Affected Entities

Description	Amount
QPAMs that rely on the QPAM Class Exemption	1,063
Individual Exemptions that have been Granted (2016-2025)	30
QPAMs covered by Individual Exemptions (2016-2025)	Approximately 50
Client Plans with QPAM relationships	Approximately 150,000
ERISA Plans per QPAM	Approximately 140

7.1. QPAMs

A financial institution qualifying as a QPAM must be a bank, savings and loan association, insurance company, or an investment adviser registered under the Advisers Act that meets specified standards regarding financial size as specified in the QPAM Class Exemption. The financial institution must also acknowledge in a written management agreement that it is an ERISA fiduciary with respect to each plan that retains it as a QPAM.

Approximately 1,063 entities have notified the Department that they rely on the QPAM Class Exemption.[45] The number of QPAMs that could be affected by this Proposed QROAD Class Exemption in any given year depends on the number of QPAMs that would otherwise request an individual exemption because of Criminal Convictions or Prohibited Misconduct events covered by Section I(g), as well as the number of entities within a corporate family operating as QPAMs.

To estimate the number of individual exemptions that may be sought in a typical year, the Department utilizes the 30 individual exemptions granted to QPAMs since 2016, covering approximately 50 individual QPAMs.[46] This translates into approximately three individual exemptions being granted each year, and includes extensions of existing exemptions.[47] The Department notes, however, that the number of triggering events (*e.g.,* a criminal conviction) and the number of individual exemptions are not equal, as individual exemptions are generally granted with a term less than the full 10 year ineligibility period (typically five years). QPAMs typically need to reapply after the five-year period for an individual exemption to provide relief for the remainder of the ineligibility period.

Financial institutions often operate multiple Affiliated QPAMs within a corporate group, and so a single exemption typically applies to several Affiliated QPAMs, with approximately four Affiliated QPAMs, on average, covered by a single exemption.[48] However, since the cost of the individual exemption process and compliance is directly or indirectly shared across affected QPAMs and it is possible that the parent organization may bear some of the cost, the Department relies on the number of individual exemptions as the basis for its analysis. The Department requests comments on this assumption.

7.2. ERISA Plan Clients of QPAMs

Plans that maintain relationships with QPAMs also may be affected by the Proposed QROAD Class Exemption. Without it, plans could face significant costs from the potential loss of chosen investment and trading strategies, as well as the costs associated with seeking another QPAM to manage their assets. To minimize this uncertainty and mitigate impact on plans, the Proposed QROAD Class Exemption would establish a clear process for the QPAM to continue relying on the QPAM Class Exemption. Based on the most recent 2023 Form 5500 data, the Department estimates there are approximately 150,000 ERISA plans with QPAM relationships, resulting in an average of 140 ERISA plans per QPAM.[49] The Department requests data and comments on these estimates.

7.3. IRA Clients of QPAMs

The Proposed QROAD Class Exemption also covers IRAs.[50] Therefore, the Proposed QROAD Class Exemption also affects IRA owners who hire a discretionary asset manager that is a QPAM or invest in a pooled fund managed by a QPAM. In 2022, nearly 70 million U.S. taxpayers had an IRA.[51] A survey of U.S. households conducted by the Investment Company Institute found that approximately half of the households with a traditional IRA consulted a professional financial adviser on how to manage income and assets in retirement.[52] The Department does not, however, have data on the

[45] Employee Benefits Security Administration, *Entities Relying on PTE 84–14 (the Qualified Professional Asset Manager Exemption),* (as of July 1, 2026), available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/qpam-reliance-notices.*

[46] Employee Benefits Security Administration, *Index of Granted Individual Exemptions,* available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted.* Since financial institutions often operate multiple Affiliated QPAMs within a corporate group, a single exemption may apply to several Affiliated QPAM entities.

[47] This estimate is calculated in the following manner: 30 individual exemptions ÷ 10 years = 3 individual exemptions per year. Most of these exemptions have varying exemption periods, extending up to five years, although one exemption, PTE 2026–03, provides a nine-year exemption period. Given the singularity of PTE 2026–03, and the uniqueness of every individual exemption, the nine-year exemption period provided by PTE 2026–03 was not incorporated into the Department's calculation as to how many exemptions may be granted in the future.

[48] Employee Benefits Security Administration, *Index of Granted Individual Exemptions,* available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted.*

[49] The Department analyzed Schedule C data and found 48,008 unique relationships between plans and QPAMs. However, small plans are not required to file schedule C, so the Department lacks data on the relationships between small plans and QPAMs. To address this lack of data, the Department adjusted its estimate by tripling the initial estimate from 48,008 to 144,024, which was rounded to 150,000 due to uncertainty. 1,063 QPAMs have notified the Department that they rely on the QPAM Class Exemption, so 150,000 relationships/1,063 QPAMs = 141 client plans per QPAMs, rounded to 140 client plans per QPAM.

[50] The term ''Plan'' refers to an employee benefit plan described in ERISA Section 3(3) and/or a plan described in Code Section 4975(e)(1).

[51] Internal Revenue Service, *SOI Tax Stats—Accumulation and distribution of Individual Retirement Arrangements (IRA),* Table 1, (2022), available at *https://www.irs.gov/statistics/*soi-tax-stats-accumulation-and-distribution-of-individual-retirement-arrangements.

[52] The study found that 69 percent of traditional IRA-owning households have a strategy for managing income and assets in retirement and that 78 percent of those households consulted with a professional financial advisor on how to manage income and assets. The percent of IRA-owning households that consulted with a professional financial advisor is estimated as: 69% × 78% = 54%. (*See* Investment Company Institute, *The Role of IRAs in US Households' Saving for Retirement,* (2024), ICI Research Perspective: Vol. 31, No. 2. (Mar. 2025), available at *https://www.ici.org/system/files/2025-03/per31-02.pdf.*)

proportion of IRA holders who rely on a discretionary asset manager. The Department assumes that such relationships are rare, or else the involvement of a QPAM is through a pooled Investment Fund managed on a discretionary basis. The Department requests data and comments on these assumptions.

8. Benefits

The Department expects that the Proposed QROAD Class Exemption may provide several benefits for QPAMs, Covered Plans, and Covered Plan participants. By establishing clearer eligibility standards and structured compliance methods following ineligibility events, the proposal may reduce reliance on individual exemption applications, improve regulatory certainty, and reduce operational disruption for plans and investment managers. In addition, clearer requirements may reduce legal and administrative burdens associated with seeking individualized relief and support more timely compliance decisions. The following discussion describes several potential benefits associated with this proposal.

8.1. Reduced Reliance on Individual Exemptions

The proposal may reduce the number of individual exemption applications that QPAMs will submit when an ineligibility event occurs. Under the current framework, affected QPAMs typically prepare lengthy applications with the assistance of outside counsel, and then must wait on the Department's review and grant of relief. This process may be costly.[53] By establishing clear, predefined methods with standard conditions, certain QPAMs may rely on the structured process described in this Proposed QROAD Class Exemption, instead of applying for an individual exemption. This could lower legal and administrative costs, reduce delays, and make it easier for firms to respond promptly to misconduct events while still ensuring the required safeguards are in place to protect Covered Plans, and their participants and beneficiaries.

8.2. Greater Regulatory Certainty

The proposal provides clearer guidance about what steps QPAMs that face Section I(g) ineligibility must take to remain eligible to rely on the QPAM Class Exemption. Specifically, the proposal helps Reliance QPAMs better understand their obligations and reduce uncertainty about how Affiliate misconduct affects their status. Without clearer standards, a Plan may attempt to retain an asset manager that no longer qualifies for the QPAM Class Exemption while waiting to determine whether the manager can obtain an individual exemption with retroactive relief.[54] This approach can result in uncertainty and create significant risk for Plan sponsors. By clarifying the expectations for continued eligibility, the proposal reduces ambiguity and supports more timely decision-making. Moreover, with more defined requirements, Reliance QPAMs may be able to train staff more effectively and address issues earlier.

8.3. Reduced Operational Disruption

When a QPAM becomes ineligible to rely on the QPAM Class Exemption due to a violation of Section I(g) of that class exemption, Covered Plans may face uncertainty about whether their assets can continue to be managed without interruption. In particular, failure to obtain timely individual exemptive relief could bar new transactions that are dependent on the exemption, which may result in Covered Plan clients being unable to retain their investment positions, thus negatively impacting those plans and their participants and beneficiaries.[55] This proposal aims to reduce that uncertainty by providing defined conditions that permit continued, uninterrupted operation in certain cases to help avoid abrupt transitions to new asset managers, reduce potential transaction costs associated with switching managers, and support stability in long-term investment strategies.

8.4. Summary of Benefits

The proposal would increase regulatory clarity, reduce reliance on individual exemptions, and limit operational disruption following ineligibility events under Section I(g) of the QPAM Class Exemption. By establishing clearer standards and defined compliance methods in certain circumstances, the proposal also would reduce uncertainty for a QPAM and its Affiliates, and lower legal and administrative costs associated with seeking an individual exemption. Taken together, the proposal also may promote continuity in asset management and reduce transaction costs associated with switching managers, while maintaining protections for Covered Plans, and their participants and beneficiaries.

9. Costs

This proposed exemption establishes defined compliance methods that may reduce the need for certain QPAMs to apply for individual exemptions following ineligibility events described in Section I(g) of the QPAM Class Exemption. Under the Proposed QROAD Class Exemption, Reliance QPAMs must prepare notices for clients and the Department and meet other eligibility requirements, such as certifications or audits.

The Department expects the proposal to result in significant cost savings stemming from a reduced need to prepare individual exemption applications and for some QPAMs to conduct biennial audits instead of annual audits. Costs and cost savings to QPAMs may ultimately be passed to clients of Reliance QPAMs. Costs, such as fees or other charges, would primarily occur during the first year a QPAM transitions to or begins using the new compliance method, while cost savings would occur during all years the QPAM relies on the proposed exemption.

Overall, the Department estimates the total gross cost savings to be $621,649. After accounting for rule familiarization and notice preparation costs, the Department estimates the net cost to be −$491,644.

9.1. Rule Familiarization (First-Year Cost)

QPAMs may incur one-time costs to review the proposed exemption and assess their compliance status. The Department expects that QPAMs that previously received individual exemptions will review the Proposed QROAD Class Exemption to determine whether the new class exemption provides a compliance method to operate without seeking future individual exemptions, or whether to continue relying on existing individual exemptive relief. In the future, QPAMs with an ineligibility event will also need to review the Proposed QROAD Class Exemption to see if they qualify to use the exemption. Besides the QPAMs, there is a small community of outside legal counsel that will review the Proposed QROAD Class Exemption to assist their clients.

As discussed in the Affected Entities section, the compliance costs may be directly or indirectly shared across affected QPAMs; therefore, the Department relies on the number of

[53] SIFMA, Comment Letter, (Oct. 11, 2022), available at *https://www.regulations.gov/comment/EBSA-2022-0008-0014.*

[54] American Benefits Council, Comment Letter (Oct. 11, 2022), *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/00027.pdf.*

[55] DWS Investment Management Americas, Inc., Letter to the Department (June 12, 2023) (Supplemental Information for Prohibited Transaction Exemption Application Nos. D–12059 and D–12090).

individual exemptions as the basis for its analysis. Approximately 30 individual exemptions to QPAMs have been granted since 2016, with 15 separate triggering events each covering multiple QPAMs.[56] QPAMs seeking an individual exemption are expected to perform the review themselves and utilize outside legal counsel for additional assistance. The Department estimates that 30 entities would conduct a one-time review during a ten-year time horizon.

The Department assumes these QPAMs will conduct at least an internal legal review and consult outside ERISA counsel for interpretive guidance. The Department estimates two hours of internal ERISA counsel time at $187.58 per hour [57] and two hours of outside ERISA counsel time at $625 per hour.[58] [59] Please see Table 3 for burden and cost calculations.

9.2. Non-Controlling/Controlled Misconduct Entity (Section II of the Proposed QROAD Class Exemption)

As discussed above, approximately 30 individual exemptions have been granted during the 10-year period from 2016 through 2025. Based on this figure, the Department assumes that, without this Proposed QROAD Class Exemption, the same number would be granted over the next ten years. Among the individual exemptions granted over the 10-year period from 2016 through 2025, approximately 43 percent of individual exemptions had fact patterns suggesting the affected QPAMs could utilize the Section II compliance method. The Department therefore assumes that 13 entities would utilize the Section II compliance method under the Proposed QROAD Class Exemption.[60] The incremental costs associated with this method are limited to obtaining the certifications. There are no other incremental costs associated with this compliance method, as all other requirements, such as sending notices to participants, need to be done both under the baseline and the Proposed QROAD Class Exemption.

9.2.1. Certification (First-Year Using Proposed Class Exemption Cost)

The proposed exemption also requires the Reliance QPAM to obtain a certification from an Independent Fiduciary in its first year of using the Proposed QROAD Class Exemption following any triggering event that confirms the Reliance QPAM meets the eligibility requirements of the Section II compliance method. The Department assumes that the Independent Fiduciary would spend approximately, on average, five hours reviewing the relevant representations and preparing the certification at a wage rate of $625. The proposed exemption also requires the certification to be posted on the QPAM's website when completed, and to be available to the Department and all Covered Plan Clients. Certification costs can be found in Table 3.

9.3. Controlling/Misconduct Entity (Section III of the Proposed QROAD Class Exemption)

As discussed above, approximately 30 individual exemptions were granted the 10-year period from 2016 through 2025, and the Department has assumed the same number would need relief over the next 10 years. Of these 30 individual exemptions, about 43 percent, or 13 individual exemptions, had fact patterns suggesting that the affected QPAMs could utilize the Section III compliance method under the Proposed QROAD Class Exemption.[61] The incremental costs associated with this method are limited to obtaining the certifications. There are no other incremental costs associated with this compliance method as all other requirements, such as sending notices to participants, need to be done both under the baseline and Proposed QROAD Class Exemption.

9.3.1. Certification (First-Year Using Proposed Class Exemption Cost)

The proposed exemption also requires the Reliance QPAM to obtain a certification from an Independent Fiduciary in its first year of using the Proposed QROAD Class Exemption following any triggering event that confirms the Reliance QPAM meets the eligibility requirements of the Section III compliance method. The Department assumes that the Independent Fiduciary would spend approximately, on average, five hours reviewing the relevant representations and preparing the certification at a wage rate of $625. The proposed exemption also requires the certification to be posted on the QPAM's website when completed, and to be available to the Department and all Covered Plan Clients. Certification costs can be found in Table 3.

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[56] Employee Benefits Security Administration, *Index of Granted Individual Exemptions,* available at *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/exemptions/granted.*

[57] Internal DOL calculation based on 2026 labor cost data. For a description of DOL's methodology for calculating wage rates, *see https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf.*

[58] Laffey Matrix, *4–7 Years of Experience,* available at *https://www.laffeymatrix.com/see.html.*

[59] The Department utilized a reading rate of 250 words per minute in estimating the time needed to familiarize with the proposed exemption.

[60] This estimate is calculated in the following manner: 30 entities × 43 percent = 13 entities.

[61] This estimate is calculated in the following manner: 30 entities × 43 percent = 13 entities.

TABLE 3. Cost Associated with Proposed Class Exemption

Activity	Number of QPAMs	Average Hour Burden	Total Hour Burden	Hourly Wage Rate	Total Cost
	(A)	(B)	(C) = (A x B)	(D)	(E) = (C x D)
Rule Familiarization					
Internal ERISA counsel reviews rule	30	2	60	$187.58	$11,255
Outside ERISA counsel reviews rule	30	2	60	$625	$37,500
Section II Pathway					
Certification					
Independent Fiduciary reviews the relevant representations and prepares the certification	13	5	65	$625.00	$40,625
Section III Pathway					
Certification					
Independent Fiduciary reviews the relevant representations and prepares the certification	13	5	65	$625.00	$40,625
Total Cost	-	-	**250**	-	**$130,005**
Average Annual Cost	-	-	**25**	-	**$13,001**
Note: The average annual cost represents the cost during a ten-year period.					

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TABLE 4. Summary of Ten-Year Costs Associated with Proposed Class Exemption

Rule Familiarization Costs	$48,755
Certification Costs for Section II Compliance Method	$40,625
Certification Costs for Section III Compliance Method	$40,625
Total Rule Costs	**$130,005**
Average Annual Cost	**$13,001**

9.4. Cost Savings

9.4.1. Cost Savings Associated With Individual Exemption Application

The proposal may remove costs currently associated with applying for individual exemptions. Potential savings include reduced legal fees paid to outside counsel, and reduced business disruption costs associated with exemption processing delays. These savings would accrue primarily to QPAMs that would otherwise seek individual exemptions under the baseline.

The Department assumes that most QPAMs currently operating under individual exemptions would elect instead to rely on one of the compliance methods established in the Proposed QROAD Class Exemption for continued eligibility. The Department estimates, of the 30 entities granted individual exemptions over the 10-year period from 2016 through 2025, 13 would utilize the Section II compliance method and 13 entities would utilize the Section III compliance method. Therefore, 26 entities would no longer need to apply for an individual exemption during each future 10-year period if the Proposed QROAD Class Exemption is granted. This change would result in meaningful cost savings. The four remaining entities would seek an individual exemption because they would not qualify for relief under the Proposed QROAD Class Exemption. Since the proposal does not change the compliance pathway applicable to those entities, no incremental costs are attributed to them.

The Department assumes the entities would save 25 hours of outside ERISA counsel to consult and assist with preparing an individual exemption application at $625.00 per hour, 25 hours of internal counsel time to draft the application at $187.58 per hour, and 5 hours of senior executive oversight and review of the application at $238.46 per hour. The Department also assumes QPAMs would save a mailing cost of $6.50 per application.[62] Please see Table 5 for cost savings and calculations. The Department requests comments on these assumptions and cost savings.

9.4.2. Cost Savings Associated With Audit

The proposal is expected to reduce audit-related costs for many QPAMs that qualify under the proposed exemption. When an ineligibility event stems from a Criminal Conviction or Prohibited Misconduct by a Misconduct Entity that neither Controls nor is Controlled by a QPAM, those QPAMs would no longer be required to complete an audit under the Section II compliance method. When the ineligibility event is triggered by a Criminal Conviction or Prohibited Misconduct by a Misconduct Entity that Controls or is Controlled by the QPAM, under the Section III compliance method all Affiliated QPAMs or Related QPAMs would be required to complete biennial audits performed by an independent auditor and submit the resulting reports to the Department.

Under the current baseline, two main audit patterns exist for QPAMs whose fact patterns are consistent with eligibility for the Section III compliance method: some QPAMs underwent annual audits; others underwent audits every two years; and two others, granted in 2026, are scheduled to undergo audits every five years.[63] The Department has determined, after reviewing prior individual exemptions with similar compliance method fact patterns, that roughly four audits per year would be eliminated by moving from annual to biennial audits under the Proposed QROAD Class Exemption's audit requirements. The Department estimates these entities would save 20 hours of outside ERISA counsel assistance, 10 hours of financial professional drafting the notice, and 5 hours of senior executive review and sign-off of the audit. The Department also estimates that QPAMs would save mailing costs of $7.50 for the audit.[64] Please see Table 5 for cost savings and calculations. The Department requests comments on these assumptions and cost savings.

9.4.3. Summary of Cost Savings

The Department estimates the total gross labor cost savings for all QPAMs relying on the proposed exemption conditions instead of the individual exemption process to be $621,649. After accounting for rule familiarization and notice preparation costs, the Department estimates the net cost to be −$491,644. The gross cost savings are presented in Table 5. The net cost can be found in Table 6.

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[62] Based on experience, the Department assumes each individual application will be approximately 70 pages, double-sided. The Department also assumes the individual application will be a mailed in a 6-oz large envelope at a cost of $3.00 (*Source:* United States Postal Service). Therefore, the mailing cost will be estimated in the following manner: $3.00 + $0.05 × 70 pages = $6.50.

[63] Given the recency of these two exemptions, and the uniqueness of each individual exemption granted by the Department, the Department is unable to determine at this time whether future individual exemptions will require audits every five years. Therefore, the Department has not incorporated the possibility that future individual exemptions may require audits every five years into this cost analysis.

[64] Based on experience, the Department assumes each audit will be approximately 90 pages, double-sided. The Department also each assumes the audit will be a mailed in a 6-oz large envelope at a cost of $3.00 (*Source:* United States Postal Service). Therefore, the mailing cost will be estimated in the following manner: $3.00 + $0.05 × 90 pages = $7.50.

TABLE 5. Gross Cost Savings Associated with Proposed Class Exemption (10-Year Total)

Activity	Number of QPAMs	Average Hour Burden	Total Hour Burden	Hourly Wage Rate	Labor Cost Savings	Mailing Cost Savings	Total Cost Savings
	(A)	(B)	(C) = (A x B)	(D)	(E) = (D × C)	(F) = (A × $6.50 for application or $7.50 for audit)	(G) = (E + F)
Section II Pathway							
Individual Exemption							
Outside ERISA counsel assist with application	13	25	325	$625.00	$203,125	-	$203,125
Internal counsel draft application	13	25	325	$187.58	$60,964	$85	$61,049
Senior executive reviews and sign-off	13	5	65	$238.46	$15,500	-	$15,500
Section III Pathway							
Individual Exemption							
Outside ERISA counsel assist with application	13	25	325	$625.00	$203,125	-	$203,125
Internal counsel draft application	13	25	325	$187.58	$60,964	$85	$61,049
Senior executive reviews and sign-off	13	5	65	$238.46	$15,500	-	$15,500
Audit (biennial)							
Outside ERISA counsel assist with application	4	20	80	$625.00	$50,000	-	$50,000
Financial professional drafts audit	4	10	40	$187.58	$7,503	$30	$7,533
Senior executive reviews and sign-off	4	5	20	$238.46	$4,769	-	$4,769
Total Gross Cost Savings	-	-	**1,570**	-	**$621,450**	**$199**	**$621,649**

TABLE 6. Net Cost Associated with Proposed Class Exemption (10-Year Total)

	Cost
Total Gross Cost Savings	-$621,649
Total Cost Associated with Proposed Exemption	$130,005
Total Net Cost (undiscounted)	-$491,644
Total Net Cost (10-year discounted cost at 7 percent discount rate)[65]	-$345,310

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9.5. Summary of Costs and Cost Savings

The Proposed QROAD Class Exemption may create certain compliance costs for affected QPAMs, including costs associated with reviewing the exemption and preparing required notices for the Department and affected clients. At the same time, the proposal may reduce costs currently associated with preparing individual exemption applications following ineligibility events. By establishing defined compliance methods that allow certain QPAMs to remain eligible under specified conditions, the proposal may reduce legal and administrative burdens and support more efficient compliance.

10. Regulatory Alternatives

10.1. No New PTE and Continue Requiring Individual Exemptions

Under this alternative, the Department would not issue a new class exemption and would continue requiring QPAMs that become ineligible under the QPAM Class Exemption to seek individual prohibited transaction exemptions. This approach would preserve case-by-case review and would continue the imposition of significant compliance costs on the affected QPAMs. As reflected in the cost analysis, preparing an individual exemption application requires substantial outside ERISA counsel time, internal legal drafting, and external oversight. If that application is successful, compliance with the individual exemption imposes ongoing costs, including to provide training, policies, disclosures and regular audits. These costs are largely fixed per applicant and do not benefit from economies of scale.

In addition to direct compliance costs, reliance on individual exemptions may introduce uncertainty and potential transition costs for Covered Plans relying on QPAM-managed entities. Smaller or mid-sized asset managers may face disproportionate burden relative to larger firms, which could reduce competition in the plan asset management market. While individualized reviews allow tailored conditions, the Department believes this alternative would likely result in higher aggregate administrative costs and greater market disruption relative to a class-based approach.

10.2. Modify PTE 84–14 Section I(g)

The Department considered amending the QPAM Class Exemption by narrowing the scope of Section I(g) regarding what events may make a QPAM ineligible for relief. This would result in fewer QPAMs becoming ineligible under Section I(g) of the QPAM Class Exemption. However, after carefully considering this option, the Department determined that, at the present time, it is not appropriate to narrow the scope of Section I(g) of the QPAM Class Exemption in this way. As noted above, the records supporting several individual exemption requests clearly demonstrate that a misconduct event by a ''far flung'' affiliate of a QPAM, with no apparent Control over the QPAM, may nonetheless involve numerous personnel spread across the QPAM's organizational structure. The Department continues to believe that the complexity of most criminal convictions and the behavior associated therewith, particularly those involving prolonged misconduct, warrants the protections described in this proposal. Accordingly, this proposal preserves the scope of Section I(g) of the QPAM Class Exemption and protects Covered Plans by requiring certain determinations by a qualified Independent Fiduciary regarding whether a QPAM is eligible for the relief provided under the Proposed QROAD Class Exemption.

10.3. Propose This Exemption With a Narrower Section II

The Department considered publishing this Proposed QROAD Class Exemption but limiting Section II and Section III relief to a total of two Foreign Convictions or instances of Prohibited Misconduct (including NPAs and DPAs). This would ensure the same treatment of all conduct that the Department has identified as raising serious integrity concerns. However, after carefully considering this option, the Department determined that, at the present time, it is appropriate to treat Foreign Convictions and Prohibited Misconduct differently than U.S. Convictions, in recognition of the different systems and processes that result in Foreign Convictions and Prohibited Misconduct. Accordingly, this proposal acknowledges that Foreign Convictions and Prohibited Misconduct are relevant to QPAM integrity and do trigger ineligibility under Section I(g) but allows a QPAM to continue relying on Section II or III despite multiple Foreign Convictions and/or instances of Prohibited Misconduct.

10.4. Propose This Exemption With a Provision That Each Audit Report Must Be Made Publicly Available

Section III(e) requires The Reliance QPAM must provide the Audit Report to the Department within forty-five (45) calendar days of completion, and the Department will make the Audit Report available to the public upon request. The Department considered making the Audit Report publicly available as soon as practicable after the Reliance QPAM provides it or requiring the Reliance QPAM itself to make the Audit Report public. However, the Department tentatively believes this would impose undue burdens on Reliance QPAMs without significant protection for plans and participants.

11. Uncertainty

11.1. Number of Affected QPAMs That May Become Ineligible

There is uncertainty regarding the number of QPAMs that may become ineligible under the QPAM Class Exemption and how many will use the Proposed QROAD Class Exemption. The frequency and distribution of triggering events may vary over time depending on enforcement activity, firm conduct, market conditions, and evolving compliance practices. As a result, the total number of entities that may rely on the proposed modified exemption framework cannot be predicted with complete precision.

If fewer entities are affected than estimated, aggregate compliance cost savings associated with the proposed exemption would be lower than projected. Conversely, if more entities are affected than estimated, the potential cost savings associated with the proposed exemption would increase.

11.2. Frequency of Individual Exemption Applications

There is also uncertainty regarding how frequently affected QPAMs would otherwise seek individual exemptions in the absence of a class-based exemption. Some QPAMs may apply for individual relief, while others may restructure operations, transfer assets, or exit the QPAM market. These behavioral responses affect both direct administrative costs and broader market impacts.

The cost estimates in this RIA assume that QPAMs that historically sought individual exemptions would rely instead on the Proposed QROAD Class Exemption when available. However, actual application behavior may differ depending on firm size, reputational considerations, and the perceived likelihood of approval of an individual exemption. Variations in these assumptions could materially affect the estimated cost differentials across alternatives.

[65] The total net cost at the three percent discount rate is −$419,382.

11.3. Impact on Fully Compliant QPAMs

Additionally, there is uncertainty regarding the extent to which this proposal may indirectly affect QPAMs that remain fully compliant. To the extent that fully compliant QPAMs incur additional internal compliance costs, the aggregate burden associated with the proposal could be higher than estimated. At the same time, greater regulatory clarity and more standardized expectations may reduce compliance costs over time.

11.4. Estimates of Burden

Finally, there is uncertainty regarding the estimates of burden. Compliance costs may vary significantly depending on firm size, operational complexity, and the availability of internal legal expertise. The estimates presented in this analysis rely on representative wage rates and assumed labor hours; however, actual costs may differ across firms.

If affected entities rely more heavily on outside counsel than assumed, compliance costs under the individual exemption alternative would increase. Conversely, firms with greater internal compliance capacity may experience lower costs. These variations contribute to uncertainty in the overall magnitude of projected cost savings.

11.5. Sensitivity Analyses of Costs

Given the uncertainty surrounding these cost estimates, particularly due to variation in plan complexity, the Department has conducted a sensitivity analysis to examine how the estimated costs would change if there was a decrease or increase in the hour burden from the baseline assumptions. Please see Table 7 for sensitivity analysis of hour burden estimates.

TABLE 7. Sensitivity Analysis

	Total Gross Cost	Total Gross Cost Savings	Total Net Cost
25 Percent of Primary Scenario	$32,501	$155,412	-$122,911
50 Percent of Primary Scenario	$65,003	$310,825	-$245,822
Primary Scenario	***$130,005***	***$621,649***	***-$491,644***
150 Percent of Primary Scenario	$195,008	$932,474	-$737,466
200 Percent of Primary Scenario	$260,010	$1,243,298	-$983,288

Paperwork Reduction Act—Department of Labor

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[66] This helps to ensure that: the public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the *Proposed QPAM Re-eligibility Options After Disqualification (QROAD) Class Exemption.* To obtain a copy of the ICR, contact the PRA addressee shown below or go to *https://www.RegInfo.gov* and reference OMB control number 1210–0128.

[66] 44 U.S.C. 3506(c)(2)(A) (1995).

The Department has submitted a copy of the proposed exemption to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden for the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronically delivered responses).

Commenters may send their views on the Department's PRA analysis in the same way they send comments in response to the proposed exemption (for example, through the *www.regulations.gov* website), including as part of a comment responding to the broader NPRM.

PRA Addressee: Address requests for copies of the ICR to PRA Clearance Officer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5718, Washington, DC 20210; *ebsa.opr@dol.gov* (*https://www.reginfo.gov/public/do/PRAMain*).

For a full discussion of this information collection please see the supporting statement which is part of the ICR available at *https://www.reginfo.gov/public/do/PRAMain.*

1. Proposed Exemption

As discussed in the Cost section of this RIA, the Proposed QROAD Class Exemption creates information collection requirements subject to the PRA. These requirements arise from the notifications, certifications, and audit requirements under the proposed exemption. The burden for these requirements is similar to the burden in the QPAM Class Exemption, so as QPAMs utilize the Proposed QROAD Class Exemption there will be little new burden related to the information collection.

Under the proposal, affected QPAMs must prepare and distribute a written notice to client plans and, where applicable, to the Department. The notice must describe the triggering event, identify the applicable compliance method, and confirm adherence to the required conditions. The hour burden associated with additional burden from the Proposed QROAD Class Exemption requirements is summarized in Table 8 and detailed in the Cost section above.

TABLE 8. Summary of Hour Burden

Activity	Average Annual Cost Using Proposed Class Exemption
Preparation of Notices (Hour Burden)	13

The summary below represents the combined burden of the Proposed QROAD Class Exemption and DOL's QPAM Class Exemption. The information collection for both class exemptions will be included in OMB control number, 1210–0128.

Agency: Employee Benefits Security Administration, Departments of Labor.

Title: QPAM Class Exemptions.

Type of Review: Revised.

OMB Control Number: 1210–0128.

Affected Public: Business or other for-profit.

Respondents: 1,067.

Responses: 2,916.

Estimated Total Burden Hours: 2,578.

Estimated Total Costs: $1,252,823.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [67] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of 5 U.S.C. 553(b).[68] Under 5 U.S.C. 603, agencies must submit an initial regulatory flexibility analysis (IRFA) of a proposal that is likely to have a significant economic impact on a substantial number of small entities, such as small businesses, organizations, and governmental jurisdictions.

The Department has prepared this initial regulatory flexibility analysis (IRFA) and requests data or other information that would prevent it from certifying that a final class exemption would not have a significant impact on a substantial number of small entities.

1. Need for the Proposed Exemption

As discussed above, the Proposed QROAD Class Exemption would revise and standardize the framework governing ineligibility events under the QPAM Class Exemption. Under current regulatory conditions, QPAMs that become ineligible due to violations of Section I(g) of the QPAM Class Exemption must apply for individual exemptions if they intend to continue to rely on the QPAM Class Exemption. The process of applying for individual exemptions can be time-consuming and costly. This proposal establishes two structured compliance methods designed to clarify eligibility standards and reduce reliance on individualized applications.

2. Affected Small Entities

The Proposed QROAD Class Exemption would affect QPAMs. Under Small Business Administration (SBA) size standards, the relevant threshold for investment advisers registered under the Advisers Act and similar entities is $47 million in annual receipts.[69] The relevant NAICS codes include Investment Banking and Securities Dealing (523150), Insurance Carriers (524113), and Portfolio Management (523940).

The QPAM Class Exemption was premised on the QPAM being an entity of sufficient size to withstand undue influence from parties in interest. These size standards would limit the number of small entities that would be impacted. For example, the preamble to the 1982 proposal of the QPAM Class Exemption stated:

''The minimum capital and funds-undermanagement standards of the proposed exemption are intended to assure that the eligible fiduciaries managing the accounts or funds (''investment funds''), consisting of the assets of one or more plans, are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest.'' [70]

Additionally, the Department has sought revenue information on the parent companies of QPAMs that have obtained individual exemptions in the past. The parent companies for whom the Department could identify revenues have annual revenues in the billions or hundreds of billions of dollars. While the Department does not have complete data on all QPAMs that could use the Proposed QROAD Class Exemption, it expects that few would fall below SBA's revenue threshold of $47 million.

The QPAM Class Exemption sets size thresholds a firm must meet in order to be a QPAM. The minimum capital and funds-under-management standards are intended to ensure that the eligible fiduciaries managing the accounts or investment funds are established institutions which are large enough to discourage the exercise of undue influence upon their decision-making processes by parties in interest. Therefore, the Department believes that this proposal would not affect a significant number of small entities. If a QPAM did meet the SBA definition of a small entity, the per-entity cost for the Section II and Section III compliance methods are both $3,125,[71] which are less than 0.01 percent of the SBA revenue threshold of $47 million. The Section II compliance cost of $3,125 would represent 1 percent of annual revenue for an entity with approximately $312,500 in annual revenue. There are also per-entity cost-savings of $37,075 for both compliance methods.

[67] 5 U.S.C. 601–612.

[68] 5 U.S.C. 601(2), 603(a).

[69] SBA, *Table of Size Standards,* (2023), *https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[70] 47 FR 56945, 56947 (Dec. 21, 1982).

[71] This is based on the per-entity cost estimates in Table 3, which is calculated using the hour burden and hourly wage rate.

3. Cost of Proposed Exemption

The Proposed QROAD Class Exemption establishes two structured compliance methods designed to clarify eligibility standards and reduce reliance on individualized applications. Under the proposal, Reliance QPAMs must prepare notices to clients and the Department, and meet other requirements such as certifications or audits, to utilize the exemption. The proposal may reduce reliance on costly individual exemption applications, and the need for or frequency of audits. Increased compliance costs related to the notice and certification are expected to be modest relative to the revenues of affected entities.

To provide context for the magnitude of these costs, the Department compares the estimated per-entity compliance cost to the SBA size standard for Investment Banking and Securities Dealing (523150), Insurance Carriers (524113), and Portfolio Management (523940) which is $47 million in annual revenue. As shown in Tables 9 and 10, the estimated per-entity cost for the Section II and Section III compliance methods are both $3,125, which represents a very small share of revenues. A cost of $3,125 would represent 1 percent of annual revenue for an entity with approximately $312,500 in annual revenue.

The proposal also may generate cost savings by reducing reliance on individual exemption applications and a reduction in the need for, or frequency of, audits. As shown in Tables 9 and 10, the estimated gross cost savings from forgoing an audit and an application for an individual exemption for QPAMs using the Section II or Section III compliance methods is $37,075, which represents a larger share of revenues than the estimated compliance costs across all revenue levels examined. Accordingly, the Department expects that the proposed exemption could result in net cost savings for affected entities in circumstances where firms would otherwise seek an individual exemption. In addition, relatively few QPAMs are expected to experience ineligibility events in any given year and therefore few would need to rely on the structured compliance methods established by the proposal.

TABLE 9. Cost and Cost Savings of Proposed Class Exemption Relative to SBA Size Threshold for Section II Compliance Method

Revenue Level (Relative to SBA Threshold)	Annual Revenue	Cost per Entity	Cost as Percent Revenue	Cost Savings per Entity	Cost Savings as Percent Revenue
	(A)	(B)	(C) = (B/A)	(D)	(E) = (D/A)
100 Percent of SBA Threshold	$47,000,000	$3,125	0.01%	$37,075	0.08%
75 Percent of SBA Threshold	$35,250,000	$3,125	0.01%	$37,075	0.11%
50 Percent of SBA Threshold	$23,500,000	$3,125	0.01%	$37,075	0.16%
25 Percent of SBA Threshold	$11,750,000	$3,125	0.03%	$37,075	0.32%
Note: These gross cost savings represent the cost savings of foregoing an audit and an application for an individual exemption. Not all QPAMs will experience this scenario.					

TABLE 10. Cost and Cost Savings of Proposed Class Exemption Relative to SBA Size Threshold for Section III Compliance Method

Revenue Level (Relative to SBA Threshold)	Annual Revenue	Cost per Entity	Cost as Percent Revenue	Cost Savings per Entity	Cost Savings as Percent Revenue
	(A)	(B)	(C) = (B/A)	(D)	(E) = (D/A)
100 Percent of SBA Threshold	$47,000,000	$3,125	0.01%	$37,075	0.08%
75 Percent of SBA Threshold	$35,250,000	$3,125	0.01%	$37,075	0.11%
50 Percent of SBA Threshold	$23,500,000	$3,125	0.01%	$37,075	0.16%
25 Percent of SBA Threshold	$11,750,000	$3,125	0.03%	$37,075	0.32%
Note: These gross cost savings represent the cost savings of foregoing an audit and an application for an individual exemption. Not all QPAMs will experience this scenario.					

4. Alternative

As an alternative, the Department considered taking no action and continuing to require QPAMs that experience ineligibility events to apply for individual exemptions. However, the individual exemption process can be time-consuming and costly for affected entities and may create uncertainty for QPAMs and their affiliated entities during the review period. The proposed exemption is intended to provide clearer standards and reduce reliance on individualized applications while maintaining appropriate safeguards.

5. Duplicate, Overlapping, or Relevant Federal Rules

There are no duplicate, overlapping, or relevant Federal rules.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.[72] For purposes of the UMRA, this rulemaking is not expected to have such an impact on the private sector.

C. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the Federal Government and States, or on the distribution of power and responsibilities among the various levels of government.[73] Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the proposed exemption.

The proposed exemption does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and Code Section 4975(c)(2) does not relieve an ERISA fiduciary, or other party in interest or disqualified person with respect to a Plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404 which require, among other things, that an ERISA fiduciary act prudently and discharge their duties respecting the Plan solely in the interests of the participants and beneficiaries of the Plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of Code Section 401(a) that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries.

(2) Before the exemption may be granted under ERISA Section 408(a) and Code Section 4975(c)(2), the Department must find that it is administratively feasible; in the interests of Plans, their participants and beneficiaries, and IRA owners; and protective of the rights of participants and beneficiaries of Plans and IRA owners.

(3) If granted, the exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption.

(4) The proposed exemption, if granted, is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Proposed Class Exemption

The Department is proposing this exemption on its own motion under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) in accordance with the Department's exemption procedures regulation.[74] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I—Definitions

(a) The term ''*Affiliate*'' means ''Affiliate'' as defined in Section VI(d) of the QPAM Class Exemption. Therefore, an ''Affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, Controlling, Controlled by, or Under Common Control with the person;

(2) Any director of, Relative of, or partner in, any such person;

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a five percent or more partner or owner; and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in Code Section 4975(e)(2)(H) or officer (earning ten (10) percent or more of the yearly wages of such person); or

(B) Has direct or indirect authority, responsibility, or control regarding the custody, management or disposition of Plan assets.

(b) The term ''*Affiliated QPAM*'' means, with respect to a Misconduct Entity, an Affiliate that meets the definition of ''QPAM,'' but that is not a ''*Related QPAM*.''

(c) The terms ''*Control,*'' ''*Controlling,*'' ''*Controlled by,*'' and ''*Controls*'' mean the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term ''*Under Common Control*'' refers to two or more entities that are directly or indirectly subject to the Control of the same entity.

(d) The term ''*Covered Plan*'' means a plan or Investment Fund subject to Part 4 of Title I of ERISA (an ''ERISA-covered plan'') or a plan or Investment Fund subject to Code Section 4975 (an ''IRA''), in each case, with respect to which the QPAM relies on the QPAM Class Exemption, or with respect to which the QPAM has expressly represented that the manager qualifies as a QPAM or relies on the QPAM Class Exemption. A Covered Plan does not include an ERISA-covered plan or IRA

[72] 2 U.S.C. 1501 *et seq.* (1995).

[73] Federalism, 64 FR 153 (Aug. 4, 1999).

[74] 29 CFR part 2570, subpart B (89 FR 4662, Jan. 24, 2024). For purposes of this proposed exemption, references to ERISA Section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code Section 4975.

to the extent that the QPAM has expressly disclaimed reliance on QPAM status or the QPAM Class Exemption in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a QPAM may disclaim reliance on the QPAM Class Exemption in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the QPAM will not represent that it is a QPAM and will not rely on the relief described in the QPAM Class Exemption.

(e) The term ''*Criminal Conviction*'' means a ''Criminal Conviction'' as defined in Section VI(r) of the QPAM Class Exemption, except that, for purposes of this exemption, a ''Criminal Conviction'' includes all Criminal Convictions that arise from the same incident in that they are based on the same underlying facts, circumstances and conduct. A ''Criminal Conviction'' includes ''U.S. Convictions'' and ''Foreign Convictions,'' as those terms are described below.

(f) The term ''*Exemption Period*'' means the 10-year period beginning on the most recent Ineligibility Date.

(g) The term ''*Ineligibility Date*'' means ''Ineligibility Date'' as defined in Section I(h) of the QPAM Class Exemption.

(h) The term ''*Independent Fiduciary*'' has the same meaning as ''qualified independent fiduciary'' in 29 CFR 2570.31(j).

(i) The term ''*Investment Fund*'' means ''Investment Fund'' as defined in Section VI(b) of the QPAM Class Exemption.

(j) The term ''*Misconduct Entity*'' means an entity that is the subject of a Criminal Conviction or Prohibited Misconduct. Except as expressly allowed below, relief in this exemption does not extend to any Criminal Conviction or Prohibited Misconduct involving a ''Misconduct Entity'' that was a QPAM during the period of time beginning on the date the misconduct began that gave rise to Criminal Conviction or Prohibited Misconduct through the end of the most recent Exemption Period.

(k) The terms ''*Participate In,*'' ''*Participates In,*'' ''*Participating In,*'' ''*Participated In,*'' *and* ''*Participation In*'' mean ''Participate In,'' ''Participates In,'' ''Participating In,'' ''Participated In,'' and ''Participation In'' as those terms are defined in Section VI(t) of the QPAM Class Exemption.

(l) The term ''*Prohibited Misconduct*'' means ''Prohibited Misconduct'' as defined in Section VI(s) of the QPAM Class Exemption.

(m) The term ''*Plan*'' means ''Plan'' as defined in Section VI(n) of the QPAM Class Exemption.

(n) The term ''*QPAM Class Exemption*'' means Prohibited Transaction Class Exemption 84–14 for Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), as amended at 75 FR 38837 (July 6, 2010), as amended at 89 FR 23090 (April 3, 2024), and as corrected at 89 FR 65779 (Aug. 13, 2024));

(o) The term ''*Qualified Professional Asset Manager*'' *or* ''*QPAM*'' means a ''Qualified Professional Asset Manager'' or ''QPAM,'' as defined in Section VI(a) of the QPAM Class Exemption.

(p) The term ''*Related QPAM*'' means an entity that meets the definition of QPAM and that relies on this exemption, and with respect to which a Misconduct Entity owns a direct or indirect five (5) percent or more interest, but where the Misconduct Entity does not ''*Control*'' the Related QPAM.

(q) The term ''*Relative*'' means a relative as that term is defined in ERISA Section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(r) The term ''*Reliance Date*'' means the date on which a QPAM first relies on this exemption with respect to a Criminal Conviction or Prohibited Misconduct. The Reliance Date may not be earlier than the associated Ineligibility Date.

(s) The term ''*Reliance QPAM*'' means any QPAM that is relying on the relief in this exemption. One corporate organizational structure might have multiple Affiliated and Related QPAMs that seek to rely on the relief herein, all of which are Reliance QPAMs if qualified under the conditions set forth herein.

Section II—Exemptive Relief Where No Control Relationship Exists Between the Reliance QPAM and the Misconduct Entity

(a) Covered Transactions

A Reliance QPAM may continue to rely on the QPAM Class Exemption during the Exemption Period notwithstanding:

(1) A single Criminal Conviction described in Section VI(r)(1) of the QPAM Class Exemption (a U.S. Conviction) of a Misconduct Entity, where the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM; and/or

(2) One or more Criminal Convictions described in Section VI(r)(2) of the QPAM Class Exemption (Foreign Convictions) by one or more Misconduct Entities, where, in each instance, the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM; and/or

(3) One or more instances of Prohibited Misconduct by one or more Misconduct Entities, where, in each instance, the Misconduct Entity is not a QPAM and, at any time, neither Controls nor is Controlled by the Reliance QPAM.

(b) Eligibility

(1) As of the Reliance Date, no officer, director, agent (other than the Misconduct Entity), or employee of the Reliance QPAM knew of or had reason to know of, or Participated In, the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct, during the time the conduct was ongoing. Further, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of a party engaged on behalf of the Reliance QPAM, who has responsibility for, or exercises authority in connection with, the management of Covered Plan assets, knew of or had reason to know of, or Participated In the conduct that was the subject of the Criminal Conviction or Prohibited Misconduct, during the time the conduct was ongoing;

(2) As of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of the Reliance QPAM received direct compensation, or knowingly received indirect compensation, in connection with the conduct that underlies the Criminal Conviction or Prohibited Misconduct. Further, as of the Reliance Date, no officer, director, agent (other than the Misconduct Entity) or employee of a party engaged on behalf of the Reliance QPAM who had responsibility for, or exercised authority in connection with, the management of plan assets, received direct compensation, or knowingly received indirect compensation, in connection with the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct;

(3) The Reliance QPAM (and any other Related QPAMs and Affiliated QPAMs of the Misconduct Entity) did not exercise authority over the assets of

any Investment Fund or plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or Code Section 4975 (an IRA) in a manner that it knew, or should have known, would further the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct, or cause the Reliance QPAM (or its Affiliates or any officers, employees or partners) to directly or indirectly profit from the conduct that is the subject of the Criminal Conviction or Prohibited Misconduct;

(4) As of the Reliance Date, the Reliance QPAM will not use its authority or influence to direct an Investment Fund that is subject to ERISA or the Code and managed by such QPAM with respect to one or more Covered Plans to enter into any transaction with a Misconduct Entity or to engage a Misconduct Entity to provide any service to such Investment Fund for a direct or indirect fee borne by such Investment Fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(5) As of the Reliance Date, the asset management decisions of the Reliance QPAM are conducted independently of the management and business activities of the Misconduct Entity;

(6) As of the Reliance Date, no Misconduct Entity will act as an ERISA fiduciary within the meaning of ERISA Section 3(21)(A) or Code Section 4975(e)(3) with respect to ERISA-covered Plan and IRA assets, except that each may act as such an ERISA fiduciary with respect to employee benefit plans sponsored for its own employees or employees of an Affiliate;

(7) The conduct that is the subject of the Criminal Conviction or Prohibited Misconduct did not involve assets of any Plan or Investment Fund subject to ERISA Title I, Part 4 and/or Code Section 4975;

(8) The Reliance QPAM complies with each applicable condition of this exemption and with each condition of the QPAM Class Exemption, except for the Criminal Conviction or Prohibited Misconduct that necessitated reliance on this exemption. Subject to the QROAD Phase Out Period described in Section IV below, relief under this exemption terminates immediately at the time a Reliance QPAM fails to comply with any condition applicable to its relief under this exemption;

(c) Policies and Training

(1) Within 60 days of the Reliance Date, the Reliance QPAM implements, maintains (or continues to maintain), adjusts (to the extent necessary), and follows written policies requiring and reasonably designed to ensure compliance with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, the QPAM Class Exemption, and this exemption (the Policies). The Policies must be designed to ensure that:

(A) The asset management decisions of the Reliance QPAM are conducted: (i) independently of the management and business activities of the Misconduct Entity; and (ii) without considering any fee a related local sub-custodian may receive from those decisions. This condition does not preclude a Reliance QPAM from receiving publicly available research and other widely available information from an Affiliate of the Misconduct Entity;

(B) The Reliance QPAM fully complies with ERISA's fiduciary duties and with the prohibited transaction provisions under ERISA and the Code as applicable with respect to each Covered Plan and does not knowingly participate in any violations of these duties and provisions with respect to any Plan for which it provides asset management services;

(C) The Reliance QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to any Plan;

(D) Any filings or statements made by the Reliance QPAM to regulators, including but not limited to the Department of Labor, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete to the best of such QPAM's knowledge at that time;

(E) To the best of the Reliance QPAM's knowledge at the time, such QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(F) The Reliance QPAM complies with the terms of this exemption;

(G) The Reliance QPAM conducts the Training as described in (c)(2); and

(H) Any violation of, or failure to comply with, an item that is the subject of a policy required by this paragraph (c) is corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected is reported, upon discovering the failure to promptly correct, in writing, to appropriate corporate officers, the head of compliance and the General Counsel (or their functional equivalent) of the Reliance QPAM, and an appropriate ERISA fiduciary of any affected Covered Plan where such ERISA fiduciary is independent of the Reliance QPAM and the Misconduct Entity. However, with respect to any Covered Plan sponsored by an Affiliate of the Misconduct Entity or beneficially owned by an employee of the Misconduct Entity or its Affiliates, such ERISA fiduciaries do not need to be independent of the Misconduct Entity. A Reliance QPAM will not be treated as having failed to develop, implement, maintain, or follow its Policies, provided that it corrects any instance of noncompliance when discovered or when it reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (H).

(2) The Reliance QPAM implements a program of training, conducted at least annually, with the first training completed within 12 months of the Reliance Date, for all relevant asset/portfolio management, trading, legal, compliance, and internal audit personnel (the Training), as follows:

(A) The Training is conducted by a professional who has been prudently selected and who has appropriate training and proficiency with ERISA and the Code to perform the tasks required by this exemption and may be conducted in-person, electronically or via a website; and

(B) The Training must be set forth in the Policies and, at a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing (including resources on how to report suspected wrongdoing within the Reliance QPAM and to EBSA and other relevant Federal oversight agencies).

(d) Independent Fiduciary

(1) The Reliance QPAM must prudently select an Independent Fiduciary with appropriate technical training and proficiency with ERISA and the Code, to determine the Reliance QPAM's compliance with Sections II(a) and II(b)(1)–(7), and that the Policies under Section II(c) have been established. The Independent Fiduciary must be granted unfettered access to all the information and documents it deems

necessary in its sole discretion to make its required findings.

(2) Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that contains a detailed description of the Independent Fiduciary's processes and procedures. The written report must also contain a certification as to whether, to the best of the Independent Fiduciary's knowledge and belief: all of the representations made in such report are true and correct; all of the conditions in Section II(a) and (b)(1)–(7) have been met; and all of the Policies in Section II(c) have been established. The Independent Fiduciary's report must contain:

(A) An express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the Reliance QPAM or any party engaged on behalf of the Reliance QPAM; and

(B) A certification by the head of compliance of the Reliance QPAM stating that, to the best of their knowledge and belief: such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g); shared all material information regarding that investigation with the Independent Fiduciary; and the Independent Fiduciary's report is accurate and complete.

The Independent Fiduciary's written report must be made available on the Reliance QPAM's website upon completion.

(e) Notice to the Department and Covered Plan Fiduciaries

(1) Within 90 days of the Reliance Date, the Reliance QPAM provides written notice to the Department and each sponsor and beneficial owner of a Covered Plan that has entered into a written management agreement with the Reliance QPAM. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM after the Reliance date, but less than 90 days after the Reliance Date, must receive a copy of the written notice within 90 days of engagement. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM (including a participation or subscription agreement in a pooled fund managed by the Reliance QPAM) 90 or more days after the Reliance Date must receive a copy of the written notice prior to, or contemporaneously with, the client's receipt of a written management agreement from the Reliance QPAM. Disclosures required under this paragraph may be delivered electronically (including by an email that has a link to this exemption as published in the **Federal Register**). The written notice must contain:

(A) A certification from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief: the Independent Fiduciary's report is accurate, complete and correct; the Reliance QPAM is in compliance with the requirements of Section II(a) and (b); and the Reliance QPAM has established the requisite Policies and Training pursuant to Section II(c);

(B) A detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and that the Criminal Conviction or Prohibited Misconduct results in a failure to meet a condition in the QPAM Class Exemption;

(C) A copy of this exemption as published in the **Federal Register**.

(D) Instructions on how to retrieve a copy of the certified written report of the Independent Fiduciary required by Section II(d) from the Reliance QPAM's website; and

(E) Instructions on how to retrieve the Policies required by Section II(c) or a description (Summary Policies) which accurately summarizes key components of such Reliance QPAM's Policies from the Reliance QPAM's website. If the Reliance QPAM changes its Policies, each Covered Plan client must receive a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Reliance QPAM meets this disclosure requirement through Summary Policies, changes to the Policies will not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(2) The Reliance QPAM sends the notices described in (1) to the Department via email to *QPAM@dol.gov,* and to each Covered Plan client of the Reliance QPAM in a manner ensuring receipt by an ERISA fiduciary of each Covered Plan. The notices must be sent for any new Criminal Convictions or instances of Prohibited Misconduct that are eligible for relief under this Section II and will be available for public disclosure.

(f) Subsequent Covered Criminal Convictions or Prohibited Misconduct Events

The Reliance QPAM must comply with the definitions in Section I and each Section II condition with respect to each ineligibility event that otherwise qualifies for relief under Section II. The timeframe for compliance for each ineligibility event begins on the Reliance Date related to such event.

(g) Special Rule for Related QPAMs

Notwithstanding the above, if the Reliance QPAM is a Related QPAM, then the Reliance QPAM may rely on the QPAM Class Exemption during the Exemption Period for a covered transaction described in Section II(a) and III(a) if the conditions in Section II(b)(1)–(8) and (f) are satisfied. Related QPAMs are not otherwise required to satisfy the conditions in Section II(c), (d) and (e).

Section III—Exemptive Relief Under a Control Relationship Between the Reliance QPAM and the Misconduct Entity

(a) Covered Transactions

A Reliance QPAM may continue to rely on the QPAM Class Exemption during the Exemption Period, notwithstanding:

(1)(A) A single U.S. Conviction of a Misconduct Entity, where the Misconduct Entity is not a QPAM, at any time, either Controls or is Controlled by the Reliance QPAM; or

(B) Collectively, up to two U.S. Convictions by one or more Misconduct Entities, where in each instance, the Misconduct Entity is not a QPAM and no more than one U.S. Conviction involves a Misconduct Entity is not a QPAM that, at any time, either Controls or is Controlled by Reliance QPAM; and/or

(2) One or more Foreign Convictions by one or more Misconduct Entities, where any Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM including where any Misconduct Entity is a QPAM; and/or

(3) One or more instances of Prohibited Misconduct by one or more Misconduct Entities, where any Misconduct Entity, at any time, either Controls or is Controlled by the Reliance QPAM including where any Misconduct Entity is a QPAM.

(b) Eligibility

(1) To qualify for relief under Section III, the conditions in Section II(b) and Section III of this exemption must be satisfied.

(c) Policies and Training

(1) Within 60 days of the Reliance Date, the Reliance QPAM implements, maintains (or continues to maintain), adjusts (to the extent necessary), and follows the Policies as set out in Section II(c)(1)(A)–(H) above.

(2) The Reliance QPAM implements the Training, conducted in accordance with the requirements in Section II(c)(2)(A)–(B) above.

(d) Independent Fiduciary

(1) The Reliance QPAM must prudently appoint an Independent Fiduciary with appropriate technical training and proficiency with ERISA and the Code, to determine the Reliance QPAM's compliance with Sections II(b)(1)–(7), III(a), and that the Policies required under Section III(c) have been established. The Independent Fiduciary must be granted unfettered access to all the information and documents it deems necessary in its sole discretion to make its required findings.

(2) Within 90 days of the Reliance Date, the Independent Fiduciary must submit a written report to the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that contains a detailed description of the Independent Fiduciary's processes and procedures. The written report must also contain a certification as to whether, to the best of the Independent Fiduciary's knowledge and belief: all of the representations made in such report are true and correct; all of the conditions in Sections II(b)(1)–(7), III(a) have been met; and all of the Policies required under Section III(c) have been established. The Independent Fiduciary's report must contain:

(A) An express statement confirming that, to the best of the Independent Fiduciary's knowledge, no person who knew or had reason to know of the misconduct that gave rise to a violation of Section I(g) of the QPAM Class Exemption currently works at the Reliance QPAM or any party engaged on behalf of the Reliance QPAM; and

(B) A certification by the head of compliance of the Reliance QPAM, stating that to the best of their knowledge and belief: such head of compliance has diligently investigated the misconduct that gave rise to the violation of Section I(g); shared all material information regarding that investigation with the Independent Fiduciary; and the Independent Fiduciary's report is accurate and complete.

The Independent Fiduciary's written report must be made available on the Reliance QPAM's website upon completion.

(e) Audit

(1) The Reliance QPAM undergoes an audit by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of and the Reliance QPAM's compliance with the Policies and Training conditions in Section III(c) and the eligibility conditions in Section III(a) and (b). The audit requirement must be incorporated into the Policies. Each audit must cover twelve (12) consecutive months. The first audit must cover the 12-month period beginning on the earlier of the start date of the One Year Transition under Section I(i) of the QPAM Class Exemption (if applicable), or the Reliance Date. The audit must be completed within 6 months of the end of the 12-month period to which it relates. The audit must be completed within 6 months of the end of the twelve-month period to which it relates. Each successive biennial audit must cover a one-year period that begins 12 months after the end of the most recent audit period, and must be completed within 6 months of the end of the audit period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, the Reliance QPAM and any applicable Affiliates will grant the auditor unfettered access to its businesses, including, but not limited to its computer systems, business records, transactional data, workplace locations, training materials, and personnel. Such access must be provided only to the extent that it is not prevented by State or Federal statute or does not involve communications subject to attorney client privilege, and may be limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether the Reliance QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test the QPAM's operational compliance with the Policies and Training conditions. In this regard, the auditor must test a sample of the Reliance QPAM's transactions involving Covered Plans. The sample must include transactions that are sufficient in size, number and nature to afford the auditor a reasonable basis to determine the extent of the Reliance QPAM's operational compliance with the Policies and Training conditions. The auditor also must review each Compliance Report issued by the Compliance Officer as described in Section III(h) since the previous Audit Report was issued;

(5) On or before the end of the relevant period for completing each audit, the auditor must issue a written report (the Audit Report) to the Reliance QPAM that describes the procedures performed by the auditor during its examination. At its discretion, the auditor may issue a single consolidated Audit Report that covers all Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(A) the adequacy of the Reliance QPAM's Policies and Training; the Reliance QPAM's compliance with this exemption; the need, if any, to strengthen the Policies and Training required by Section III(c); and any instance of the Reliance QPAM's noncompliance with the Policies and Training. The Reliance QPAM must promptly address any noncompliance by preparing a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training. Any plan of action or action taken by the Reliance QPAM must be identified in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(e)(7) below). In the event a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the Reliance QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. Any finding that the Reliance QPAM has complied with the requirements under this subparagraph

must be based on evidence that the Reliance QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the Compliance Officer, as described below, as the basis for its conclusions in lieu of independently making the determinations and testing as required herein; and

(B) The adequacy of each Exemption Review and Exemption Report described in Section III(h) issued since the previous Audit Report was issued;

(6) The auditor must notify the Reliance QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) For each Audit Report, the general counsel of the Reliance QPAM (or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the Reliance QPAM, with respect to which the Audit Report applies) must certify in writing that they have reviewed the Audit Report and this exemption and that to the best of their knowledge and belief at the time, the Reliance QPAM has addressed, corrected, or remedied any noncompliance and inadequacy, or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. The certification must also include the signatory's determination that the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption and with the applicable provisions of ERISA and the Code;

(8) The Reliance QPAM provides its certified Audit Report to the Department via email to *QPAM@dol.gov,* no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made available to the public upon request. Further, the Reliance QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any ERISA fiduciary of a Covered Plan;

(9) The Reliance QPAM and the auditor must submit to the Department via email to *QPAM@dol.gov* any executed auditor engagement agreement(s) under this exemption no later than 60 days after the execution of any such engagement agreement;

(10) The auditor must provide the Department, upon request, access to all the workpapers it created and utilized in the course of the audit, for inspection and review, provided such access and inspection is otherwise permitted by law;

(11) The Reliance QPAM must notify the Department of a change in the independent auditor no later than 60 days after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor and the Reliance QPAM; and

(12) At the Department's request, the Reliance QPAM and the auditor must provide the Department with updates about the progress of the audit.

(f) Warranties

As of the Reliance Date, with respect to any arrangement, agreement, or contract between a Reliance QPAM and a Covered Plan, the Reliance QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable, with respect to the Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to the Covered Plan, to the extent that section is applicable;

(2)(A) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from: the Reliance QPAM's violation of the conditions of this exemption; loss of QPAM relief due to failure to satisfy Section I(g); prohibited transactions or ERISA fiduciary breaches connected to the misconduct that gave rise to reliance on this exemption. The term ''actual losses'' includes, but is not limited to, losses and related costs arising from prudently unwinding transactions with third parties and from prudently transitioning Plan assets to an alternative asset manager as well as costs associated with exposure to excise taxes under Code Section 4975 as a result of the Reliance QPAM's inability to rely on the relief in the QPAM Class Exemption; and

(B) To develop and maintain written processes that clearly describe: (i) how the Reliance QPAM identifies and quantifies ''actual losses'' for purposes of Section III(f)(2)(A); and (ii) how Covered Plans may recover or avoid incurring the losses that the Reliance QPAM must indemnify or hold Covered Plans harmless from incurring pursuant to Section III(f)(2)(A);

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Reliance QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by the Reliance QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a separately managed account or pooled fund, in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the Ineligibility Date, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all such investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund, in the event the withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting the liability of the Reliance QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of an ERISA plan fiduciary or other party hired by the ERISA plan fiduciary who is independent of the Reliance QPAM and its Affiliates, officers, employees or partners, or damages arising from acts outside the control of the Reliance QPAM; and

(7) Within 60 days after the Reliance Date, the Reliance QPAM must provide a notice of its obligations under this Section III(f) to each Covered Plan, including a copy of the processes developed to identify, quantify, and recover ''actual losses'' as provided in clause (2) above (the Reliance QPAM must send an updated notice to each Covered Plan within 30 days of a subsequent material change to the ''actual losses'' process). For Covered Plans that enter into a written management agreement with the Reliance QPAM after the Reliance Date, but less than 60 days after the Reliance Date, the Reliance QPAM must provide a notice of its obligations and ''actual losses'' process within 60 days of engagement. For Covered Plans that enter into a written management agreement with a Reliance QPAM on or after 60 days from the Reliance Date, the Reliance QPAM must agree to its obligations under this Section III(f) in the written asset or investment management agreement.

(g) Notice to the Department and Covered Plan Fiduciaries

(1) Within 90 days of the Reliance Date, the Reliance QPAM provides written notice to the Department and each sponsor and beneficial owner of a Covered Plan that has entered into a written management agreement with the Reliance QPAM. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM after the Reliance date, but less than 90 days after the Reliance Date must receive a copy of the written notice within 90 days of engagement. All Covered Plan clients that enter into a written management agreement with the Reliance QPAM (including a participation or subscription agreement in a pooled fund managed by the Reliance QPAM) 90 or more days after the Reliance Date must receive a copy of the written notice prior to, or contemporaneously with, the client's receipt of a written management agreement from the Reliance QPAM. Disclosures required under this paragraph may be delivered electronically (including by an email that has a link to this exemption as published in the **Federal Register**). The written notice must contain:

(A) A certification from the Reliance QPAM's head of compliance and general counsel (or their functional equivalent) that, to the best of their knowledge and belief: the Independent Fiduciary's report is accurate, complete and correct; the Reliance QPAM is in compliance with the requirements of Section III(a) and (b); and the Reliance QPAM has established the requisite Policies and Training pursuant to Section III(c);

(B) A detailed description of the circumstances, conduct, and entities that Participated In the Criminal Conviction and/or the Prohibited Misconduct, and that the Criminal Conviction or Prohibited Misconduct results in a failure to meet a condition in the QPAM Class Exemption;

(C) A copy of this exemption as published in the **Federal Register**;

(D) Instructions on how to retrieve a copy of the certified written report of the Independent Fiduciary required by Section III(d) from the Reliance QPAM's website; and

(E) Instructions on how to retrieve the Policies required by Section III(c) or a description (Summary Policies) which accurately summarizes key components of such Reliance QPAM's Policies from the Reliance QPAM's website. If the Reliance QPAM changes its Policies, each Covered Plan client receives a new disclosure within 180 days following the end of the calendar year during which the Policies were changed. If the Reliance QPAM meets this disclosure requirement through Summary Policies, changes to the Policies will not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(2) The Reliance QPAM sends the notices described in (1) to the Department via email to *QPAM@dol.gov,* and to each Covered Plan client of the Reliance QPAM in a manner ensuring receipt by an ERISA fiduciary of each Covered Plan. The notices must be sent for any new Criminal Convictions or instances of Prohibited Misconduct that are eligible for relief under this Section III and will be available for public disclosure.

(h) Compliance Officer

(1) Within 60 days after the Reliance Date, the Reliance QPAM designates a senior compliance officer (the Compliance Officer) to be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct a review of each twelve-month period comprising the Exemption Period (each, an Exemption Review), to determine the adequacy and effectiveness of the Reliance QPAM's implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(A) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(B) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management; and

(2) With respect to the Exemption Review, the following conditions must be met:

(A) The Exemption Review must include a review of the Reliance QPAM's compliance with and the effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the 12-month period under review; the most recent Audit Report issued pursuant to this exemption; any material change in the relevant business activities of the Reliance QPAM; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Reliance QPAM;

(B) The Compliance Officer must prepare a written report for the Exemption Review (an Exemption Report) that (i) summarizes their material activities during the 12-month period under review; (ii) sets forth any instance of noncompliance discovered during the twelve-month period under review, and any related corrective action; (iii) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (iv) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions in response to such recommendations;

(C) In the Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time that: (i) the report is accurate; (ii) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (iii) any known instance of noncompliance during the 12-month period under review and any prior period, and any related correction taken to date, has

been identified in the Exemption Report; and (iv) the Reliance QPAM complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(D) The Exemption Report must be provided to appropriate corporate officers of the Reliance QPAM; the head of compliance and the general counsel (or their functional equivalent) of the Reliance QPAM; and must be made unconditionally available to the independent auditor described above; and

(E) The Exemption Review, including the Compliance Officer's written Report, must be completed within 90 days following the end of the period to which it relates.

(i) Subsequent Covered Criminal Convictions or Prohibited Misconduct Events

The Reliance QPAM must comply with the definitions in Section I and each condition in this Section III for each ineligibility event that otherwise qualifies for relief under Section III. Compliance for each ineligibility event begins on the Reliance Date of such event.

Section IV—Phase Out Period Due to Noncompliance

A Reliance QPAM that relies on the relief in Section II or III but subsequently fails to comply with a condition in this exemption may rely on the relief in this Section IV and continue to rely on the relief in Section II or III of this exemption, as applicable, for up to one year (the QROAD Phase Out Period) following the date the Reliance QPAM knew of or should have reasonably known of the noncompliance (Noncompliance Date). Relief is available only with respect to the Reliance QPAM's Covered Plans that had a pre-existing written management agreement with the Reliance QPAM, as required under QPAM Class Exemption Section VI(a), as of the Noncompliance Date. A Reliance QPAM must manage Covered Plan assets prudently and loyally during the QROAD Phase Out Period. During the QROAD Phase Out Period, the QPAM must comply with the conditions of Section II or III of this exemption and the following conditions:

Within 60 days after the Noncompliance Date, the Reliance QPAM must provide notice to the Department via email at *QPAM@dol.gov,* and to each of its Covered Plans, stating:

(1) Its failure to satisfy the terms of this exemption and the starting date of the QROAD Phase Out Period; and

(2) That during the QROAD Phase Out Period, the Reliance QPAM:

(A) Agrees not to restrict the ability of a Covered Plan to terminate or withdraw from its arrangement with the Reliance QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(B) Will not impose any fees, penalties, or charges on Covered Plans in connection with the process of terminating or withdrawing from an Investment Fund managed by the Reliance QPAM except for reasonable fees, appropriately disclosed in advance, that are specifically designed to: (i) prevent generally recognized abusive investment practices, or (ii) ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors; and

(C) Agrees to indemnify, hold harmless, and promptly restore actual losses to the client Plans for any damages that directly result to them from a violation of applicable laws, a breach of contract, or any claim arising out of the conduct that is the subject of any Criminal Conviction or Prohibited Misconduct causing reliance on this exemption. Actual losses specifically include losses and costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 as a result of a Reliance QPAM's inability to rely upon the relief in the QPAM Class Exemption.

Section V—Recordkeeping

(a) The Reliance QPAM maintains the records necessary to enable the persons described in subsection (a)(2) below to determine whether the conditions of this exemption have been met with respect to a transaction for a period of six years from the date of the transaction in a manner that is reasonably accessible for examination. No prohibited transaction will be considered to have occurred solely due to the unavailability of such records if they are lost or destroyed due to circumstances beyond the control of the QPAM before the end of the six-year period.

(1) No party, other than the QPAM responsible for complying with this Section V(a), will be subject to the civil penalty that may be assessed under ERISA Section 502(i) or the excise tax imposed by Code Section 4975(a) and (b), if applicable, if the records are not maintained or available for examination as required by this Section V(a).

(2) Except as provided in subsection (a)(3) below, or precluded by 12 U.S.C. 484 (regarding limitations on visitorial powers for national banks), and notwithstanding any provisions of ERISA Section 504(a)(2) and (b), the records are reasonably available at their customary location during normal business hours for examination by:

(A) Any authorized employee of the Department or the Internal Revenue Service or another State or Federal regulator,

(B) Any ERISA fiduciary of a Covered Plan,

(C) Any contributing employer and any employee organization whose members are covered by a Covered Plan, or

(D) Any participant or beneficiary of a Covered Plan.

(3) None of the persons described in subsection (2)(B) through (D) of this section are authorized to examine records regarding a Covered Plan that they are not a participant in or beneficiary or fiduciary of, privileged trade secrets or privileged commercial or financial information of the Reliance QPAM, or information identifying other individuals.

(4) Should the Reliance QPAM refuse to disclose information to a person described in subsection (2)(A) through (D) of this section on the basis that the information is exempt from disclosure, the Reliance QPAM must provide a written notice advising the requestor of the reasons for the refusal and that the Department may request such information by the close of the thirtieth (30th) day following the request.

(5) A Reliance QPAM's failure to maintain the records necessary to determine whether the conditions of this exemption have been met will

result in the loss of the relief provided under this exemption only for the transaction or transactions for which such records are missing or have not been maintained. Such failure does not affect the relief for other transactions if the Reliance QPAM maintains required records for such transactions in compliance with this Section V(a).

(b) The Reliance QPAM must provide the Department with the records necessary to demonstrate that each condition, as applicable, of this exemption has been met within 30 days of a request by the Department.

Section VI—Effective Date

(a) This exemption will be effective 60 calendar days after publication of the final exemption in the **Federal Register**.

(b) QPAMs that are currently relying on individual exemptions to continue relying on the QPAM Class Exemption must continue to comply with those individual exemptions and instead may rely on the relief in this exemption only as of the date they are in compliance with all applicable conditions of this exemption.

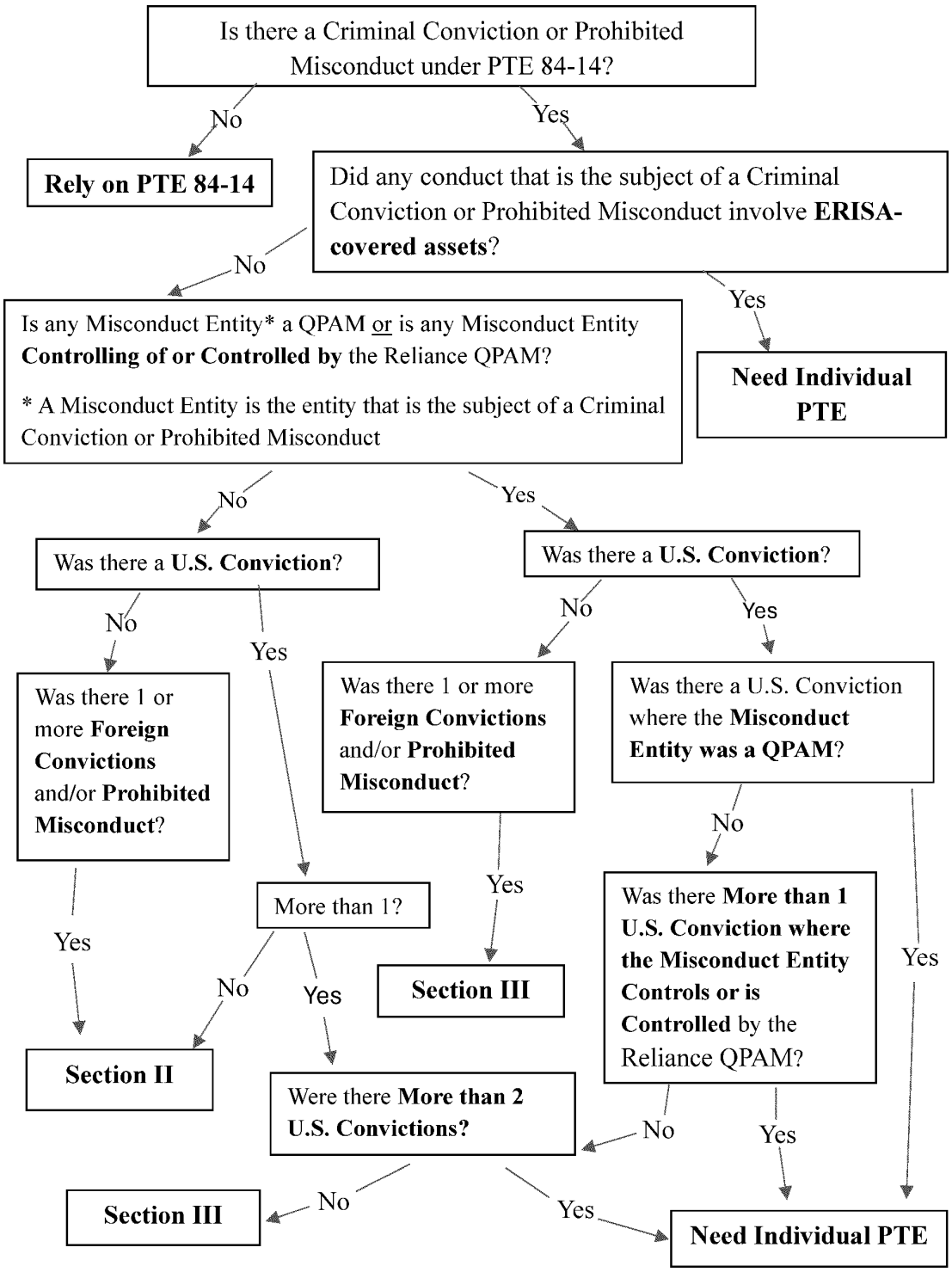
(c) If a QPAM is acquired (in whole or in part) by the Misconduct Entity or a subsidiary or Affiliate of the Misconduct Entity (a newly-acquired QPAM), the newly-acquired QPAM must satisfy all applicable conditions of this exemption within 6 months of the acquisition. To that end, the newly-acquired QPAM must initially submit to an audit, if applicable, pursuant to this exemption. The period covered by the first audit of the newly-acquired QPAM must begin on a date that is not later than six months after the acquisition.

Signed at Washington, DC, this 3rd day of November 2026.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Appendix A—Proposed QROAD Class Exemption—Decision Flow [75]



[FR Doc. 2026–23465 Filed 11–17–26; 8:45 am]

BILLING CODE 4510–29–P

[75] This flow chart is meant to assist the reader only as a supplemental guide, and in no way or manner supersedes or replaces the operative language of the QROAD Class Exemption, if granted.

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