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Presidential Documents

Title 3—

The President

Proclamation 9721 of April 6, 2018

National Crime Victims' Rights Week, 2018

By the President of the United States of America

A Proclamation

Year after year, millions of violent and property crimes occur in the United States. Each of these crimes has a victim. These victims can be left with serious physical and emotional wounds, and often with long-lasting, significant financial challenges. Even when victims receive assistance in the aftermath of these crimes, they may live in perpetual fear for their safety or continue to suffer ongoing financial setbacks. During National Crime Victims' Rights Week, we renew our determination to hold criminals accountable for their actions and to reassure all crime victims that they are not alone.

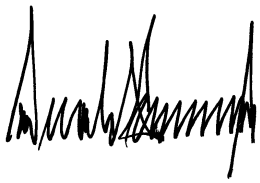
Across our Nation, thousands of dedicated advocates, healthcare professionals, private citizens, and criminal justice personnel strive to help victims as they move toward recovery and return to their lives. The Department of Justice (DOJ), through its Office for Victims of Crime (OVC), supports thousands of these local victim assistance programs. These programs provide many services, including mental health counseling and real-time crisis assistance, such as temporary housing, transportation, and civil legal assistance. OVC also supports State crime victim compensation programs, which help reimburse victims for medical, mental health, funeral, burial, and other expenses resulting from their experiences as victims of crime. Yet, according to the National Crime Victimization Survey, only 42 percent of the victims of violent crime report the offense to police, and only 12 percent of victims of serious violence received services to assist them in the aftermath. Appropriate victim services from trained and qualified providers can transform lives. All those who diligently endeavor to console, heal, and support victims of crime deserve our gratitude and continued support.

My Administration will continue to take a strong stance against crime in the United States. For example, DOJ's Project Safe Neighborhoods initiative has helped coordinate our efforts with State and local jurisdictions to restore public safety to our communities. In addition, earlier this year, I signed the SAFER Act of 2017, which strengthens and reauthorizes efforts to eliminate the nationwide rape kit backlog. If we can prosecute violent crimes more quickly and efficiently, we can help the victims of crime overcome their experiences and prevent others from suffering in the future.

This week, we reaffirm our commitment to alleviate the burdens of crime victims, support those who serve these victims, and reduce the number of future victims by assisting law enforcement to keep our communities safe. Together, we can ensure a safe and prosperous future for all Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 8 through 14, 2018, as National Crime Victims' Rights Week. I urge all Americans, families, law enforcement, community and faith-based organizations, and private organizations to work together to support victims of crime and protect their rights.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2018–07758
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Presidential Documents

Proclamation 9722 of April 6, 2018

National Former Prisoner of War Recognition Day, 2018

By the President of the United States of America

A Proclamation

Since the days of the American Revolution, brave men and women have selflessly answered the call to protect and defend our great Nation. During the conflicts of the past two centuries, more than 500,000 United States service members have been captured and held as prisoners of war (POWs). National Former Prisoner of War Recognition Day honors these American patriots, who each paid an extraordinary price to help preserve our liberty.

This year commemorates several significant military anniversaries, including the centennial observance of the Armistice that ended World War I, the 75th anniversary of the Battle of Kasserine Pass in World War II, the 65th anniversary of the Korean Armistice Agreement, the 50th anniversary of the Vietnam War's Tet Offensive, and the 25th anniversary of the Battle of Mogadishu. Enemy forces captured and imprisoned American service members during each of these conflicts. During these battles, as with those throughout our Nation's history, military personnel carried out their missions undaunted by risk of capture or loss of life, because of their love for each other and their devotion to the principles of duty, honor, and justice.

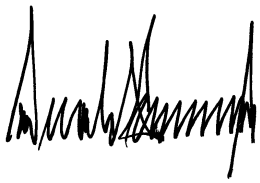
On this day, we pay homage to the courageous warriors who endured time in enemy hands and returned with honor to their families. During their capture, they faced loneliness, torture, hardship, separation from loved ones, and uncertainty about the future. In spite of unimaginable tribulations, these patriots persevered and survived. They are American heroes.

Former POWs remain actively engaged in communities throughout our country. Their efforts help fellow veterans and their families cope with life after military service. In addition, their stories are a source of inspiration for current and future generations. Former POWs and loved ones of military personnel who have not returned from past conflicts share a unique connection. Few people can comprehend the emotional toll, the loss, and the pain of uncertainty the families of the fallen or captured endure better than former POWs. Their encouragement, understanding, and outreach helps ensure that their fallen and unaccounted-for comrades are not forgotten.

As President, I remain committed to honoring and caring for former POWs. They have persevered through the harshest of conditions and, thankfully, have returned home to their loving families and a grateful Nation. They deserve our utmost reverence and respect.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2018, as National Former Prisoner of War Recognition Day. I call upon Americans to observe this day by honoring the service and sacrifice of all our former prisoners of war and to express our Nation's eternal gratitude for their sacrifice. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0184; Product Identifier 2018–NE–07–AD; Amendment 39–19248; AD 2018–07–17]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A., Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Safran Helicopter Engines, S.A., Arrius 2B1, 2B1A, 2B2, and 2K1 turboshaft engines. This AD requires inspecting the power turbine wheel (PTW) assembly and replacing the PTW if the turbine blade dampers are found missing. This AD was prompted by the manufacturer reporting a number of PTW assemblies may have been assembled without the blade dampers. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective April 27, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 27, 2018.

We must receive comments on this AD by May 29, 2018.

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

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

For service information identified in this final rule, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0184.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0184; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0044, dated February 14, 2018 (referred to after this as the MCAI), to address an unsafe condition for the specified products. The MCAI states:

> During an ARRIUS 2B2 engine ground run check, the ''Degrade'' indicator illuminated and unusual vibration occurred. At the same time, bluish smoke and debris came out of the exhaust pipe. Both engines were shut down without further occurrences.
>
> Investigations at Safran Helicopter Engines revealed that missing dampers on the PTW assembly caused rupture of PTW blades. Further investigations identified a batch of potentially affected PTW.
>
> The dampers on the PTW blades reduce the mechanical stress exerted on the blades. With no dampers, mechanical stress on the blades can exceed the vibratory fatigue limit, eventually leading to rupture of the blades.
>
> This condition, if not corrected, could lead to In Flight Shut Down and release of low energy debris through exhaust pipe, potentially resulting in forced landing, damage to the helicopter and injury to occupants.
>
> To address this potential unsafe condition, Safran Helicopter Engines issued the SB to provide instructions for inspection and PTW replacement.
>
> For the reasons described above, this [EASA] AD requires replacement of potentially affected PTWs with serviceable parts.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0184.

Related Service Information Under 1 CFR Part 51

We reviewed Safran Helicopter Engines Alert Mandatory Service Bulletin (MSB) No. A319 72 2854, Version A, dated February 9, 2018. The MSB describes procedures for replacing the PTW. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires inspecting the PTW assembly and replacing the PTW if the turbine blade dampers are found missing.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the action is less than the time required for public comment. EASA made a determination of an unsafe condition warranting regulatory action and compliance within 20 flight hours or 30 days. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0184 and Product Identifier 2018–NE–07–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 46 engines installed on helicopters of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Records Search	1 work-hour × $85 per hour = $85	$0	$85	$3,910

We estimate the following costs to do any necessary replacements that would be required based on the results of the mandated inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
PTW replacement	16 work-hours × $85 per hour = $1,360	$16,500	$17,860

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–07–17 Safran Helicopter Engines (Type Certificate previously held by Turbomeca, S.A.): Amendment 39–19248; Docket No. FAA–2018–0184; Product Identifier 2018–NE–07–AD.

(a) Effective Date

This AD is effective April 27, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Safran Helicopter Engines, S.A., Arrius 2B1, 2B1A, 2B2, and 2K1 turboshaft engines with a power turbine wheel (PTW) assembly having a serial number listed in Appendix 2.1 of Safran Helicopter Engines Mandatory Service Bulletin (MSB) No. A319 72 2854, Version A, dated February 9, 2018.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an engine failure caused by missing turbine blade dampers. We are issuing this AD to prevent failure of a power turbine blade. The unsafe condition, if not addressed, could result in loss of engine power in flight and reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 20 flight hours or 30 days after the effective date of this AD, whichever occurs first:

(1) Inspect the PTW in accordance with paragraph 2.4.2.3 of Safran Helicopter Engines MSB No. A319 72 2854, Version A, dated February 9, 2018; and

(2) If, as a result of the inspection required by paragraph (g)(1) of this AD, any dampers are found missing, replace the PTW with a part eligible for installation before further flight.

(h) Installation Prohibition

Do not install an engine with a PTW with a serial number listed in Appendix 2.1 of Safran Helicopter Engines MSB A319 72 2854, Version A, dated February 9, 2018, unless all thirty-one blade dampers are installed.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2018–0044, dated February 14, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0184.

(k) Material Incorporated by Reference

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

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

(i) Safran Helicopter Engines Alert Mandatory Service Bulletin No. A319 72 2854, Version A, dated February 9, 2018.

(ii) Reserved.

(3) For Safran Helicopter Engines service information identified in this AD, contact Safran Helicopter Engines, S.A., 40220 Tarnos, France; phone: (33) 05 59 74 40 00; fax: (33) 05 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 6, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–07541 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0153; Product Identifier 2018–NE–03–AD; Amendment 39–19247; AD 2018–07–16]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Austro Engine GmbH model E4 and E4P diesel piston engines. This AD requires replacement of the waste gate controller and the control rod circlip. This AD was prompted by reports of broken or disconnected turbocharger waste gate control rods on some engines. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 27, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 27, 2018.

We must receive comments on this AD by May 29, 2018.

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

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

For service information identified in this final rule, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000–2711; internet: *www.austroengine.at.* You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the

availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0153.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0153; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017–0250, dated December 18, 2017 (referred to after this as the MCAI), to address an unsafe condition for the specified products. The MCAI states:

Occurrences have been reported where, on some engines, turbocharger waste gate control rods were found broken and/or disconnected. Investigation results indicate that these failures were due to insufficient fatigue life or improper handling of the waste gate control rod and improper installation of the non spring loaded waste gate control rod circlip.

These conditions, if not corrected, could lead to improper operation of the waste gate with consequent engine power loss, possibly resulting in reduced control of the aeroplane.

To address these potential unsafe conditions, Austro Engine designed a new spring loaded waste gate control rod circlip and published Mandatory Service Bulletin (MSB) MSB–E4–022, later revised, EASA AD No. 2017–0250 introducing a life limit for the affected waste gate controllers and waste gate control rod circlips.

For the reason described above, this [EASA] AD requires implementation of those life limits, and prohibits reinstallation of non spring loaded circlips.

You may obtain further information by examining the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0153.

Related Service Information Under 1 CFR Part 51

We reviewed Austro Engine Mandatory Service Bulletin (MSB) No. MSB–E4–022/2, Rev. No. 2, November 27, 2017. The MSB describes procedures for replacement of the waste gate controller and the control rod circlip. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

We also reviewed Austro Engine GmbH MSB No. MSB–E4–002/2, Rev. No. 2, dated April 1, 2015. This MSB describes E4 and E4P model engine configurations.

FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacement of the waste gate controller and the control rod circlip.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the compliance time for the action is less than the time required for public comment. The FAA has reviewed and agrees with EASA's determination that certain affected waste gate controller and control rod circlip must be replaced within 50 flight hours or 2 months. Failure to replace these parts within the required compliance times could lead to improper operation of the waste gate controller with consequent engine power loss and reduced control of the airplane. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0153 and Product Identifier 2018–NE–03–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this final rule.

Costs of Compliance

We estimate that this AD affects 211 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace Turbocharger Waste Gate Controller and Circlip.	1.5 work-hours × $85 per hour = $127.50.	$235	$362.50	$76,488

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–07–16 Austro Engine GmbH Engines: Amendment 39–19247; Docket No. FAA–2018–0153; Product Identifier 2018–NE–03–AD.

(a) Effective Date

This AD is effective April 27, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Austro Engine GmbH model E4 and E4P diesel piston engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8560, Reciprocating Engine Supercharger.

(e) Unsafe Condition

This AD was prompted by reports of broken or disconnected turbocharger waste gate control rods on some engines. We are issuing this AD to prevent failure of the turbocharger waste gate control rod. The unsafe condition, if not addressed, could result in loss of engine thrust control and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Within the compliance times identified in Table 1 to paragraph (g) of this AD, and thereafter at intervals not to exceed 250 flight hours (FHs), replace the waste gate controller and control rod circlip in accordance with the Accomplishment Instructions, Paragraph 2.1, of Austro Engine GmbH Mandatory Service Bulletin (MSB) No. MSB–E4–022/2, Rev. No. 2, dated November 27, 2017.

Table 1 to Paragraph (g) – Initial Replacement Compliance Time

Group	Compliance Time (A or B, whichever occurs later)	
1	A	Within 50 FHs or 2 months, whichever occurs first after the effective date of this AD
	B	Within 250 FHs since first installation on an engine
2	A	Within 100 FHs or 5 months, whichever occurs first after the effective date of this AD
	B	Within 250 FHs since first installation on an engine

(h) Installation Prohibition

Do not install on any engine a non-spring loaded waste gate control rod circlip, part number DIN6799–5, after the effective date of this AD.

(i) Definitions

For the purpose of this AD, a Group 1 engine is an Austro Engine GmbH model E4–B or E4–C engine installed on a DA 42 M–NG airplane with external containers or an E4–A engine. A Group 2 engine is any other Austro Engine GmbH model E4 and E4P engine.

(j) Credit for Previous Actions

You may take credit for replacement of the waste gate controller and control rod circlip required by paragraph (g) of this AD if you performed this action before the effective date of this AD using earlier versions of Austro Engine MSB No. MSB–E4–022.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

(1) For more information about this AD, contact Robert Green, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7754; fax: 781–238–7199; email: *robert.green@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2017–0250, dated December 18, 2017, for more information. You may examine the EASA AD in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0153.

(m) Material Incorporated by Reference

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

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

(i) Austro Engine GmbH Mandatory Service Bulletin No. MSB–E4–022/2, Rev. No. 2, dated November 27, 2017.

(ii) Reserved.

(3) For Austro Engine GmbH service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000–2711; internet: *www.austroengine.at.*

(4) You may view this service information at FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 3, 2018.

Robert J. Ganley,

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

[FR Doc. 2018–07540 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 149

[USCBP–2016–0040]

RIN 1651–AA98

CBP Decision No. 18–04; Definition of Importer Security Filing Importer

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposed amendment to expand the definition of an Importer Security Filing (ISF) Importer, the party that is responsible for filing the ISF, for certain types of shipments. The changes are necessary to ensure that the definition of ISF Importer includes parties that have a commercial interest in the cargo and the best access to the required information.

DATES: This rule is effective May 14, 2018.

FOR FURTHER INFORMATION CONTACT: Craig Clark, Branch Chief, Advance Data Programs and Cargo Initiatives, Office of Cargo and Conveyance Security, Office of Field Operations by telephone at 202–344–3052 and email at *craig.clark@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under CBP regulations, Importer Security Filing (ISF) Importers, as defined in 19 CFR 149.1, are required to submit an ISF to CBP, which consists of information pertaining to certain cargo arriving by vessel. The ISF is required to be submitted before the cargo is loaded on a vessel that is destined to the United States. For cargo other than foreign cargo remaining on board (FROB), the transmission of the ISF is required no later than 24 hours before cargo is laden aboard a vessel destined to the United States. For FROB shipments, the transmission of the ISF is required any time prior to lading. *See* 19 CFR 149.2(b).

For shipments consisting of goods intended to be entered into the United States and goods intended to be delivered to a foreign trade zone (FTZ), ISF Importers, or their agents, must submit 10 data elements to CBP. *See* 19 CFR 149.3(a). For shipments consisting entirely of FROB and shipments consisting entirely of goods intended to be transported as Immediate Exportation (IE) or Transportation and Exportation (T&E) in-bond shipments, ISF Importers, or their agents, must submit five data elements to CBP *See* 19 CFR 149.3(b).

Currently, an ISF Importer is generally defined as the party causing goods to arrive within the limits of a port in the United States by vessel. *See* 19 CFR 149.1. The regulation provides that generally the ISF Importer is the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. However, the regulation limits the definition of ISF Importer to certain named parties for FROB, IE and T&E in-bond shipments, and for merchandise being entered into FTZ. For FROB cargo, the regulation provides that the ISF Importer is the carrier; for IE and T&E in-bond shipments, and goods to be delivered to an FTZ, the regulation provides that the ISF Importer is the party filing the IE, T&E, or FTZ documentation.

Based on input from the trade as well as CBP's analysis, CBP concluded that these limitations did not reflect commercial reality and, in some cases, designate a party as the ISF Importer even though the party has no commercial interest in the shipment and limited access to the ISF data. Therefore, in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on July 6, 2016 (81 FR 43961), CBP proposed to expand the definition of ISF Importer for FROB cargo, for IE and T&E shipments and for goods to be delivered to an FTZ.

For FROB shipments, CBP proposed to broaden the definition of an ISF Importer to include non-vessel operating common carriers (NVOCCs). For IE and T&E in-bond shipments, and for goods to be delivered to an FTZ, CBP proposed to broaden the definition of an ISF Importer to also include the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. This rule adopts these proposals as final. By broadening the definition to include these parties, the responsibility to file the ISF will be with the party causing the goods to enter the limits of a port in the United States and most likely to have access to the required ISF information.

For a detailed discussion of the statutory and regulatory histories of the rule, and the factors governing the development of this rule, please refer to the NPRM.

II. Discussion of Comments

CBP received two comments on the proposed rule, and each raised a number of issues. One comment favored the proposed amendment with recommended changes and one did not. A summary of the significant issues

raised by the comments and CBP's responses are set forth below.

Comment

One commenter said that the proposed ISF Importer definition with respect to FROB cargo was unclear. The commenter recommended revising the definition to indicate that the carrier is responsible for filing the ISF except when a shipment is being carried by an NVOCC, in which case the NVOCC would be responsible for filing the ISF.

Response

Although the commenter's suggested language would cover many situations, it would not account for all circumstances in which the shipment is being carried by an NVOCC. It would not cover the situation where the vessel operating carrier is the party that causes the goods to arrive within the limits of a port in the United States by vessel despite the NVOCC having booked the shipment. As discussed in the NPRM, an example would be when an NVOCC books a shipment not initially scheduled to arrive in the United States, but the vessel is diverted to the United States by the vessel operating carrier. If the cargo remains on board the vessel at the U.S. port and is not discharged until it arrives at the originally-scheduled foreign destination port, this would create FROB cargo. In this situation, even though the shipment would be carried by the NVOCC, the vessel operating carrier, and not the NVOCC, would be the party that caused the goods to arrive within the limits of a port in the United States by vessel and thus, the party responsible for filing the ISF.

In view of the above, CBP believes that the broader proposed definition of ISF Importer with regard to FROB shipments, which places the responsibility for filing the ISF on the party who caused the goods to arrive within the limits of a port in the United States by vessel, rather than on a specific party, is necessary.

Comment

One commenter noted that, for situations in which a shipment booked by an NVOCC is diverted by the vessel operating carrier to the United States in cases of extreme weather, machinery failure, or other unforeseen circumstances, the required ISF for the resulting FROB cargo could not be filed prior to loading as required by the current regulations. This commenter also noted that, in such situations, the NPRM's suggestion that the vessel operating carrier would be responsible for filing the ISF would not be workable because the carrier would not have possession of the business confidential house-bill level information that it would need from the NVOCC to be able to file the ISF.

To address these issues, the commenter recommended that CBP adopt one of the following regulatory amendments: (1) Exempt FROB cargo in such situations from ISF requirements; (2) allow the vessel operating carrier to file the ISF at the master bill of lading level as soon as practicable; or (3) allow the vessel operating carrier to submit the required data elements for the ISF as soon as practicable to CBP, and require the NVOCCs with cargo on the vessel to submit the remaining data elements of the ISF as soon as practicable to CBP once the vessel operating carriers have informed the NVOCCs of the diversion.

Response

The proposed rule was limited to amending the definition of the ISF Importer in 19 CFR 149.1(a) concerning the parties responsible for filing the ISF. The commenter's suggestions, which relate to suggestions about when the required data elements must be transmitted or the level of detail required for the data elements as set forth in 19 CFR 149.2 and 149.3,[1] are outside the scope of this rulemaking. CBP notes that while those sections do not provide for exceptions from the ISF requirements based on extenuating circumstances, CBP may take the existence of extenuating circumstances into account in determining whether to issue a liquidated damages claim for an untimely or incomplete submission of the ISF.

Comment

One commenter requested clarification regarding the portion of the proposed definition that states that for IE and T&E in-bond shipments, and goods to be delivered to an FTZ, the ISF Importer may also be the party filing the IE, T&E, or FTZ documentation. The commenter said that this language appears to be designed to allow the carrier or NVOCC to file the ISF documentation for such shipments, as is the case in some instances today.

Response

The proposed ISF Importer definition establishes the party that is responsible for filing the ISF, depending on the type of cargo transported. For IE and T&E in-bond shipments, and goods to be delivered to an FTZ, the ISF Importer will be the goods' owner, purchaser, consignee, agent such as a licensed customs broker, or the party filing the IE, T&E, or FTZ documentation. If the carrier or NVOCC falls within the definition as one these parties, as it may if it was the agent for such a shipment, then it may file the ISF under the proposed definition.

Comment

One commenter did not agree that the NVOCC should be included in the definition of ISF Importer with respect to FROB cargo. This commenter said that the NVOCC does not have access to basic shipment manifest data, that it is not the party who caused the merchandise to be imported, and that it is not normally the party who is in position to know the details that are required for filing the ISF. This commenter also added that the ocean carrier is in control of the vessel and is responsible for the initial routing and any subsequent changes, and that an NVOCC may be unaware of the vessel operator's decision to route a vessel through a U.S. port.

Response

CBP disagrees with the commenter's reasoning and conclusion that an NVOCC should not be included in the definition of ISF Importer with respect to FROB cargo. For FROB cargo, the regulations require the submission of five data elements: The booking party, the foreign port of unlading, the place of delivery, the ship to party, and the commodity HTSUS number. *See* 19 CFR 149.3(b). When a party shipping the goods books a FROB shipment with an NVOCC, the NVOCC is the party most likely to have direct knowledge of these data elements because it, not the vessel operating carrier, has a direct business relationship with the shipping party. With limited exceptions, it is also the party that causes the goods to arrive within the limits of a port in the United States by vessel. Thus, it is generally the appropriate party to file the ISF. As noted in response to an earlier comment, where the vessel operating carrier diverts a shipment not initially scheduled to arrive in the United States and the cargo remains on board the vessel at the U.S. port, the vessel operating carrier, not the NVOCC, is the party that causes the goods to arrive

[1] 19 CFR 149.2(b) provides the required time of transmission of the data elements for the ISF. For FROB cargo, the regulation specifies that the required data elements must be submitted prior to lading aboard the vessel at the foreign port. *See* 19 CFR 149.2(b)(4). The regulation provides no exceptions to this requirement in any circumstances, including for diversions. The ISF regulations provide that for shipments consisting entirely of FROB cargo, ISF Importers, or their agents, must submit five data elements to CBP for each good listed at the six-digit HTSUS number at the lowest bill of lading level (*i.e.,* at the house bill of lading level, if applicable). *See* 19 CFR 149.3(b).

within the limits of a port in the United States and thus the responsible party for filing the ISF.

Comment

One commenter stated that the U.S. offices of a multinational NVOCC may be unaware that a shipment booked by the NVOCC's non-U.S. affiliate is destined to the United States.

Response

This final rule requires the NVOCC to file the ISF for shipments of FROB cargo when it falls under the definition of the ISF Importer. This requirement applies to the NVOCC regardless of which affiliate within the NVOCC booked the shipment. Each NVOCC is responsible for ascertaining whether any of its shipments are destined to the United States.

Comment

One commenter stated that the proposed rule would jeopardize smaller NVOCCs that would be forced to develop procedures to comply with the rule in the rare occurrence of a shipment of FROB cargo.

Response

FROB cargo consists of only a small subset of the total cargo that an NVOCC regularly ships. As discussed in the Regulatory Flexibility Act section in Part IV.B of this rule, CBP believes that the rule would not have a significant economic impact burden on a substantial number of smaller entities, including NVOCCs. These entities already send this information to the party that files the ISF, or directly to CBP, so amending the regulation to require that they submit it directly to CBP will not significantly affect their existing process.

Comment

One commenter stated that an NVOCC should not be penalized for being responsible for an ISF filing when it either, did not know a shipment was FROB or, simply does not have the data elements that the regulations require. The commenter further stated that an NVOCC is not recognized as a carrier in the Trade Act of 2002 and is not mandated to manifest its House Bill of Lading data. The commenter added that NVOCCs gain release of their cargo against the carrier's bill of lading, not the House Bill of Lading.

Response

As mentioned in an earlier comment response, if the shipping party books a FROB shipment with an NVOCC, the NVOCC is the party most likely to have direct knowledge of the required ISF information. In cases of diversion to the United States creating FROB cargo, the NPRM stated that the vessel operating carrier would be the ISF Importer.

The issue of whether an NVOCC is recognized as a carrier in the Trade Act of 2002 and the vessel manifest and cargo release procedures are irrelevant to whether it is responsible for filing an ISF. As discussed earlier, the responsibility for filing the ISF lies with the party who caused the goods to arrive within the limits of a port in the United States by vessel. In addition, CBP notes that the Trade Act of 2002 recognizes an NVOCC as a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. *See* section 431A(b) of the Trade Act of 2002 (19 U.S.C. 1431a(b)) (citing section 3(17)(B) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)(B)); *see also* 19 CFR 4.7(b)(3)(ii)).

Comment

One commenter stated that the proposed rule would have a dramatic impact on the underwriting of International Carrier Bonds and increase liability to NVOCCs with late filing penalties.

Response

CBP disagrees. CBP believes that NVOCCs which are required to file ISFs under the proposed rule are fully capable of complying with the required ISF provisions and that any impact on the underwriting of International Carrier Bonds, if any, would be minimal. The bond that covers the ISF is broad enough to cover these amendments and this rule simply shifts the liability onto the most appropriate party—the one with the information.

III. Conclusion

After review of the comments and further consideration, DHS adopts as final the proposed amendments published in the **Federal Register** on July 6, 2016 (81 FR 43961).

IV. Regulatory Analysis

A. Executive Orders 12866, 13563, and 13771

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

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. OMB considers this rule to be an Executive Order 13771 deregulatory action. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

Though CBP does not estimate a quantitative savings as a result of this rule, it is a deregulatory action because it simplifies the transmission of ISF information to CBP, eliminates confusion regarding the party responsible for submitting the ISF, and significantly reduces confidentiality concerns raised by the current requirements. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

Under current regulations, the party that is required to submit the ISF is the party causing the goods to arrive within the limits of a port in the United States by vessel. However, the regulation limits the definition for FROB, IE, and T&E shipments as well as for merchandise being entered into an FTZ to certain named parties. Based on input from the trade as well as CBP's analysis, CBP has concluded that these limitations do not reflect commercial reality and, in some cases, designate a party as the ISF Importer even though that party has no commercial interest in the shipment and limited access to the ISF data. In some cases, the party responsible may not even be involved in the importation at the time the ISF must be filed. This causes confusion in the trade as to who is responsible for filing the ISF and raises confidentiality concerns because sometimes the private party with the information gives the information to the ISF Importer who then sends it to CBP. Therefore, CBP is expanding the definition of ISF Importer for FROB cargo, for IE and T&E shipments, and for goods to be delivered to an FTZ. This change is consistent

with the requirement of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), which provides that the requirement to file the ISF will be imposed on the party most likely to have direct knowledge of that information.

Under the current definition, the ISF Importer for FROB shipments is the vessel operating carrier. In cases where the shipper uses an intermediary, *i.e.,* NVOCC, the vessel operating carrier does not have access to certain of the required elements for confidentiality reasons—only the intermediary has this information. In most cases, the NVOCC chooses to file this information directly to CBP, sidestepping the confidentiality concerns, but the legal burden is on the vessel operating carrier so some NVOCCs feel pressured to share this information with the carrier. Under this rule, the ISF Importer for FROB cargo is either the NVOCC or the vessel operating carrier, depending on which of these parties is the party causing the goods to arrive within the limits of a port in the United States by vessel.

Likewise, the current definition of ISF Importer causes confusion for IE and T&E cargo. It provides that the ISF Importer in these cases is the filer of the IE or T&E documentation. This causes confusion because the IE or T&E documentation often is not created until the cargo arrives in the United States. This is problematic because ISF information must be submitted at least 24 hours prior to lading. To address this issue and to ensure that the ISF Importer has a bona fide interest in the commercial shipment, this rule expands the definition of ISF Importer for IE and T&E in-bond shipments to also include the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. The rule also makes a similar change to the definition of the ISF Importer of FTZ cargo. With this change, the ISF Importer includes the party with a bona fide interest in the commercial shipment and who has access to the required data in the specified time frame.

The modification of the definition of ISF Importer simply shifts the legal responsibility in some cases for filing the ISF from one party to another for a subset of the total cargo (FROB; IE and T&E; and FTZ cargo). For IE, T&E, and FTZ cargo, the party that is currently required to file the data may not yet even be involved in the transaction at the time the data must be submitted. In these cases another party that has the data such as the owner, purchaser, consignee, or agent often files the data, though that party is not legally obligated to file it. Under this rule, these parties that have the data are now included in the definition of the party responsible for filing the data. Since these parties are generally the ones currently submitting this data to CBP, this change will have no significant impact.

In some rare instances, this final rule may shift the burden of filing from one party to another. For example, since the party currently responsible for filing may not be involved in the transaction at the time the data must be submitted, it could be one of several parties (*e.g.,* the owner, purchaser, consignee, or agent) that actually submits the information. Once this rule is in effect, there will be greater clarity as to which party is responsible, which could change who actually submits the data. In the vast majority of cases, there will be no change in who submits the data, but it is possible that there will be a change in some cases.

To the extent that there is a change in who actually submits the ISF data, there will be a shift in the time burden to do so from one party to the other. CBP estimates that submitting this information takes 2.19 hours at a cost of $50.14 per hour.[2] This loaded wage rate was estimated by multiplying the Bureau of Labor Statistics' (BLS) 2014 median hourly wage rate for Ship and Boat Captains and Operators ($32.73) by the ratio of BLS' average 2014 total compensation to wages and salaries for Transportation and Material Moving occupations (1.5319), the assumed occupational group for ship and boat captains and operators, to account for non-salary employee benefits.[3] [4]

Therefore, to the extent this rule shifts the reporting burden from one party to the other, there will be a corresponding shift of $109.81 in opportunity cost per filing. CBP lacks data showing how often there will be a shift in the actual reporting burden as a result of this rule but it believes it to be very small and possibly zero. When it published the proposed rule, CBP requested comments on this matter and did not receive any.

For FROB, the ISF Importer must currently either obtain the information from a third party that has the necessary information or ask that the third party file the information directly to CBP. In some cases, the third party shares this information with the ISF Importer, but it usually files the data directly with CBP for confidentiality reasons. Under this rule, with limited exceptions, the party that has access to the ISF information will submit it directly to CBP. Since this third party is generally already providing the ISF information through the current ISF Importer or directly to CBP, this rule will not add a significant burden to these entities. As described above, to the extent that this rule shifts the reporting burden from one party to the other, there will be a corresponding shift of $109.81 in opportunity cost per filing. CBP lacks data showing how often there will be a shift in the actual reporting burden as a result of this rule but it believes it to be very small and possibly zero. When it published the proposed rule, CBP requested comment on this matter and received one saying that the impact would be infinitesimally small except for when a ship is diverted unexpectedly (for example, due to weather). The commenter stated that in this case placing the burden on the NVOCC would be burdensome because the NVOCC does not have control of the vessel and would not necessarily have the information needed to file. CBP agrees with the commenter and notes that in such situations, the reporting burden would remain with the carrier, as it was the party that caused the goods to arrive within the limits of a port in the United States by vessel. We therefore maintain our assumption that the reporting burden due to this provision is very small and possibly zero.

This final rule benefits all parties by eliminating the confusion surrounding the responsibility for the submission of ISF information. Under the expanded

[2] This differs from the estimated wage rate on the most recent supporting statement for this information collection: OMB Control Number 1651–0001, available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1651-003*, which is based on outdated data. We will update the wage rate in this supporting statement the next time the Information Collection Review (ICR) is renewed.

[3] Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2014 National Occupational Employment and Wage Estimates, United States-Median Hourly Wage by Occupation Code: 53–5020.'' Updated March 25, 2015. Available at *http://www.bls.gov/oes/2014/may/oes_nat.htm#53-0000.* Accessed June 15, 2015.

[4] The total compensation to wages and salaries ratio is equal to the calculated average of the 2014 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Transportation and Material Moving occupations (26.62) divided by the calculated average of the 2014 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category (17.3775). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004—December 2015,* ''Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2015 by Respondent Type: Transportation and material moving occupations.'' June 10, 2015. Available at *http://www.bls.gov/ncs/ect/sp/ececqrtn.pdf.* Accessed June 15, 2015.

definition, the party that has a commercial interest in the cargo and the best access to ISF information will fall within the definition of ISF Importer. This will improve the accuracy of the information CBP uses for targeting. In addition, this rule significantly reduces confidentiality concerns that may be caused by the current requirements. Finally, eliminating a step in the transmission process (sending the ISF information from the third party to the current ISF Importer) will result in CBP getting the information sooner. Any extra time can be used for more extensive targeting.

B. Regulatory Flexibility Act

This section examines the impact of the rulemaking on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

In the Interim Final Rule establishing the ISF requirements (73 FR 71730; November 25, 2008, CBP Decision 08–46; Docket Number USCBP–2007–0077), CBP concluded that many importers of containerized cargo are small entities. The rule could affect any importer of containerized cargo so it could have an impact on a substantial number of small entities.

This impact, however, is very small. The modification of the definition of ISF Importer simply shifts the legal responsibility in some cases for filing the ISF from one party to another for a subset of the total cargo (FROB; IE and T&E; and FTZ cargo). For IE, T&E, and FTZ cargo, the party that is currently required to file the data may not yet even be involved in the transaction at the time the data must be submitted. In these cases another party such as the owner, purchaser, consignee, or agent often files the data, though that party is not legally obligated to file it. Under this rule, these parties will be included in the definition of the party responsible for filing the data. Since these parties are currently submitting this data to CBP, this change will have no significant impact. For FROB, the ISF Importer must currently either obtain the information from a third party that has the necessary information or ask that the third party file the information directly to CBP. In some cases, the third party shares this information with the ISF Importer, but it usually files the data directly with CBP for confidentiality reasons. In this rule, CBP is expanding the definition of ISF Importer so that the party that most likely has access to the ISF information will submit it directly to CBP as the ISF Importer. Since this third party is already providing the ISF information through the current ISF Importer or directly to CBP, this rule will not add a significant burden to these entities.

For these reasons, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This final rule will not result in such an expenditure.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information related to this final rule are approved by OMB under collection 1651–0001.

List of Subjects in 19 CFR Part 149

Customs duties and inspection, Foreign trade, Foreign trade zones, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

Amendment to the Regulations

For the reasons stated in the preamble, DHS amends part 149 of title 19 of the Code of Federal Regulations (19 CFR part 149) as set forth below:

PART 149—IMPORTER SECURITY FILING

■ 1. The authority citation for part 149 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1624, 2071 note.

■ 2. In § 149.1, paragraph (a) is revised to read as follows:

§ 149.1 Definitions.

(a) *Importer Security Filing Importer.* For purposes of this part, Importer Security Filing (ISF) Importer means the party causing goods to arrive within the limits of a port in the United States by vessel. For shipments other than foreign cargo remaining on board (FROB), the ISF Importer will be the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a Foreign Trade Zone (FTZ), the ISF Importer may also be the party filing the IE, T&E, or FTZ documentation. For FROB cargo, the ISF Importer will be the carrier or the non-vessel operating common carrier.

* * * * *

Elaine C. Duke,

Deputy Secretary.

[FR Doc. 2018–07624 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF STATE

22 CFR Part 193

[Public Notice: 10381]

RIN 1400–AD31

Repeal of Benefits for Hostages in Iraq, Kuwait, or Lebanon

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: In accordance with Executive Order 13771 of January 30, 2017, which addresses agency review of existing regulations, including those that may be outmoded or ineffective, the State Department is repealing the regulations on Benefits for Hostages in Iraq, Kuwait, or Lebanon. The current regulations, which relate to hostage benefits for U.S. nationals in Iraq, Kuwait, or Lebanon were established in 1990, and are outdated as the program funding has been eliminated.

DATES: This rule is effective on April 12, 2018.

FOR FURTHER INFORMATION CONTACT: Colleen Flood, Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, 2201 C. Street NW, SA–17A, Washington, DC 20520, (202) 485–6070, *FloodCB@state.gov.*

SUPPLEMENTARY INFORMATION: This rule removes 22 CFR part 193 of the Code of Federal Regulations, which relates to limited monetary payments and federal life and health insurance benefits as a humanitarian gesture to certain U.S. nationals held hostage in Kuwait, Iraq, or Lebanon, and to the family members thereof, subject to specified funding and other limitations. The authorization to obligate funds under Section 599C of

Public Law 101–513 expired on May 5, 1991.

The 1992–1993 Foreign Relations Authorization Act amended the Hostage Relief Act of 1990 to extend both the period of time during which the benefits were available and the eligibility criteria. In addition, section 302 contained two additional changes with respect to hostages captured in Lebanon. Section 302(a)(3) provided that health and life insurance benefits were available under certain circumstances for the period of the individual's hostage status, plus a 60-month period following the termination of hostage status. Previously, these benefits expired 12 months after the termination of hostage status, which remained the law with respect to hostages held in Iraq and Kuwait.

Title 22 CFR part 193 implemented these statutes, and described the classes of persons who could apply for benefits under the Act and the procedures according to which such applications will be processed by the Department of State.

The funds allocated for the benefits have been depleted; in addition, given the way the beneficiaries are defined, no one is able to qualify for these benefits any longer. Therefore, the Department of State is repealing part 193.

Regulatory Analysis and Notices

Administrative Procedure Act

This action is being taken as a final rule pursuant to the ''good cause'' provision of 5 U.S.C. 553(b). It is the position of the Department that notice and comment are not necessary in light of the fact that part 193 is obsolete. There is no authority for these rules.

Regulatory Flexibility Act

It is hereby certified that the repeal of these regulations will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b), because the issues addressed are not of an economic nature. In addition, the repeal of this regulation does not have federalism implications under E.O. 13132.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12866 and 13563

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this regulation justify its costs. The Department does not consider this rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and No. 13132.

Civil Justice Reform

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

Consultations With Tribal Governments

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

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

PART 193—[REMOVED]

■ Accordingly, under the authority of 22 U.S.C. 2651a(a)(4) and Executive Orders 13563, 13771 and 13777, 22 CFR part 193 is removed.

Carl C. Risch,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–07074 Filed 4–11–18; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0268]

Special Local Regulations; Marine Events Within the Captain of the Port Zone Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations at various locations in the Sector Columbia River Captain of the Port zone. This action is necessary to provide for the safety of life on these navigable waters during marine events. These regulations prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 100.1302 will be enforced for the regulated areas identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified in this document.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LCDR Laura Springer, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.1302 for the following events only during the hours specified on the dates listed in the following Table:

TABLE—DATES AND TIMES OF ENFORCEMENT OF 33 CFR 100.1302 SPECIAL LOCAL REGULATIONS AT VARIOUS LOCATIONS IN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2018

No.	Date	Event	Sponsor	Location
1	June 9, 2018–June 10, 2018, 7 a.m. to 6 p.m.	Rose Fest Dragon Boat Races.	Portland-Kaohsiung Sister Association.	Portland, OR. Regulated area includes all waters of the Willamette River shore to shore, bordered on the north by the Hawthorne Bridge, and on the south by the Marquam Bridge.
2	June 1, 2018, 9 a.m. to 5 p.m.	Spring Testing Hydroplane races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
3	June 8, 2018–June 10, 2018, 8 a.m. to 7 p.m.	Richland Regatta Hydroplane races.	Northwest Power Boat Association.	Richland, WA. Regulated area includes all navigable waters of the Columbia River in the vicinity of Howard Amon Park, between River Miles 337 and 338
4	July 27, 2018–July 29, 2018, 7 a.m. to 5:30 p.m.	Kennewick Hydroplane Races.	Tri-Cities Water Follies Association.	Kennewick, WA. Regulated area includes all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.
5	July 14, 2018, 9 a.m. to 7 p.m.	The Big Float, group inner-tube float.	Human Access Project	Portland, OR. Regulated area includes all navigable waters of the Willamette River, in Portland, Oregon, enclosed by the Hawthorne Bridge, the Marquam Bridge, and west of a line beginning at the Hawthorne Bridge at approximate location 45°30′50″ N; 122°40′21″ W, and running south to the Marquam Bridge at approximate location 45°30′27″ N; 122°40′11″ W.
6	August 11, 2018, 11 a.m. to 1 p.m.	Swim the Snake	Blue Mountain Resource Conservation and Development.	Perry, WA. Regulated area includes all navigable waters, bank-to-bank of the Snake River, 500 yards upstream and 500 yards downstream from the Washington State Highway 261 Bridge at the approximate position of 46°35′23″ N; 118°13′10″ W.
7	September 3, 2018, 5:30 a.m. to noon.	Roy Webster Cross Channel Swim.	Hood River County Chamber of Commerce.	Hood River, OR. Regulated area includes all waters of the Columbia River between River Mile 169 and River Mile 170.
8	September 8, 2018–September 9, 2018, 8 a.m. to 6 p.m.	Portland Dragon Boat Races.	DragonSports USA	Portland, OR. Regulated area includes the western side of the Willamette River extending from Tom McCall Waterfront Park between the Hawthorne and Marquam Bridges, Portland, OR: Line one starting at 45–30′49″ N/122–40′24″ W then heading east to 45–30′49″ N/122–40′22″ W then heading south to 45–30′29″ N/122–40′08″ W then heading west to 45–30′26″ N/122–40′14″ W then heading north ending at 45–30′49″N/122–40′24″ W.
9	September 8, 2018, 9 a.m. to 10:30 a.m.	Columbia Crossing Swim.	3 Rivers Road Runners	Pasco, WA. Regulated area includes all navigable waters, bank-to-bank of the Columbia River in Pasco, Washington, between river mile 332 and river mile 335.

All coordinates are listed in reference Datum NAD 1983.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: April 9, 2018.

D.F. Berliner,

Captain, U.S. Coast Guard, Acting Captain of the Port, Sector Columbia River.

[FR Doc. 2018–07627 Filed 4–11–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0221]

Drawbridge Operation Regulation; Sloop Channel, Nassau, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Wantagh Parkway Bridge, mile 15.4 and the Meadowbrook State Parkway Bridge, mile 12.8, both across Sloop Channel, at Nassau, New York. This temporary deviation is necessary to facilitate public safety during a public event, the Jones Beach State Park U.S. Navy Blue Angels Show. This deviation allows the bridges to remain in the closed position during the public event.

DATES: This deviation is effective from 2:30 p.m. on May 27, 2018, to 5:30 p.m. May 28, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0221 is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Ms. Donna D. Leoce, Project Officer, First Coast Guard District, telephone (212) 514–4332, email *donna.d.leoce@uscg.mil*.

SUPPLEMENTARY INFORMATION: New York State Office of Parks, Recreation and Historic Preservation requested and the owner of both bridges, the State of New York Department of Transportation, concurred with this temporary deviation from the normal operating schedule to facilitate public safety at the Jones Beach State Park U.S. Navy Blue Angels Air Show.

The Wantagh Parkway Bridge, mile 15.4, across Sloop Channel has a vertical clearance in the closed position of 16 feet at mean high water and 19.5 feet at mean low water. The existing bridge operating regulations for this bridge are found at 33 CFR 117.5. The Meadowbrook State Parkway Bridge, mile 12.8, across Sloop Channel has a vertical clearance in the closed position of 22 feet at mean high water and 25 feet at mean low water. The existing bridge operating regulations for this bridge are found at 33 CFR 117.799(h).

Commercial fishing and recreational vessel traffic transit Sloop Channel.

Under this temporary deviation, the Wantagh Parkway Bridge and the Meadowbrook State Parkway Bridge may remain in the closed position between 2:30 p.m. and 5:30 p.m. on May 27, 2018, and between 2:30 p.m. and 5:30 p.m. on May 28, 2018.

Vessels able to pass under these bridges when in the closed position may do so at anytime. Neither bridge will be able to open for emergencies and there are no immediate alternate routes for vessels to pass. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridges so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 9, 2018.

Christopher J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2018–07549 Filed 4–11–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0148]

Drawbridge Operation Regulation; Carquinez Strait, Between Benicia and Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Union Pacific Railroad Drawbridge across the Carquinez Strait, mile 7.0, between Benicia and Martinez, CA. The deviation is necessary to allow the bridge owner to replace drawspan operational components. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 8 a.m. on April 26, 2018 through 6 p.m. on May 13, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0148, is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email *Carl.T.Hausner@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company has requested a temporary change to the operation of the Union Pacific Railroad Drawbridge over Carquinez Strait, mile 7.0, between Benicia and Martinez, CA. The drawbridge navigation span provides a vertical clearance of 70 feet above Mean High Water in the closed-to-navigation position. The draw operates as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 8 a.m. to 6 p.m., April 26 through April 29, 2018, and May 12 through May 13, 2018, to allow the bridge owner to replace the down haul wire ropes of the drawspan. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridges in the closed position may do so at any time. The drawspan will not be able to open for emergencies and there is no alternative route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in the operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 9, 2018.

Carl T. Hausner,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2018–07622 Filed 4–11–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0082; FRL–9976–70—Region 5]

Air Plan Approval; Illinois; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Illinois state implementation plan (SIP). Illinois has satisfied the progress report requirements of the Regional Haze Rule. Illinois has also provided a determination of the adequacy of its regional haze plan with the progress report.

DATES: This final rule is effective on May 14, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0082. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategy Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. What is EPA's response to the comments?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

States are required to submit a progress report every five years that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area [1] (Class I area) within the state and in each Class I area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the state's existing regional haze SIP. *See* 40 CFR 51.308(h). The first progress report must be submitted in the form of a SIP revision and is due five years after the submittal of the initial regional haze SIP. On June 24, 2011, Illinois submitted its first regional haze SIP in accordance with the requirements of 40 CFR 51.308. EPA approved Illinois' regional haze plan into its SIP on July 6, 2012, 77 FR 39943.

On February 1, 2017, Illinois submitted a SIP revision consisting of a report on the progress made in the first implementation period towards the RPGs for Class I areas outside of Illinois (progress report). The emissions from Illinois affected 19 Class I areas located out of the state. Illinois does not have any Class I areas within its borders. The Illinois progress report included a determination that the Illinois existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. EPA is approving the Illinois progress report on the basis that it satisfies the requirements of 40 CFR 51.308.

EPA published a direct final rule on October 18, 2017 (82 FR 48431), approving the Illinois regional haze progress report as a revision to the Illinois SIP, along with a proposed rule (82 FR 48473) that provided a 30-day public comment period.

In the direct final rule, it states that if EPA received adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. EPA received adverse comments during the comment period, and the October 18, 2017 direct final rule approving the Illinois regional haze progress report was withdrawn on December 8, 2017 (82 FR 57836). The adverse comments received are addressed below.

II. What is EPA's response to the comments?

EPA received two anonymous comments on the proposed approval of the Illinois regional haze progress report.

Comment #1—One commenter stated that the source-specific emissions limits for four sources in the Illinois regional haze SIP are not enforceable as the emission limits were not included in the state's plan but were rather contained in a memorandum of understanding or consent decrees. These four sources are the City of Springfield City Water, Light, and Power electric generating facility (CWLP), the Dominion Kincaid power plant (Kincaid), CITGO Petroleum Corporation (CITGO) Lemont petroleum refinery, and Exxon Mobil Corporation (Exxon Mobil) Joliet petroleum refinery. The commenter raised concern that these limits cannot be enforced by citizens.

EPA's Response to the Comment

The source-specific emission limits for CWLP and Kincaid are contained in federally enforceable permits, as well as in the Illinois' regional haze SIP. Illinois issued joint construction and operating air permits to CWLP and Kincaid pursuant to authority in the Illinois SIP. The two permits were incorporated into the Illinois' regional haze SIP (77 FR 39948). Illinois's progress report confirms that these permits, setting nitrogen oxide (NO_X) and sulfur dioxide (SO_2) emission limits, and operating conditions to meet the Regional Haze Rule requirements of the CAA, are federally enforceable. Additionally, the permits state that they ''establish limits for NO_X and SO_2 for the affected units that are directly enforceable and permanent and that are not contingent upon commencement of construction by the Permittee of additional emission control equipment for the affected units. This is because the emission limits for the affected units are legally required pursuant to section 169A of the CAA and these limits are enforceable.'' Similarly, Illinois incorporated emission limits and operating conditions from two consent decrees (for CITGO and Exxon Mobil) into minor new source review construction permits issued pursuant to authority in the Illinois SIP. As such, these are federally enforceable permits potentially subject to enforcement through action by citizens. *See* 42 U.S.C. 7604.

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81, subpart D.

Comment #2—Another commenter stated that EPA is incorrect in saying that Illinois did not rely on the Cross-State Air Pollution Rule (CSAPR) for its regional haze goals. The commenter notes that in its submittal, Illinois lists the ''Transport Rule (Part 1)'' under the ''on-the books'' control measures the state is relying on for the years 2002–2018.

EPA's Response to the Comment—In our direct final rule, EPA noted that Illinois did not rely on the Clean Air Interstate Rule (CAIR) or CSAPR in its regional haze SIP. 82 FR 48432. EPA's position reflects the statement made by Illinois in its regional haze progress report that ''Illinois does *not* rely on the use of the Clean Air Interstate Rule (CAIR) or CSAPR to satisfy its regional haze requirements.'' Instead, Illinois used state rules and other measures to satisfy the Regional Haze Rule requirements for Best Available Retrofit Technology (BART) in 40 CFR 51.308(e).

The progress report does contain a list of modeled ''on-the-books'' control measures used in the analysis for the Illinois regional haze plan. The progress report states, ''that these control measures were used in the future year modeling prepared by the Midwest Regional Planning Organization (MRPO) prior to the Illinois SIP submittal and are expected to be implemented between 2002 and 2018.'' The modeling analysis prepared by MRPO included reductions from CAIR, as well as other existing federal measures, to assess anticipated future visibility conditions. (See 77 FR 3971; January 26, 2012). Illinois did not rely on emission reductions from CAIR or CSAPR to satisfy the BART requirements because the state demonstrated that the benefits of Illinois' alternative control strategy satisfied the regional haze BART requirements.

We also note that CSAPR is being implemented at this time in Illinois and other states. Given this, it is unclear how the commenter's concerns are relevant to the approvability of Illinois' progress report.

EPA evaluated the Illinois progress report which indicates that implementation of the control measures in its regional haze plan is on track to achieve the established regional haze visibility improvement goals for the first implementation period. EPA finds that the Illinois progress report satisfies 40 CFR 51.308.

III. What action is EPA taking?

EPA is approving the regional haze progress report submitted on February 1, 2017, as a revision to the Illinois SIP on the basis that it satisfies the requirements of 40 CFR 51.308. The progress report includes an adequate discussion of the implementation of the regional haze SIP measures and of the significant emission reductions achieved. The progress report also includes a determination that the Illinois existing regional haze SIP is sufficient to achieve the established regional haze visibility improvement and emissions reduction goals for the first implementation period. EPA also finds that Illinois has met the requirements for a determination of adequacy of its regional haze plan with the progress report.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.720, the table in paragraph (e) is amended by adding the entry ''Regional Haze Progress Report'' immediately following the entry for ''Regional haze plan'' to read as follows:

§ 52.720 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Regional Haze Progress Report.	Statewide	02/01/17	April 12, 2018, [insert **Federal Register** citation].	
*	*	*	*	*

[FR Doc. 2018–07519 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2016–0749; FRL–9976–71—Region 10]

Approval and Promulgation of State Implementation Plans; Alaska: Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alaska regional haze State Implementation Plan (SIP), submitted by the State of Alaska on March 10, 2016. Alaska submitted its Regional Haze Progress Report (''progress report'' or ''report'') and a negative declaration stating that further revision of the existing regional haze SIP is not needed at this time. Alaska submitted both the progress report and the negative declaration in the form of implementation plan revisions as required by federal regulations. The progress report addresses the federal Regional Haze Rule requirements under the Clean Air Act to submit a report describing progress in achieving reasonable progress goals established for regional haze and a determination of the adequacy of the state's existing plan addressing regional haze. We are also approving minor updates to the Enhanced Smoke Management Plan, Long-Term Strategy, and Commitment to Future 308 Plan Revision sections of the regional haze SIP, submitted concurrently with the progress report.

DATES: This final rule is effective May 14, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2016–0749. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and is publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* and at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW–150), EPA Region 10, 1200 Sixth Ave Suite 900, Seattle, WA 98101; telephone number: (206) 553–0256; email address: *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
II. Final Action
III. Statutory and Executive Orders Review

I. Background Information

On February 16, 2018, the EPA proposed to approve Alaska's Regional Haze Progress Report, as well as minor updates to the Enhanced Smoke Management Plan, Long-Term Strategy, and Commitment to Future 308 Plan Revision sections of the regional haze SIP, submitted concurrently with the progress report (83 FR 7002). An explanation of the Clean Air Act requirements, a detailed analysis of the submittal, and the EPA's reasons for proposing approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for the proposal ended March 19, 2018. We received no adverse comments.[1]

II. Final Action

The EPA is approving the Alaska Regional Haze Progress Report submitted on March 10, 2016, as meeting the applicable requirements of the Clean Air Act and the federal Regional Haze Rule, as set forth in 40 CFR 51.308(g). The EPA has determined that the existing regional haze SIP is adequate to meet the state's visibility goals and requires no substantive revision at this time, as set forth in 40 CFR 51.308(h). We have also determined that Alaska fulfilled the requirements in 40 CFR 51.308(i) regarding state coordination with Federal Land Managers. Lastly, we are approving updates to the Enhanced Smoke Management Plan, Long-Term Strategy, and Commitment to Future 308 Plan Revision sections of the regional haze SIP, submitted concurrently with the Alaska Regional Haze Progress Report.

[1] We received two comments in support of the proposed approval. We also received five comments that were not germane to the regional haze program or the Alaska submission. See ''AK RH 5 year progress_Memo to File reComment'' included in the docket for this action.

III. Statutory and Executive Orders Review

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

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

The SIP is not approved to apply on any Indian reservation land and is also not approved to apply 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 11, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 3, 2018.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

■ 2. In § 52.70, the table in paragraph (e) is amended by revising the entries for ''II.III.K. Area Wide Pollutant Control Program for Regional Haze'' and ''III.III.K. Area Wide Pollutant Control Program for Regional Haze'' to read as follows:

§ 52.70 Identification of plan.

* * * * *

(e) * * *

EPA–APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI–REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
State of Alaska Air Quality Control Plan: Volume II. Analysis of Problems, Control Actions				
*	*	*	*	*
Section III. Areawide Pollutant Control Program				
*	*	*	*	*
II.III.K. Area Wide Pollutant Control Program for Regional Haze.	Statewide	3/10/2016	4/12/2018, [Insert **Federal Register** citation].	

EPA–APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI–REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
State of Alaska Air Quality Control Plan: Volume III. Appendices				
*	*	*	*	*
Section III. Areawide Pollutant Control Program				
*	*	*	*	*
III.III.K. Area Wide Pollutant Control Program for Regional Haze.	Statewide	3/10/2016	4/12/2018, [Insert **Federal Register** citation].	
*	*	*	*	*

[FR Doc. 2018–07520 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0651; FRL–9975–01]

Clethodim; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of clethodim in or on multiple commodities which are identified and discussed later in this document. In addition, this regulation removes several previously established tolerances that are superseded by this final rule. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 12, 2018. Objections and requests for hearings must be received on or before June 11, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0651, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0651 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 11, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0651, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/

DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of March 23, 2017 (82 FR 14846) (FRL–9957–99), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E8510) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton NJ 08540. The petition requested that 40 CFR 180.458 be amended by establishing tolerances for residues of the herbicide, clethodim, 2-[(1E)-1-[[[(2E)-3-chloro-2-propenyl]oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, calculated as the stoichiometric equivalent of clethodim, in or on almond, hulls at 0.2 parts per million (ppm); *Brassica,* leafy greens, subgroup 4–16B at 3.0 ppm; leaf petiole vegetable subgroup 22B at 0.60 ppm; leafy greens subgroup 4–16A at 2.0 ppm; nut, tree, group 14–12 at 0.2 ppm; okra at 1.5 ppm; onion, green, subgroup 3–07B at 2.0 ppm; stalk and stem vegetable subgroup 22A at 1.7 ppm; vegetable, *Brassica,* head and stem, group 5–16 at 3.0 ppm; and vegetable, fruiting, group 8–10, except okra at 1.0 ppm. Upon establishment of proposed tolerances above, the Petitioner requests that 40 CFR part 180.458 be amended by removing existing tolerances for residues of clethodim in or on the raw agricultural commodities asparagus at 1.7 ppm; *Brassica,* head and stem, subgroup 5A at 3.0 ppm; *Brassica,* leafy greens, subgroup 5B at 3.0 ppm; leaf petioles subgroup 4B at 0.60 ppm; leafy greens subgroup 4A at 2.0 ppm; onion, green at 2.0 ppm; turnip, greens at 3.0 ppm; and vegetable, fruiting, group 8–10 at 1.0 ppm that are superseded by this final rule. That document referenced a summary of the petition prepared by Valent USA Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's responses to these comments are discussed in Unit IV.C.

Consistent with the authority in FFDCA 408(d)(4)(A)(i), EPA is issuing tolerances that vary from what the petitioner sought. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of, and to make a determination on aggregate exposure for clethodim including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with clethodim follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The clethodim toxicity database shows relatively low toxicity with the liver being the target organ based on repeated dosing by either oral or dermal routes in rats, mice, and dogs. The observed liver effects are characterized by increased liver weights, clinical chemistry changes, and centrilobular hepatic hypertrophy. Most liver effects that occurred at or below 100 milligrams/kilogram body weight (mg/kg bw) were considered as adaptive effects and not adverse. Decreased body weight was also a common finding across studies and species. In the 1-year dog oral toxicity study, hematological changes such as increased platelet and leukocyte counts and slight elevation of glucose levels (in dogs only) were also seen.

No developmental effects were present in the rabbits. In the rat developmental toxicity study, reduced fetal body weights and an increase in the incidence of delayed ossification of the lower vertebrae were seen at the dose (350 mg/kg/day) where maternal toxicity (excessive salivation and lacrimation, red nasal discharge) was also observed. No reproductive or offspring effects were seen in the 2-generation rat reproduction study. Therefore, the toxicity data showed no increased susceptibility in the young. The clethodim database also showed no potential for neurotoxicity or immunotoxicity.

Results of rat and mouse carcinogenicity studies did not show treatment-related increases in tumor incidence. Therefore, clethodim is not shown to be genotoxic and is classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by clethodim as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document entitled, ''SUBJECT: Clethodim. Human Health Aggregate Risk Assessment for the Proposed New Uses on Tree Nut Group 14–12; Okra; Crop Group Conversions for *Brassica* Leafy Greens Subgroup 4–16B; Leafy Green Subgroup 4–16A; Leaf Petiole Vegetable Subgroup 22B; Stalk and Stem Vegetable Subgroup 22A; Vegetable, *Brassica* Head and Stem, Group 5–16; Expansion of Commodity Residue Tolerance to Green Onion Subgroup 3–07B and Response to 6(a)(2) Data Submission'' dated March 19, 2018 at 33–38 in docket ID number EPA–HQ–OPP–2016–0651.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there

is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for clethodim used for human risk assessment is discussed in Unit III of the final rule published in the **Federal Register** of May 6, 2016 (81 FR 27339) (FRL–9945–68).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to clethodim, EPA considered exposure under the petitioned-for tolerances as well as all existing clethodim tolerances in 40 CFR 180.458. EPA assessed dietary exposures from clethodim in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for clethodim. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID), Version 3.16, which incorporates 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA conducted unrefined acute dietary analyses assuming tolerance levels for all commodities and 100 percent crop-treated (PCT). DEEM version 7.81 default processing factors were assumed, except where tolerances were established for processed commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used DEEM–FCID, Version 3.16, which incorporates 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA conducted unrefined chronic dietary analyses assuming tolerance levels for all commodities and 100 PCT. DEEM version 7.81 default processing factors were assumed, except where tolerances were established for processed commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that clethodim does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for clethodim. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for clethodim in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of clethodim. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Surface and ground water contamination may occur from clethodim as well as its sulfoxide and sulfone degradates. Exposure from water contamination is primarily associated with clethodim sulfone and clethodim sulfoxide rather than parent clethodim based on greater persistence and mobility of these degradates. Thus, the exposure assessments were based on the total toxic residue rather than parent only.

Based on the First Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of clethodim for acute exposures are estimated to be 330 parts per billion (ppb) for surface water and 1,430 ppb for ground water. For chronic exposures for non-cancer assessments EDWCs are estimated to be 137 ppb for surface water and 1,150 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1,430 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 1,150 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Clethodim is currently registered for the following uses that could result in residential exposures: In and around ornamental plant beds, landscaped area, trees, and ground covers (mulch). EPA assessed residential exposure using the following assumptions:

In a reassessment of existing residential uses of clethodim conducted to reflect updates to EPA's 2012 Residential SOPs along with policy changes for body weight assumptions, the Agency assessed short-term residential handler (adult only) inhalation exposure. There is potential residential dermal post-application exposure from the existing use of clethodim on ornamentals. However, since there is no adverse systemic hazard via the dermal route of exposure, and there is no incidental oral exposure expected from clethodim use on ornamental plants, a residential post-application assessment has not been conducted. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found clethodim to share a common mechanism of toxicity with any other substances, and clethodim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that clethodim does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine

which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of fetuses as compared to maternal animals following *in utero* and/or postnatal exposure to clethodim in the developmental toxicity studies in rats or rabbits, and no increased sensitivity in pups as compared to adults in the 2-generation rat reproduction toxicity study. There are no residual uncertainties concerning prenatal and postnatal toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for clethodim is complete and sufficient for selecting toxicity endpoints and PODs for assessing risks.

ii. There is no indication that clethodim is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that clethodim results in increased susceptibility of fetuses as compared to maternal animals following *in utero* and/or postnatal exposure to clethodim in the prenatal developmental toxicity studies in rats or rabbits, and no increased sensitivity in pups as compared to adults in the 2-generation rat reproduction toxicity study. In the rat developmental study, reduced ossification seen at the same dose that resulted in maternal toxicity is considered secondary to reduced maternal body weight, and is not considered qualitative susceptibility.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were determined based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to clethodim in drinking water. Post application exposure of children and incidental oral exposures to toddlers are expected to be negligible. All exposure estimates are based on conservative assumptions that will not underestimate the exposure and risks posed by clethodim.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. The acute aggregate risk is equivalent to the acute dietary risk.

Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to clethodim will occupy 29% of the aPAD, at the 95th percentile of exposure for all infants (<1 year old), the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to clethodim from food and water will utilize 30% of the cPAD for all infants (<1 year old) the population group receiving the greatest exposure. There are no chronic residential exposure scenarios. Therefore, the chronic aggregate risk would be equivalent to the chronic dietary exposure (food and drinking water) estimate.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Clethodim is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to clethodim.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in a short-term aggregate risk estimate for adults ages 20 to 49 is a MOE of 2,100. Because EPA's level of concern for clethodim is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Intermediate-term exposure is not expected for the residential exposure pathway. Therefore, the intermediate-term aggregate exposure would be equivalent to the chronic dietary exposure estimate.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, clethodim is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to clethodim residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods are available for enforcing clethodim tolerances in/on the proposed/registered plant commodities. Samples were analyzed for residues of clethodim and metabolites containing the 2-cyclohexen-1-one moiety using the gas chromatography/mass spectroscopy (GC/MS) Method YARL–0602D, adapted from Method RM–26B–3 entitled, ''The Determination of Clethodim Residues in Crops, Chicken and Beef Tissues, Milk and Eggs'' (revision dated January 20, 1994). The method converts residues of clethodim and metabolites to clethodim sulfoxide (CSO) and clethodim 5 hydroxy sulfoxide (5–OH CSO_2), which are determined as their dimethyl esters (DME and DME–OH, respectively).

Method RM–26B–3 is the enforcement method for tolerances for clethodim including its metabolites and degradates.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

There are no Codex MRLs for clethodim and its metabolites in or on the crops associated with this action.

C. Response to Comments

The Agency received four comments on the notice of filing (NOF) for this petition. While none of the commenters mentioned any specific concerns with the clethodim tolerances noticed in the NOF, two comments generally opposed the use of chemicals or pesticides in or food and two comments generally urged the Agency to ensure protection of the environment and human health by reviewing science and determining whether use of pesticide is safe for human consumption.

The Agency recognizes that some individuals believe that certain pesticides are ''toxic chemicals'' that should not be permitted in our food; however, no new information demonstrating toxicity or exposure of clethodim that EPA could use to evaluate the safety of the pesticide was provided by commenters. The existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency, as is required by section 408 of FFDCA, estimates the risk of the potential exposure to these residues. The Agency has conducted that risk assessment, which includes the consideration of long-term animal studies with clethodim, and concluded that there is a reasonable certainty that no harm will result from aggregate human exposure to clethodim and that, accordingly, the use of clethodim on petitioned-for food commodities is ''safe.''

D. Revisions to Petitioned-For Tolerances

In accordance with its standard practice to provide greater precision about the levels of residues that are permitted by a tolerance, EPA is adding an additional significant figure to the petitioned-for tolerance values for Almond hulls and Nut, tree, group 14–12. This is to avoid the situation where residues may be higher than the tolerance level, but as a result of rounding would be considered non-violative (for example, Almond tolerance proposed at 0.2 ppm was established at 0.20 ppm, to avoid an observed hypothetical tolerance at 0.24 ppm being rounded to 0.2 ppm).

E. International Trade Considerations

In this final rule, EPA is establishing a crop subgroup tolerance for subgroup 22A (stalk and stem vegetable) at 1.7 ppm. This subgroup includes the commodity kohlrabi, for which a tolerance is currently set at 3.0 ppm, as one of the commodities in the currently established tolerance for *Brassica,* head and stem subgroup 5A. Setting a new tolerance at 1.7 ppm on kohlrabi as part of subgroup 22A has a potentially trade restrictive effect on the import of kohlrabi. In the 2016 crop grouping rule, kohlrabi was moved to the stalk and stem vegetable subgroup 22A. *See* 81 FR 26471 (May 3, 2016).

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA intends to promptly publish this action with the WTO. In addition, EPA is allowing the existing kohlrabi tolerance to remain in effect for six months following publication of this rule in order to provide a six-month reasonable interval for producers in exporting countries to adapt the modified tolerances. Before that date, residues of clethodim in or on kohlrabi will be permitted at the current tolerance levels; after that date, residues will need to be in compliance with the new tolerance levels.

The tolerance level is appropriate based on available data and residue levels resulting from registered use patterns. The tolerance levels are not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods. None of the other tolerance actions taken in this rulemaking restrict permissible pesticide residues below currently allowed levels in the United States.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the expiration of the tolerance, shall be subject to FFDCA section 408(1)(5). Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide clethodim, 2-[(1E)-1-[[[(2E)-3-chloro-2-propenyl]oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one, and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, calculated as the stoichiometric equivalent of clethodim, in or on Almond, hulls at 0.20 ppm; *Brassica,* Leafy, greens, subgroup 4–16B at 3.0 ppm; Leaf petiole vegetable subgroup 22B at 0.60 ppm; Leafy greens subgroup 4–16A at 2.0 ppm; Nut, tree, group 14–12 at 0.20 ppm; Okra 1.5 ppm; Onion, green, subgroup 3–07B at 2.0 ppm; Stalk and stem vegetable subgroup 22A at 1.7 ppm; Vegetable, *Brassica,* head and stem, group 5–16 at 3.0 ppm; and Vegetable, fruiting, group 8–10, except okra at 1.0 ppm. In addition, established tolerances in or on ''Asparagus''; ''*Brassica,* head and stem, subgroup 5A''; ''*Brassica,* leafy greens, subgroup 5B''; ''Leaf petioles subgroup 4B'';

''Leafy greens subgroup 4A''; ''Onion, green''; ''Turnip, greens''; and ''Vegetable, fruiting, group 8–10'' are removed as they are superseded by this final tolerance rule. To minimize the potential for trade irritation, the Agency is allowing the existing tolerance for kohlrabi to remain in place for six months by adding an expiration date of six months following publication of this rule to each individual tolerance. Since kohlrabi is currently contained within the existing subgroup 5A tolerance, which is being removed by this action, the Agency is listing kohlrabi as a separate tolerance at 3.0 ppm to remain in effect for a six-month period.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997)); or Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: March 19, 2018.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.458:

■ a. Remove the entries for ''Asparagus''; ''*Brassica,* head and stem, subgroup 5A''; ''*Brassica,* leafy greens, subgroup 5B''; ''Leaf petioles subgroup 4B''; ''Leafy greens subgroup 4A''; ''Onion, green''; ''Turnip, greens''; and ''Vegetable, fruiting, group 8–10''; from the table in paragraph (a).

■ b. Add alphabetically the entries to the table in paragraph (a) ''Almond, hulls''; ''*Brassica,* Leafy, greens, subgroup 4–16B''; ''Kohlrabi''; ''Leaf petiole vegetable subgroup 22B''; ''Leafy greens subgroup 4–16A''; ''Nut, tree, group 14–12''; ''Okra''; ''Onion, green, subgroup 3–07B''; ''Stalk and stem vegetable subgroup 22A''; ''Vegetable, *Brassica,* head and stem, group 5–16''; and ''Vegetable, fruiting, group 8–10, except okra''.

■ c. Add footnote 1 to the table in paragraph (a).

The additions and revisions read as follows:

§ 180.458 Clethodim; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Almond, hulls	0.20
* * * * *	
Brassica, leafy, greens, subgroup 4–16B	3.0
* * * * *	
Kohlrabi [1]	3.0
Leaf petiole vegetable subgroup 22B	0.60
Leafy greens subgroup 4–16A	2.0
* * * * *	
Nut, tree, group 14–12	0.20
Okra	1.5
* * * * *	
Onion, green, subgroup 3–07B	2.0
* * * * *	
Stalk and stem vegetable subgroup 22A	1.7
* * * * *	
Vegetable, *brassica,* head and stem, group 5–16	3.0
Vegetable, fruiting, group 8–10, except okra	1.0
* * * * *	

[1] This tolerance expires on October 12, 2018.

* * * * *

[FR Doc. 2018–07651 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Frequency Allocations and Radio Treaty Matters

CFR Correction

■ In Title 47 of the Code of Federal Regulations, Parts 0 to 19, revised as of October 1, 2017, on page 657, in § 2.106, under ''United States (US) Footnotes'', footnote US378 is reinstated to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

US378 In the band 1710–1755 MHz, the following provisions apply:

(a) Federal fixed and tactical radio relay stations may operate indefinitely on a primary basis within 80 km of Cherry Point, NC (34°58′ N, 76°56′ W) and Yuma, AZ (32°32′ N, 113°58′ W).

(b) Federal fixed and tactical radio relay stations shall operate on a secondary basis to primary non-Federal operations at the 14 sites listed below:

State	Location	Coordinates
	80 km radius of operation centered on:	
CA	China Lake	35°41′ N, 117°41′ W.
CA	Pacific Missile Test Range/Point Mugu	34°07′ N, 119°30′ W.
FL	Eglin AFB	30°29′ N, 086°31′ W.
MD	Patuxent River	38°17′ N, 076°25′ W.
NM	White Sands Missile Range	33°00′ N, 106°30′ W.
NV	Nellis AFB	36°14′ N, 115°02′ W.
UT	Hill AFB	41°07′ N, 111°58′ W.
	50 km radius of operation centered on:	
AL	Fort Rucker	31°13′ N, 085°49′ W.
CA	Fort Irwin	35°16′ N, 116°41′ W.
GA	Fort Benning	32°22′ N, 084°56′ W.
GA	Fort Stewart	31°52′ N, 081°37′ W.
KY	Fort Campbell	36°41′ N, 087°28′ W.
NC	Fort Bragg	35°09′ N, 079°01′ W.
WA	Fort Lewis	47°05′ N, 122°36′ W.

(c) In the sub-band 1710–1720 MHz, precision guided munitions shall operate on a primary basis until inventory is exhausted or until December 31, 2008, whichever is earlier.

(d) All other Federal stations in the fixed and mobile services shall operate on a primary basis until reaccommodated in accordance with the Commercial Spectrum Enhancement Act.

* * * * *

[FR Doc. 2018–07566 Filed 4–11–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170710645–8098–02]

RIN 0648–XG162

Fisheries of the Northeastern United States; Northeast Skate Complex; Inseason Adjustment to the Skate Wing Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces the adjustment of the commercial per-trip possession limit in the skate wing fishery for the remainder of the 2017 fishing year, through April 30, 2018, based on a revised landings projection. This possession limit adjustment is necessary to allow fishermen the opportunity to fully harvest the remaining skate wing annual total allowable landings. This announcement also informs the public that the skate wing possession limit is increased until the end of the fishing year (April 30).

DATES: Effective April 9, 2018, through April 30, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: The skate wing fishery is managed through the Northeast Skate Complex Fishery Management Plan (FMP); the regulations for which are found at 50 CFR part 648, subpart O. On December 27, 2017, we reduced the commercial skate wing possession limit from 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip to the incidental limit of 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) per trip for the remainder of the fishing year (82 FR 59526). The Regional Administrator is authorized to reduce the skate wing possession limit when landings reach 85 percent of the annual total allowable landings (TAL), which occurred in December. However, this is discouraged if the reduction is expected to prevent attainment of the annual TAL. Regulations at § 648.322(b) describe this process of adjusting the commercial possession limit of skate wings.

Based on landings data reported through March 31, 2018, our revised projections indicate that under the current possession limits, the skate wing fishery will only harvest 98 percent of the annual TAL before the end of the fishing year on April 30. Because the annual TAL would not be fully utilized under the current incidental possession limit, we are authorized to adjust the possession limit in accordance with the regulations to allow the full attainment of the annual TAL. Revised projections indicate that increasing the possession limit for skate wings from 500 lb (227 kg) back to the seasonal 4,100 lb (1,860 kg) per trip for the remainder of April (and the fishing year) would better allow the annual TAL to be fully utilized while still limiting the possibility of exceeding it due to the limited time period.

This action increases the commercial skate wing possession limit from the incidental limit of 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) per trip to the seasonal 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip. This action is being implemented to allow the skate wing fishery an opportunity to fully attain the annual TAL while minimizing the possibility of exceeding it. Upon filing of this notice, no person may possess on board or land more than 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip for the remainder of the 2017 fishing year, unless under specific exemption. This action applies to the skate wing fishery only and does not affect vessels fishing in accordance with a skate bait letter of authorization. On May 1, 2018, the 2018 fishing year begins, and the commercial skate wing possession limit will return to the skate wing season 1 (May 1, 2018 through August 31, 2018) possession limit of 2,600 lb (1,179 kg) of skate wings or 5,902 lb (2,677 kg) whole weight per trip.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action ends the previous trip limit reduction in the commercial skate bait fishery, and raises the possession limit from the incidental limit to the standard season 2 limit in order to allow fishermen the opportunity to fully harvest the annual skate wing TAL. The regulations at § 648.322(b)(2)(iii) allow this by stating that trip limits should not be reduced if they prevent the attainment of the TAL. If implementation of this adjustment were delayed to solicit prior public comment, this could further prevent the fishery's ability to harvest the full TAL, thereby undermining the objectives of the Northeast Skate Complex Fishery Management Plan. This action also relieves the restriction of the former trip limit reduction in the wing fishery for the remainder of the 2017 fishing year. The Assistant Administrator further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07589 Filed 4–9–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG159

Fisheries of the Exclusive Economic Zone off Alaska; Sablefish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2018 total allowable catch of sablefish allocated to vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 9, 2018, through 2400 hours, A.l.t., December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 total allowable catch (TAC) of sablefish allocated to vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA is 501 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2018 TAC of sablefish allocated to vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA will be reached. Therefore, NMFS is requiring that sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This closure does not apply to fishing by vessels participating in the cooperative fishery of the Rockfish Program for the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 6, 2018.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07615 Filed 4–9–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 71
Thursday, April 12, 2018

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2016–0050]

RIN 0579–AE38

Branding Requirements for Bovines Imported Into the United States From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the branding of bovines imported into the United States from Mexico. We are taking this action at the request of the Government of Mexico to address issues that have arisen with the branding requirement for these bovines. The changes we are proposing would help prevent inconsistencies in branding that can result in bovines being rejected for import into the United States.

DATES: We will consider all comments that we receive on or before June 11, 2018.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2016-0050.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2016-0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docket Detail;D=APHIS-2016-0050* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Betzaida Lopez, Senior Staff Veterinarian, National Import Export Services, Policy, Permitting, and Regulatory Services, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–3300.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.436, referred to below as the regulations) governs the importation of ruminants; within subpart D, § 93.427 specifically addresses the importation of cattle and other bovines from Mexico into the United States.

In § 93.427, paragraph (c) contains conditions to prevent the spread of tuberculosis to U.S. livestock and paragraph (e) contains conditions to prevent the entry of bovine spongiform encephalopathy (BSE) via the importation of cattle and other bovines from Mexico. Under paragraph (c)(1), steers imported into the United States must be identified with a distinct, permanent, and legible ''M'' mark, and spayed heifers must be identified with a distinct, permanent, and legible ''M_X'' mark, applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry. The brands must not be less than 2 inches or more than 3 inches high, and must be applied to the animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae).

Under paragraph (e)(3), sexually intact bovines must be permanently and humanely identified using one of the following methods:

- An ''MX'' mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry. The brand must not be less than 2 inches or more than 3 inches high, and must be applied to the animal's right hip, high on the tailhead (over the junction of the sacral and first coccygeal vertebrae);
- A tattoo with the letters MX applied to the inside of one ear of the animal; or
- Other means of permanent identification upon request if deemed adequate by the Administrator to humanely identify the animal in a distinct and legible way as having been imported from Mexico.

Several issues have arisen as a result of the branding requirements. The small size of the brands means that the brands may blotch when applied to the animals, making the brands difficult to read and potentially requiring the animal to be re-branded. In addition the ''M_X'' brand required for spayed heifers and the ''MX'' brand for sexually intact cattle can be easily confused, resulting in doubt over whether animals have been correctly branded and in some cases causing them to be rejected for importation at the ports. The Government of Mexico has requested that we modify the requirements to address these issues.

Accordingly, we are proposing to amend the requirements in § 93.427. In paragraph (c)(1), we would require steers and spayed heifers to be marked with a single ''M'' brand between 3 and 5 inches (7.5 and 12.5 cm) tall and wide to be placed on the right hip within 4 inches (10 cm) of the midline of the tailhead. This should be interpreted as the top of the brand being within 4 inches of the midline of the tailhead and placed above the hook and pin bones. The brand should also be within 18 inches (45.7 cm) of the anus.

Increasing the size of the brands and simplifying them to a simple ''M'' would help reduce or eliminate branding errors, which in turn would reduce the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. The change to the description of the placement of the brand clarifies the requirement by making the description more specific.

Similarly, in paragraph (e)(3)(i) we would amend the branding option for sexually intact bovines from Mexico to provide for those animals to be branded with a single ''M'' brand between 3 and 5 inches (7.5 and 12.5 cm) tall and wide, located on the upper right front shoulder of the animal.

As with the change for steers and spayed heifers, increasing the size of the brand for sexually intact animals would reduce or eliminate branding errors.

Changing the placement of the brand for sexually intact bovines from the hip to the shoulders would allow steers and spayed heifers to be visually distinguished from breeding cattle while allowing the use of the simplified brand for both categories of animals. We are not proposing to change the tattoo option for sexually intact bovines in paragraph (e)(3)(ii) because the MX tattoo has not posed a problem with confusion or errors as the brands have.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, APHIS considers this rule to be a deregulatory action under Executive Order 13771 as the action may result in cost savings.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* website (see **ADDRESSES** above for instructions for accessing *Regulations.gov).*

This proposed rule would amend the regulations in 9 CFR part 93 to change the identification requirements of bovines imported from Mexico. At present, cattle from Mexico carry at least two forms of identification, generally a brand and an approved eartag. Cattle imported from Mexico for other than immediate slaughter, are required to be branded with an ''M'' for steers, an ''Mx'' for spayed heifers, and an ''MX'' brand or tattoo for breeding bovines. APHIS is proposing that all bovines imported from Mexico be branded with a single ''M'' to avoid branding uncertainties. In order to distinguish between feeder and breeding cattle, the brand for steers and spayed heifers would be placed on the back hip and the brand for breeding cattle would be placed on the shoulder. Cattle imported from Mexico would still require an approved eartag.

The new identification requirements would reduce if not eliminate questionable brands, reducing the need for rebranding and the incidence of cattle rejections at port-of-entry inspection. Revenue from hides accounts for about 75 percent of the byproduct-value of beef cattle. Damage from rebranding can reduce hide value. Also, re-inspection due to questionable brands increases transactions costs. Currently, a $4.00 inspection fee per head is billed to the broker who in turn charges the exporter. The single ''M'' brand would both minimize hide damage and the need for re-inspections. Because the approved eartag is a current requirement, we do not anticipate any additional costs would be incurred.

Entities that may be impacted by the proposed rule fall into various categories of the North American Industry Classification System. The majority of these businesses are small entities.

Based on a sample of the percentage of cattle in fiscal year 2015 that initially were not allowed entry from Mexico because of branding concerns, the decrease in the value of hides when rebranded, and the cost of re-inspection, we estimate annual cost savings attributable to the proposed rule may range from $113,900 to $248,700. There would also be unquantified cost savings from the expected reduction in delays at ports of entry due to branding issues. In accordance with guidance on complying with Executive Order 13771, the primary estimate of the cost savings for this rule is $181,300. This value is the mid-point of the above range in cost savings annualized in perpetuity using a 7 percent discount rate.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden requirements included in this proposed rule are approved by the Office of Management and Budget under control number 0579–0040.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2483.

List of Subjects in Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.427 is amended by revising paragraphs (c)(1) and (e)(3)(i) to read as follows:

§ 93.427 Cattle and other bovines from Mexico.

* * * * *

(c) * * *

(1) Each steer or spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible ''M'' mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the steer or spayed heifer is imported for slaughter in accordance with § 93.429. The ''M'' mark shall be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and shall be applied to each animal's right hip, within 4 inches (10 cm) of the midline of the tailhead (that is, the top of the brand should be within 4 inches (10 cm) of the midline of the tailhead, and placed above the hook and pin bones). The brand should also be within 18 inches (45.7 cm) of the anus.

* * * * *

(e) * * *

(3) * * *

(i) An ''M'' mark properly applied with a freeze brand, hot iron, or other method, and easily visible on the live animal and on the carcass before skinning. Such a mark must be between 3 inches (7.5 cm) and 5 inches (12.5 cm) high and wide, and must be applied to the upper right front shoulder of each animal; or

* * * * *

Done in Washington, DC, this 9th day of April 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–07585 Filed 4–11–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR 17

[Docket No. FWS–R3–ES–2018–0005; FXES11130900000]

RIN 1018–BC01

Endangered and Threatened Wildlife and Plants; Removing the Kirtland's Warbler From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the Kirtland's warbler (*Setophaga kirtlandii*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This determination is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to the species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of endangered or threatened under the Act.

DATES: We will accept comments received or postmarked on or before July 11, 2018. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 29, 2018.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2018–0005, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2018–0005, U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Document availability: This proposed rule and supporting documents are available on *http://www.regulations.gov.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517–351–2555.

FOR FURTHER INFORMATION CONTACT: Scott Hicks, Field Supervisor, Michigan Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone 517–351–2555; facsimile 517–351–1443. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

This action proposes to remove the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)) based on the species' recovery. Removing a species from the List (''delisting'') can only be completed by issuing a rule.

Basis for Action

We may delist a species if the best scientific and commercial data indicate the species is neither an endangered species nor a threatened species for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered; or (3) the original data used at the time the species was classified were in error (50 CFR 424.11). Here, we have determined that the species may be delisted based on recovery. A species may be delisted based on recovery only if the best scientific and commercial data indicate that it is no longer endangered or threatened.

The threats that led to the species being listed under the Act (primarily loss of the species' habitat and effects of brood parasitism by brown-headed cowbirds) have been removed, ameliorated, or are being appropriately managed by the actions of multiple conservation partners over the past 50 years.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Reasons we should or should not delist the Kirtland's warbler.

(2) New information on the historical and current status, range, distribution, and population size of the Kirtland's warbler.

(3) New information on the known and potential threats to the Kirtland's warbler on its breeding grounds, on its wintering grounds, and during migration, including brood parasitism, and habitat availability.

(4) Information on the timing and extent of the effects of climate change on the Kirtland's warbler.

(5) New information regarding the life history, ecology, and habitat use of the Kirtland's warbler.

(6) Current or planned activities within the geographic range of the Kirtland's warbler that may impact or benefit the species.

(7) The adequacy of conservation agreements that would be implemented if the species is delisted.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such

information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in **DATES**. We will schedule public hearings on this proposal if any are requested, and announce the details of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Peer Review

In accordance with our policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period. We will consider all comments and information we receive from peer reviewers during the comment period on this proposed rule, as we prepare a final rule.

Previous Federal Actions

The Kirtland's warbler was listed as endangered under the Endangered Species Preservation Act on March 11, 1967 (32 FR 4001), primarily due to threats associated with limited breeding habitat and brown-headed cowbird (*Molothrus ater*) brood parasitism. The species is currently listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). We developed a recovery plan in 1976 (USFWS 1976) and revised the plan on September 30, 1985 (USFWS 1985).

On June 29, 2012, we published a document in the **Federal Register** (77 FR 38762) announcing that we were conducting a 5-year review of the status of Kirtland's warbler under section 4(c)(2) of the Act. In that document, we requested that the public provide us any new information concerning this species. The 5-year status review, completed in August 2012 (USFWS 2012), resulted in a recommendation to change the status of this species from endangered to threatened. The 2012 5-year status review is available on the Service's website at *https://www.fws.gov/midwest/endangered/birds/Kirtland/index.html,* and via the Service's Environmental Conservation Online System (ECOS) (*https://ecos.fws.gov/ecp0/profile/speciesProfile?spcode=B03I*).

On November 14, 2013, we published a rule in the **Federal Register** (78 FR 68370) revising the taxonomy to reflect the scientifically accepted taxonomy and nomenclature of this species (*Setophaga kirtlandii* (= *D. kirtlandii*)).

On April 17, 2017, we published a document in the **Federal Register** (82 FR 18156) announcing initiation of 5-year status reviews for eight endangered animal species, including Kirtland's warbler, and requested information on the species' status. This proposed rule constitutes completion of that 5-year status review.

Species Information

Taxonomy

The Kirtland's warbler is a songbird classified in the Order Passeriformes, Family Parulidae. Spencer Baird originally described this species in 1852, and named it *Sylvicola kirtlandii* after Dr. Jared P. Kirtland of Cleveland, Ohio (Baird 1872, p. 207). The American Ornithologists' Union Committee on Classification and Nomenclature—North and Middle America recently changed the classification of the Parulidae, which resulted in three genera (*Parula, Dendroica,* and *Wilsonia*) being deleted and transferred to the genus *Setophaga* (Chesser *et al.* 2011, p. 606). This revision was adopted by the Service on February 12, 2014 (see 78 FR 68370; November 14, 2013).

Distribution

The Kirtland's warbler is a neotropical migrant that breeds in jack pine (*Pinus banksiana*) forests in northern Michigan, Wisconsin, and Ontario. This species has one of the most geographically restricted breeding distributions of any mainland bird in the continental United States. Breeding habitat within the jack pine forest is both highly specific and disturbance-dependent, and likely was always limited in extent (Mayfield 1960, pp. 9–10; Mayfield 1975, p. 39). Similarly, the known wintering range is primarily restricted to The Bahamas (Cooper *et al.* 2017, p. 213).

Kirtland's warblers are not evenly distributed across their breeding range. More than 98 percent of all singing males have been counted in the northern Lower Peninsula of Michigan since population monitoring began in 1951 (Michigan Department of Natural Resources (MDNR), Service (USFWS), U.S. Forest Service (USFS), unpubl. data). The core of the Kirtland's warbler's breeding range is concentrated in five counties in northern lower Michigan (Ogemaw, Crawford, Oscoda, Alcona, and Iosco), where nearly 85 percent of the singing males were recorded between 2000 and 2015, with over 30 percent counted in Ogemaw County alone and over 21 percent in just one township during that same time period (MDNR, USFWS, USFS, unpubl. data).

Kirtland's warblers have also been observed in Ontario periodically since 1900 (Samuel 1900, pp. 391–392), and in Wisconsin since the 1940s (Hoffman 1989, p. 29). Systematic searches for the presence of Kirtland's warblers in States and provinces adjacent to Michigan, however, did not begin until 1977 (Aird 1989, p. 32; Hoffman 1989, p. 1). Shortly after these searches began, male Kirtland's warblers were found during the breeding season in Ontario (in 1977), Quebec (in 1978), Wisconsin (in 1978), and the Upper Peninsula of Michigan (in 1982) (reviewed in Aird 1989, pp. 32–35). Nesting was confirmed in the Upper Peninsula in 1996 (Weinrich 1996, p. 2; Weise and Weinrich 1997, p. 2), and in Wisconsin and Ontario in 2007 (Richard 2008, pp. 8–10; Trick *et al.* 2008, pp. 97–98).

Systematic searches to confirm nesting in states and provinces adjacent to Michigan have not been consistent across years. Female Kirtland's warblers are often observed with singing males, however, and nesting is generally assumed to occur at most sites where singing males are present (Probst *et al.* 2003, p. 369; MDNR, USFWS, USFS, unpubl. data). Singing males have been observed in the Upper Peninsula since 1993, with the majority of observations in the central and eastern Upper Peninsula (MDNR, USFWS, USFS, unpubl. data). In Wisconsin, nesting has been confirmed in Adams County every year since 2007, and has recently expanded into Marinette and Bayfield Counties (USFWS 2017, pp. 2–4). Scattered observations of mostly solitary birds have also occurred in recent years at several other sites in Douglas, Vilas, Washburn, and Jackson Counties in Wisconsin. Similarly, in Ontario, nesting was confirmed in Renfrew County from 2007 to 2016 (Richard 2013, p. 152; Tuininga 2017, pers. comm.), and reports of Kirtland's warblers present during the breeding season have occurred in recent years in both northern and southern Ontario (Tuininga 2017, pers. comm.).

The current distribution of breeding Kirtland's warblers encompasses the known historical breeding range of the species based on records of singing males observed in Michigan's northern Lower Peninsula, Wisconsin, and Ontario (Walkinshaw 1983, p. 23). In 2015, the number of singing males confirmed during the formal census period in Wisconsin (19), Ontario (20), and the Upper Peninsula (37) represented approximately 3 percent of the total singing male population (Environment Canada, MDNR, USFWS, USFS, Wisconsin DNR (WNDR), unpubl. data), demonstrating the species' reliance on their core breeding range in Michigan's northern Lower Peninsula. The number of Kirtland's warblers that could ultimately exist outside of the core breeding range is unknown; however, these peripheral individuals do contribute to a wider distribution.

Given the geographical extent of the warbler's historical range, peripheral Kirtland's warblers and habitat (outside the northern Lower Peninsula of Michigan) may help maintain the breadth of environmental diversity within the species, and increase the species' adaptive diversity (ability to adapt to changing environmental conditions over time) (Shaffer and Stein 2000, pp. 308–311). In Michigan's northern Lower Peninsula, the Kirtland's warbler's breeding habitat is spread over an approximately 15,540 square kilometer (km) (6,000 square mile) non-contiguous area. Therefore, within Michigan's northern Lower Peninsula, the Kirtland's warbler's breeding habitat is unlikely to uniformly experience catastrophic events (*e.g.,* wildfire) over that large an area. Although the number of Kirtland's warblers in Michigan's Upper Peninsula, Wisconsin, and Ontario currently represent a small percentage of the total population, Kirtland's warblers are successfully reproducing in these areas. The Kirtland's warbler's expansion into Michigan's Upper Peninsula, Wisconsin, and Ontario (Canada), therefore, could represent a future potential for the establishment of additional breeding territories outside of northern lower Michigan and would further increase the ability of the species to withstand catastrophic events by reducing the risk of such an event effecting the entire population over an even larger spatial scale.

Kirtland's warblers are more difficult to detect during the winter and are infrequently observed. The warblers appear to be unevenly distributed across the landscape; they tend to hide in low-lying, dense vegetation; and males do not generally sing during the winter (Currie *et al.* 2003, pp. 1–2; Currie *et al.* 2005a, p. 97). Extensive searches in the past produced few sightings of wintering Kirtland's warblers (Mayfield 1996, pp. 36–38; Lee *et al.* 1997, p. 21). A long-standing body of evidence dating to 1841, when the very first specimen was collected off the coast of Abaco Island (Stone 1986, p. 2), indicates that Kirtland's warblers winter largely within The Bahamas. The Bahamas is an archipelago of approximately 700 low-lying islands stretching more than 1,046 km (650 miles) from near the eastern coast of Florida to the southeastern tip of Cuba. Eleuthera and Cat Islands support the largest known population of wintering Kirtland's warblers (Sykes and Clench 1998, pp. 249–250; Cooper unpubl. data), although other islands have not been studied as intensively and potentially support substantial numbers. Within The Bahamas, Kirtland's warblers have been observed on several islands including The Abacos, Andros, Cat Island, Crooked Island, Eleuthera, The Exumas, Grand Bahama Island, Long Island, and San Salvador (Blanchard 1965, pp. 41–42; Hundley 1967, pp. 425–426; Mayfield 1972, pp. 347–348; Mayfield 1996, pp. 37–38; Haney *et al.* 1998, p. 202; Sykes and Clench 1998; Cooper unpubl. data). Haney *et al.* (1998, p. 205) found that only 3 of 107 reports originated from outside of The Bahamas: Two sightings from northern Dominican Republic, and one sighting from coastal Mexico. In addition, recent winter reports of solitary individuals have originated from Bermuda (Amos 2005, p. 3) and Cuba (Isada 2006, p. 462; Sorenson and Wunderle 2017). Cooper *et al.* (2017, p. 209) used geolocators to track Kirtland's warblers to determine distribution for 27 birds on the wintering grounds. The estimated wintering ranges of 18 tracked males overlapped primarily the central Bahamas (Eleuthera, Cat Island, The Exumas, Long Island, Rum Cay, San Salvador), 4 males overlapped primarily the western Bahamas (Grand Bahama, The Abacos, Nassau, Andros Island), and 4 males overlapped primarily the eastern Bahamas (Acklins Islands, Mayaguana, Great Inagua) or Turks and Caicos. One male appeared to winter in central Cuba (Cooper *et al.* 2017, p. 211).

Although the known wintering range appears restricted primarily to The Bahamas, many of the islands in the Caribbean basin are uninhabited by people or have had limited avian survey efforts, which may constrain our ability to comprehensively describe the species' wintering distribution. Kirtland's warblers readily shift sites on the wintering grounds based on habitat availability and food resources, and colonize new areas following disturbance (Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 134; Wunderle *et al.* 2014, p. 44). Suitable habitat exists on other islands, both within The Bahamas and elsewhere in the Caribbean basin, potentially providing habitat and buffering against the effects of catastrophic events such as hurricanes.

Breeding Habitat

The Kirtland's warbler's breeding habitat consists of jack pine-dominated forests with sandy soil and dense ground cover (Walkinshaw 1983, p. 36), most commonly found in northern lower Michigan, with scattered locations in the Upper Peninsula of Michigan, Wisconsin, and Ontario. Jack pine-dominated forests of the northern Great Lakes region historically experienced large, frequent, and catastrophic stand-replacing fires (Cleland *et al.* 2004, p. 313). These fires occurred approximately every 60 years, burned approximately 85,420 hectares (ha) (211,077 acres (ac)) per year, and resulted in jack pine comprising 53 percent of the total land cover (Cleland *et al.* 2004, pp. 315–317). Modern wildfire suppression has since increased the average fire return interval within this same landscape to approximately

775 years, decreased the amount of area burned to approximately 6,296 ha (15,558 ac) per year, and reduced the contribution of jack pine to 37 percent of the current land cover (Cleland *et al.* 2004, p. 316). The overall effect has been a reduction in the extent of dense jack pine forest, and in turn, the Kirtland's warbler's breeding habitat.

Kirtland's warblers generally occupy jack pine stands that are 5 to 23 years old and at least 12 ha (30 ac) in size (Donner *et al.* 2008, p. 470). The most obvious difference between occupied and unoccupied stands is the percent canopy cover (Probst 1988, p. 28). Stands with less than 20 percent canopy cover are rarely used for nesting (Probst 1988, p. 28). Tree canopy cover reflects overall stand structure, combining individual structural components such as tree stocking, spacing, and height factors (Probst 1988, p. 28). Tree canopy cover, therefore, may be an important environmental cue for Kirtland's warblers when selecting nesting areas.

Occupied stands usually occur on dry, excessively drained, nutrient-poor glacial outwash sands (Kashian *et al.* 2003, pp. 151–153). Stands are structurally homogeneous with trees ranging 1.7 to 5.0 meters (m) (5.5 to 16.4 feet (ft)) in height, and are generally of three types: Wildfire-regenerated, planted, and unburned-unplanted (Probst and Weinrich 1993, p. 258). Wildfire-regenerated stands occur naturally following a stand-replacing fire from serotinous seeding (seed cones remain closed on the tree with seed dissemination in response to an environmental trigger, such as fire). Planted stands are stocked with jack pine saplings after a clear cut. Unburned-unplanted stands originate from clearcuts that regenerate from non-serotinous, natural seeding, and thus do not require fire to release seeds.

Optimal habitat is characterized as large stands (more than 32 ha (80 ac)) composed of 8 to 20-year-old jack pines that regenerated after wildfires, with 27 to 60 percent canopy cover, and more than 5,000 stems per hectare (2,023 stems per acre) (Probst and Weinrich 1993, pp. 262–263). The poor quality and well-drained soils reduce the risk of nest flooding and maintain low shrubs that provide important cover for nesting and brood-rearing. Yet as jack pine saplings grow in height, percent canopy cover increases, causing self-pruning of the lower branches and changes in light regime, which diminishes cover of small herbaceous understory plants (Probst 1988, p. 29; Probst and Weinrich 1993, p. 263; Probst and Donnerwright 2003, p. 331). Bocetti (1994, p. 122) found that nest sites were selected based on higher jack pine densities, higher percent cover of blueberry, and lower percent cover of woody debris than would be expected if nests were placed at random. Due to edge effects associated with low area-to-perimeter ratios, predation rates may be higher for Kirtland's warblers nesting in small patches bordered by mature trees than in large patches (Probst 1988, p. 32; Robinson *et al.* 1995, pp. 1988–1989; Helzer and Jelinski 1999, p. 1449). Foraging requirements may also be negatively influenced as jack pines mature (Fussman 1997, pp. 7–8).

Conversely, marginal habitat is characterized as jack pine stands with at least 20 to 25 percent tree canopy cover and a minimum density of 2,000 stems per hectare (809 stems per acre, Probst and Weinrich 1993, pp. 261–265; Nelson and Buech 1996, pp. 93–95), and is often associated with unburned-unplanted areas (Donner *et al.* 2010, p. 2). Probst and Hayes (1987, p. 237) indicate that the main disadvantage of marginal habitat is reduced pairing success. Evidence from Wisconsin and Canada, however, has shown an ability of Kirtland's warblers to successfully reproduce in areas with smaller percentages of jack pine and with significant components of red pine (*Pinus resinosa*) and pin oak (*Quercus palustris*) (Mayfield 1953, pp. 19–20; Orr 1975, pp. 59–60; USFWS 1985, p. 7; Fussman 1997, p. 5; Anich *et al.* 2011, p. 201; Richard 2013, p. 155; Richard 2014, p. 307). Use of these areas in Michigan is rare and occurs for only short durations (Huber *et al.* 2001, p. 10). In Wisconsin, however, breeding has occurred primarily in red pine plantations that have experienced extensive red pine mortality and substantial natural jack pine regeneration (Anich *et al.* 2011, p. 204). Preliminary investigation (Anich *et al.* 2011, p. 204) suggests that in this case, a matrix of openings and thickets has produced conditions suitable for Kirtland's warblers, and that the red pine component may actually prolong the use of these sites due to a longer persistence of low live branches on red pines. Habitat conditions in documented Kirtland's warbler breeding areas in Ontario had similar ground cover to breeding sites in Michigan and Wisconsin, although tree species composition was more similar to Wisconsin sites than Michigan sites (Richard 2014, p. 306). The tree species composition at the Canadian sites also had high levels of red pine (up to 71 percent), similar to the plantations in Wisconsin (Anich *et al.* 2011, p. 201; Richard 2014, p. 307).

Habitat management to benefit Kirtland's warblers began as early as 1957 on State forest land and 1962 on Federal forest land (Mayfield 1963, pp. 217–219; Radtke and Byelich 1963, p. 209). Efforts increased in 1981, with the establishment of an expanded habitat management program to supplement wildfire-regenerated habitat and ensure the availability of relatively large patches of early successional jack pine forest for nesting (Kepler *et al.* 1996, p. 16). In the 1981 Management Plan for Kirtland's Warbler Habitat (USFS and MDNR 1981, p. 23), approximately 29,987 ha (74,100 ac) of Michigan State forest lands and about 21,650 ha (53,500 ac) of Federal forest lands were identified as lands suitable and manageable for Kirtland's warbler breeding habitat. That plan also provided prescriptions and guidelines to be used in protecting and improving identified nesting habitat. Contiguous stands or stands in close proximity were grouped into 23 areas referred to as Kirtland's Warbler Management Areas (KWMAs). KWMAs are administrative boundaries that describe parcels of land dedicated to and managed for Kirtland's warbler breeding habitat. The KWMAs were further subdivided into cutting blocks containing 200 or more acres of contiguous stands. These acreages were determined by factoring an average population density of one breeding pair per 12 ha (30 ac) into a 45 to 50 year commercial harvest rotation, which would produce suitable habitat as well as marketable timber (USFWS 1985, p. 21). At the time the recovery plan was updated, there were 51,638 ha (127,600 ac) of public forest lands designated for Kirtland's warbler habitat management in order to meet Kirtland's warbler recovery program objectives (USFWS 1985, p. 18). Data collected from the annual singing male census from 1980 to 1995 indicated that a breeding pair used closer to 15 ha (38 ac) within suitably aged habitat (Bocetti *et al.* 2001, p. 1). Based on these data, the Kirtland's Warbler Recovery Team recommended increasing the total amount of managed habitat to 76,890 ha (190,000 ac) (Ennis 2002, p. 2).

Wintering Habitat

On the wintering grounds, Kirtland's warblers occur in early successional scrublands, characterized by dense, low, broadleaf shrubs of varied foliage layers with small openings, resulting from natural or anthropogenic disturbances (locally known as low coppice) (Maynard 1896, pp. 594–595; Challinor 1962, p. 290; Mayfield 1972, p. 267; Mayfield 1992, p. 3; Mayfield 1996, pp. 38–39; Radabaugh 1974, p. 380; Lee *et al.* 1997, p. 23; Haney *et al.* 1998, p. 207; Sykes and Clench 1998, p. 256;

Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 133).

Clearing vegetation by bulldozers, wildfires, hurricanes, and local agricultural practices, such as ''slash and burn,'' can create suitable habitat on Eleuthera Island (Wunderle *et al.* 2007, p. 124), and the Kirtland's warbler likely benefited from local declines in agriculture as fallow lands reverted to early successional scrublands (Sykes and Clench 1998, p. 247). Kirtland's warblers typically occupy wintering sites 3 to 28 years (mean is approximately 14 years) after human disturbance (Wunderle *et al.* 2010, p. 127). As local food resources diminish in abundance, these sites may not be sufficient to sustain an individual for an entire winter; therefore, individuals must move widely from patch to patch, tracking changes in fruit abundance (Wunderle *et al.* 2007, p. 123; Wunderle *et al.* 2010, p. 134; Wunderle *et al.* 2014, p. 44).

Migration and Stopover Habitat

Spring departure from the wintering grounds is estimated to occur from late-April to early May, and arrival on the breeding grounds approximately 15 days later based on data from geolocators attached to 27 male Kirtland's warblers in 2012 and 2014 (Cooper *et al.* 2017, p. 212). These dates are similar to direct observations of color-banded birds arriving on the breeding grounds (Rockwell *et al.* 2012, p. 746) and when comparing the latest observation of birds present on the wintering grounds with the date first resighted on their breeding grounds (Ewert *et al.* 2012, p. 11). Male Kirtland's warblers have been observed arriving on the breeding grounds between May 1 and June 5 (Petrucha 2011, p. 17; Rockwell *et al.* 2012, p. 747), with a mean range between May 14 and May 15, and with the first females arriving a week or so after the first males (Mayfield 1960, pp. 41–42; Rockwell 2013, pp. 48–49).

Cooper *et al.* (2017, p. 212) determined that fall migration of adult males began with departure dates in late September through late October and arrival on the wintering grounds in mid-October to early November. The earliest recorded sighting in The Bahamas was August 20 (Robertson 1971, p. 48). Data from recovered geolocators showed that most Kirtland's warblers exhibited a loop migration, with fall migration occurring farther east than spring migration (Cooper *et al.* 2017, p. 214). Nearly all males departed the breeding grounds and flew in an easterly direction, spending time in southeastern Ontario or in the eastern Great Lakes region of the United States (Cooper *et al.* 2017, pp. 211, 213). Fall migration proceeded in a general southern direction, departing the mainland United States along the Carolina coastline (Cooper *et al.* 2017, pp. 211, 213). Spring migration followed a more westerly path, with landfall occurring in Florida and Georgia (Cooper *et al.* 2017, pp. 213, 216). An additional stopover site was identified in the western Lake Erie basin (Cooper *et al.* 2017, p. 216). Petrucha *et al.* (2013, p. 383) analyzed 562 records of Kirtland's warblers observed during migration and found that migration records were spread over most of the United States east of the Mississippi River, clustered around the Great Lakes and Atlantic Ocean coastlines.

Migrating Kirtland's warblers have been observed in a variety of habitats, including shrub/scrub, residential, park, orchard, woodland, and open habitats (Petrucha *et al.* 2013, p. 390). There is some evidence that dense vegetation less than 1.5 m (4.9 ft) in height may be important to migrating Kirtland's warblers (Stevenson and Anderson 1994, p. 566). The majority of migration records (82 percent) described the habitat as shrub/scrub, similar in structure to that on the breeding and wintering grounds (Petrucha *et al.* 2013, p. 384).

Biology

Diet and Foraging

On the breeding grounds, Kirtland's warblers are primarily insectivorous and forage by gleaning (plucking insects from) pine needles, leaves, and ground cover, occasionally making short sallies, hover-gleaning at terminal needle clusters, and gathering flying insects on the wing. Kirtland's warblers have been observed foraging on a wide variety of prey items, including various types of larvae, moths, flies, beetles, grasshoppers, ants, aphids, spittlebugs, and blueberries (Mayfield 1960, pp. 18–19; Fussman 1997, p. 33). Deloria-Sheffield *et al.* (2001, p. 385) identified similar taxa from fecal samples collected from Kirtland's warblers, but also observed that from July to September, homopterans (primarily spittlebugs), hymenopterans (primarily ants) and blueberries were proportionally greater in number than other taxa among samples. Deloria-Sheffield *et al.* (2001, p. 386) suggested that differences in the relative importance of food items between spring foraging observations and late summer fecal samples were temporal and reflected a varied diet that shifts as food items become more or less available during the breeding season. Within nesting areas, arthropod numbers peak at the same time that most first broods reach the fledging stage (Fussman 1997, p. 27). Planted and wildfire-regenerated habitats were extremely similar in terms of arthropod diversity, abundance, and distribution, suggesting that current habitat management techniques are effective in simulating the effects that wildfire has on food resources for Kirtland's warblers (Fussman 1997, p. 63).

On the wintering grounds, Kirtland's warblers rely on a mixed diet of fruit and arthropods. During foraging observations, 69 percent of Kirtland's warblers consumed fruits, such as snowberry (*Chiococca alba*), wild sage (*Lantana involucrata*), and black torch (*Erithalis fruticosa*), with wild sage being the overwhelmingly predominant food choice (Wunderle *et al.* 2010, pp. 129–130). Despite variation in food availability among sites and winters, the proportion of fruit and arthropods in fecal sample of Kirtland's warblers was consistent (Wunderle *et al.* 2014, p. 25). Food abundance was a reliable predictor of site fidelity, with birds shifting location to sites with higher biomass of ripe fruit and ground arthropods during the late winter (Wunderle *et al.* 2014, p. 31).

Demographics

The average life expectancy of adult Kirtland's warblers is approximately 2.5 years (Walkinshaw 1983, pp. 142–143). The oldest Kirtland's warbler on record was an 11-year old male, which, when recaptured in the Damon KWMA in 2005, appeared to be in good health and paired with a female (USFS, unpubl. data).

Overall, Kirtland's warbler annual survival estimates are similar to those of other wood warblers (reviewed in Faaborg *et al.* 2010, p. 12). Reported survival rates of the Kirtland's warbler varied by sex and age classes (Mayfield 1960, pp. 204–207; Walkinshaw 1983, pp. 123–143; Bocetti *et al.* 2002, p. 99; Rockwell *et al.* 2017, p. 723; Trick, unpubl. data). Rockwell *et al.* (2017, pp. 719–721) analyzed mark-recapture data from 2006–2010 on breeding grounds in Michigan and from 2003–2010 on the wintering grounds in The Bahamas, and determined the mean annual survival estimates for adults and yearlings were 0.58 and 0.55, respectively. Rockwell *et al.* (2017, p. 722), also found that monthly survival probabilities were relatively high when birds were stationary on the wintering and breeding grounds, and were substantially lower during the migratory period, which has the highest mortality

rate out of any phase of the annual cycle, accounting for 44 percent of annual mortality. Survival probability was positively correlated to March rainfall in the previous year, suggesting the effects of rain on the wintering grounds carried over to affect annual survival in subsequent seasons. Reduced rain can result in lower available food resources for Kirtland's warblers, which could result in poorer body condition; has been shown to make them less likely to survive the subsequent spring migration (Rockwell *et al.* 2017, pp. 721–722); and lowers reproductive success during the breeding season (Rockwell *et al.* 2012, p. 745).

Genetics

From the information available, it appears that Kirtland's warblers display winter and breeding-ground panmixia (mixing of individuals across locations within the population). In 2007, eight birds examined from six different wintering sites on Eleuthera Island were found on breeding territories in the Damon KWMA in Ogemaw County, Michigan (Ewert, unpubl. data). Additionally, four other birds banded from one wintering site on Eleuthera Island were found on breeding territories across four counties in northern lower Michigan. Kirtland's warblers are also known to regularly move between KWMAs in northern lower Michigan during the breeding season (Probst *et al.* 2003, p. 371). This suggests that the warbler's population exhibits panmictic (a group of interbreeding individuals where all individuals in the population are potential reproductive partners) rather than metapopulation (groups of interbreeding individuals that are geographically distinct) demographic characteristics (Esler 2000, p. 368).

King *et al.* (2005, p. 569) analyzed blood samples from 14 wintering Kirtland's warblers on Eleuthera Island, isolated and characterized 23 microsatellite DNA markers specific to the species, and found moderate to high levels of allelic diversity and heterozygosity that demonstrate the potential variability of the individual loci that were developed. Wilson *et al.* (2012, pp. 7–9) used 17 microsatellite loci (12 were developed by King *et al.* 2015, p. 570) to measure and compare the genetic diversity from breeding Kirtland's warblers in Oscoda County, MI. Wilson *et al.* (2012, pp. 7–9) tested for genetic bottlenecks, temporal changes in genetic diversity, and effective population size using samples from 3 time periods (1903–1912, 1929–1955, and 2008–2009). Their results showed no evidence of a bottleneck in the oldest (1903–1912) sample, indicating that any population declines prior to that point may have been gradual. Although population declines have been observed since then, there was only weak genetic evidence of a bottleneck in the two more recent samples (no bottleneck detected in two of three possible models for each sample). The study showed a slight loss of allelic richness between the oldest and more recent samples (estimated to be 1.7 alleles per locus), but no significant difference in heterozygosity between samples and no evidence of inbreeding. Effective population size estimates varied depending on the methods used, but none were low enough to indicate that inbreeding or rapid loss of genetic diversity were likely in the future. Based on the available data, genetic diversity does not appear to be a limiting factor for the Kirtland's warbler, or indicate the need for genetic management at this time.

Abundance and Population Trends

Prior to 1951, the size of the Kirtland's warbler population was extrapolated from anecdotal observations and knowledge about breeding and wintering habitat conditions. The Kirtland's warbler population may have peaked in the late 1800s, a time when conditions across the species' distribution were universally beneficial (Mayfield 1960, p. 32). Wildfires associated with intensive logging, agricultural burning, and railroads in the Great Lakes region burned hundreds of thousands of acres, and vast portions were dominated by jack pine forests (Pyne 1982, pp. 199–200, 214). Suitable winter habitat consisting of low coppice (early-successional and dense, broadleaf vegetation) was also becoming more abundant, due to a decrease in widespread commercial agriculture in The Bahamas after the abolition of slavery in 1834, resulting in former croplands converting to scrub (low coppice) (Sykes and Clench 1998, p. 245). During this time, Kirtland's warblers were found in greater abundance throughout The Bahamas than were found in previous decades, and reports of migratory strays came from farther north and west of the known migratory range, evidence of a larger population that would produce more migratory strays (Mayfield 1993, p. 352).

Between the early 1900s and the 1920s, agriculture in the northwoods was being discouraged in favor of industrial tree farming, and systematic fire suppression was integrated into State and Federal policy (Brown 1999, p. 9). Mayfield (1960, p. 26) estimated the amount of jack pine on the landscape suitably aged for Kirtland's warblers had decreased to approximately 40,470 ha (100,000 ac) of suitable habitat in any one year. This reduction in habitat amount presumably resulted in fewer Kirtland's warblers from the preceding time period, and Kirtland's warblers were not observed in all stands of suitable conditions (Wood 1904, p. 10). Serious efforts to control forest fires in Michigan began in 1927, and resulted in a further reduction of total acres burned, as the number of wildfires decreased and the size of forest tracts that burned decreased (Mayfield 1960, p. 26; Radtke and Byelich 1963, p. 210).

By this time, brown-headed cowbirds had expanded from the short grass plains and become common within the Kirtland's warbler's nesting range due to clearing of land for settlement and farming in northern Michigan (Wood and Frothingham 1905, p. 49; Mayfield 1960, p. 146). Brown-headed cowbirds are obligate brood parasites; females remove an egg from a host species' nest and lay their own egg to be raised by the adult hosts, and the result usually causes the death of the remaining host nestlings (Rothstein 2004, p. 375). Brood parasitism by brown-headed cowbirds contributed to the decline of Kirtland's warblers, and a brown-headed cowbird trapping program was initiated in 1972, to reduce the impact of brood parasitism (see Factor E discussion, below).

Comprehensive surveys (censuses) of the entire Kirtland's warbler population began in 1951. Because of the warbler's specific habitat requirements and the frequent, loud and persistent singing of males during the breeding season, it was possible to establish a singing male census (Ryel 1976, p. 2). The census consists of an extensive annual survey of all known and potential breeding habitat to count singing males. The census protocol assumes that there is a breeding female for each singing male, so the number of singing males is assumed to equate to the number of breeding pairs. Although this may not be true in some cases, the census provides a robust, relative index of the Kirtland's warbler population change over time (Probst *et al.* 2005, p. 51). Censuses were conducted in 1951, 1961, each year from 1971 to 2013, and in 2015 (Figure 1, below). The 1951 census documented a population of 432 singing males confined to 28 townships in eight counties in northern lower Michigan (Mayfield 1953, p. 18). By 1971, the Kirtland's warbler population declined to approximately 201 singing males and

was restricted to just 16 townships in six counties in northern lower Michigan (Probst 1986, pp. 89–90). Over the next 18 years, the Kirtland's warbler population level remained relatively stable at approximately 200 singing males but experienced record lows of 167 singing males in 1974 and again in 1987. Shortly after 1987, the population began a dramatic increase, reaching a record high of 2,383 singing males in 2015 (MDNR, USFS, USFWS unpubl. data).

Due in part to the increase in population numbers and distribution, and significant effort and cost associated with monitoring for the Kirtland's warbler, the census in Michigan's northern Lower Peninsula has shifted to a less intensive survey protocol (Kennedy 2017, pers. comm.; Williams *et al.* 2016, p. 1). Starting in 2017, surveys for Kirtland's warblers in northern lower Michigan will occur every other year in a portion of the known occupied habitat. This less intensive survey is designed to detect population trends (Kennedy 2017, pers. comm.).

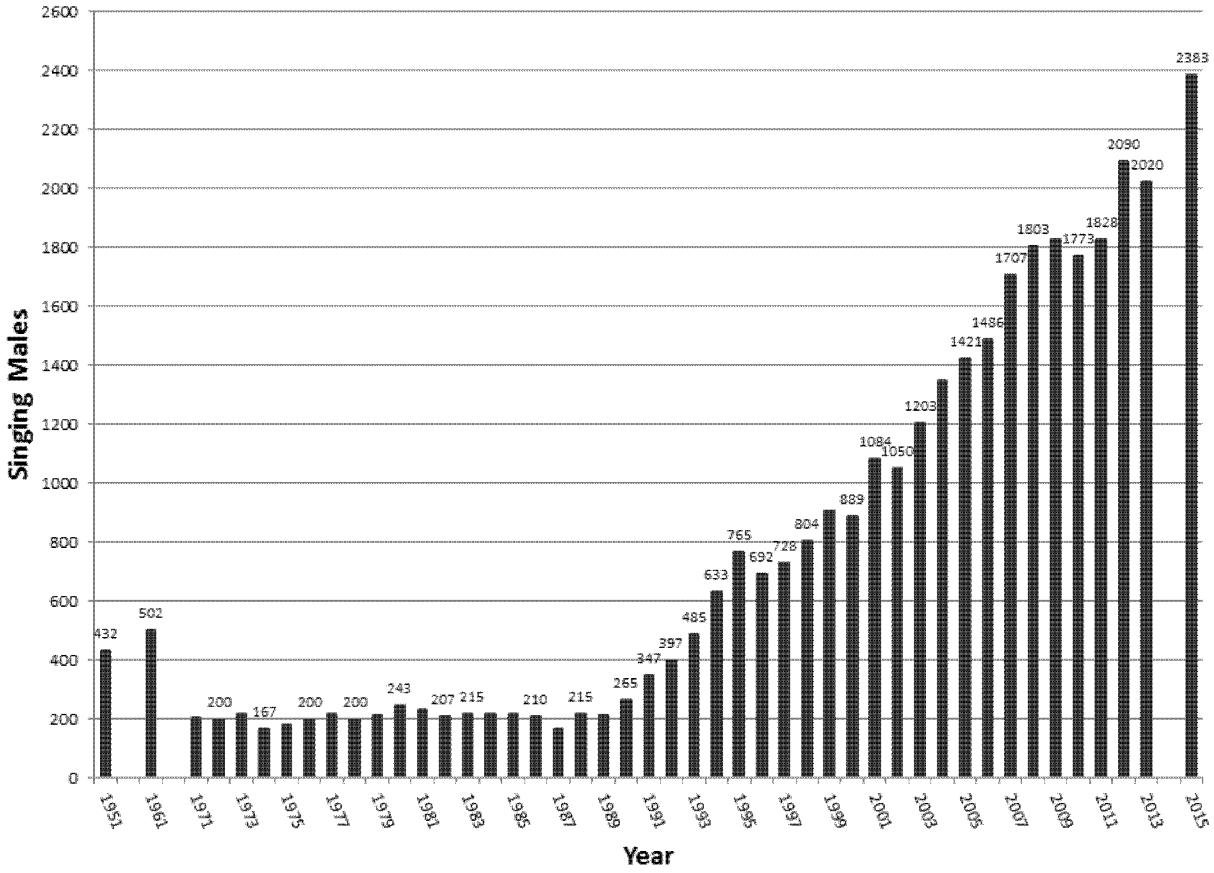

Figure 1: Kirtland's warbler census results for each year in which a full census was completed (1951, 1961, 1971–2013, and 2015) (MDNR data). *Note: the census was not conducted in the years 1952–1960, 1962–1970, 2014, or 2016–2017.*

Since implementation of the brown-headed cowbird control program began in 1972, the Kirtland's warbler population size closely tracked with the amount of suitable habitat on the landscape in northern lower Michigan at least through 2004 (Donner *et al.* 2008, p. 478). Overall, the amount of suitable habitat increased by nearly 150 percent from 1979 to 2004. The source of suitable habitat began to shift during this time as well. In the late 1980s, maturation of habitat generated through wildfire composed a higher percentage of the total suitable habitat available to the Kirtland's warbler compared to other types of habitat (Donner *et al.* 2008, p. 472). By 1992, artificially regenerated plantation habitat was nearly twice as abundant as wildfire habitat, and increased to triple that of wildfire habitat by 2002 (Donner *et al.* 2008, p. 472). From 1979 to 1994, the majority of singing males were found in wildfire-generated habitat (Donner *et al.* 2008, p. 474). By 1994, responding to a shift in available nesting habitat types, males redistributed out of habitat generated by wildfire and unburned-unplanted habitat and into plantation (planted) habitat. From 1995 to 2004, males continued redistributing into plantations from wildfire habitat, and 85 percent of males were found in plantation habitat by 2004 (Donner *et al.* 2008, p. 475). This redistribution of males into plantations also resulted in males being more evenly distributed across the core breeding range than in

previous years. Artificial regeneration of suitable breeding habitat, along with brown-headed cowbird control (as discussed under Factor E, below), have been critical to the warbler's recovery, allowing for a dramatic increase in population numbers and wider distribution across the landscape. In general, increasing the amount, quality, and distribution of available habitat results in larger, more genetically diverse populations that are more resilient and can more readily withstand perturbations (Shaffer and Stein 2000, pp. 308–312).

Population Viability

Brown *et al.* (2017a, p. 443) incorporated full annual cycle (breeding and wintering) dynamics into a population viability model to assess the long-term population viability of the Kirtland's warbler under five management scenarios: (1) Current suitable habitat and current cowbird removal; (2) reduced suitable habitat and current cowbird removal; (3) current suitable habitat and reduced cowbird removal, (4) current suitable habitat and no cowbird removal; and (5) reduced suitable habitat and reduced cowbird removal. The model that best simulated recently observed Kirtland's warbler population dynamics included a relationship between precipitation in the species' wintering grounds and productivity (Brown *et al.* 2017a, pp. 442, 444) that reflects our understanding of carry-over effects (Rockwell *et al.* 2012, pp. 748–750; Wunderle *et al.* 2014, pp. 46–48).

Under the current management conditions, which include habitat management and brown-headed cowbird control at existing levels, the model predicts that the Kirtland's warbler population will be stable over a 50-year simulation period. When simulating a reduced brown-headed cowbird removal effort by restricting cowbird trapping activities to the central breeding areas in northern lower Michigan (*i.e.,* eastern Crawford County, southeastern Otsego County, Oscoda County, western Alcona County, Ogemaw County, and Roscommon County) and assuming a 41 percent or 57 percent reduction in Kirtland's warbler productivity, the results showed a stable or slightly declining population, respectively, over the 50-year simulation period (Brown *et al.* 2017a, p. 447). Other scenarios, including reduced habitat suitability and reduced Kirtland's warbler productivity due to experimental jack pine management on 25 percent of available breeding habitat, had similar results with projected population declines over the 50-year simulation period, but mean population numbers remained above the population goal of 1,000 pairs (Brown *et al.* 2017a, p. 446), the numerical criterion identified in the Kirtland's warbler recovery plan (USFWS 1985).

Brown *et al.* (2017a, p. 447) assumed that future reductions to the Kirtland's warbler's productivity rates under two reduced cowbird removal scenarios would be similar to historical rates. This assumption would overestimate the negative effects on Kirtland's warbler productivity if future parasitism rates are lower than the rates modeled (see Factor E discussion, below, for additional information on contemporary parasitism rates). Supplementary analysis (Brown *et al.* 2017b, unpub. report) using the model structure and assumptions of Brown *et al.* (2017a) simulated the impacts of a 5, 10, 20, and 30 percent reduction in productivity to take into consideration a wider range of possible future parasitism rates. Even small reductions in annual productivity had measurable impacts on population abundance, but there were not substantial differences in mean population growth rate up to a 20 percent reduction in productivity (Brown *et a*l. 2017b, p. 3). Even with annual reductions in productivity of up to 5 percent for 50 years, the population trend (growth rate) projected for the final 30 years of the model simulations was 0.998 (range from the 5 simulations 0.993 to 1.007) or nearly the same as that projected in the simulations with no reduction in productivity at 0.999 (range of 0.995 to 1.008) (Brown *et al.* 2017b, p. 3). It is reasonable to infer that the Kirtland's warbler population can support relatively small reductions in productivity over a long period of time (*e.g.,* the 50-year timeframe of the simulations), providing a margin of assurance as management approaches are adaptively managed over time, and the species may be able to withstand as great as a 20 percent reduction in annual productivity, provided it does not extend over several years.

It is important to acknowledge that the results of the model simulations are most helpful to indicate the effect of various management decisions relative to one another, rather than provide predictions of true population abundance. In other words, we interpreted the model output to provide us with projections of relative trends, rather than to apply specific population abundance thresholds to each future projection. Although there are limitations to all population models based on necessary assumptions, input data limitations, and unknown long-term responses such as adaptation and plasticity, data simulated by Brown *et al.* (2017a and 2017b, entire) provide useful information in assessing relative population trends for the Kirtland's warbler under a variety of future scenarios and provide the best available analysis of population viability.

In summary, Kirtland's warbler population numbers have been greatly affected by brown-headed cowbird parasitism rates and the extent and quality of available habitat on the breeding grounds. The best available population model predicts that limited non-traditional habitat management and continued low brood parasitism rates will result in sustained population numbers above the recovery goal. Monitoring population numbers and brood parasitism rates will be important in evaluating population viability in the future, and will be considered as part of the post-delisting monitoring plan.

Recovery and Recovery Plan Implementation

State and Federal efforts to conserve the Kirtland's warbler began in 1957, and were focused on providing breeding habitat for the species. The Kirtland's warbler was federally listed as an endangered species in 1967, under the Endangered Species Preservation Act of 1966 (Pub. L. 89–669). By 1972, a Kirtland's Warbler Advisory Committee had been formed to coordinate management efforts and research actions across Federal and State agencies, and conservation efforts expanded to include management of brown-headed cowbird brood parasitism (Shake and Mattsson 1975, p. 2).

Efforts to protect and conserve the Kirtland's warbler were further enhanced when the Endangered Species Act of 1973 became law and provided for acquisition of land to increase available habitat, funding to carry out additional management programs, and provisions for State and Federal cooperation. In 1975, the Kirtland's Warbler Recovery Team (Recovery Team) was appointed by the Secretary of the Interior to guide recovery efforts. A Kirtland's Warbler Recovery Plan was completed in 1976 (USFWS 1976), and updated in 1985 (USFWS 1985), outlining steps designed to protect and increase the species' population.

Recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, but they are not regulatory documents. A decision to revise the status of or remove a species from the List is ultimately based on an analysis of the

best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

The Kirtland's warbler recovery plan (USFWS 1985) identifies one ''primary objective'' (hereafter referred to as ''recovery criterion'') that identifies when the species should be considered for removal from the List, and ''secondary objectives'' (hereafter referred to as ''recovery actions'') that are designed to accomplish the recovery criterion. The recovery criterion states that the Kirtland's warbler may be considered recovered and considered for removal from the List when a self-sustaining population has been re-established throughout its known range at a minimum level of 1,000 pairs. The 1,000-pair demography-based standard was informed by estimates of the amount of the specific breeding habitat required by each breeding pair of Kirtland's warblers, the amount of potential habitat available on public lands in Michigan's northern Lower Peninsula, and the ability of State and Federal land managers to provide suitable nesting habitat on an annual basis. The recovery criterion was intended to address the point at which the ultimate limiting factors to the species had been ameliorated so that the population is no longer in danger of extinction or likely to become so within the foreseeable future.

The recovery plan, however, does not clearly articulate how meeting the recovery criterion will result in a population that is at reduced risk of extinction. The primary threats to the Kirtland's warbler are pervasive and recurring threats, but threat-based criteria specifying measurable targets for control or reduction of those threats were not incorporated into the recovery plan. Instead, the recovery plan lists actions focused on specific actions, in order to accomplish the recovery criterion. These included managing breeding habitat, protecting the Kirtland's warbler on its wintering grounds and along the migration route, reducing key factors such as brown-headed cowbird parasitism from adversely affecting reproduction and survival of Kirtland's warblers, and monitoring the Kirtland's warbler to evaluate responses to management practices and environmental changes.

At the time the recovery plan was prepared, we estimated that land managers would need to annually maintain approximately 15,380 ha (38,000 ac) of nesting habitat in order to support and sustain a breeding population of 1,000 pairs (USFWS 1985, pp. 18–20). We projected that this would be accomplished by protecting existing habitat, improving occupied and developing habitat, and establishing approximately 1,010 ha (2,550 ac) of new habitat each year, across 51,640 ha (127,600 ac) of State and Federal pine lands in the northern Lower Peninsula of Michigan (USFWS 1985, pp. 18–20). We also prioritized development and improvement of guidelines that would maximize the effectiveness and cost efficiency of habitat management efforts (USFWS 1985, p. 24). The MDNR, USFS, and Service developed the Strategy for Kirtland's Warbler Habitat Management (Huber *et al.* 2001, entire) to update Kirtland's warbler breeding habitat management guidelines and prescriptions based on a review of past management practices, analysis of current habitat conditions, and new findings that would continue to conserve and enhance the status of the Kirtland's warbler (Huber *et al.* 2001, p. 2).

By the time the recovery plan was updated in 1985, the brown-headed cowbird control program had been in effect for more than 10 years. The brown-headed cowbird control program had virtually eliminated brood parasitism and more than doubled the warbler's productivity rates in terms of fledging success (Shake and Mattsson 1975, pp. 2–4). The Kirtland's warbler's reproductive capability had been successfully restored, and the brown-headed cowbird control program was credited with preventing further decline of the species. Because management of brown-headed cowbird brood parasitism was considered essential to the survival of the Kirtland's warbler, it was recommended that the brown-headed cowbird control program be maintained for ''as long as necessary'' (USFWS 1985, p. 27).

Although the recovery plan identifies breeding habitat as the primary limiting factor, with brood parasitism as a secondary limiting factor, it also suggests that events or factors outside the breeding season might be adversely affecting survival (USFWS 1985, pp. 12–13). At the time the recovery plan was updated, little was known about the Kirtland's warbler's migratory and wintering behavior, the species' migratory and wintering habitat requirements, or ecological changes that may have occurred within the species' migration route or on its wintering range. This lack of knowledge emphasized a need for more information on the Kirtland's warbler post fledging, during migration, and on its wintering grounds (Kelly and DeCapita 1982, p. 365). Accordingly, recovery efforts were identified to: (1) Define the migration route and locate wintering areas, (2) investigate the ecology of the Kirtland's warbler and factors that might be affecting mortality during migration and on its winter range, and (3) provide adequate habitat and protect the Kirtland's warbler during migration and on its wintering areas (USFWS 1985, pp. 24–26).

In correspondence with the Service's Midwest Regional Director, and based on more than 20 years of research on the Kirtland's warbler's ecology and response to recovery efforts, the Recovery Team helped clarify recovery progress and issues that needed attention prior to reclassification to threatened status or delisting (Ennis 2002, pp. 1–4; Ennis 2005, pp. 1–3). From that synthesis, several important concepts emerged that continued to inform recovery including: (1) Breeding habitat requirements, amount, configuration, and distribution; (2) brood parasitism management; (3) migratory connectivity, and protection of Kirtland's warblers and their habitat during migration and on the wintering grounds; and (4) establishment of credible mechanisms to ensure the continuation of necessary management (Thorson 2005, pp. 1–2).

Our understanding of the Kirtland's warbler's breeding habitat selection and use and the links between maintaining adequate amounts of breeding habitat and a healthy Kirtland's warbler population has continued to improve. As the population has rebounded, Kirtland's warblers have become reliant on artificial regeneration of breeding habitat, but have also recolonized naturally regenerated areas within the historical range of the species and nested in habitat types previously considered non-traditional or less suitable. As explained in more detail below, recovery efforts have expanded to establish and enhance management efforts on the periphery of the species' current breeding range in Michigan's Upper Peninsula, Wisconsin, and Canada, and reflect the best scientific understanding of the amount and configuration of breeding habitat (see Factor A discussion, below). These adjustments improve the species' ability to adapt to changing environmental conditions, withstand stochastic disturbance and catastrophic events, and better ensure long-term conservation for the species.

The brown-headed cowbird control program has run uninterrupted since 1972, as recommended in the recovery plan, and the overall methodology has remained largely unchanged since the

program was established. Along with habitat management, brown-headed cowbird control has proven to be a very effective tool in stabilizing and increasing the Kirtland's warbler population. To ensure survival of the Kirtland's warbler, we anticipate that continued brown-headed cowbird brood parasitism management may be needed, at varying levels depending on parasitism rates, to sustain adequate Kirtland's warbler productivity. As explained in more detail below, brown-headed cowbird control techniques and the scale of trapping efforts have adapted over time and will likely continue to do so, in order to maximize program effectiveness and feasibility (see Factor E discussion, below).

We now recognize that the Kirtland's warbler persists only through continual management activities designed to mitigate recurrent threats to the species. The Kirtland's warbler is considered a conservation-reliant species, which means that it requires continuing management to address ongoing threats (Goble *et al.* 2012, p. 869). Conservation of the Kirtland's warbler will continue to require a coordinated, multi-agency approach for planning and implementing conservation efforts into the future. Bocetti *et al.* (2012, entire) used the Kirtland's warbler as a case study on the challenge of delisting conservation-reliant species. They recommended four elements that should be in place prior to delisting a conservation-reliant species, including a conservation partnership capable of continued management, a conservation plan, appropriate binding agreements (such as memoranda of agreement (MOAs)) in place, and sufficient funding to continue conservation actions into the future (Bocetti *et al.* 2012, p. 875).

The Kirtland's warbler has a strong conservation partnership consisting of multiple stakeholders that have invested considerable time and resources to achieving and maintaining this species' recovery. Since 2016, the Recovery Team is no longer active, but instead new collaborative efforts formed to help ensure the long-term conservation of the Kirtland's warbler regardless of its status under the Act. These efforts formed to facilitate conservation planning through coordination, implementation, monitoring, and research efforts among many partners and across the species' range. A coalition of conservation partners lead by Huron Pines, a nonprofit conservation organization based in northern Michigan, launched the Kirtland's Warbler Initiative in 2013. The Kirtland's Warbler Initiative brings together State, Federal, and local stakeholders to identify and implement strategies to secure funds for long-term Kirtland's warbler conservation actions given the continuous, recurring costs anticipated with conserving the species into the future. The goal of this partnership is to ensure the Kirtland's warbler thrives and ultimately is delisted, as a result of strong public-private funding and land management partnerships. Through the Kirtland's Warbler Initiative, a stakeholder group called the Kirtland's Warbler Alliance was developed to raise awareness in support of the Kirtland's warbler and the conservation programs necessary for the health of the species and jack pine forests.

The second effort informing Kirtland's warbler conservation efforts is the Kirtland's Warbler Conservation Team. The Kirtland's Warbler Conservation Team was established to preserve institutional knowledge, share information, and facilitate communication and collaboration among agencies and partners to maintain and improve Kirtland's warbler conservation. The current Kirtland's Warbler Conservation Team is comprised of representatives from the Service, USFS, MDNR, Wisconsin DNR, U.S. Department of Agriculture's Wildlife Services (USDA–WS), Canadian Wildlife Service, Huron Pines, Kirtland's Warbler Alliance, The Nature Conservancy, and California University of Pennsylvania.

Since 2015, conservation efforts for the Kirtland's warbler have been guided by the Kirtland's Warbler Breeding Range Conservation Plan (Conservation Plan) (MDNR *et al.* 2015, *https://www.michigan.gov/documents/dnr/Kirtlands_Warbler_CP_457727_7.pdf*). The Conservation Plan outlines the strategy for future cooperative Kirtland's warbler conservation and provides technical guidance to land managers and others on how to create and maintain Kirtland's warbler breeding habitat within an ecosystem management framework. The scope of the Conservation Plan currently focuses only on the breeding range of the Kirtland's warbler within the United States, although the agencies involved (MDNR, USFS, and USFWS) intend to cooperate with other partners to expand the scope of the plan in the future to address the entire species' range (*i.e.,* the entire jack pine ecosystem, as well as the migratory route and wintering range of the species). The Conservation Plan will be revised every 10 years to incorporate any new information and the best available science (MDNR *et al.* 2015, p. 1).

In April 2016, the Service, MDNR, and USFS renewed a memorandum of understanding (MOU) committing the agencies to continue collaborative habitat management, brown-headed cowbird control, monitoring, research, and education in order to maintain the Kirtland's warbler population at or above 1,000 breeding pairs, regardless of the species' legal protection under the Act (USFWS, MDNR, and USFS 2016, entire). In addition, Kirtland's warbler conservation actions are included in the USFS's land and resource management plans (Forest Plans), which guide management priorities for the Huron-Manistee, Hiawatha, and Ottawa National Forests.

Funding mechanisms that support long-term land management and brown-headed cowbird control objectives are in place to assure a high level of certainty that the agencies can meet their commitments to the conservation of the Kirtland's warbler. MDNR and USFS have replanted approximately 26,420 ha (90,000 ac) of Kirtland's warbler habitat over the past 30 years. Over the last 10 years, only a small proportion of the funding used to create Kirtland's warbler habitat is directly tied to the Act through the use of grant funding (*i.e.,* section 6 funding provided to the MDNR). Although there is the potential that delisting could reduce the priority for Kirtland's warbler work within the MDNR and USFS, as noted in the Conservation Plan (MDNR 2015, p. 17), much of the forest management cost (*e.g.,* silvicultural examinations, sale preparation, and reforestation) is not specific to maintaining Kirtland's warbler breeding habitat and would likely be incurred in the absence of the Kirtland's warbler. The MDNR and USFS have successfully navigated budget shortfalls and changes in funding sources over the past 30 years and were able to provide sufficient breeding habitat to enable the population to recover, and have agreed to continue to do so through the MOU. Additionally, the Service and MNDR developed an MOA to set up a process for managing funds to help address long-term conservation needs, specifically brown-headed cowbird control (USFWS and MDNR 2015, entire). If the annual income generated is greater than the amount needed to manage brown-headed cowbird parasitism rates, the remaining portion of the annual income may be used to support other high priority management actions to directly benefit the Kirtland's warbler, including wildlife and habitat management, land acquisition and consolidation, and education. The MOA

requires that for a minimum of 5 years after the species is delisted, MDNR consult with the Service on planning the annual brown-headed cowbird control program and other high priority actions. In addition, MDNR recently reaffirmed their commitment to the MOA and confirmed their intent to implement and administer the brown-headed cowbird control program, even if the Kirtland's warbler is delisted (MDNR 2017).

In summary, the general guidance of the recovery plan has been effective, and the Kirtland's warbler has responded well to active management over the past 50 years. The primary threats identified at listing and during the development of the recovery plan have been managed, and commitments are in place to continue managing the threats. The status of the Kirtland's warbler has improved, primarily due to breeding habitat and brood parasitism management provided by MDNR, USFS, and the Service. The population has been above the 1,000 pair goal since 2001, above 1,500 pairs since 2007, and above 2,000 pairs since 2012. The recovery criterion has been met. Since 2015, efforts for the Kirtland's warbler have been guided by a Conservation Plan that will continue to be implemented if the species is delisted.

Since the revision of the recovery plan (USFWS 1985), decades of research have been invaluable to refining recovery implementation and have helped clarify our understanding of the dynamic condition of the Kirtland's warbler, jack pine ecosystem, and the factors influencing them. The success of recovery efforts in mitigating threats to the Kirtland's warbler are evaluated below.

Summary of Factors Affecting the Kirtland's Warbler

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). A species may be determined to be an endangered species or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; and/or (3) the original scientific data used at the time the species was classified were in error.

For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following delisting or downlisting (*i.e.,* reclassification from endangered to threatened) and the removal or reduction of the Act's protections. A recovered species is one that no longer meets the Act's definition of endangered or threatened. A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the ''significant portion of its range'' phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the Kirtland's warbler, should be considered endangered or threatened throughout all of its range. Then we will consider whether there are any significant portions of the Kirtland's warbler's range where the species is in danger of extinction or likely to become so within the foreseeable future.

The Act does not define the term ''foreseeable future.'' For the purpose of this proposed rule, we defined the ''foreseeable future'' to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of the Kirtland's warbler. Based on the history of habitat and brown-headed cowbird management and the established commitment by State and Federal partners to continue the necessary management that has been conducted over the past 50 years, as well as the predictions of the population viability model (Brown *et al.* 2017a, entire) that considers a 50-year timeframe into the future, it is reasonable to define the foreseeable future for the Kirtland's warbler as 50 years. Beyond that time period, the future conditions become more uncertain, such that we cannot make predictions as to how they will affect the status of the species.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act. The following analysis examines all five factors currently affecting or that are likely to affect the Kirtland's warbler in the foreseeable future.

A. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range

Breeding Habitat

Historically, wildfires were the most important factor in the establishment of natural jack pine forests and Kirtland's warbler breeding habitat. However, modern wildfire suppression greatly altered the natural disturbance regime that generated Kirtland's warbler breeding habitat for thousands of years (USFWS 1985, p. 12; Cleland *et al.* 2004, pp. 316–318). Prior to the 20th century, the historic fire recurrence in jack pine forests averaged 59 years; although it is now estimated to occur in cycles as long as 775 years (Cleland *et al.* 2004, pp. 315–316).

In the absence of wildfire, land managers must take an active role in mimicking natural processes that regularly occurred within the jack pine ecosystem, namely stand-replacing disturbance events. This is primarily done through large-scale timber harvesting and human-assisted reforestation. Although planted stands

tend to be more structurally simplified than wildfire-regenerated stands (Spaulding and Rothstein 2009, p. 2610), land managers have succeeded in selecting Kirtland's Warbler Management Areas that have landscape features of the natural breeding habitat and have developed silvicultural techniques that produce conditions within planted stands suitable for Kirtland's warbler nesting. In fact, over 85 percent of the habitat used by breeding Kirtland's warblers in 2015 in the northern Lower Peninsula of Michigan (approximately 12,343 ha (30,500 ac)) had been artificially created through clearcut harvest and replanting. The planted stands supported over 92 percent of the warbler's population within the Lower Peninsula during the breeding season (MDNR, USFS, USFWS, unpubl. data). The effectiveness of these strategies is also evident by the reproductive output observed in planted stands, which function as population sources (Bocetti 1994, p. 95). Thus, in a landscape where natural fire disturbance patterns have been reduced, threats to natural breeding habitat are being mitigated through large-scale habitat management. Therefore, the status of the Kirtland's warbler depends largely on the continued production of managed breeding habitat.

The Conservation Plan (MDNR *et al.* 2015) identifies continued habitat management needs and objectives to maintain sufficient suitable breeding habitat for Kirtland's warblers. Habitat management is currently conducted on approximately 88,626 ha (219,000 ac) of jack pine forest within MDNR, USFS, and Service lands throughout the northern Lower Peninsula and Upper Peninsula of Michigan (MDNR *et al.* 2015, pp. 22–23). The Conservation Plan incorporates some conservative assumptions about the area needed to support a breeding pair of Kirtland's warblers, as well as how long a stand will be used by the species. The density and duration of use estimates were developed by data gathered over the last decade. Lands within the Lower Peninsula averaged 8 to 9 ha (19 to 22 ac) per pair and had a duration of use between 9 and 10 years. Lands within the Upper Peninsula on the Hiawatha National Forest required an average of 40 ha (100 ac) per pair and had a duration of use averaging 10 years (Huber *et al.* 2013 cited in MDNR *et al.* 2015, p. 22). Using those measures of average hectares per pair and duration of use, 14,593 ha (36,060 ac) of suitable breeding habitat would need to be available at all times to maintain a minimum population of 1,300 pairs, requiring land management agencies to jointly manage 1,550 ha (3,830 ac) of habitat annually (631 ha (1,560 ac) on MDNR land and 918 ha (2,270 ac) on USFS land) through wildfire-regenerated jack pine or managed reforestation (MDNR *et al.* 2015, pp. 22–23). It is important to recognize that the more recent observations concerning density of Kirtland's warblers in breeding habitat and duration of stand use are often greater than the assumptions used for planning purposes and explain why the Kirtland's warbler population that is actually observed is higher than would be predicted based on the planning assumptions.

The Conservation Plan identifies a goal to develop at least 75 percent of the Kirtland's warbler's breeding habitat acreage using traditional habitat management techniques (opposing wave planting with interspersed openings), and no more than 25 percent of habitat using non-traditional habitat management techniques (*e.g.,* reduced stocking density, incorporating a red pine component within a jack pine stand, prescribed burning) (MDNR *et al.* 2015, p. 23). Non-traditional techniques will be used to evaluate new planting methods that improve timber marketability, reduce costs, and improve recreational opportunities while sustaining the warbler's population above the recovery criterion of 1,000 pairs. The majority of managed breeding habitat is created through clear cutting and planting jack pine seedlings. However, managing jack pine for Kirtland's warbler breeding habitat typically results in lower value timber products due to the overall poor site quality in combination with the required spacing, density, and rotation age of the plantings (Greco 2017, pers. comm.). Furthermore, the demand for jack pine products has fluctuated in recent years, and long-term forecasts for future marketability of jack pine are uncertain. Commercially selling jack pine timber on sites where reforestation will occur is critical to the habitat management program. Timber receipts offset the cost of replanting jack pine at the appropriate locations, scales, arrangements, and densities needed to support a viable population of nesting Kirtland's warblers that would not otherwise be feasible through conservation dollars. The Kirtland's Warbler Conservation Team is currently working on developing techniques through adaptive management that increase the marketability of the timber at harvest while not substantially reducing Kirtland's warbler habitat suitability (Dan Kennedy 2017, pers. comm.).

The land management agencies have maintained adequate breeding habitat despite times when their budgets were flat or declining, even while costs related to reforestation continue to increase. For example, over the last 30 years, the MDNR replanted over 20,000 ha (50,000 ac) of Kirtland's warbler habitat, averaging over 680 ha (1,700 ac) per year. They took this action voluntarily, and within the past 10 years, they used funding from sources other than those available under the Act. Section 6 grants under the Act have helped support MDNR's Kirtland's warbler efforts, but that funding has largely been used for population census work in recent years and reflects only a small percentage of the funding the State of Michigan spends annually to produce Kirtland's warbler breeding habitat.

Shifting agency priorities and competition for limited resources have and will continue to challenge the ability of land managers to fund reforestation of areas suitable for Kirtland's warblers. Low jack pine timber sale revenues, in conjunction with reduced budgets, increased Kirtland's warbler habitat reforestation costs, and competition with other programs, are challenges the land management agencies have met in the past and will need to continue addressing to meet annual habitat development objectives. Commitments by land managers and the Conservation Team are in place, as described previously, to ensure recovery of the Kirtland's warbler will be sustained despite these challenges.

A regulatory mechanism that aids in the management of breeding habitat is Executive Order (E.O.) 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds'' (66 FR 3853), which directs Federal agencies to develop a memorandum of understanding (MOU) with the Service to promote the conservation of migratory bird populations. The USFS and the Service signed an MOU (FS Agreement #08–MU–1113–2400–264) pursuant to E.O. 13186 with the purpose of strengthening migratory bird conservation by identifying and implementing strategies that promote conservation and avoid or minimize adverse impacts on migratory birds through enhanced collaboration. Additionally, USFS Forest Plans have been developed in compliance with the provisions of section 7 of the Act and the Healthy Forest Restoration Act of 2003 (Pub. L. 108–148). These plans emphasize management that maintains

and develops essential breeding habitat for the Kirtland's warbler (USFS 2006a, p. 82; USFS 2006b, p. 35).

We reviewed available information on the effects from expanded development adjacent to occupied habitats in both breeding and wintering areas, and impacts from recreational activities on the breeding grounds. Although these factors and those discussed above do affect Kirtland's warblers and their habitat, land management agencies have been successful in maintaining sufficient amounts of suitable habitat to support historically high numbers of Kirtland's warblers. Although activities that affect breeding habitat may still have some negative effects on individual Kirtland's warblers, the population of Kirtland's warblers appears resilient to these activities within the context of the current management regime. Furthermore, to date, management efforts have been adaptive in terms of the acreage and spatial and temporal configuration of habitat needed to mitigate the effects associated with natural breeding habitat loss and fragmentation. The land management agencies have shown a commitment to Kirtland's warbler habitat management through signing the 2016 MOU, agreeing to continue habitat management, and developing and implementing the Conservation Plan.

Migration Habitat

Although Kirtland's warblers spend a relatively small amount of time each year migrating, the migratory period has the highest mortality rate out of any phase of the annual cycle, accounting for 44 percent of annual mortality (Rockwell *et al.* 2017, p. 722). Migratory survivorship levels are, however, above the minimum needed to sustain the population (Mayfield 1960, pp. 204–207; Berger and Radabaugh 1968, p. 170; Bocetti *et al.* 2002, p. 99; Rockwell *et al.* 2017, pp. 721–723; Trick, unpubl data). Recent research is refining our knowledge of spring and fall migration timing and routes for the Kirtland's warbler. Little is currently known about the importance of specific stop-over sites and any factors affecting them, although coastal areas along the Great Lakes and Atlantic Ocean (*e.g.,* western Lake Erie basin and the Florida and Georgia coasts) that appear important to migrating Kirtland's warblers are also areas where natural habitats have been highly fragmented by human development. At stopover sites within these highly fragmented landscapes, competition for food sources among long-distance passerine migrants is expected to be high, especially in fallout areas (when many migrating birds land to rest, usually due to weather events or long flights over open water, Moore and Yong 1991, pp. 86–87; Kelly *et al.* 2002, p. 212; Németh and Moore 2007, p. 373), and may prolong stopover duration or increase the number of stopovers that are needed to complete migration between breeding and wintering grounds (Goymann *et al.* 2010, p. 480).

The quantity and quality of migratory habitat needed to sustain Kirtland's warbler numbers above the recovery goal of 1,000 pairs appears to be sufficient, based on a sustained and increasing population since 2001. If loss or destruction of migratory habitat were limiting or likely to limit the population to the degree that maintaining a healthy population may be at risk, it should be apparent in the absence of the species from highly suitable breeding habitat in the core breeding range. In fact, we have seen just the opposite: Increasing densities of breeding individuals in core areas and a range expansion into what would appear to be less suitable habitat elsewhere. This steady population growth and range expansion has occurred despite increased development and fragmentation of migratory stopover habitat within coastal areas; therefore, loss or degradation of migratory habitat is not a substantial threat to the species now or in the foreseeable future.

Wintering Habitat

The quantity and quality of wintering habitat needed to sustain Kirtland's warbler numbers above the recovery goal of 1,000 pairs appears to be sufficient, based on a sustained and increasing population since 2001. Compared to the breeding grounds, less is known about the wintering grounds in The Bahamas. Factors affecting Kirtland's warblers on the wintering grounds, as well as the magnitude of the impacts, remain somewhat uncertain. Few of the known Kirtland's warbler wintering sites currently occur on protected land. Rather, most Kirtland's warblers appear to winter more commonly in early successional habitats that have recently been or are currently being used by people (*e.g.,* abandoned after clearing, grazed by goats), where disturbance has set back plant succession (Wunderle *et al.* 2010, p. 132). Potential threats to wintering habitat include habitat loss caused by human development, altered fire regime, changes in agricultural practices, and invasive plant species. The potential threats of rising sea level, drought, and destructive weather events such as hurricanes on the wintering grounds are discussed below under Factor E.

Tourism is the primary economic activity in The Bahamas, accounting for 65 percent of the gross domestic product, and The Bahamas' Family Islands Development Encouragement Act of 2008 supports the development of resorts on each of the major Family Islands (part of The Bahamas) (Moore and Gape 2009, p. 72). Residential and commercial development could result in direct loss of Kirtland's warbler habitat, especially on New Providence and Grand Bahama, which together support 85 percent of the population of Bahamian people (Moore and Gape 2009, p. 73; Wunderle *et al.* 2010, p. 135; Ewert 2011, pers. comm.). This loss could occur on both private and commonage lands (land held communally by rural settlements), as well as generational lands (lands held jointly by various family members).

Local depletion and degradation of the water table from wells and other water extraction and introduction of salt water through human-made channels or other disturbances to natural hydrologies may also negatively impact Kirtland's warblers by affecting fruit and arthropod availability (Ewert 2011, pers. comm.).

Fire may have positive or negative impacts on winter habitat, depending on the frequency and intensity of fires, and where the fires occur. Fires are relatively common and widespread on the pine islands in the northern part of the archipelago, and have increased since settlement, especially during the dry winter season when Kirtland's warblers are present (The Nature Conservancy 2004, p. 3). Human-made fires may negatively impact wintering Kirtland's warblers if they result in reduced density and fruit production of understory shrubs in Caribbean pine (*Pinus caribaea*) stands (Lee *et al.* 1997, p. 27; Currie *et al.* 2005b, p. 85). On non-pine islands, fire may benefit Kirtland's warblers when succession of low coppice to tall coppice is set back (Currie *et al.* 2005b, p. 79).

Invasive plants are another potential factor that could limit the extent of winter habitat in The Bahamas. Brazilian pepper (*Schinus terebinthifolius*), jumbie bean (*Leucaena leucocephala*), and Guinea grass (*Panicum maximum*) may be the most important invasive species of immediate concern (Ewert 2011, pers. comm.). These aggressive plants colonize patches early after disturbances and may form monocultures, which preclude the establishment of species heavily used by Kirtland's warblers. Some invasive species, such as jumbie bean, are good forage for goats. By browsing on these invasive plants, goats

create conditions that favor native shrubs and may increase the density of native shrubs used by Kirtland's warblers (Ewert 2011, pers. comm.). Goat farming could play a role in controlling the spread of some invasive species at a local scale, while aiding in the restoration of native vegetation patches. Still, many plants such as royal poinciana (*Delonix regia*), tropical almond (*Terminalia catappa*), and morning glory (*Ipomoea indica*) are commonly imported for landscaping and have the potential to escape into the wild and become invasive (Smith 2010, pp. 9–10; Ewert 2011, pers. comm.).

The Bahamas National Trust administers 32 national parks that cover over 809,371 ha (2 million ac) (Bahamas National Trust 2017, p. 3). Although not all national parks contain habitat suitable for Kirtland's warblers, several parks are known to provide suitable wintering habitat, including the Leon Levy Native Plant Preserve on Eleuthera Island, Harrold and Wilson Ponds National Park on New Providence Island, and Exuma Cays Land and Sea Park on Hawksbill Cay (The Nature Conservancy 2011, p. 2). Hog Bay Island, a national park in Bermuda, also provides suitable Kirtland's warbler wintering habitat (Amos 2005).

Caribbean pine, a potentially important component of wintering Kirtland's warbler habitat, is protected from harvest in The Bahamas under the Conservation and Protection of the Physical Landscape of The Bahamas (Declaration of Protected Trees) Order of 1997. The Bahamas National Trust Act of 1959 and the National Parks Ordinance of 1992 established non-government statutory roles to the Bahamas National Trust and the Turks and Caicos Islands National Trust, respectively. These acts empower these organizations to hold and manage environmentally important lands in trust for their respective countries.

Simply protecting parcels of land or important wintering habitat, however, may be insufficient to sustain adequate amounts of habitat for the Kirtland's warbler because of the species' dependence on early successional habitat (Mayfield 1972, p. 349; Sykes and Clench 1998, pp. 256–257; Haney *et al.* 1998, p. 210; Wunderle *et al.* 2010, p. 124), which changes in distribution over time. In addition, food availability at any one site varies seasonally, as well as between years, and is not synchronous across all sites (Wunderle *et al.* 2010, p. 124). In the face of changes in land use and availability, sustaining sufficient patches of early-successional habitat for Kirtland's warbler in The Bahamas will likely require a landscape-scale approach (Wunderle *et al.* 2010, p. 135).

Although threats to Kirtland's warblers on the wintering grounds exist as a result of habitat loss due to succession or development, the current extent and magnitude of these threats appears not to be significantly limiting Kirtland's warbler population numbers based on the species' continuous population growth over the last two decades. This indicates that loss or degradation of winter habitat is not a substantial threat causing population-level effects to the species now or in the foreseeable future.

Habitat Distribution

The Kirtland's warbler has always occupied a relatively limited geographic range on both the breeding and wintering grounds. This limited range makes the species naturally more vulnerable to catastrophic events compared to species with wide geographic distributions, because having multiple populations in a wider distribution reduces the likelihood that all individuals will be affected simultaneously by a catastrophic event (*e.g.,* large wildfire in breeding habitat, hurricane in The Bahamas). Since the species was listed, the geographic area where the Kirtland's warbler occurs has increased, reducing the risk to the species from catastrophic events. As the population continues to increase and expand in new breeding and wintering areas, the species will become less vulnerable to catastrophic events. The Conservation Plan, which land management agencies agreed to implement under the 2016 MOU, includes a goal to improve distribution of habitat across the breeding range to reduce this risk by managing lands in the Upper Peninsula of Michigan and in Wisconsin in sufficient quantity and quality to provide breeding habitat for 10 percent (100 pairs) or more of the 1,000 pairs goal (MDNR *et al.* 2015, p. 23).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Kirtland's warbler is a non-game species, and there is no known or potential commercial harvest in either the breeding or wintering grounds. Utilization for recreational, scientific, or educational purposes appears to be adequately regulated by several State, Federal, and international wildlife laws, based on a sustained and increasing population since 2001. Land management agencies within the Kirtland's warbler's breeding range have the ability to implement seasonal closures to specific areas for a variety of reasons and, when necessary, could limit access outside of designated roads and trails to further protect the species.

The Kirtland's warbler is protected by the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–712). The MBTA prohibits take, capture, killing, trade, or possession of Kirtland's warblers and their parts, as well as their nests and eggs. The regulations implementing the MBTA further define ''take'' as to ''pursue, hunt, shoot, wound, kill, trap, capture, or collect'' or attempt those activities (50 CFR 10.12).

The States of Florida, Georgia, Indiana, Michigan, North Carolina, Ohio, Virginia, and Wisconsin list the Kirtland's warbler as endangered, under their respective State endangered species regulations. In Michigan, where the majority of the population breeds, part 365 of Public Act 451 of 1994 prohibits take, possession, transportation, importation, exportation, processing, sale, offer for sale, purchase, or offer to purchase, transportation or receipt for shipment by a common or contract carrier of Kirtland's warblers or their parts. The Kirtland's warbler is listed as endangered under Ontario's Endangered Species Act of 2007.

The Kirtland's warbler was declared federally endangered in Canada in 1979. Canada's Species at Risk Act of 2003 (SARA) is the primary law protecting the Kirtland's warbler in Canada. Canada's SARA bans killing, harming, harassing, capturing, taking, possessing, collecting, buying, selling, or trading of individuals that are federally listed. In addition, SARA also extends protection to the residence (habitat) of individuals that are federally listed.

Canada's Migratory Bird Convention Act of 1994 also provides protections to Kirtland's warblers. Under Canada's Migratory Bird Convention Act, it is unlawful to be in possession of migratory birds or nests, or to buy, sell, exchange, or give migratory birds or nests, or to make them the subject of commercial transactions.

In The Bahamas and the Turks and Caicos Islands, the Kirtland's warbler is recognized as a globally Near Threatened species, but has no federally listed status. In The Bahamas, the Wild Birds Protection Act (chapter 249) allows the Minister of Wild Animals and Birds Protection to establish and modify reserves for the protection of any wild bird. The species is also protected in The Bahamas by the Wild Animals (Protection) Act (chapter 248) that prohibits the take or capture, export, or attempt to take, capture, or export any wild animal from The Bahamas. The Bahamas regulates scientific utilization

of the Kirtland's warbler, based on recommendations previously provided by the Kirtland's Warbler Recovery Team (Bocetti 2011, pers. comm.).

The species remains protected from pursuit, wounding, or killing that could potentially result from activities focused on the species in breeding, wintering, and migratory habitat (*e.g.,* wildlife photography without appropriate care to ensure breeding birds can continue to feed and care for chicks and eggs normally and without injury to their offspring). Overutilization for recreational, scientific, or educational purposes does not constitute a substantial threat to the Kirtland's warbler now or in the foreseeable future.

C. Disease or Predation

There is no information of any disease impacting the Kirtland's warbler on either the breeding or wintering grounds.

For most passerines, nest predation has the greatest negative impact on reproductive success, and can affect entire populations (Ricklefs 1969, p. 6; Martin 1992, p. 457). Nest predation may be particularly detrimental for ground-nesting bird species in shrublands (Martin 1993, p. 902). Predation rates of Kirtland's warbler nests have ranged from 3 to 67 percent of nests examined (Mayfield 1960, p. 204; Cuthbert 1982, p. 1; Walkinshaw 1983, p. 120); however, few predation events have been directly observed, and in general, evidence regarding the importance of certain nest or adult predators lack quantitative support (Mayfield 1960, p. 182; Walkinshaw 1972, p. 5; Walkinshaw 1983, pp. 113–114).

Overall, nest predation rates for Kirtland's warblers are similar to non-endangered passerines and are below levels that would compromise population replacement (Bocetti 1994, pp. 125–126; Cooper *et al.,* unpubl. data). The increasing numbers of house cats in the breeding and wintering habitats is recognized (Lepczyk *et al.* 2003, p. 192; Horn *et al.* 2011, p. 1184), but there is not sufficient evidence to conclude at this time that predation from cats is currently having population-level impacts to the Kirtland's warbler. Therefore, we conclude that disease and predation do not constitute substantial threats to the Kirtland's warbler now or in the foreseeable future.

D. Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine the threats identified within the other factors as ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Section 4(b)(1)(A) of the Act requires that the Service take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. Our consideration of these mechanisms is described within each of the threats to the species, where applicable (see discussion under each of the other factors).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Brood Parasitism

Brood parasitism can depress reproduction of avian hosts in several ways, including the direct removal or predation of eggs or young, facilitating nest predation by other nest predators, reducing hatching or fledging success, altering host population sex ratios, and increasing juvenile and adult mortality beyond the nest (Elliot 1999, p. 55; Hoover 2003, pp. 928–929; Smith *et al.* 2003, pp. 777–780; Zanette *et al.* 2005, p. 818; Hoover and Reetz 2006, pp. 170–171; Hoover and Robinson 2007, p. 4480; Zanette *et al.* 2007, p. 220). The brown-headed cowbird is the only brood parasite within the Kirtland's warbler's breeding range.

Although brown-headed cowbirds were historically restricted to prairie ecosystems, forest clearing and agricultural development of Michigan's Lower Peninsula in the late 1800s facilitated the brown-headed cowbird's range expansion into Kirtland's warbler nesting areas (Mayfield 1960, p. 145). Wood and Frothingham (1905, p. 49) found that brown-headed cowbirds were already common within the Kirtland's warbler's breeding range by the early 1900s. Strong (1919, p. 181) later reported the first known instance of brood parasitism of a Kirtland's warbler nest in Crawford County, Michigan, in 1908. Shortly thereafter, Leopold (1924, p. 57) related the scarcity of Kirtland's warblers to brown-headed cowbird parasitism. Mayfield (1960, pp. 180–181) supported Leopold's hypothesis with empirical data, and further recognized that brown-headed cowbird parasitism significantly affected the survival of the Kirtland's warbler.

The Kirtland's warbler is particularly sensitive to brown-headed cowbird brood parasitism. The warbler's limited breeding range likely exposes the entire population to brown-headed cowbird parasitism (Mayfield 1960, pp. 146–147; Trick, unpubl. data). In addition, the peak egg-laying period of the brown-headed cowbird completely overlaps with that of the Kirtland's warbler, and the majority of Kirtland's warblers produce only one brood each year (Mayfield 1960, pp. 151–152; Radabaugh 1972, p. 55; Rockwell, unpubl. data). Kirtland's warblers have limited evolutionary experience with brown-headed cowbirds compared to other hosts and have not developed effective defensive behaviors to thwart brood parasitism (Walkinshaw 1983, pp. 157–158).

Between 1903 and 1971, researchers observed parasitism rates of Kirtland's warbler nests ranging from 48 percent to 86 percent (reviewed in Shake and Mattson 1975, p. 2). Brown-headed cowbirds also appear to exert greater pressure on Kirtland's warbler nests than other passerines within the same breeding habitat. Walkinshaw (1983, p. 154) reported that 93 percent of all the brown-headed cowbird eggs he found in jack pine habitat were located in Kirtland's warbler nests compared to all other host species combined. Kirtland's warbler fledging rates averaged less than 1 young per nest prior to the initiation of brown-headed cowbird control (Walkinshaw 1972, p. 5).

The effect of brown-headed cowbird parasitism exacerbated negative impacts associated with habitat loss in the decline of the Kirtland's warbler population (Rothstein and Cook 2000, p. 7). Nicholas Cuthbert and Bruce Radabaugh (Cuthbert 1966, pp. 1–2) demonstrated that trapping brown-headed cowbirds within Kirtland's warbler nesting areas decreased parasitism rates and increased Kirtland's warbler nesting success. Accordingly, intensive brown-headed cowbird removal was recommended on major Kirtland's warbler nesting areas as one of the necessary steps for the recovery of the Kirtland's warbler (Shake and Mattsson 1975, p. 2).

Since 1972, the Service, in conjunction with the USDA–WS, MDNR, and USFS, has implemented an intensive brown-headed cowbird control program within major Kirtland's warbler nesting areas in Michigan's Lower Peninsula. On average, the control program annually removes approximately 3,573 brown-headed cowbirds from occupied Kirtland's warbler habitat in northern lower Michigan (USDA–WS 2016, unpubl.

report). Recent trap rates, however, have been below 1,500 brown-headed cowbirds per year (USDA–WS, unpubl. data). Brown-headed cowbird trapping is also conducted in selected Kirtland's warbler breeding areas in Wisconsin. The trapping program in Wisconsin started in 2008, and is run using similar methods to the program in Michigan, with an average of 238 brown-headed cowbirds captured per year (USDA–WS, USFWS unpub. data).

Following the initiation of brown-headed cowbird control in northern lower Michigan in 1972, brood parasitism rates decreased to 6.2 percent, and averaged 3.4 percent between 1972 and 1981 (Kelly and DeCapita 1982, p. 363). Kirtland's warbler fledging rates simultaneously increased from less than 1 per nest to 2.8 per nest, and averaged 2.78 young fledged per nest between 1972 and 1981 (Kelly and DeCapita 1982, pp. 364–365). Had brown-headed cowbird parasitism not been controlled, Mayfield (1975, p. 43) calculated that by 1974, the Kirtland's warbler population may have been reduced to only 42 pairs.

Brood parasitism of Kirtland's warbler nests also occurs in Wisconsin. In 2007, two of three Kirtland's warbler nests were parasitized (USFWS unpubl. data). After the initiation of brown-headed cowbird control in 2008, brood parasitism rates in Wisconsin have fluctuated substantially among years, from 10 percent to 66 percent (USFWS unpubl. data; Trick unpubl. data). However, in the same time period (2008–2017), overall nest success has ranged from 19 to 80 percent, and the average fledge rate was estimated to be between 1.51 to 1.92 chicks per nest (USFWS 2017, pp. 2–3).

Limited studies on the effectiveness of the brown-headed cowbird control program in relation to Kirtland's warbler nest productivity in Michigan have been conducted since the early 1980s. De Groot and Smith (2001, p. 877) found that brown-headed cowbirds were nearly eliminated in areas directly adjacent to a trap, and brown-headed cowbird densities decreased 5 km (3 miles) and greater from brown-headed cowbird removal areas. Brown-headed cowbird densities significantly increased at distances greater than 10 km (6 miles) from brown-headed cowbird removal areas, further demonstrating the localized effect of brown-headed cowbird control (De Groot and Smith 2001, p. 877). Although brown-headed cowbird density increased with distance beyond 5 km (3 miles) of brown-headed cowbird traps, brown-headed cowbird densities were still low in those areas compared to other parts of North America (De Groot and Smith 2001, p. 877). Anecdotal observation of brood parasitism rates have also indicated very low levels of brood parasitism within Kirtland's warbler nesting areas (Bocetti 1994, p. 96; Rockwell 2013, p. 93).

A study is currently underway in Michigan to evaluate the effective range of a brown-headed cowbird trap and to determine the brood parasitism rate of Kirtland's warbler nests when traps are not operated during the warbler's breeding season. Beginning in 2015, 12 brown-headed cowbird traps (out of 55 total) were closed for two breeding seasons, and Kirtland's warbler nests were searched to determine the rate of parasitism (Cooper *et al.,* unpubl. data). In 2015, only one nest out of 150 was parasitized, approximately 8 km (5 miles) away from the nearest brown-headed cowbird trap. In 2016, similar low rates of parasitism were observed, with only two parasitized nests out of 137. Due to the low levels of brood parasitism observed, an additional 6 traps were closed in 2017, and none of the 100 nests observed in 2017 was parasitized (Cooper *et al.,* unpubl. data). These preliminary data corroborate similar findings that the effective range of a brown-headed cowbird trap is likely much larger than the range (1.6 km (1 mile) radius) traditionally used in planning and implementing the brown-headed cowbird control program.

Additionally, point count surveys were conducted during 2015 and 2016, in Kirtland's warbler nesting areas in Michigan's northern Lower Peninsula where brown-headed cowbird traps were not being operated. Only 13 brown-headed cowbirds were observed during 271 point count surveys (Cooper *et al.,* unpubl. data). Trend estimate data from Breeding Bird Survey routes between 2005 and 2015 have also shown decreased brown-headed cowbird population trends in Michigan and the Upper Great Lakes (Sauer *et al.* 2017, p. 169).

However, in similar experiments where brown-headed cowbird trapping was reduced or brought to an end following a lengthy period of trapping, brood parasitism rates elevated or returned to pre-trapping rates. Research at Fort Hood Military Reservation in Texas showed that after 3 years of decreased brown-headed cowbird trapping levels, parasitism rates increased from 7.9 percent to 23.1 percent and resulted in black-capped vireo (*Vireo atricapilla*) nest survival decreasing to unsustainable levels (Kostecke *et al.* 2009, p. 1). Kosciuch and Sandercock (2008, p. 546) found similar results with parasitism frequency and host bird productivity returning to pre-trapping levels quickly upon discontinuing cowbird removal.

After 45 years of brown-headed cowbird trapping in Michigan, the threat of brood parasitism on the Kirtland's warbler has been greatly reduced, but not eliminated. Brown-headed cowbirds are able to parasitize more than 200 host species (Friedmann *et al.* 1977, p. 5), and the effect of brown-headed cowbird parasitism is therefore not density-dependent on any one host. Brown-headed cowbirds remain present in jack pine habitat away from brown-headed cowbird traps, even if that area had been trapped in previous years, but potentially in lower numbers (DeGroot and Smith 2001, p. 877; Bailey 2007, pp. 97–98; Cooper *et al.,* unpubl. data). Female brown-headed cowbirds are highly prolific, estimated to produce up to 40 eggs in a breeding season (Scott and Ankney 1980, p. 680). Successful brown-headed cowbird reproduction outside of trapped areas may maintain a population of adult brown-headed cowbirds that could return in subsequent years with the ability to parasitize Kirtland's warbler nests. It is unclear if reduced parasitism rates are a permanent change to the landscape of northern lower Michigan. The best available information, however, indicates that cowbird removal efforts can be reduced without adversely impacting Kirtland's warbler productivity rates. Given the historical impact that the brown-headed cowbird has had on the Kirtland's warbler, and the potential for the brown-headed cowbird to negatively affect the warbler, a sustainable Kirtland's warbler population depends on monitoring the magnitude and extent of brood parasitism and subsequently adjusting the level of cowbird trapping appropriately.

The MOA (see Recovery and Recovery Plan Implementation discussion, above) established in 2015 between the Service and MDNR addresses the commitment and long-term costs associated with future efforts to control cowbirds. The MOA established a dedicated account from which income can be used to implement cowbird management and other conservation actions for the Kirtland's warbler. To date, the account has greater than one million dollars invested for long-term growth, and income generated will be used to ensure sufficient cowbird management to adequately reduce nest parasitism of the Kirtland's warbler.

Thus, we conclude that with the expected continued management, the threat of brood parasitism by brown-headed cowbirds to the Kirtland's

warbler has been ameliorated to sufficiently low levels and will continue to remain at these acceptable levels in the foreseeable future.

Effects of Changes to Environmental Conditions

The effects of projected changes in temperature, precipitation, and sea level on Kirtland's warblers were not identified in the listing rule (32 FR 4001; March 11, 1967) or in the updated recovery plan (USFWS 1985, entire), yet the potential impact of climate change has gained widespread recognition as one of many pressures that influence the distributions of species, the timing of biological activities and processes, and the health of populations. Potential effects to the Kirtland's warbler include a decrease in productivity rates, a decrease and shift in suitable breeding habitat outside of the species' current range (Prasad *et al.* 2007, unpaginated), a decrease in the extent of wintering habitat, and decoupling the timing of migration from food resource peaks that are driven by temperature and are necessary for migration and feeding offspring (van Noordwijk *et al.* 1995, p. 456; Visser *et al.* 1998, pp. 1869–1870; Thomas *et al.* 2001, p. 2598; Strode 2003, p. 1142).

There are a multitude of anticipated changes to the extent and availability of suitable Kirtland's warbler habitat within jack pine forests on the breeding grounds based on projected changes to temperature and precipitation that range from expansion to contraction of habitat. Continued increases in temperature and evaporation will likely reduce jack pine forest acreage (NAST 2000, pp. 116–117), as well as increase the susceptibility of current jack pine forests to pests and diseases (Bentz *et al.* 2010, p. 609; Cudmore *et al.* 2010, pp. 1040–1041; Safranyik *et al.* 2010, p. 433). Competition with deciduous forest species is also expected to favor an expansion of the deciduous forest into the southern portions of the boreal forest (USFWS 2009, p. 14) and affect interspecific relationships between the Kirtland's warbler and other wildlife (Colwell and Rangel 2009, p. 19657; Wiens *et al.* 2009, p. 19729). However, warmer weather and increased levels of carbon dioxide could also lead to an increase in tree growth rates on marginal forestlands that are currently temperature-limited (NAST 2000, p. 57). Additionally, higher air temperatures will cause greater evaporation and, in turn, reduce soil moisture, resulting in conditions conducive to forest fires (NAST 2000, p. 57) that favor jack pine propagation. Under different greenhouse gas emission scenarios, there may be a reduction of suitable Kirtland's warbler breeding habitat in Michigan, as well as an expansion of suitable habitat in western Wisconsin and Minnesota (Prasad *et al.* 2007, unpaginated).

On the wintering grounds, effects to the Kirtland's warbler could occur as a result of changing temperature, precipitation, rising sea levels, and storm events. For migratory species, unfavorable changes on the wintering grounds can result in subsequent negative effects on fitness later in the annual cycle (Marra *et al.* 1998, p. 1885; Rockwell *et al.* 2012, pp. 747–748; Rockwell *et al.* 2017, p. 721; Sillett *et al.* 2000, pp. 2040–2041). For the Kirtland's warbler, wintering habitat condition has been shown to affect survival and reproduction (Rockwell *et al.* 2017, p. 721; Rockwell *et al.* 2012, pp. 747–748). This likely results from limited resource availability on the wintering grounds that reduces body condition and fat reserves necessary for successful migration and reproduction (Wunderle *et al.* 2014, pp. 47–49). The availability of sufficient food resources is affected by the extent of habitat for arthropods and fruiting plants, temperature, and precipitation (Brown and Sherry 2006, pp. 25–27; Wunderle *et al.* 2014, p. 39).

Temperatures in the Caribbean have shown strong warming trends across all regions, particularly since the 1970s (Jones *et al.* 2015, pp. 3325, 3332), and are likely to continue to warm. Climate models predict an increase in temperature of almost 2.5 to 3.0 degrees Celsius (4.5–6.3 degrees Fahrenheit) above the mean temperatures of 1970–1989 by the 2080s (Karmalkar *et al.* 2013, p. 301). In addition to higher mean daily temperatures, Stennett-Brown *et al.* (2017, pp. 4838–4840) predict an increase in the number of warm days and nights, and a decrease in the frequencies of cool days and nights, for 2071–2099 relative to 1961–1999. Increased temperatures could affect food availability by altering food supply (arthropod and fruit availability), although it is unknown to what extent the predicted increases in temperature would increase or decrease food supply for the Kirtland's warbler. Other effects of increasing temperature related to sea level and precipitation are described below.

Increasing temperatures can contribute to sea level rise from the melting of ice over land and thermal expansion of seawater. A wide range of estimates for future global mean sea level rise are found in the scientific literature (reviewed in Simpson *et al.* 2010, pp. 55–61). The Intergovernmental Panel on Climate Change (IPCC) (2013, p. 25) predicted a likely range in the rise in sea level of 0.26 m (0.85 ft) to almost 1 m (3.3 ft, IPCC 2013, p. 25; Church *et al.* 2013, p. 1186); other estimates in sea level rise for the same timeframe ranged from a minimum of 0.2 m (0.7 ft) to a maximum of 2.0 m (6.6 ft) (Parris *et al.* 2012, p. 12). Increase in sea level could reduce the availability of suitable habitat due to low-elevation areas being inundated, resulting in a reduction in the size of the islands on which Kirtland's warblers winter (Amadon 1953, p. 466; Dasgupta *et al.* 2009, pp. 21–23). The Bahamas archipelago is mainly composed of small islands, and more than 80 percent of the landmass is within 1.5 m (4.9 ft) of mean sea level (The Bahamas Environment, Science and Technology Commission 2001, p. 43). This makes The Bahamas particularly vulnerable to future rises in sea level (Simpson *et al.* 2010, p. 74), which could result in reduction of the extent of winter habitat and negatively impact the Kirtland's warbler. Simpson *et al.* (2010, p. 77) estimated a loss of 5 percent of landmass in the Bahamas due to a 1 m rise in sea level, whereas Dasgupta *et al.* (2007, p. 12; 2009, p. 385) estimates 11.0 percent of land area in The Bahamas would be impacted by a 1 m (3.3 ft) sea level rise. Wolcott *et al.* (in press, unpaginated) analyzed the amount of Kirtland's warbler habitat that would be lost due to a 1 m (3.3 ft) and 2 m (6.6 ft) rise in sea level on north and north-central islands in The Bahamas, using high resolution land cover data for Eleuthera and ''open land'' (nonforest, urban, or water) within available GIS land cover data for the other islands. On Eleuthera, the island with the greatest known density of overwintering Kirtland's warblers, the amount of available wintering habitat was reduced by 0.8 percent and 2.6 percent due to a 1 m (3.3 ft) and 2 m (6.6 ft) rise in sea level, respectively (Wolcott *et al.* in press, unpaginated). Loss of habitat was greater for northern islands of The Bahamas where elevations are lower, and where there have historically been few observations of Kirtland's warblers (Wolcott *et al.* in press, unpaginated).

Generally, climate models predict a drying trend in the Caribbean, but there is considerable temporal and spatial variation and often disagreement among models regarding specific predictions that make it difficult to determine the extent to which reduced rainfall or timing of rainfall may affect the Kirtland's warbler in the future. We reviewed available literature examining precipitation trends and projections in the Caribbean, and specifically The

Bahamas, to assess the potential effects of changes in precipitation.

Jones *et al.* (2016, p. 10) found that precipitation trends in the Caribbean from 1979–2012 did not show statistically significant century-scale trends across regions, but there were periods of up to 10 years when some regions were drier or wetter than the long-term averages. In the northern Caribbean (which includes The Bahamas, Cuba, Jamaica, Haiti, Dominican Republic, and Puerto Rico), some years were more wet than the average, and other years were more dry across all seasons (Jones *et al.* 2016, p. 3314), with higher precipitation totals since about 2000. Within The Bahamas, precipitation trends during the dry season (November through April) showed a significant drying trend for 1979–2009 (Jones *et al.* 2016, pp. 3328, 3331).

Karmalkar *et al.* (2013, entire) used available climate model data to provide both present-day and scenario-based future predictions on precipitation and temperature for the Caribbean islands. Projected trends in The Bahamas by the 2080s show relatively small changes in terms of wet season precipitation, with a small decrease in precipitation in the early part of the wet season (May through July) and a slight increase in the late wet season (August through October) in the northern parts of The Bahamas (Karmalkar *et al.* 2013, p. 297). In one model, the dry season was predicted to remain largely the same, except for a small increase in precipitation in November, whereas an alternate model projected The Bahamas would experience wetter conditions in the dry season, including during March (Karmalkar *et al.* 2013, pp. 298, 299).

Finally, Wolcott *et al.* (in press, unpaginated) modeled projected changes in precipitation under two scenarios with varying future carbon dioxide (CO_2) emissions and found that the projected precipitation varied seasonally and spatially throughout the islands of The Bahamas, both in the mid-term (2050) and long-term (2100). The northern and north-central islands are likely to have increased precipitation in March (compared to baseline conditions), whereas the central islands are likely to become drier.

Accurately projecting future precipitation trends in the Caribbean is difficult due to the complex interactions between sea surface temperatures, atmospheric pressure at sea level, and predominant wind patterns. Further, some models have difficulty accurately simulating the semi-annual seasonal cycle of precipitation observed in the Caribbean. Recent models using statistical downscaling techniques have improved resolution, but still show limitations for predicting precipitation. Thus, rainfall projections where Kirtland's warblers overwinter have limited certainty and should be interpreted with caution. Understanding the likely projected precipitation in the Bahamas and Caribbean is important because of the strong link between late winter rainfall and fitness of Kirtland's warblers. A drying trend on the wintering grounds will likely cause a corresponding reduction in available food resources (Studds and Marra 2007, pp. 120–121; Studds and Marra 2011, pp. 4–6). Rainfall in the previous month was an important factor in predicting fruit abundance (both ripe and unripe fruit) for wild sage and black torch in The Bahamas (Wunderle *et al.* 2014, p. 19), which is not surprising given the high water content (60–70 percent) of their fruit (Wunderle unpubl. data, cited in Wunderle *et al.* 2014, p. 4). Carry-over effects of weather on the wintering grounds, particularly late-winter rainfall, have been shown to affect spring arrival dates, reproductive success, and survival rates of Kirtland's warblers (reviewed in Wunderle and Arendt 2017, pp. 5–12; Rockwell *et al.* 2012, p. 749; Rockwell *et al.* 2017, pp. 721–722).

Decreases in rainfall and resulting decreases in food availability may also result in poorer body condition prior to migration. The need to build up the necessary resources to successfully complete migration could, in turn, result in delays to spring departure in dry years (Wunderle *et al.* 2014, p. 16) and may explain observed delays in arrival times following years with less March rainfall in The Bahamas (Rockwell *et al.* 2012, p. 747). Delays in the spring migration of closely related American redstarts (*Setophaga ruticilla*) have also been directly linked to variation in March rainfall and arthropod biomass (Studds and Marra 2007, p. 120; Studds and Marra 2011, p. 4) and have also resulted in fewer offspring produced per summer (Reudinck *et al.* 2009, p. 1624). These results strongly indicate that environmental conditions modify the phenology of spring migration, which likely carries a reproductive cost. If The Bahamas experience a significant winter drying trend, Kirtland's warblers may be pressured to delay spring departures, while simultaneously contending with warming trends in their breeding range that pressure them to arrive earlier in the spring. Projection population modeling (Rockwell *et al.* 2017, p. 2) estimated a negative population growth in Kirtland's warbler as a result of a reduction (by more than 12.4 percent from the current mean levels) in March rainfall.

Extreme weather events such as tropical storms and hurricanes will continue to occur with an expected reduction in the overall frequency of weaker tropical storms and hurricanes, but an increase in the frequency of the most intense hurricanes (category 4 and 5 hurricanes), based on several dynamical climate modeling studies of Atlantic basin storm frequency and intensity (Bender *et al.* 2010, p. 456; Knutson *et al.* 2010, pp. 159–161; Murakami *et al.* 2012a, pp. 2574–2576; Murakami *et al.* 2012b, pp. 3247–3253; Knutson *et al.* 2013, pp. 6599–6613; Knutson *et al.* 2015, pp. 7213–7220). Although very intense hurricanes are relatively rare, they inflict a disproportionate impact in terms of storm damage (*e.g.,* approximately 93 percent of damage resulting from hurricanes is caused by only 10 percent of the storms Mendelsohn *et al.* 2012, p. 3). Hurricanes have the potential to result in direct mortality of Kirtland's warblers during migration and while on the wintering grounds (Mayfield 1992, p. 11), but the more significant effects generally occur following the hurricane due to altered shelter and food (Wiley and Wunderle 1993, pp. 331–336). Because Kirtland's warblers readily shift sites on the wintering grounds based on food availability, Kirtland's warblers would likely be able to shift locations within and possibly between nearby islands as an immediate post-hurricane response (Wunderle *et al.* 2007, p. 124). Further, hurricanes likely produce new wintering habitat for Kirtland's warblers by opening up closed canopy habitat of tall coppice, and may also help set back succession for existing suitable habitat (Wunderle *et al.* 2007, p. 126).

Because of the uncertainties in modeling the projected changes in precipitation, both spatially and temporally, there is a great level of uncertainty in how precipitation is likely to change in the foreseeable future and thereby affect Kirtland's warbler. There is more confidence that temperatures are likely to increase, and it is possible that there will be a drying trend over much of the Caribbean. However, it is not clear whether all islands will be equally affected by less precipitation. As a long-distance migrant, the Kirtland's warbler is well suited, in terms of its movement patterns and dispersal ability, to reach other locations outside of their current winter range where suitable winter habitat and food resources may be more

available under future temperature and precipitation conditions. Individuals have been reported wintering outside of The Bahamas (see Distribution discussion above), though the extent of behavioral plasticity and adaptive capacity at the species level to shift locations in response to future, long-term precipitation and temperature conditions in the Caribbean remains unknown.

Collision With Lighted and Human-Made Structures

Collision with human-made structures (*e.g.,* tall buildings, communication towers, wind turbines, power lines, heavily lighted ships) kills or injures millions of migrating songbirds annually (reviewed in Drewitt and Langston 2008, p. 259; Longcore *et al.* 2008, pp. 486–489). Factors that influence the likelihood of avian collisions with human-made structures include size, location, the use of lighting, and weather conditions during migratory periods (reviewed in Drewitt and Langston 2008, p. 233). The presence of artificial light at night and plate-glass windows are the most important factors influencing avian collisions with existing human-made structures (Ogden 1996, p. 4).

There are five confirmed reports of Kirtland's warblers colliding with human-made structures, all of which resulted in death. Two of these deaths resulted from collisions with windows (Kleen 1976, p. 78; Kramer 2009, pers. comm.), and three resulted from collisions with a lighted structure, including a lighthouse (Merriam 1885, p. 376), an electric light mast (Jones 1906, pp. 118–119), and a lighted monument (Nolan 1954). Another report of a Kirtland's warbler that flew into a window and appeared to survive after only being stunned by the collision (Cordle 2005, p. 2) was not accepted as an official documented observation of a Kirtland's warbler (Maryland Ornithological Society 2010, unpaginated).

Some bird species may be more vulnerable to collision with human-made structures than others due to species-specific behaviors. Particularly vulnerable species include: Night-migrating birds that are prone to capture or disorientation by artificial lights because of the way exposure to a light field can disrupt avian navigation systems; species that habitually make swift flights through restricted openings in dense vegetation; and species that are primarily active on or near the ground (reviewed in Ogden 1996, p. 8; Gauthreaux and Belser 2006, p. 67). Of the avian species recorded, the largest proportion of species (41 percent) that suffer migration mortality at human-made structures belong to the wood warbler subfamily (Parulinae), of which many species exhibit the above-mentioned behaviors (Ogden 1996, p. 14).

The Kirtland's warbler belongs to the Parulinae subfamily and exhibits many of the behaviors characteristic of other birds considered vulnerable to collision with human-made structures, yet little is known regarding how prone this species is to collision. The majority of bird collisions go undetected because corpses land in inconspicuous places or are quickly removed by scavengers postmortem (Klem 2009, p. 317). Additionally, while most avian collisions take place during migration, detailed information about Kirtland's warbler migration is still limited. The Kirtland's warbler population is also small, reducing the probability of collision observations by chance alone, compared to other species. These factors have inhibited the gathering of information, and in turn, a more comprehensive understanding of the hazards human-made structures pose to the Kirtland's warbler. It is reasonable to presume, however, that more Kirtland's warblers collide with human-made structures than are reported.

Solutions to reduce the hazards that cause avian collisions with human-made structures are being implemented in many places. Extinguishing internal lights of buildings at night, avoiding the use of external floodlighting, and shielding the upward radiation of low-level lighting such as street lamps are expected to reduce attraction and trapping of birds within illuminated urban areas, and in turn, injury and mortality caused by collision, predation, starvation, or exhaustion (reviewed in Ogden 1996, p. 31). The Service's Urban Conservation Treaty for Migratory Birds program has worked with several cities to adopt projects that benefit migrating birds flying through urban areas in between breeding and wintering grounds. For example, some cities within the Kirtland's warbler's migration corridor, such as Chicago, Indianapolis, Columbus, Detroit, and Milwaukee, have ''Lights Out'' or similar programs, which encourage the owners and managers of tall buildings to turn off or dim exterior decorative lights as well as interior lights during spring and fall migration periods (*http://www.audubon.org/conservation/existing-lights-out-programs*). These programs are estimated to reduce general bird mortality by up to 83 percent (Field Museum 2007, p. 1).

Additionally, migrating birds are not equally attracted to various lighting patterns, and modifying certain types of lighting systems could significantly reduce collision-related mortality. Gehring *et al.* (2009, p. 509) reported that by removing steady-burning, red L–810 lights and using only flashing, red L–864 or white L–865 lights on communication towers and other similarly lit aeronautical obstructions, mortality rates could be reduced by as much as 50 to 70 percent. On December 4, 2015, the Federal Aviation Administration revised its advisory circular that prescribes tower lighting to eliminate the use of L–810 steady-burning side lights on towers taller than 107 m (350 ft) (AC 70/7460–1L), and on September 28, 2016, released specifications for flashing L–810 lights on towers 46–107 m (150–350 ft) tall. These lighting changes should significantly reduce the risk of migratory bird collisions with communication towers.

As noted previously concerning potential threats to migratory habitat, if mortality during migration were limiting or likely to limit the population to the degree that maintaining a healthy population may be at risk, it should be apparent in the absence of the species from highly suitable breeding habitat in the core breeding range. In fact, we have seen just the opposite, increasing densities of breeding individuals in core areas and a range expansion into what would appear to be less suitable habitat elsewhere. This steady population growth and range expansion occurred while the potential threats to the species during migration were all increasing on the landscape (*e.g.,* new communication towers and wind turbines); therefore, we conclude that collision with lighted and human-made structures does not constitute a substantial threat to the Kirtland's warbler now or in the foreseeable future.

Synergistic Effects of Factors A Through E

When threats occur together, one may exacerbate the effects of another, causing effects not accounted for when threats are analyzed individually. Many of the threats to the Kirtland's warbler and its habitat discussed above under Factors A through E are interrelated and could be synergistic, and thus may cumulatively impact Kirtland's warbler beyond the extent of each individual threat. For example, increases in temperature and evaporation could reduce the amount of jack pine habitat available and increase the level of brood parasitism. Historically, habitat loss and brood parasitism significantly impacted

the Kirtland's warbler and cumulatively acted to reduce its range and abundance. Today, these threats have been ameliorated and adequately minimized such that the species has exceeded the recovery goal. The best available data show a positive population trend over several decades and record high population levels. At a high enough population level, the Kirtland's warbler can withstand certain threats and continue to be resilient. Continued habitat management and brown-headed cowbird control at sufficient levels, as identified in the Conservation Plan and at levels consistent with those to which management agencies committed in the MOU and MOA, will assure continued population numbers at or above the recovery criteria with the current magnitude of other threats acting on the Kirtland's warbler.

Proposed Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.''

On July 1, 2014, we published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578). Aspects of that policy were vacated for species that occur in Arizona by the U.S. District Court for the District of Arizona (*CBD* v. *Jewell,* No. CV–14–02506–TUC–RM (March 29, 2017), clarified by the court, March 29, 2017). Since the Kirtland's warbler does not occur in Arizona, for this finding we rely on the SPR policy, and also provide additional explanation and support for our interpretation of the SPR phrase. In our policy, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an ''endangered species.'' The same analysis applies to ''threatened species.''

Our final policy addresses the consequences of finding a species is in danger of extinction in an SPR, and what would constitute an SPR. The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy applies to analyses for all status determinations, including listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. The first step in our assessment of the status of a species is to determine its status throughout all of its range. We subsequently examine whether, in light of the species' status throughout all of its range, it is necessary to determine its status throughout a significant portion of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis will be required. As described in our policy, once the Service determines that a ''species''—which can include a species, subspecies, or distinct population segment (DPS)—meets the definition of ''endangered species'' or ''threatened species,'' the species must be listed in its entirety and the Act's protections applied consistently to all individuals of the species wherever found (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Under section 4(a)(1) of the Act, we determine whether a species is an endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. These same factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

Determination of Status Throughout All of the Kirtland's Warbler's Range

We conducted a review of the status of the Kirtland's warbler and assessed the five factors to evaluate whether the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range. The size of the Kirtland's warbler population is currently at its known historical maximum, which is nearly 10 times larger than it was at the time of listing and close to 2.5 times larger than the recovery goal. The population's breeding range also expanded outside of the northern Lower Peninsula to areas in Michigan's Upper Peninsula, Wisconsin, and Ontario. This recovery is attributable to successful interagency cooperation in the management of habitat and brood parasitism. The amount of suitable habitat has increased by approximately 150 percent since listing, primarily due to the increased amount of planted habitat generated from adaptive silvicultural techniques. Brown-headed cowbird control has been conducted on an annual basis within the majority of Kirtland's warbler nesting areas since 1972, and has greatly reduced the impacts of brood parasitism.

During our analysis, we found that impacts believed to be threats at the time of listing have been eliminated or reduced, or are being adequately managed since listing, and we do not expect any of these conditions to substantially change after delisting and into the foreseeable future. Population modeling that assessed the long-term population viability of Kirtland's warbler populations showed stable populations over a 50-year simulation period with current habitat management and maintaining sufficient cowbird

removal (see *Population Viability* discussion, above). Brood parasitism and availability of sufficient suitable breeding habitat are adequately managed through the Kirtland's Warbler Breeding Range Conservation Plan and the 2016 MOU. The Conservation Plan and the MOU acknowledge the conservation-reliant nature of the Kirtland's warbler and the need for continued habitat management and brown-headed cowbird control, and affirm that the necessary long-term management actions will continue. The species is resilient to threats including changing weather patterns and sea level rise due to climate change, collision with lighted and human-made structures, impacts to wintering and migratory habitat, and cumulative effects, and existing information indicates that this resilience will not change in the foreseeable future. These conclusions are supported by the available information regarding species abundance, distribution, and trends. Thus, after assessing the best available information, we conclude that the Kirtland's warbler is not in danger of extinction throughout all of its range, nor is it likely to become so within the foreseeable future.

Determination of Status Throughout a Significant Portion of the Kirtland's Warbler's Range

Consistent with our interpretation that there are two independent bases for listing species, as described above, after examining the status of the Kirtland's warbler throughout all of its range, we now examine whether it is necessary to determine its status throughout a significant portion of its range. Per our final SPR policy, we must give operational effect to both the ''throughout all'' of its range language and the SPR phrase in the definitions of ''endangered species'' and ''threatened species.'' As discussed earlier and in greater detail in the SPR policy, we have concluded that to give operational effect to both the ''throughout all'' language and the SPR phrase, the Service should conduct an SPR analysis if (and only if) a species does not warrant listing according to the ''throughout all'' language.

Because we determined that the Kirtland's warbler is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range, we will consider whether there are any significant portions of its range in which the species is in danger of extinction or likely to become so. To undertake this analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be in danger of extinction or likely to become so in the foreseeable future in that portion. To identify only those portions that warrant further consideration, we determine whether there are any portions of the species' range: (1) That may be ''significant,'' and (2) where the species may be in danger of extinction or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not equivalent to a determination that the species should be listed—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

If we identify any portions (1) that may be significant and (2) where the species may be in danger of extinction or likely to become so within the foreseeable future, we conduct a more thorough analysis to determine whether both of these standards are indeed met. The determination that a portion that we have identified does meet our definition of significant does not create a presumption, prejudgment, or other determination as to whether the species is in danger of extinction or likely to become so within the foreseeable future in that identified SPR. We must then analyze whether the species is in danger of extinction or likely to become so within the SPR. To make that determination, we use the same standards and methodology that we use to determine if a species is in danger of extinction or likely to become so within the foreseeable future throughout all of its range (but applied only to the portion of the range now being analyzed).

In practice, one key part of identifying portions appropriate for further analysis may be whether the threats are geographically concentrated. If a species is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then there is no basis on which to conclude that the species may be in danger of extinction or likely to become so within the foreseeable future in any portion of its range. Therefore, we examined whether any threats are geographically concentrated in some way that would indicate the species may be in danger of extinction, or likely to become so, in a particular area. Kirtland's warblers occupy different geographic areas throughout their annual life cycle (breeding grounds, migratory routes, wintering grounds). Although there are different threats during time spent in each of these areas, the entire population moves through the full annual cycle (breeding, migration, and wintering) and functions as a single panmictic population (see Genetics discussion above). Because all individuals move throughout all of these geographic areas, these different geographic areas do not represent biologically separate populations that could be exposed to different threats. The entire population and all individuals move through each of these geographic areas and are exposed to the same threats as they do; thus, no portion could have a different status.

Although there are different threats acting on the species on the breeding grounds, migratory routes, and wintering grounds (see discussion under Factors A through E, above), the entire Kirtland's warbler population experiences all of these threats at some point during their annual cycle and those threats, in combination, have an overall low-level effect on the species as a whole. Threats throughout the species' range are being managed or are occurring at low levels, as is evident in the species' continued population growth over the last two decades. Commitments by management agencies through the MOA and MOU provide assurances that habitat management and brown-headed cowbird control will continue at sufficient levels to ensure continued stable population numbers. We conclude that there are no portions of the species' range that are likely to be both significant and be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portion warrants further consideration to determine whether the species is in danger of extinction or likely to become so in a significant portion of its range. For these reasons, we conclude that the species is not in danger of extinction, or likely to become so within the foreseeable future, throughout a significant portion of its range.

Conclusion

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Kirtland's warbler. The threats that led to the species being listed under the Act (primarily loss of the species' habitat (Factor A) and effects of brood parasitism by brown-headed cowbirds (Factor E)) have been removed, ameliorated, or are being appropriately

managed by the actions of multiple conservation partners over the past 50 years. These actions include habitat management, brown-headed cowbird control, monitoring, research, and education. Given commitments shown by the cooperating agencies entering into the Kirtland's warbler MOU and the long record of engagement and proactive conservation actions implemented by the cooperating agencies over a 50-year period, we expect conservation efforts will continue to support a healthy, viable population of the Kirtland's warbler post-delisting and into the foreseeable future. Furthermore, there is no information to conclude that at any time over the next 50-year window (as we define the foreseeable future for this species) that the species will be in danger of extinction. Thus, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the Kirtland's warbler to be in danger of extinction throughout all or a significant portion of its range, nor are they likely to cause the species to become endangered within the foreseeable future throughout all or a significant portion of its range. On the basis of our evaluation, we conclude that, due to recovery, the Kirtlands warbler is not an endangered or threatened species. We therefore propose to remove the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) due to recovery.

Effects of This Rule

This proposal, if made final, would revise 50 CFR 17.11(h) by removing the Kirtland's warbler from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Kirtland's warbler. There is no critical habitat designated for this species. Removal of the Kirtland's warbler from the List of Endangered and Threatened Wildlife would not affect the protection given to all migratory bird species under the MBTA.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective post-delisting monitoring (PDM) plan for the Kirtland's warbler. The PDM plan will build upon current research and effective management practices that have improved the status of the species since listing. Ensuring continued implementation of proven management strategies, such as brown-headed cowbird control and habitat management, that have been developed to sustain the species will be a fundamental goal for the PDM plan. The PDM plan will identify measurable management thresholds and responses for detecting and reacting to significant changes in the Kirtland's warbler's numbers, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines. The investigation will be to determine if the Kirtland's warbler warrants expanded monitoring, additional research, additional habitat protection or brood parasite management, or resumption of Federal protection under the Act.

Required Determinations

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, Secretarial Order 3206, the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the Service, January 20, 2016, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We will coordinate with tribes in the Midwest within the range of the Kirtland's warbler and request their input on this proposed rule.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0005 or upon request from the Field Supervisor, Michigan Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Michigan Ecological Services Field Office in East Lansing, Michigan, in coordination with the Midwest Regional Office in Bloomington, Minnesota.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry ''Warbler (wood), Kirtland's'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

Dated: March 8, 2018.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–06864 Filed 4–11–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180209147–8147–01]

RIN 0648–BH76

Fisheries of the Northeastern United States; 2018–2020 Small-Mesh Multispecies Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes small-mesh multispecies specifications for fishing years 2018–2020 and corrects a regulatory error from a previous rulemaking action. The specifications are intended to establish allowable catch limits for each stock within the fishery to control overfishing while allowing optimum yield. This action also informs the public of the proposed fishery specifications and regulatory correction, and provides an opportunity for comment.

DATES: Comments must be received by 5:00 p.m. local time, on April 27, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2018–0031, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0031,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the Proposed Rule for Small-Mesh Multispecies Specifications.''

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 part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also accessible via the internet at *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages the small-mesh multispecies fishery within the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is composed of five stocks of three species of hakes: Northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake. Southern silver hake and offshore hake are often grouped together and collectively referred to as ''southern whiting.'' The small-mesh multispecies fishery is managed separately from the groundfish fishery because it is conducted with much smaller mesh, and does not generally result in the catch of regulated groundfish species like cod and haddock. Amendment 19 to the FMP (April 4, 2013; 78 FR 20260) established the process and framework for setting catch specifications for the small-mesh fishery. The FMP requires that catch and landing limits for the small-mesh multispecies fishery be established through the specifications process on an annual basis for up to three years at a time.

The Whiting Plan Development Team (PDT) met in July 2017 to review the latest Stock Assessment and Fishery Evaluation (SAFE) report for the small-mesh multispecies fishery. This assessment update indicated that, in general, small-mesh multispecies stocks (whiting and hake) are increasing in the north and decreasing in the south. The Council's Scientific and Statistical Committee (SSC) conducted a final review of the PDT's recommended specifications and the SAFE report at their October 2017 meeting. On December 7, 2017, the Council approved the final recommended 2018–2020 catch limit specifications for the small-mesh multispecies fishery.

During development of these specifications, NMFS identified an error in the small-mesh multispecies regulations. In a previous action (80 FR 30379; May 28, 2015), we approved a Council-recommended reduction in the northern red hake possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg). However, when we drafted the rule implementing this change, we did not clarify that the possession limit for southern red hake remained unchanged at 5,000 lb (2,268 kg). In addition to setting new specifications for the whiting fishery for 2018 and projecting specifications for 2019 and 2020, this action would correct the error, and clarify the red hake possession limits in the regulations.

The recommended specifications would adjust the overfishing limit (OFL), allowable biological catch (ABC), annual catch limit (ACL), and total allowable landings (TAL) for the four main stocks in the small-mesh multispecies fishery (Table 1). These adjustments are based on Council recommendations, and account for the changes in stock biomass shown in the latest stock assessment update from 2017. The specification limits are intended to provide for sustainable yield and keep the risk of overfishing at acceptable levels as defined by the Council and its SSC.

Proposed Specifications

This action proposes the Council's recommended specifications for the

2018–2020 small-mesh multispecies fishery, which are consistent with the catch and landings limits recommended by the PDT and SSC. A summary of the proposed specifications is shown below in Table 1.

TABLE 1—SUMMARY OF PROPOSED SMALL-MESH MULTISPECIES SPECIFICATIONS FOR FISHING YEARS 2018–2020, WITH PERCENT CHANGE FROM 2017, IN METRIC TONS

	OFL	ABC	ACL	Percent change	TAL	Percent change
Northern Silver Hake	58,350	31,030	29,475	+27	26,604	+33
Northern Red Hake	840	721	685	+45	274	+128
Southern Whiting	31,180	19,395	18,425	−35	14,465	−39
Southern Red Hake	1,150	1,060	1,007	−38	305	−59

These proposed specifications represent increases in the catch limits of the northern stocks, and decreases in the catch limits of the southern stocks. These changes are unlikely to have a significant impact because generally the small-mesh multispecies fishery harvests less than 50 percent of any given TAL each year; except in the case of northern red hake. In the southern fishery, southern red hake landings have approached 50 percent of the TAL, while southern whiting landings have not exceeded 20 percent of the TAL in the last five years. The northern fishery is usually limited by the northern red hake stock, which has achieved or exceeded the TAL, triggering inseason accountability measures (AM) to reduce the possession limit, each year for the past several years. These restrictions often prevent the northern silver hake landings from reaching much higher than 30 percent of the TAL because of the geographic overlap of the two species and similar fishing practices used. The proposed increase to the northern stocks catch limits, based on evidence in the SAFE report that populations of northern silver hake and northern red hake have increased, may have a positive impact on the fishery by delaying the need for inseason AMs, avoiding unnecessary discards, and allowing better utilization of the increase in biomass of both stocks.

The 2017 stock assessment update showed that the risk of overfishing in the northern stocks is relatively low. Therefore, the increase in ACL and TAL should not negatively affect the northern stocks. However, the update did show that southern red hake is overfished and overfishing is occurring, and while southern whiting is not overfished, the stock is declining. The Council was notified of the overfished status of southern red hake at their meeting in Gloucester, MA on September 26, 2017, and will begin development of a rebuilding program within the next couple of years. The decrease in southern ACLs is intended to end overfishing. Because recruitment data is conflicting in recent years, the Council is suggesting a full benchmark assessment to re-evaluate southern red hake status before initiating the rebuilding process. The next benchmark assessment for small-mesh multispecies is scheduled for 2019. All other management measures in the small-mesh multispecies fishery (such as possession limits) will remain unchanged. If approved, these specifications would remain effective for fishing years 2018–2020 unless otherwise revised during that time.

Regulatory Correction

This action also proposes to correct regulatory text that specifies the red hake possession limits in the southern small mesh exemption areas (Southern New England and Mid-Atlantic Exemption Areas). In the 2015–2017 specifications for the small-mesh multispecies fishery (May 28, 2015; 80 FR 30379), the possession limit for red hake in the northern exemption areas was reduced from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg), but did not specify that the possession limit in the southern areas would remain 5,000 lb (2,268 kg). The Council never intended to change the possession limit for the southern red hake fishery. This action would modify the text in the regulations, consistent with the Council's intent, to specify that the northern red hake possession limit is 3,000 lb (1,361 kg), and the southern red hake possession limit remains 5,000 lb (2,268 kg). This minor modification would reduce confusion in the industry, as it clarifies the difference in red hake possession limits between the northern and southern exemption areas, as originally intended by the Council.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is supplemented by information contained in the preamble of this proposed rule. The IRFA was prepared to examine the economic impacts of this proposed rule, if adopted, on small business entities. A description of the specifications, why they are being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**). A summary of the 2018–2020 small-mesh multispecies specifications IRFA analysis follows.

Description of the Reasons Why Action by the Agency Is Being Considered

This action proposes catch limits and fishery specifications for the 2018–2020 small-mesh multispecies fishery. The measures are consistent with the best scientific information available, and the most recent catch limit recommendations of the Council's SSC to prevent overfishing, as well as achieve sustainable yield in the fishery. This action also clarifies regulatory text to specify the red hake possession limits for the northern and southern stocks.

Statement of the Objectives of, and Legal Basis for, This Proposed Rule

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

This proposed rule affects commercial fish harvesting entities engaged in the northeast multispecies limited access

fishery and the small-mesh multispecies fishery. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with northeast multispecies permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. In terms of RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of $11 million (NAICS 11411) for all its affiliated operations worldwide. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016.

The small-mesh exempted fishery allows vessels to harvest species in designated areas using mesh sizes smaller than the minimum mesh size required by Regulated Mesh Area (RMA) regulations. To participate in the small-mesh multispecies exempted fishery, vessels must possess either a limited access multispecies permit (categories A, C, D, E or F) or an open access multispecies permit (category K). Limited access multispecies permit holders can target small-mesh multispecies with different possession limit requirements depending on fishing region and mesh size used, and open access, Category K permit holders may fish for small-mesh multispecies when participating in an exempted fishing program. Therefore, entities holding one or more multispecies permits (permit type A, C–F, K) are the entities that have the potential to be directly impacted by this action. According to the commercial database, there were 853 distinct ownership entities, based on entities' participation during the 2014–2016 time-period, that could potentially target small-mesh multispecies. This includes entities that could not be classified into a business type because they did not earn revenue from landing and selling fish in 2014–2016 and thus are considered to be small. Of the 853 total firms, 844 are categorized as small business entities and nine are categorized as large business.

While 853 commercial entities have the potential to be impacted by the proposed action, not all of these entities actively land small-mesh multispecies for commercial sale. Therefore, not all 853 entities may be directly affected by the proposed action. There are 406 distinct entities that commercially sold small-mesh multispecies from 2014–2016 and may be directly affected by the proposed action. Of those, 404 (over 99 percent) are categorized as small business.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

There are no new reporting, recordkeeping, or other compliance requirements contained in this proposed rule, or any of the alternatives considered for this action.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

This action (the preferred alternative) proposes 2018–2020 commercial catch specifications for the small-mesh multispecies fishery based on the most recent stock assessment update, which would increase the ACLs and TALs for the northern stocks of red and silver hake, and decrease the ACLs and TALs of southern red hake and whiting. The Council also considered a No Action alternative, where the same catch limits and specifications from 2017 would continue into 2018 with no change. Only these two alternatives are considered significant because in order to be considered, alternatives must be recommended by the Council and satisfy Magnuson-Stevens Act requirements. These alternatives were the only two that met these qualifications.

While catch limits for the southern stocks are more restrictive in the preferred alternative, they will not necessarily have a negative impact. Landings of both southern whiting and southern red hake in 2016 were well below the respective 2016 TALs, and southern whiting landings in 2016 were well below the proposed 2018–2020 preferred specifications. Based on 2016 landings, southern red hake landings would likely exceed the proposed TAL, but only by a very small amount. Therefore, we expect the proposed action to have minimal economic impact in the southern region compared to the no action alternative.

For the northern stocks, the proposed action is less restrictive than the no action alternatives and raises the TAL by 33 percent for silver hake and 128 percent for red hake. This is expected to have no impact or low positive impacts on profit relative to the TAL under the no action alternative, depending on availability and market conditions.

The Council recommended these proposed specifications (preferred alternative) over the no action alternative to satisfy the Magnuson-Stevens Act requirements to end overfishing, while allowing the greatest opportunity to achieve sustainable yield. This also increases the likelihood that the fishery will remain a viable source of fishing revenues for small-mesh multispecies entities in the long term, and makes it the better economic choice. Overall, we expect the proposed action to have no impact or slight positive impacts compared to the no-action alternative.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 6, 2018.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.86, revise the introductory text of paragraphs of (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), and add paragraph (d)(1)(v) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(1) * * *

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 in (6.35 cm).* Owners or operators of a

vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake, if either of the following conditions apply:

* * * * *

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 in (6.35 cm) but less than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

* * * * *

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section may possess and land not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake when fishing in the Gulf of Maine or Georges Bank Exemption Areas, as described in § 648.80(a), and not more than 40,000 lb (18,144 kg) of combined silver hake and offshore hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in §§ 648.80(b)(10) and 648.80(c)(5), respectively, if both of the following conditions apply:

* * * * *

(v) *Possession limits for red hake.* Vessels participating in the small-mesh multispecies fishery consistent with § 648.86(d)(1), may possess and land not more than 3,000 lb (1,361 kg) of red hake when fishing in the Gulf of Maine or Georges Bank Exemption areas, as described in § 648.80(a), and not more than 5,000 lb (2,268 kg) of red hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in §§ 648.80(b)(10) and 648.80(c)(5), respectively.

* * * * *

[FR Doc. 2018–07536 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 71

Thursday, April 12, 2018

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

Submission for OMB Review; Comment Request

April 9, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 14, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Natural Resources Conservation Service

Title: Long Term Contracting.

OMB Control Number: 0578–0013.

Summary of Collection: The Long Term Contracting regulations at 7 CFR part 630, and the Conservation program regulations at 7 CFR 624, 625, 701 set forth the basic policies, program provisions, and eligibility requirements for owners and operators to enter into and carry out long-term conservation program contracts with technical assistance under the various program. These programs are administered by the Natural Resources Conservation Service (NRCS). These programs authorize federal technical and financial long-term cost sharing assistance for conservation treatment with eligible land users and entities. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, Federal financial assistance payments are made to the land user, or third party, upon successful application of the conservation treatment.

Need and Use of the Information: NRCS will collect information using several NRCS forms. The forms are needed to administer NRCS long-term contracting programs as authorized. NRCS uses the information to ensure the proper utilization of program funds.

Description of Respondents: Individuals or households; Farms; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 5,560.

Frequency of Responses: Reporting; Annually, Other (As required).

Total Burden Hours: 3,085.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–07572 Filed 4–11–18; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 9, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 14, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utility Service

Title: High Energy Cost Grants Rural Communities.

OMB Control Number: 0572–0136.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 901 *et seq.*) as amended in November 2000, to create new grant and loan authority to assist rural communities with extremely high energy costs (Pub. L. 106–472). The amendment authorized the Secretary of the U.S. Department of Agriculture through Rural Development to provide competitive grants for energy generation, transmission, or distribution facilities serving communities in which the national average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy. All applicants are required to submit a project proposal containing the elements in the prescribed format.

Need and Use of the Information: Information is collected by the Rural Utility Service from applicants to confirm that the eligibility requirements and the proposals are consistent with the purposes set forth in the statute. Various forms and progress reports are used to monitor compliance with grant agreements, track expenditures of Federal funds and measure the success of the program. Without collecting the listed information, USDA will not be assured that the projects and communities served meet the statutory requirements for eligibility or that the proposed projects will deliver the intended benefits.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 1,172.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–07561 Filed 4–11–18; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

[Docket No. FSIS–2018–0008]

Trade and Foreign Agricultural Affairs; Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: Office of Trade and Foreign Agricultural Affairs, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of Trade and Foreign Agricultural Affairs (TFAA), U.S. Department of Agriculture (USDA), is sponsoring a public meeting on May 31, 2018. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 41st Session of the Codex Alimentarius Commission (CAC) taking place in Rome, Italy, between July 2 and 6, 2018. The Administrator of the Food Safety and Inspection Service and the Deputy Under Secretary for Food Safety recognize the importance of providing interested parties the opportunity to obtain background information on the 41st Session of the CAC and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, May 31, 2018, 1:00 p.m.–4:00 p.m.

ADDRESSES: The public meeting will take place at the USDA, Jamie L. Whitten Building, 1400 Independence Avenue SW, Room 107–A, Washington, DC 20250.

Documents related to the 41st Session of the CAC will be accessible via the internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

The U.S. Delegate to the 41st Session of the CAC invites U.S. interested parties to submit their comments electronically to the following email address: *uscodex@fsis.usda.gov.*

Call-in-Number

If you wish to participate in the public meeting for the 41st Session of the CAC by conference call, please use the call-in-number and the participant code listed below:

Call-in-Number: 1–888–844–9904.

The participant code will be posted on the web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

Registration

Attendees may register to attend the public meeting by emailing *uscodex@fsis.usda.gov* by May 29, 2018. Early registration is encouraged as it will expedite entry into the building. The meeting will convene in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in person, but wish to participate, may do so by phone.

FOR FURTHER INFORMATION CONTACT:

About the 41st session of the CAC contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *uscodex@fsis.usda.gov.*

About the public meeting contact: Jasmine Curtis, U.S. Codex Office, 1400 Independence Avenue SW, Room 4865, Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *Jasmine.Curtis@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

CAC was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, the CAC seeks to protect the health of consumers and ensure fair practices in the food trade; promotes coordination of all food standards work undertaken by international governmental and non-governmental organizations; determines priorities and initiates and guides the preparation of draft standards through and with the aid of appropriate organizations; finalizes the standards elaborated and publishes them in a *Codex Alimentarius* (food code) either as regional or worldwide standards, together with international standards already finalized by other bodies, wherever this is practicable; and amends published standards, as appropriate, in the light of new developments.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 41st Session of the CAC will be discussed during the public meeting:

- Report by the chairperson on the 74th and 75th Sessions of the Executive Committee
- Amendments to the Procedural Manual
- Final Adoption of Codex texts
- Adoption of Codex Texts at Step 5
- Revocation of Codex Texts
- Proposals for New Work
- Discontinuation of Work
- Amendments to Codex Standards and Related Texts
- Matters arising from the reports of the Commission, the Executive Committee and Subsidiary Bodies
- Committees working by correspondence and pilot for a Committee on Standards Advancement
- Regular Review of Codex Work Management: Report 2017–2018
- Codex Budgetary and Financial Matters: Report 2016–2017 and Progress 2018–2019
- Codex Budgetary and Financial Matters: Proposal 2020–2021

- FAO/WHO Scientific Support to Codex: activities, budgetary and financial matters
- Matters arising from FAO and WHO
- Report of the side event on FAO and WHO capacity development activities
- Report of the side event on the Codex Trust Fund (CTF2)
- Report of the discussion panels with International Government Organizations (IGOs) and Non-Governmental Organizations (NGOs).
- Election of the chairperson and vice chairpersons
- Designation of countries responsible for appointing the chairpersons of Codex subsidiary bodies
- Any other business

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat before the meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the May 31, 2018, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 41st Session of the CAC (see **ADDRESSES**). Written comments should state that they relate to activities of the 41st Session of the CAC.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2018–07586 Filed 4–11–18; 8:45 am]

BILLING CODE 3410–DM–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Telephonic Business Meeting.

DATES: Friday, April 20, 2018, at 11:00 a.m. EST.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371, *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only. Participant access instructions: Listen-only, toll free: 1–877–723–9519; Conference ID: 762–4641. Please dial in 5–10 minutes prior to the start time.

Meeting Agenda

I. Approval of Agenda
II. Program Planning
- Discussion and Vote Chair for Vermont Advisory Committee
- Discussion and Vote on Chair for North Carolina Advisory Committee

III. Staff Director's Report
IV. Adjourn Meeting.

Dated: April 10, 2018.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2018–07777 Filed 4–10–18; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Strategy To Address Trade-Related Forced Localization Barriers Impacting the U.S. ICT Hardware Manufacturing Industry

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The International Trade Administration is seeking information to support the development of a comprehensive strategy to address trade-related forced localization policies, practices, and measures impacting the U.S. information and communications technology (ICT) hardware manufacturing industry. Comments will be used to support the development of a holistic strategic plan for counteracting and deterring the expansion of barriers to trade and trade-related measures put in place by U.S. trading partners that are specifically designed to localize the production and technology development of ICT hardware, and unfairly harm U.S. ICT hardware manufacturers and exports.

DATES: Written comments must be submitted on or before May 14, 2018. Comments must be in English.

ADDRESSES: You may submit responses to the questions below by one of the following methods. Comments should be submitted under docket ITA–2008–0001:

(a) *Electronic Submission:* Submit all electronic comments via the Federal e-Rulemaking Portal at *http://www.regulations.gov.* The materials in the docket will not be edited to remove identifying or contact information, and

the Department cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with business confidential information that you do not wish to be made public, submit the comment as a written/paper submission in the manner detailed below.

(b) *Written/Paper Submission:* Send all written/paper submissions to: Cary Ingram, U.S. Department of Commerce, International Trade Administration, Office of Health and Information Technologies, 1401 Constitution Ave. NW, Washington, DC 20230; Submissions of ''Business Confidential Information'': Any submissions containing ''business confidential information'' must be delivered in a sealed envelope marked ''confidential treatment requested'' to the address listed above. Please provide an index listing the document(s) or information that the submitter would like the Department to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Provide a statement explaining the submitter's grounds for objecting to disclosure of the information to the public. The Department also requests that submitters of business confidential information include a non-confidential version (either redacted or summarized) of those confidential submissions, which will be available for public viewing and posted on *https://www.regulations.gov.* In the event that the submitter cannot provide a non-confidential version of its submission, the Department requests that the submitter post a notice in the docket stating that it has provided the Department with business confidential information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that business confidential information has been provided, the Department will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

For alternatives to online or mail submissions, please contact Mr. Cary Ingram at (202) 482–2872 or *cary.ingram@trade.gov.* The public is strongly encouraged to file submissions electronically.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments should be directed to Mr. Cary Ingram at (202) 482–2872, or *cary.ingram@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: Over the past five years, there has been a rapid expansion of laws, regulations, trade policies, directives, and practices by various U.S. trading partners to further multilayered campaigns to force the domestic localization of production and technology development of information and communications technology (ICT) hardware. Various forms of domestic production requirements, local content requirement (LCR) mandates, coerced technology transfer rules, and other barriers to trade have been put in place to supplant U.S. technology products in international ICT markets. These are measures that arbitrarily discriminate against foreign products, intellectual property (IP), or hardware suppliers, and are distinctively designed to force the production and development of ICT hardware to be localized within a country's territorial boundaries, while also cultivating and incubating select domestic industries, technologies, or intellectual property at the expense of imported goods, or foreign-owned or developed IP.

The ICT hardware sector has become a leading target for discriminatory measures in markets throughout the world at an accelerated level of proliferation. Examples of trade-related barriers and measures impacting the industry include:

- Local content requirements (LCRs) for ICT products sold in the domestic market;
- Subsidies or other government preferences made contingent upon the use of local ICT products, indigenous technology, or domestically owned IP;
- Mandates for service providers to purchase domestically-manufactured ICT hardware or ICT products with specific levels of domestic content;
- Measures to force the transfer of technology or IP to local entities;
- Unjustified requirements to conduct conformity assessment and certification procedures in-country.

The competitiveness of the U.S. ICT manufacturing sector is increasingly coming under threat by the continued expansion of forced localization policies and practices in geographic and technological scope. These forced localization measures and barriers not only threaten U.S. production of ICT hardware currently in the market, but also threaten the United States' competitive position in new and emerging technology sectors across the entire ICT-enabled industrial base as these policies expand to broader technology segments. Recognizing the need to address current forced localization measures impacting the U.S. ICT hardware manufacturing sector on a strategic basis, and to deter additional localization barriers, the U.S. Department of Commerce's International Trade Administration is reviewing the landscape of policy options and potential remedies that can be utilized to develop a strategic response to the expanding forced localization trend causing harm to the U.S. ICT manufacturing base. The Department is seeking to develop a comprehensive, holistic set of actionable tools, tactics, and strategies to counteract the spread of policies, practices, and barriers-to-trade specifically designed to discriminate against U.S. ICT products and exports, while instigating the domestic localization of ICT hardware production and technology development.[1] Respondents may address any, all, or none of the following questions, and may address additional topics that may help the Department in developing a comprehensive strategy to address trade-related forced localization barriers affecting the U.S. ICT manufacturing industry. While the Department welcomes all input considered relevant to the development of a comprehensive strategy, the Department specifically seeks the following types of information:

1. *Laws, regulations, policies, trade practices, non-tariff barriers, and other trade-related measures put in place by U.S. trading partners that appear to be specifically structured to force the localization of production and technology development of ICT hardware, and unfairly harm U.S. ICT hardware manufacturers and exports.*

2. *The estimated burden and harm caused by the identified trade-related localization laws, regulations, policies, trade practices, non-tariff barriers, and other trade-related localization measures in terms of lost revenue, market share, exports, employment, income, or other measures to quantify the damage and harm to the U.S. ICT hardware manufacturing industry and related export opportunities.*

The information obtained from written submissions will be used to inform the strategic planning to address

[1] Data localization policies or restrictions on cross-border data flows will not be covered in this edition of the strategy review or this current request for comments.

and deter the expanding use of trade-related localization measures, practices and other barriers harming the U.S. ICT manufacturing industry. The scope of products included in this strategic review are ICT goods that fall under NAICS codes 3341, 3342, 3343, 3344, 3345, 3346, and 3359; or the following HS codes: 8443, 8471, 8473, 8486, 8504, 8517, 8518, 8519, 8520, 8521, 8522, 8523, 8525, 8528, 8529, 8533, 8534, 8541, 8542, 854420, 854470, 900110, 9030, 903141, 850440, 850450, 850490.

The U.S. Department of Commerce invites comments from stakeholders from the private sector, academia, think-tanks, civil society, and other interested parties concerned with the continued growth and competitiveness of the U.S. ICT manufacturing industry in the global economy. Entities making submissions may be contacted for further information or explanation, and, in some cases, meetings with individual submitters may be requested. The Department may also hold additional forums for comment such as roundtables or workshops to attain expanded input for strategy development.

Ian Steff,

Deputy Assistant Secretary for Manufacturing.

[FR Doc. 2018–07584 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Pidilite Industries Limited (Pidilite), a producer/exporter of carbazole violet pigment 23 (CVP 23) from India, sold subject merchandise at prices below normal value (NV) during the period of review (POR) December 1, 2015, through November 30, 2016.

DATES: Applicable April 12, 2018.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or George Ayache, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6905 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2017, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on CVP 23 from India.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. As a result, the revised deadline for the final results of this review is now April 6, 2018.[2]

Scope of the Order

The merchandise subject to the *Order*[3] is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3′,2′-m]*[4] *triphenodioxazine, 8,18-dichloro-5, 15-diethy-5, 15-dihydro-,* and molecular formula of C34 H22 Cl2 N4 O2. The subject merchandise includes the crude pigment in any form (*e.g.,* dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.,* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the *Order.*

The merchandise subject to the *Order* is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the *Order* is dispositive.

Analysis of Comments Recieved

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[5] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we have not made changes to the *Preliminary Results.*[6] Because Pidilite withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, we continue to find that Pidilite failed to cooperate to the best of its ability and, accordingly, find it appropriate to assign it a margin based on adverse facts available (AFA) in accordance with sections 776(a)(1) and (a)(2)(A), (B), (C) and 776(b) of the Tariff Act of 1930, as amended. For further discussion, see the Issues and Decision Memorandum.

Adjustment for Export Subsidies

For Pidilite, in the original investigation, we subtracted the portion of the countervailing duty rate attributable to export subsidies (17.02 percent) from the final dumping margin of 66.59 percent in order to calculate the cash-deposit rate of 49.57 percent.[7] Since the publication of the *Antidumping Duty Order,* we have not conducted an administrative review of the countervailing duty order on CVP 23 from India.[8] Therefore, imports of the subject merchandise from Pidilite during the review period were subject to countervailing duties for export subsidies of 17.02 percent. Accordingly, we have adjusted the dumping margin

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[1] *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 57205 (December 4, 2017) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[3] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India,* 69 FR 77988 (December 29, 2004) (*Order*).

[4] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* ''Amendment to Petition for Antidumping Investigations of China and India and a Countervailing Duty Investigation of India on Imports of Carbazole Violet Pigment 23 in the forms of Crude Pigment, Presscake and Dry Color Pigment,'' dated December 3, 2003, at 8.

[5] *See* Memorandum, ''Carbazole Violet Pigment 23 from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2015–2016,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[6] *See Preliminary Results* and accompanying Preliminary Decision Memorandum.

[7] *See Order.*

[8] *See Carbazole Violet Pigment 23 from India: Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 42648 (September 11, 2017).

in accordance with section 772(c)(1)(C) of the Act.

Final Results of the Review

Commerce determines that, for the period of December 1, 2015, through November 30, 2016, the following dumping margin exists:

Exporter/producer	Dumping margin (percent)	Rate adjusted for export subsidies (percent)
Pidilite Industries Limited	66.59	49.57

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[9] For entries of the subject merchandise from Pidilite, we will instruct CBP to assess antidumping duties at the adjusted rate of 49.57 percent.

We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Pidilite will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.48 percent, the all-others rate established in the LTFV investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[9] *See* section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).

[10] *See Order.*

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: April 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Affiliation
IV. Use of Facts Otherwise Available With Adverse Inferences
V. Analysis of Comments
  Comment 1: Whether Pidilite and Its U.S. Customer Are Affiliated
  Comment 2: Whether To Continue To Apply AFA to Pidilite for the Final Results
VI. Conclusion

[FR Doc. 2018–07616 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–549–836, C–570–070]

Rubber Bands From Thailand and the People's Republic of China: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable April 12, 2018.

FOR FURTHER INFORMATION CONTACT: Shanah Lee at (202) 482–6386 (Thailand) and Kristen Johnson at (202) 482–4793 (the People's Republic of China), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 2018, the Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations on rubber bands from Thailand and the People's Republic of China.[1] Currently, the preliminary determinations of these investigations are due no later than April 26, 2018.

[1] *See Rubber Bands from Thailand, the People's Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations,* 83 FR 8429 (February 27, 2018). Pursuant to section 703(a)(1) of the Tariff Act of 1930, as amended, the countervailing duty investigation on rubber bands from Sri Lanka was terminated following the International Trade Commission's determination that imports of rubber bands from Sri Lanka that are alleged to be sold at less than fair value and subsidized by the government of Sri Lanka are negligible. *See Rubber Bands from China, Sri Lanka, and Thailand; Determinations,* 83 FR 12594 (March 22, 2018).

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act) requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1)(A) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if a petitioner makes a timely request for a postponement. Under 19 CFR 351.205(e), a petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reason for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[2]

On March 27, 2018, Alliance Rubber Co. (the petitioner) submitted a timely request, pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e), to postpone fully the preliminary determinations.[3] The petitioner stated that the purpose of its request is to provide Commerce with adequate time to analyze fully 'questionnaire responses to determine the extent to which countervailable subsidies are used by the respondents.[4]

In accordance with 19 CFR 351.205(e), the petitioner stated the reason for requesting a postponement of the preliminary determinations and the record does not present any compelling reasons to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to July 2, 2018.[5] In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

[2] *See* 19 CFR 351.205(e).

[3] *See* Letter from the petitioner, ''Petitioner's Request for Postponement of the Preliminary Determinations,'' dated March 27, 2018.

[4] *Id.* at 2.

[5] The actual deadline is June 30, 2018, which is a Saturday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

Dated: April 6, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–07588 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–065]

Countervailing Duty Investigation of Stainless Steel Flanges From the People's Republic of China: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers/exporters of stainless steel flanges from the People's Republic of China (China). The period of investigation is January 1, 2016, through December 31, 2016.

DATES: Applicable April 12, 2018.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Jerry Huang, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0486 or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Preliminary Determination in this investigation was published on January 23, 2018.[1] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. As a result, the revised deadline for the final determination of this investigation is now April 4, 2018.[2] We invited interested parties to comment on the Preliminary Determination. However, we received no comments from any interested parties.

[1] *See Countervailing Duty Investigation of Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination,* 83 FR 3124 (January 23, 2018) (*Preliminary Determination*).

[2] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

Scope of the Investigation

The products covered by this investigation are stainless steel flanges from China. For a complete description of the scope of this investigation, see the Appendix to this notice.

Analysis of Subsidy Programs and Comments Received

As noted above, we received no comments pertaining to the Preliminary Determination. As stated in the Preliminary Determination, we found that the mandatory respondents in these investigations, Bothwell (Jiangyan) Steel Fittings Co., Ltd.; Hydro Fluids Controls Limited; Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd.; and Qingdao I-Flow Co., Ltd.; did not cooperate to the best of their abilities and, accordingly, we determined it appropriate to apply facts otherwise available with adverse inferences, in accordance with section 776(a)–(b) of the Tariff Act of 1930, as amended (the Act).[3] For the purposes of the final determination, Commerce has made no changes to the Preliminary Determination.

All-Others Rate

As discussed in the Preliminary Determination, Commerce based the selection of the ''All-Others'' rate on the countervailable subsidy rate established for the mandatory respondents in accordance with section 705(c)(5)(A)(ii) of the Act.[4] We made no changes to the selection of this rate for this final determination.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Bothwell (Jiangyan) Steel Fittings Co., Ltd	174.73
Hydro-Fluids Controls Limited	174.73
Jiangyin Shengda Brite Line Kasugai Flange Co., Ltd	174.73
Qingdao I-Flow Co., Ltd	174.73
All-Others	174.73

Continuation of Suspension of Liquidation

As a result of our Preliminary Determination and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, Commerce directed U.S. Customs and

[3] *See Preliminary Determination,* 83 FR at 3124–3125.

[4] *Id.,* 83 FR at 3125.

Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, will continue the suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: April 4, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The products covered by this investigation are certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements.

Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) Weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2018–07587 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG142

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that three exempted fishing permit applications contain all of the required information and warrant further consideration. These exempted fishing permits would authorize five commercial fishing vessels to test the economic viability of using hook gear to selectively target pollock and haddock in the Western Gulf of Maine and Cashes Ledge Closure Areas (excluding the Cashes Ledge Habitat Management Area), and to temporarily retain undersized catch for measurement and data collection.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 27, 2018.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on EFP Applications for Hook Gear Access to WGOM and Cashes Ledge Closure Areas.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on EFP Applications for Hook Gear Access to WGOM and Cashes Ledge Closure Areas.''

FOR FURTHER INFORMATION CONTACT: Kyle Molton, Fishery Management Specialist, 978–281–9236, *Kyle.Molton@noaa.gov.*

SUPPLEMENTARY INFORMATION: Two commercial fishermen and a groundfish sector submitted complete applications to renew exempted fishing permits (EFPs) on February 16, 2018, to conduct commercial fishing activities that the regulations would otherwise restrict. These EFPs would authorize five commercial fishing vessels to fish a combined total of 150 trips in the Western Gulf of Maine (WGOM) and Cashes Ledge Closure Areas, excluding the Cashes Ledge Habitat Management Area (HMA), with hook gear, and to temporarily retain undersized catch for measurement and data collection. Within the Cashes Ledge Closure Area, access would be permitted in the Fippennies Ledge HMA, but not in the Cashes Ledge or Ammen Rock HMAs. These HMAs were developed as part of the New England Fisheries Management Council's Omnibus Essential Fish Habitat Amendment 2, and approved by NMFS on January 3, 2018.

The EFPs would authorize the applicants to use hook gear to selectively target pollock and haddock while maintaining minimal bycatch. In addition, the applicants would also explore and develop premium markets to increase the value of the catch. This study would be conducted in the WGOM and Cashes Ledge Closure Areas. The applicants have requested access to these areas based on reports, and experimental fishing, which suggest that there are high concentrations of the target species located in these areas. The exemptions are necessary to conduct this study because vessels on commercial groundfish trips are prohibited from fishing for groundfish in these closed areas and from retaining undersized groundfish. EFP trips would occur year-round, excluding existing seasonal closures.

Participating vessels would take a combined total of 150 trips to closed areas. Trips would be roughly 24 hours or less in length. Vessels would use automated jigging machines, handline, and rod and reel gears only. Based on preliminary 2017 data, estimated catch on these trips is between 1,000 and 2,000 lb (453.5 to 907.2 kg) of pollock and haddock, combined, per trip. 2017 data indicate that catch of non-target species is small; cod represented less than 10 percent of catch overall, and other species were encountered only sporadically or in low numbers.

Because these vessels would be fishing in closed areas, and must minimize interactions with non-target species like cod, the use of a vessel monitoring system and 100-percent monitoring would be required for all vessels. A research technician or at-sea monitor would accompany all trips that occur under these EFPs to measure and document fish caught and document fishing gear, bait, location, and fishing conditions to evaluate gear performance. The vessel captains would also document fishing practices used to avoid bycatch of non-target species. Undersized fish would be discarded as quickly as possible after sampling. All Northeast multispecies of legal size would be landed, and all catch would be attributed to the vessel's sector annual catch entitlement. The applicants will also document ex-vessel price for all sold catch for comparison with other harvest methods and markets. The participating vessels would not be exempt from any sector monitoring or reporting requirements.

If approved, the applicants may request minor modifications and extensions to the EFPs throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07597 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG152

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application submitted by the Cape Cod Commercial Fishermen's Alliance contains all of the required information and warrants further consideration. This exempted fishing permit would require participants to use electronic monitoring systems on 100 percent of sector trips for catch accounting in the groundfish fishery. Additionally, vessels would be authorized to access portions of groundfish closed areas. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before April 27, 2018.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''100 PERCENT EM EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''100 PERCENT EM EFP.''

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Management Specialist, 978–281–9255.

SUPPLEMENTARY INFORMATION: Groundfish sectors are required to implement and fund an at-sea monitoring (ASM) program. Sectors may use electronic monitoring (EM) to satisfy this monitoring requirement, provided that NMFS deems the technology sufficient for catch monitoring. NMFS has yet to approve EM as a suitable alternative to ASM. However, NMFS is working with industry and other stakeholders to test the operational feasibility of EM and resolve outstanding barriers to implementation. Project partners include the Cape Cod Commercial Fishermen's Alliance, The Nature Conservancy, the Maine Coast Fishermen's Association, the Gulf of Maine Research Institute, and fishermen from the Northeast Fishery Sectors V & XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, and the Maine Coast Community Sector.

In fishing year 2017, NMFS issued an exempted fishing permit (EFP) to these project partners to develop an audit-model EM program for the groundfish fishery. The EFP required vessels to use EM systems on 100 percent of groundfish sector trips to verify regulated groundfish discards. EM was used in lieu of human observers to meet their sector ASM requirements. Thirteen vessels using a variety of gear types (*e.g.* hook, benthic longline, sink gillnet, bottom trawl) participated in the

project. A total of 81 trips were completed in fishing year 2017.

The project partners have submitted a renewal request for fishing year 2018. The proposed participant list includes 14 vessels, 13 of which participated in this EFP in fishing year 2017. Together, these vessels are expected to take an estimated 400 trips. The project partners expect up to 10 additional vessels may join the project in fishing year 2018.

Vessels participating in this EFP would be required to use EM on 100 percent of groundfish trips. Camera systems would be used in lieu of human at-sea monitors, and in addition to Northeast Fishery Observer Program (NEFOP) observers. Vessels would adhere to a vessel-specific monitoring plan detailing at-sea catch handling protocols. Vessels would submit haul-level electronic vessel trip reports (eVTR) with count and weight estimates for all groundfish discards.

The discard estimates provided in the eVTR would be used for catch accounting, and all catch of allocated groundfish would be deducted from the appropriate sector's allocation. The EM service provider would review the video footage and produce an EM summary report identifying, counting, and generating weight estimates for all groundfish discards. The provider would submit this report to NMFS. NMFS would compare the eVTR and EM summary file to ensure the submissions match within an established tolerance. If the trips do not match, the eVTR would not be used for catch accounting for that trip. For trips that carry a NEFOP observer, the NEFOP data would be used for catch accounting. The EM service provider would review 100 percent of the video footage at the outset of the fishing year, but may reduce the review percentage mid-year as part of audit-model testing, if approved by NMFS.

Because participating vessels would be fully monitored, project partners requested access to closed areas to incentivize participation and create additional fishing opportunities for healthy stocks. Vessels would be allowed to use hook gear and sink gillnets in Closed Area II from May 1 through February 15, hook gear in Western Gulf of Maine Closure Area, and jig gear in Cashes Ledge Closure Area.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07596 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG150

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application submitted by the Gulf of Maine Research Institute contains all of the required information and warrants further consideration. The exempted fishing permit would allow the use of electronic monitoring to support testing a maximized retention model in the groundfish fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 27, 2018.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''GMRI MREM EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''GMRI MREM EFP.''

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Fishery Management Specialist, 978–281–9255.

SUPPLEMENTARY INFORMATION: Groundfish sectors are required to implement and fund an at-sea monitoring (ASM) program. A sector is allowed to use electronic monitoring (EM) to satisfy this monitoring requirement, provided that NMFS deems the technology sufficient for catch monitoring. NMFS has yet to approve EM as an alternative to ASM, but is working with industry and other stakeholders to develop EM for catch monitoring in the groundfish fishery. For the groundfish fishery, the program designs currently being considered are the ''audit model'' and the ''maximized retention model.'' The audit model would use EM to verify discards reported by a captain on a vessel trip report. Under the maximized retention electronic monitoring (MREM) model, vessels would be required to retain most fish species (*e.g.,* allocated groundfish stocks), and EM would be used to ensure compliance with discarding regulations.

GMRI submitted an exempted fishing permit (EFP) application to test a maximized retention electronic monitoring (MREM) model and an accompanying dockside monitoring (DSM) program to monitor high-volume bottom-trawl vessels in the groundfish fleet. Vessels would be outfitted with EM systems (cameras and gear sensors), and the cameras would be on for 100 percent of groundfish trips. The EFP would require participating vessels to retain and land all catch of allocated groundfish, including undersized fish that they would normally be required to discard. All other species would be handled per normal commercial fishing operations. An EM service provider would review 100 percent of the video footage to verify that the vessels did not discard allocated groundfish. NMFS Northeast Fisheries Science Center staff would conduct a secondary review of 100 percent of the video footage for all trips.

All catch would be assessed shoreside via an accompanying DSM program. The DSM program would have three primary objectives: (1) Biological sampling; (2) verification of dealer-reported landings, and; (3) fish hold inspections. Vessels would be authorized to sell catch, including undersized fish, to a limited number of dealers. The vessel and dealer would work with the Center to ensure that a Federal employee or contract staff is present to observe 100 percent of offloads for this project. The sampler would verify dealer landings and collect biosamples, including length-frequency data on a subset of fish in each market category. The Northeast Region Office of

Law Enforcement would randomly inspect fish holds on approximately 10 percent of EFP trips.

Because vessels would be fully monitored, GMRI also requested exemptions to incentivize participation in the project and increase fishing opportunities for healthy stocks. The EFP would allow vessels to use the codend configuration used in the Canadian haddock fishery (5.1-inch (13.0-cm) square mesh codend) and/or the codend configuration tested in the REDNET project (4.5-inch (11.4-cm) diamond mesh codend). This exemption is intended to improve size selectivity and increase catch of target species, while avoiding groundfish species of concern.

The applicant also requested access to portions of Closed Area II. Vessels would be allowed to fish in the non-essential fish habitat portions of Closed Areas I and II from May 1 through February 15. Vessels would not be allowed to fish in the area from February 16 through April 30 as fishing activity during this time may negatively affect Georges Bank cod and haddock spawning. The applicant states that, due to the distribution and movement of groundfish stocks, this exemption would improve vessels' ability to selectively target healthy groundfish stocks.

The EFP application also requested an exemption from sector third-party ASM requirements. We do not intend to grant this requested exemption. Participating vessels would still be required to discard non-allocated groundfish stocks (*e.g.* ocean pout, wolffish, windowpane flounder) and adhere to possession limits for certain groundfish stocks (*e.g.* halibut) and non-groundfish species ((*e.g.* monkfish, dogfish, skate). NMFS applies assumed discard rates to all trips to estimate catch for non-allocated groundfish and non-groundfish species. These discard rates are calculated from the data that at-sea monitors collect. Therefore, continued ASM coverage for participating vessels is necessary to collect catch and discard information on a subset of EFP trips to derive assumed discard rate values. These vessels would carry ASM coverage at the standard level required for sectors, which is 15 percent for the 2018 fishing year. Northeast Fishery Observer Program observers would not be deployed on these vessels because their fishing activity is not consistent with the Standardized Bycatch Reporting Methodology sampling design.

This EFP would cover fishing trips that occur in the 2018 and 2019 fishing years. NMFS would authorize a maximum of eight bottom-trawl vessels to participate. All catch of groundfish stocks allocated to sectors would be deducted from the appropriate sector's allocation for each groundfish stock. Because this is a maximized retention program, vessels would not be permitted to discard legal unmarketable fish for allocated groundfish stocks, regardless of whether the vessel holds a sector exemption to do so through its operations plan.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07583 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG151

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Acting Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an exempted fishing permit application submitted by The Nature Conservancy contains all of the required information and warrants further consideration. This exempted fishing permit would allow participants to use electronic monitoring systems in lieu of at-sea monitors in support of a study to develop electronic monitoring for catch monitoring in the groundfish fishery. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 27, 2018.

ADDRESSES: You may submit written comments by either of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line ''TNC EM EFP RENEWAL.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''TNC EM EFP RENEWAL.''

FOR FURTHER INFORMATION CONTACT: Claire Fitz-Gerald, Groundfish Fishery Management Specialist, 978–281–9255.

SUPPLEMENTARY INFORMATION: Groundfish sectors are required to implement and fund an at-sea monitoring (ASM) program. Sectors may use electronic monitoring (EM) to satisfy this monitoring requirement, provided NMFS deems the technology sufficient for catch monitoring. NMFS has yet to approve EM as a suitable alternative to ASM. However, we are working with industry and other stakeholders to test the operational feasibility of EM and resolve outstanding issues that are barriers to implementation.

In fishing year 2016, The Nature Conservancy, in partnership with the Cape Cod Commercial Fishermen's Alliance; the Maine Coast Fishermen's Association; and, the Gulf of Maine Research Institute; and fishermen from the Northeast Fishery Sectors V & XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, and the Maine Coast Community Sector; obtained an exempted fishing permit (EFP) for vessels to use EM systems in lieu of human observers to meet their ASM requirements. Fourteen vessels participated in the project, and 52 EFP trips were completed. In fishing year 2017, the project partners submitted a renewal request for this EFP as well as an additional EFP application for a 100-percent EM project. Both EFPs were issued; 13 vessels participated in the 100-percent EFP and 5 vessels participated in this EFP. Thirty-seven EFP trips were completed this year to date under this EFP.

The project partners have submitted a renewal request for this EFP for the 2018 fishing year. The proposed participant list includes five vessels, all of which participated in this EFP in fishing year 2017. Together, they are expected to take an estimated 225 trips in fishing year 2018. At 15-percent

observer coverage, this would equate to roughly 30–35 EFP trips.

Vessels participating in this EFP would use EM in lieu of human ASMs, and in addition to Northeast Fishery Observer Program (NEFOP) observers, on groundfish trips selected for observer coverage. Vessels would adhere to a vessel-specific Vessel Monitoring Plan (VMP) detailing at-sea catch handling protocols. An EM service provider would review 100 percent of the video footage. The provider would also produce an EM summary report identifying, counting, and generating weight estimates for all groundfish discards, which it would submit to the NMFS Greater Atlantic Fisheries Regional Office. These data would be used for catch accounting purposes on trips selected for ASM coverage. EM data would not be used for catch accounting in place of observer data on NEFOP trips, but the information generated would facilitate comparisons between cameras and human observers. The Northeast Fisheries Science Center would conduct a secondary review of the EM summary reports for a subset of EFP trips.

Under this EFP, vessels would be exempt from their sector's monitoring program requirement only, and all other standard sector reporting and monitoring requirements would still apply, such as using dealer-reported landings and vessel trip reports. Vessels would be assigned observer coverage at the standard ASM coverage level of 15 percent, which is a combination of NEFOP and ASM coverage. All catch of allocated groundfish stocks would be deducted from the appropriate sector's allocation. Legal-sized regulated groundfish would be retained and landed, as required by the Northeast Multispecies Fishery Management Plan. Undersized groundfish would be handled according to the VMP guidelines in view of cameras and returned to the sea as quickly as possible. All other species would be handled per normal commercial fishing operations. No legal-size regulated groundfish would be discarded, unless otherwise permitted through regulatory exemptions granted to the participating vessel's sector.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07595 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG059

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Demolition and Reuse of the Original East Span of the San Francisco-Oakland Bay Bridge

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (Caltrans) for authorization to take marine mammals during the dismantling and reuse of the original East Span of the San Francisco-Oakland Bay Bridge (SFOBB) in the San Francisco Bay (SFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 14, 2018.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Young@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/node/23111* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Sara Young, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On January 9, 2018, NMFS received a request from Caltrans for an IHA to take marine mammals incidental to the demolition and reuse of the original East Span of the SFOBB in San Francisco Bay. Caltrans' request is for take of seven species of marine mammals, by Level B harassment. Neither Caltrans nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued several IHAs to Caltrans for similar work, with the most recent IHA issued in 2017 (82 FR 35510). Caltrans complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Effects of the Specified Activity on Marine Mammals and their Habitat and Estimated Take section. This proposed IHA would cover one year of a larger project for which Caltrans obtained previous IHAs. The larger project involves dismantling of many piers of many remaining structures from the original east span of the bridge.

Description of Proposed Activity

Overview

Caltrans proposes to demolish and reuse portions of the original East Span of the SFOBB by mechanical dismantling and by use of controlled charges to implode two piers (Piers E19 and E20) into their open cellular chambers below the mudline. Activities associated with dismantling of the piers may potentially result in incidental take of marine mammals due to the use of highly controlled charges to dismantle the marine foundations of the piers. A public access point will incorporate existing piers (E21, E22, and E23) but requires use of pile driving to finalize the access structure. Pier E2 will also be retained for public access improvements, but does not require any in-water work.

Several previous one-year IHAs have been issued to Caltrans for pile driving/removal and construction of the new SFOBB East Span beginning in 2003. NMFS has issued 11 IHAs to Caltrans for the SFOBB Project. The first five IHAs (2003, 2005, 2007, 2009, and 2011) addressed potential impacts associated with pile driving for the construction of the new East Span of the SFOBB. IHAs issued in 2013, 2014 and July 2015 addressed activities associated with both constructing the new East Span and dismantling the original East Span, specifically addressing vibratory pile driving, vibratory pile extraction/removal, attenuated impact pile driving, pile proof testing, and mechanical dismantling of temporary and permanent marine foundations. On September 9, 2015, NMFS issued an IHA to Caltrans for incidental take associated with the demolition of Pier E3 of the original SFOBB by highly controlled explosives (80 FR 57584; September 24, 2015). On September 30, 2016, NMFS issued an IHA authorizing the incidental take of marine mammals associated with both pile driving/removal and controlled implosion of Piers E4 and E5 (81 FR 67313). On July 13, 2017, NMFS issued an IHA to Caltrans authorizing take of marine mammals for additional dismantling the original East Span of the SFOBB using mechanical means as well as 5to 6 implosion events to dismantle 13 piers (Piers E6–E18). This year of work will include removal of Piers E19 and E20.

Dates and Duration

Vibratory pile driving for construction of the Oakland Touchdown pedestrian bridge (OTD) and OTD access trestle may begin in June 2018. Impact pile-driving activities will be restricted from June 1 to November 30, to avoid peak salmonid migration periods. Pier implosion requiring IHA coverage is scheduled to begin in September 2018. Pier implosion will be restricted from September 1 to November 30, to minimize potential impacts on biological resources in the Bay.

Specific Geographic Region

The SFOBB project area is located in the central SFB or Bay, between Yerba Buena Island (YBI) and the city of Oakland. The western limit of the project area is the east portal of the YBI tunnel, located in the city of San Francisco. The eastern limit of the project area is located approximately 1,312 feet (400 meters) west of the Bay Bridge toll plaza, where the new and former spans of the bridge connect with land at the OTD in the city of Oakland. The approximate width of the in-water work area is 350 meters (1,148 feet). This includes all in-water areas under the original bridge and new bridge. All activities proposed under this IHA application will be confined to this area. However, other previous in-water project activities have taken place in discrete areas near both YBI and Treasure Island outside these limits.

Detailed Description of Specific Activity

Construction activities associated with both dismantling and reuse of marine foundations of the original east span bridge may result in the incidental take of marine mammals. These activities include the use of highly controlled charges to dismantle Piers E19 and E20, as well as pile-driving activities associated with construction of a public access facility that will incorporate reuse Piers E21, E22 and E23. Pier E2 will also be retained and incorporated into a public access facility. However, public access improvements at Pier E2 will not require any in-water work and would not result in incidental take of marine mammals; therefore, are not discussed further.

Removal of Piers 19 and 20

The removal of Piers E19 and E20 will be performed in three phases. The first phase will use mechanical dismantling to remove the above-water portions of

the piers, which is not expected to result in take. The second phase will use controlled blasting methods for removal of the in-water portions of the piers. The third phase will include dredging of imploded rubble to specified removal limits, which is also not expected to result in take. Limits of removal will be determined at each location and will result in removal to between 0.46 and 0.91 meter (1.5 and 3 feet) below the mudline.

Piers E19 and E20 are large cellular structures through the water column, which are supported on concrete slabs and hundreds of driven timber piles encased in a concrete seal. The timber piles and concrete seal courses that are below approved removal limits will remain in place. Rubble that mounds above the determined debris removal elevation limits from the dismantling of these piers will be removed off-site for disposal; as was done during the removal of Piers E6 to E18.

A Blast Attenuation System (BAS) similar to that used for previous blast events will be used during all future controlled blasting events, to minimize potential impacts on biological resources in the Bay. The effectiveness of this minimization measure is supported by the findings from the successful removal of Piers E3 to E18.

Each pier will be removed in the following three phases:

- Pre-blasting activities, including removing the pier cap and concrete pedestals, installing and testing the BAS;
- installing charges, activating the BAS, and imploding the pier; and
- dredging of imploded rubble to specified removal limits.

Further detail on the above steps to remove the marine foundations are provided. Phase 1: Dismantling the concrete pedestals and concrete pier cap by mechanical means (including the use of torches and excavators mounted with hoe rams, drills, and cutting tools), and drilling vertical boreholes where the charges will be loaded for controlled blasting. Phase 2: The charges then will be loaded into the drilled boreholes. Controlled blasting removal will be accomplished using hundreds of small charges, with delays between individual charges. The controlled blast sequence for each pier will last approximately 1 to 5 seconds. The controlled blast removals have been designed to remove each pier to between 0.46 and 0.91 meter (1.5 and 3 feet) below the mudline. Phase 3: Dredging of imploded rubble to specified removal limits.

Blast Attenuation System Testing, Installation, and Deployment

The BAS will be deployed around each pier being imploded and will be the same system as that successfully used for the removal of Piers E3 to E18. The BAS is a modular system of pipe manifold frames, placed around each pier and fed by air compressors to create a curtain of air bubbles. Each BAS frame is approximately 15.4 meters long by 1.8 meters wide (50.5 feet long by 6 feet wide). The BAS to be used will be the same design that was used at Piers E3 to E18 and will meet the same specifications. The BAS will be activated before and during implosion. As shown during the Pier E3 Demonstration Project and eight subsequent pier blast events by the SFOBB Project, the BAS will attenuate noise and pressure waves generated during each controlled blast, to minimize potentially adverse effects on biological resources that may be nearby.

Before installing the BAS, Caltrans will move any existing debris on the Bay floor that may interrupt or conflict with proper installation of the BAS. Each BAS frame will be lowered to the bottom of the Bay by a barge-mounted crane and will be positioned into place. Divers will assist frame placement and will the connect air hoses to the frames. Based on location around the pier, the BAS frame elements will be situated from approximately 8 to 12 meters (25 to 40 feet) from the outside edge of each pier. The frames will be situated to contiguously surround each pier. Frame ends will overlap to ensure no break in the BAS when operational. Each frame will be weighted to negative buoyancy for activation. Compressors will provide enough pressure to achieve a minimal air volume fraction of 3 to 4 percent, consistent with the successful use of BAS systems in past controlled blasting activities.

The complete BAS will be installed and tested during the weeks leading up to the controlled blast. The BAS test parameters will include checking operating levels, flow rate, and a visual check to determine that the system is operating correctly. System performance is anticipated to provide approximately 80 percent noise and pressure attenuation, based on the results from the previous SFOBB Project blast events using a similar system.

Test blasts may be conducted to ensure that the hydroacoustic monitoring equipment will be functional and triggered properly before the pier implosion event. The test blasts would be conducted within the completely installed and operating BAS. A key requirement of pier implosion will involve accurately capturing hydroacoustic information from the controlled blast. To accomplish this, a smaller test charge will be used to trigger recording instrumentation. Multiple test blasts on the same day may be required to verify proper instrument operation and calibrate the equipment for the implosion events. These same instruments and others of the same type will use high-speed recording devices to capture hydroacoustic data at both near-field and far-field monitoring locations during the implosion.

Test blasts will be scheduled to occur within two weeks of the scheduled implosion. Tests will use a charge weight of approximately 18 grains (0.0025 pound) or less and will be placed along one of the longer faces of the pier. The results from test blasts that occurred before the implosions of Pier E3 and E5 indicate that these test blasts will have minimal impacts on fish and no impacts on marine mammals (see Appendix A in application).

Piers E19 and E20 will be imploded during a single event. Before pier removal via controlled blasting, Caltrans will load the bore holes of the piers with controlled charges. Individual cartridge charges using electronic blasting caps have been selected to provide greater control and accuracy in determining the individual and total charge weights. Use of individual cartridges will allow a refined blast plan that efficiently breaks concrete while minimizing the amount of charges needed.

Boreholes will vary in diameter and depth, and have been designed to provide optimal efficiency in transferring the energy created by the controlled charges to dismantle the piers. Individual charge weights will vary from 7 to 11 kilograms (15 to 25 pounds), and the total charge weight for the Pier E19 and E20 blast event will be approximately 1,800 kilograms (4,000 pounds). The total number of individual charges to be used per pier will be approximately 100. Charges will be arranged in different levels (decks) and will be separated in the boreholes by stemming. Stemming is the insertion of inert materials (*e.g.,* sand or gravel) to insulate and retain charges in an enclosed space. Stemming allows more efficient transfer of energy into the structural concrete for fracture, and further reduces the release of potential energy into the surrounding water column. The entire detonation sequence, consisting of approximately 200 detonations, will last approximately 1 to 5 seconds for each pier; with a minimum delay time of 9 milliseconds

(msec) between detonations. There will be approximately half a second delay between pier blasts to avoid overlap of pressure waves.

Piers E19 and E20 will be blasted in a single pier implosion event. These piers will be removed by blasting down through the concrete cellular structure but not through the concrete slab, seal, and timber piles below. Remaining concrete seals and timber piles below the mudline will not be removed.

Reuse of Piers E21 to E23

Piers E19 and E20 will be imploded during a single event. Before pier removal via controlled blasting, Caltrans will load the bore holes of the pier with controlled charges. Individual cartridge charges using electronic blasting caps have been selected to provide greater control and accuracy in determining the individual and total charge weights. Use of individual cartridges will allow a refined blast plan that efficiently breaks concrete while minimizing the amount of charges needed.

Boreholes will vary in diameter and depth, and have been designed to provide optimal efficiency in transferring the energy created by the controlled charges to dismantle the piers. Individual charge weights will vary from 7 to 11 kilograms (15 to 25 pounds), and the total charge weight for the Pier E19 and E20 blast event will be approximately 1,800 kilograms (4,000 pounds). The total number of individual charges to be used per pier will be approximately 100. Charges will be arranged in different levels (decks) and will be separated in the boreholes by stemming. Stemming is the insertion of inert materials (*e.g.,* sand or gravel) to insulate and retain charges in an enclosed space. Stemming allows more efficient transfer of energy into the structural concrete for fracture, and further reduces the release of potential energy into the surrounding water column. The entire detonation sequence, consisting of approximately 200 detonations, will last approximately 1 to 5 seconds for each pier; with a minimum delay time of 9 msec between detonations. There will be approximately half a second delay between pier blasts to avoid overlap of pressure waves.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 1 lists all species with expected potential for occurrence in San Francisco Bay and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. 2016 SARs (Carretta *et al.,* 2017). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (Carretta *et al.,* 2017) (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 1—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE ACTION AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-; N	20,990 (0.05, 20,125, 2011)	624	132
Family Balaenopteridae (rorquals):						
Fin Whale	*Balaenoptera physalus*	California/Oregon/Washington	E; Y	9,029 (0.12, 8,127, 2014)	81	2
Humpback Whale	*Megaptera novaeangliae*	California/Oregon/Washington	E; Y	1,918 (.03, 1,876, 2014)	11	6.5
Minke Whale	*Balaenoptera acutorostrata*	California/Oregon/Washington	-; N	636 (0.72, 369, 2014)	3.5	1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	California/Oregon/Washington	E; Y	2,106 (0.58, 1,332, 2008)	2.7	1.7
Family Delphinidae:						
Common Bottlenose Dolphin.	*Tursiops truncatus*	California Coastal	-; N	453 (0.06, 346, 2011)	2.7	2
Short-Beaked Common Dolphin.	*Delphinus delphis*	California/Oregon	-; N	969,861 (0.17, 839,325, 2014)	8,393	40
Family Phocoenidae (porpoises):						
Harbor Porpoise	*Phocoena phocoena*	San Francisco-Russian River	-; N	9,886 (0.51, 6,625, 2011)	66	0

TABLE 1—MARINE MAMMAL SPECIES THAT MAY OCCUR IN THE ACTION AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-; N	296,750 (N/A, 153,337, 2011)	9,200	389
Northern Fur Seal	*Callorhinus ursinus*	California, Eastern North Pacific.	-; N	14,050 (N/A, 7,524, 2013)	451	1.8
Steller sea lion	*Eumetopias jubatus*	Eastern	T; D	41,638 (N/A, 41,638, 2015)	2,498	108
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	California	-; N	30,968 (N/A, 27,348, 2012)	1,641	43
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-; N	179,000 (N/A, 81,368, 2010)	542	3.2

[1] 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.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's 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.

Note: *Italicized species are not expected to be taken or proposed for authorization.*

All species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal or spatial occurrence of the species italicized in Table 1 is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. San Francisco Bay would be considered extralimital and have not been sighted during marine mammal monitoring conducted by Caltrans under past IHAs.

Harbor Seal

Harbor seals are found from Baja California to the eastern Aleutian Islands of Alaska. The species primarily hauls out on remote mainland and island beaches and reefs, and estuary areas. Harbor seal tends to forage locally within 53 miles (85 kilometers) of haul out sites (Harvey and Goley 2011). Harbor seal is the most common marine mammal species observed in the Bay and also commonly is seen near the SFOBB east span (Department 2013b, 2013c). Tagging studies have shown that most seals tagged in the Bay remain in the Bay (Harvey and Goley 2011; Manugian 2013). Foraging often occurs in the Bay, as noted by observations of seals exhibiting foraging behavior (short dives less than 5 minutes, moving back and forth in an area, and sometimes tearing up prey at the surface).

The molt occurs from May through June. During both pupping and molt seasons, the number of seals and the length of time hauled out per day increases, with about 60.5 percent of the population hauled out during this time versus less than 20 percent in fall (Yochem *et al.,* 1987; Huber *et al.,* 2001; Harvey and Goley 2011). Mother-pup pairs spend more time on shore; therefore, the percentage of seals on shore at haul out sites increases during the pupping season (Stewart and Yochem 1994). Peak numbers of harbor seals hauling out in central California occurs during late May to early June, which coincides with the peak of their molt. Seals haul out more often and spend more time on shore to molt. Yochem *et al.* (1987) found that harbor seals at San Miguel Island only hauled out 11 to 19 percent of the time in fall, from late October through early December.

Harbor seal tends to forage at night and haul out during the day. Harbor seal predominately hauls out from 10 a.m. to 7 p.m., with a peak in the afternoon between 1 and 4 p.m. (Yochem *et al.,* 1987; Stewart and Yochem 1994; Grigg *et al.,* 2002; London *et al.,* 2012). Harbor seals in the Bay typically haul out in groups ranging from a few individuals to several hundred seals. One known haul out site is on the southern side of YBI, approximately 1,600 meters (5,250 feet) from Pier E6 and approximately 2,800 meters (9,190 feet) from Pier E18. The YBI haul out site had a daily range of zero to 109 harbor seals hauled out during September, October, and November, with the highest numbers hauled out during afternoon low tides (Department 2004b). Pile driving for the SFOBB was not audible to the monitors just above the haul out site, and no response to pile driving was observed.

Tide level also can affect haul out behavior, by exposing and submerging preferred haul out sites. Tides likely affect the maximum number of seals hauled out, but time of day and the season have the greatest influence on haul out behavior (Stewart and Yochem 1994; Patterson and Acevedo-Gutiérrez 2008).

Harbor seals in the Bay are an isolated population, although about 40 percent may move a short distance out of the Bay to forage (Manugian *et al.* 2017). The Bay harbor seals likely are accustomed to a noisy environment because of construction, vessel traffic, the Bay Area Rapid Transit (BART) Transbay Tube, and mechanical noise (*i.e.,* machinery, generators).

During 251 days of SFOBB monitoring from 2000 through 2016, 958 harbor seals were observed in the vicinity of the SFOBB east span. Harbor seals made up 90 percent of the marine mammals observed during monitoring for the SFOBB Project. In 2015 and 2016, the number of harbor seals sighted in the project area increased (8 days of monitoring and 95 sightings). Foraging near the project area was common, particularly in the coves adjacent to the YBI United States Coast Guard Station and in Clipper Cove between YBI and Treasure Island. Foraging also occurred in a shallow trench area southeast of YBI (Department 2013a, 2013b). These sites are more than 900 to 1,525 meters (3,000 to 5,000 feet) west of Pier E6. In 2015, juvenile harbor seals began foraging around Piers E2W and E2E of the new SFOBB east span, and in 2016, they extended east around Piers E3 to E5 of the new SFOBB east span. Foraging can occur throughout the Bay, and prey abundance and distribution affect where harbor seals will forage. Most of the harbor seal sightings were

animals transiting the area, likely moving from haul out sites or from foraging areas.

California Sea Lion

California sea lion breeds on the offshore islands of California from May through July (Heath and Perrin 2008). During the non-breeding season, adult and sub-adult males and juveniles migrate northward along the coast, to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Lowry and Forney 2005; Heath and Perrin 2008). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008).

California sea lions have been observed occupying docks near Pier 39 in San Francisco, about 3.2 miles (5.2 kilometers) from the project area, since 1987. The highest number of sea lions recorded at Pier 39 was 1,701 individuals in November 2009 (De Rango, pers. comm., 2013). Occurrence of sea lions here typically is lowest in June (breeding season) and highest in August. Approximately 85 percent of the animals that haul out at this site are males, and no pupping has been observed here or at any other site in the Bay (Lander, pers. comm., 1999). Pier 39 is the only regularly used haul out site in the project vicinity, but sea lions occasionally haul out on human-made structures, such as bridge piers, jetties, or navigation buoys (Riedman 1990).

During monitoring for the SFOBB Project, 80 California sea lions were observed from 2000 through 2016. The number of sea lions that were sighted in the project area decreased in 2015 and 2016. Sea lions appear mainly to be transiting through the project area rather than feeding, although two exceptions have occurred. In 2004, several sea lions were observed following a school of Pacific herring that moved through the project area, and one sea lion was observed eating a large fish in 2015.

Breeding and pupping occur from mid to late May until late July. After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.,* 1992), and they remain away until spring (March–May), when they migrate back to the breeding colonies. Adult females remain near the rookeries throughout the year and alternate between foraging and nursing their pups on shore until the next pupping/breeding season.

Northern Elephant Seal

Northern elephant seal is common on California coastal mainland and island sites, where the species pups, breeds, rests, and molts. The largest rookeries are on San Nicolas and San Miguel islands in the northern Channel Islands. Near the Bay, elephant seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes National Seashore.

Northern elephant seals haul out to give birth and breed from December through March. Pups remain onshore or in adjacent shallow water through May. Both sexes make two foraging migrations each year: One after breeding and the second after molting (Stewart 1989; Stewart and DeLong 1995). Adult females migrate to the central North Pacific to forage, and males migrate to the Gulf of Alaska to forage (Robinson *et al.* 2012). Pup mortality is high when they make the first trip to sea in May, and this period correlates with the time of most strandings. Pups of the year return in the late summer and fall, to haul out at breeding rookery and small haul out sites, but occasionally they may make brief stops in the Bay.

Generally, only juvenile elephant seals enter the Bay and do not remain long. The most recent sighting near the project area was in 2012, on the beach at Clipper Cove on Treasure Island, when a healthy yearling elephant seal hauled out for approximately 1 day. Approximately 100 juvenile northern elephant seals strand in or near the Bay each year, including individual strandings at YBI and Treasure Island (less than 10 strandings per year).

Northern Fur Seal

Northern fur seal breeds on the offshore islands of California and in the Bering Sea from May through July. Two stocks of Northern fur seals may occur near the Bay, the California and Eastern Pacific stocks. The California stock breeds, pups, and forages off the California coast. The Eastern Pacific stock breeds and pups on islands in the Bering Sea, but females and juveniles move south to California waters to forage in the fall and winter months.

Both the California and Eastern Pacific stocks forage in the offshore waters of California, but only sick, emaciated, or injured fur seals enter the Bay. The Marine Mammal Center (TMMC) occasionally picks up stranded fur seals around YBI and Treasure Island. The rare occurrence of northern fur seal near the SFOBB east span makes it unlikely that the species will be exposed to implosion activities.

Bottlenose Dolphin

This species is found within 0.6 mile (1 kilometer) of shore and occurs from northern Baja California, Mexico to Bodega Bay, with the range extending north over the last several decades related to El Niño events and increased ocean temperatures. As the range of bottlenose dolphins extended north, dolphins began entering the Bay in 2010 (Szczepaniak 2013). Until 2016, most bottlenose dolphins in the Bay were observed in the western Bay, from the Golden Gate Bridge to Oyster Point and Redwood City, although one individual was observed frequently near the former Alameda Air Station (Perlman 2017). In 2017, two individuals have been observed regularly near Alameda (Keener, pers. comm., 2017) and likely passed by the project area.

Harbor Porpoise

This species seldom is found in waters warmer than 62.6 degrees Fahrenheit (17 degrees Celsius) (Read 1990) or south of Point Conception, and occurs as far north as the Bering Sea (Barlow and Hanan 1995; Carretta *et al.,* 2009; Carretta *et al.,* 2012; Allen and Angliss 2013). The San Francisco–Russian River stock is found from Pescadero, 18 miles (30 kilometers) south of the Bay, to 99 miles (160 kilometers) north of the Bay at Point Arena (Carretta *et al.,* 2012). In most areas, harbor porpoise occurs in small groups, consisting of just a few individuals.

Harbor porpoises are seen frequently outside the Bay, and they began to re-enter the Bay in 2008. Keener *et al.* (2012) reports sightings of harbor porpoises from just inside the Bay, northeast to Tiburon and south to the SFOBB west span. In 17 years of monitoring in the project area, 24 harbor porpoises have been observed, and all occurred between 2006 and 2015; including two in 2014, five in 2015 and 15 in 2017. In 2017, the number of harbor porpoises in the project area increased significantly. However, the majority of harbor porpoise observations made during monitoring for the SFOBB Project have been at distances ranging from 2,438 to 3,048 meters (8,000 to 10,000 feet) from the work area.

Gray Whale

The eastern North Pacific population of gray whales ranges from the southern tip of Baja California, Mexico to the Chukchi and Beaufort Seas (Jefferson *et al.,* 1993). The gray whale makes a well-defined, seasonal north-south migration. Most of the population summers in the shallow waters of the northern Bering Sea, the Chukchi Sea, and the western Beaufort Sea (Rice and Wolman 1971). However, some individuals also summer along the Pacific coast, from Vancouver Island to central California

(Rice and Wolman 1971; Darling 1984; Nerini 1984). In October and November, gray whales begin to migrate south and follow the shoreline to breeding grounds along the western coast of Baja California and the southeastern Gulf of California (Braham 1984). Gray whales begin heading north in late winter and early spring (Rice and Wolman 1971). The average gray whale migrates 4,660 to 6,213 miles (7,500 to 10,000 kilometers), at a rate of 91 miles/day (147 kilometers/day) (Jones and Swartz 2002). Gray whales generally calve and breed during the winter, in lagoons in Baja California (Jones and Swartz 2002), although some calves are born along the California coast during the migration south.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. seven marine mammal species (three cetacean and four pinniped (three otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, one is classified as low-frequency cetaceans (gray whale), one is classified as mid-frequency cetaceans (bottlenose dolphin), and one is classified as high-frequency cetaceans (harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

General Information on Potential Effects

Explosives are impulsive sounds, which are characterized by short duration, abrupt onset, and rapid decay. The proposed Caltrans SFOBB work using controlled charges (*i.e.,* implosion events) could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area. Based on the nature of the other activities associated with the dismantling of Piers E6 through E18 of the original SFOBB East Span (mechanical dismantling) and measured sound levels from those activities during past monitoring associated with previous IHAs, NMFS does not expect activities other than implosion events to contribute to underwater noise levels such that take of marine mammals would potentially occur.

Exposure to high intensity sound for a sufficient duration may result in behavioral reactions and auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.,* 2007).

When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 decibel (dB) or reduced by 30 dB). PTS is a permanent loss within a specific frequency range.

For cetaceans, published TTS data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and 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 occurs 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 time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking occurs when other noises, such as those from human sources, interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band, which the animals utilize. However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than 3 times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand 2009). For Caltrans' proposed SFOBB construction activities, noises from controlled blasting is not likely to contribute to the elevated ambient noise levels in the project area in such a way as to increasing potential for or severity of masking. Baseline ambient noise levels in the Bay are very high due to ongoing shipping, construction and other activities in the Bay, and the sound associated with the controlled blasting activities would be very brief.

Finally, exposure of marine mammals to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul outs or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). For impulse noises (such as the proposed controlled implosions associated with the dismantling of the original SFOBB spans), NMFS uses received levels of 165 dB SEL to predict the onset of behavioral harassment for mid-frequency cetaceans and phocid pinnipeds (bottlenose dolphins and harbor seals and northern elephant seals, respectively); 135 dB SEL for high-frequency cetaceans (harbor porpoises); and 183 dB SEL for otariid pinnipeds (California sea lions and northern fur seals).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects From Controlled Pier Implosion

It is expected that an intense impulse from the proposed controlled blasting of Piers E19 and E20 would have the potential to impact marine mammals in the vicinity of the activity. The majority of impacts would be startle behavioral responses and temporary behavioral modification of marine mammals. However, a few individual animals could be exposed to sound levels that would cause TTS.

The underwater explosion would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects (such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN 2001). Generally, the higher the

level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg 2000). Gas-containing organs, particularly the lungs and gastrointestinal (GI) tract, are especially susceptible (Goertner 1982; Hill 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe GI tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten 1995). Sound-related trauma can be lethal or sublethal. 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).

The above discussion concerning underwater explosions only pertains to open water detonations in a free field. Caltrans' demolition of Piers E19 and E20 using controlled implosion uses a confined detonation method, meaning that the charges would be placed within the structure. Therefore, most energy from the explosive shock wave would be absorbed through the destruction of the structure itself, and would not propagate through the open water. Measurements and modeling from confined underwater detonation for structure removal showed that energy from shock waves and noise impulses were greatly reduced in the water column compared to expected levels from open water detonations (Hempen *et al.,* 2007; Department 2016). Therefore, with monitoring and mitigation measures discussed below, Caltrans' controlled implosions of Piers E19 and E20 are not likely to have injury or mortality effects on marine mammals in the project vicinity. Instead, NMFS considers that Caltrans' proposed controlled implosions in the San Francisco Bay are most likely to cause behavioral harassment and may cause TTS in a few individual of marine mammals, as discussed below.

Changes in marine mammal behavior are expected to result from acute stress, or startle, responses. This expectation is based on the idea that some sort of physiological trigger must exist to change any behavior that is already being performed, and this may occur due to being startled by the implosion events. The exception to this expectation is the case of behavioral changes due to auditory masking (increasing call rates or volumes to counteract increased ambient noise). Masking is not likely since the Caltrans' controlled implosion would only consist of five to six short, sequential detonations that last for approximately 3–4 seconds each.

The removal of the SFOBB East Span is not likely to negatively affect the habitat of marine mammal populations because no permanent loss of habitat will occur, and only a minor, temporary modification of habitat will occur due to the addition of sound and activity associated with the dismantling activities.

Project activities will not affect any pinniped haul out sites or pupping sites. The YBI harbor seal haul out site is on the opposite site of the island from the SFOBB Project area. Because of the distance and the island blocking the sound, underwater noise and pressure levels from the SFOBB Project will not reach the haul out site. Other haul out sites for sea lions and harbor seals are at a sufficient distance from the SFOBB Project area that they will not be affected. The closest recognized harbor seal pupping site is at Castro Rocks, approximately 8.7 miles (14 kilometers) from the SFOBB Project area. No sea lion rookeries are found in the Bay.

The addition of underwater sound from SFOBB Project activities to background noise levels can constitute a potential cumulative impact on marine mammals. However, these potential cumulative noise impacts will be short in duration and would not occur in biologically important areas, would not significantly affect biologically important activities, and are not expected to have significant environmental effects, as noted in the original FHWA 2001 FEIS for the SFOBB project, incorporated by reference into NMFS' 2003 EA and subsequent Supplemental EAs (2009 and 2015) for the issuance of IHAs for the SFOBB project.

Marine mammal forage on fish within SFB and pier implosions have the potential to injure or kill fish in the immediate area. During previous pier implosion and pile driving activities, Caltrans reported mortality to prey species of marine mammals, including northern anchovies and Pacific herring (Department 2016), averaging approximately 200 fish per implosion event (none of which were ESA-listed species and none of which are managed under a Fishery Management Plan). These few isolated fish mortality events are not anticipated to have a substantial effect on prey species populations or their availability as a food resource for marine mammals.

Studies on explosives also suggest that larger fish are generally less susceptible to death or injury than small fish, and results of most studies are dependent upon specific biological, environmental, explosive, and data recording factors. For example, elongated forms that are round in cross section are less at risk than deep-bodied forms; orientation of fish relative to the shock wave may also affect the extent of injury; and finally, open water pelagic fish, such as those expected to be in the project area, seem to be less affected than reef fishes.

The huge variation in fish populations, including numbers, species, sizes, and orientation and range from the detonation point, makes it very difficult to accurately predict mortalities at any specific site of detonation. Most fish species experience a large number of natural mortalities, especially during early life-stages, and any small level of mortality caused by the Caltrans' controlled implosion events will likely be insignificant to the population as a whole. This negligible effect on population levels of forage fish should ensure continued prey availability for marine mammal species in the area.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and TTS, for individual marine mammals resulting from exposure to pile driving and controlled blasting. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures such as the use of a blast attenuation system and shutdown zones, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage from exposure to pressure waves from explosive detonation.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Caltrans's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Caltrans' proposed activity includes the use of impulsive (impact driving) AND non-impulsive (vibratory driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

Explosive sources—Based on the best available science, NMFS uses the acoustic and pressure thresholds indicated in Table 2 to predict the onset of behavioral harassment, PTS, tissue damage, and mortality.

Based on the best available scientific data, NMFS' 2016 Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing includes acoustic thresholds related to PTS and TTS for impulsive sounds that are expressed as weighted, cumulative sound exposure levels (SELcum) and unweighted peak sound pressure levels (SPLPK), as presented in Table 3.

TABLE 2—NMFS TAKE THRESHOLDS FOR MARINE MAMMALS FROM UNDERWATER IMPLOSIONS

Group	Species	Level B harassment		Level A harassment	Serious injury		Mortality
		Behavioral	TTS	PTS	Gastro-intestinal tract	Lung	
Mid-freq cetacean	Bottlenose dolphin	165 dB SEL	170 dB SEL or 224 dB SPL_{pk}.	185 dB SEL or 230 dB SPL_{pk}.	237 dB SPL	$39.1M^{1/3}$ (1 + [D/10.081])$^{1/2}$ Pa-sec. where: M = mass of the animals in kg. D = depth of animal in m.	$91.4M^{1/3}$ (1 + [D/10.081])$^{1/2}$ Pa-sec where: M = mass of the animals in kg D = depth of animal in m.
High-freq cetacean ...	Harbor porpoise	135 dB SEL	140 dB SEL or 196 dB SPL_{pk}.	155 dB SEL or 202 dB SPL_{pk}.			
Phocidae	Harbor seal & northern elephant seal.	165 dB SEL	170 dB SEL or 212 dB SPL_{pk}.	185 dB SEL or 218 dB SPL_{pk}.			
Otariidae	California sea lion & northern fur seal.	183 dB SEL	188 dB SEL or 226 dB_{pk}.	203 dB SEL or 232 dB SPL_{pk}.			

* **Note:** All dB values are referenced to 1 μPa. SPL_{pk} = Peak sound pressure level; psi = pounds per square inch.

Table 3. Thresholds identifying the onset of Permanent Threshold Shift

	PTS Onset Acoustic Thresholds* (Received Level)	
Hearing Group	**Impulsive**	**Non-impulsive**
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 6* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 8* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Table 4. Explosive acoustic and pressure thresholds for marine mammals

Hearing Group	PTS Impulsive Thresholds	TTS Impulsive Thresholds	Behavioral Threshold (multiple detonations)
Low-Frequency (LF) Cetaceans	*Cell 1* $L_{pk,flat}$: 219 dB $L_{E,LF,24h}$: 183 dB	*Cell 2* $L_{pk,flat}$: 213 dB $L_{E,LF,24h}$: 168 dB	*Cell 3* $L_{E,LF,24h}$: 163 dB
Mid-Frequency (MF) Cetaceans	*Cell 4* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB	*Cell 5* $L_{pk,flat}$: 224 dB $L_{E,MF,24h}$: 170 dB	*Cell 6* $L_{E,MF,24h}$: 165 dB
High-Frequency (HF) Cetaceans	*Cell 7* $L_{pk,flat}$: 202 dB $L_{E,HF,24h}$: 155 dB	*Cell 8* $L_{pk,flat}$: 196 dB $L_{E,HF,24h}$: 140 dB	*Cell 9* $L_{E,HF,24h}$: 135 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 10* $L_{pk,flat}$: 218 dB $L_{E,PW,24h}$: 185 dB	*Cell 11* $L_{pk,flat}$: 212 dB $L_{E,PW,24h}$: 170 dB	*Cell 12* $L_{E,PW,24h}$: 165 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 13* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 14* $L_{pk,flat}$: 226 dB $L_{E,OW,24h}$: 188 dB	*Cell 15* $L_{E,OW,24h}$: 183 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (i.e., varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

For pile removal activities, hydroacoustic monitoring was performed during the implosions of Piers E3 through E18. Results for this monitoring were used to determine distances to marine mammal threshold criteria for underwater blasting. The criterion for lung injury and mortality to marine mammals is dependent on the mass of the animal and the depth of the animal in the water column; animals smaller in mass are more susceptible to injury from impulse pressures. The criterion is an impulse metric, expressed in pascal-second or psi-msec (Table 5). The estimated mass of a juvenile fur seal (15 kilograms (33 pounds)), was used in the lung injury and mortality calculations, because this will be the smallest animal potentially to be exposed to the implosions. The depth at which the animal is exposed also affects the criterion threshold calculation. The water depth around Piers E19 and E20 is very shallow, at 3 to 4 meters (10 to 12 feet). Although implosions will take place in shallow areas, marine mammals are more likely to be present in slightly deeper waters. Therefore, an average depth for the project area of 6 meters (20 feet) was used in the threshold calculation.

Caltrans proposes to use hydroacoustic monitoring results from the implosions of Piers E3 through E18 to estimate distances to marine mammal thresholds for the implosion of Piers E19 and E20 (Department 2015a, 2016). Measured distances from the implosion of Piers E17 to E18 (two-pier implosion event) were used to estimate distances to threshold criteria for the implosion of Piers E19 and E20. The measured distances to threshold criteria from the previous Pier E17 and E18 implosion event are shown in Tables 5 and 6. Depictions of the isopleths for all functional hearing groups is found in Figures 9–13 in the application.

TABLE 5—MEASURED DISTANCES TO UNDERWATER BLASTING THRESHOLD CRITERIA FOR LEVEL B BEHAVIORAL AND TTS AND LEVEL A PTS FROM THE PREVIOUS IMPLOSION OF PIERS E17 AND E18 IN A SINGLE EVENT AND ESTIMATED DISTANCES TO THESE THRESHOLD CRITERIA FOR THE PROPOSED IMPLOSION OF PIERS E19 AND E20 IN A SINGLE EVENT

Species hearing group		Behavioral	TTS [1]		PTS [1]	
	Threshold	165 dB SELcum	224 dB Peak	170 dB SELcum	230 dB Peak	185 dB SELcum
Mid-Frequency Cetaceans (Dolphins).	**Piers E17–E18 Measured**	511 feet	40.84 meters	**109.42 meters**	27.13 meters	**37.8 meters.**
	Piers E19–E20 Estimate	200 meters	50 meters	**120 meters**	30 meters	**40 meters.**
	Threshold	135 dB SELcum	196 dB Peak	140 dB SELcum	202 dB Peak	155 dB SELcum
High-Frequency Cetaceans (Porpoises).	**Piers E17–E18 Measured**	1142.1 meters	279.2 meters	**802.54 meters**	185.01 meters.	**278.28 meters.**
	Piers E19–E20 Estimate	1,220 meters	290 meters	**830 meters**	200 meters	**290 meters.**
	Threshold	165 dB SELcum	212 dB Peak	170 dB SELcum	218 dB Peak	185 dB SELcum
Phocid Pinnipeds (Seals)	**Piers E17–E18 Measured**	278.59 meters	92.96 meters	**195.38 meters**	61.57 meters	**67.36 meters.**
	Piers E19–E20 Estimate	290 meters	100 meters	**200 meters**	70 meters	**70 meters.**
	Threshold	183 dB SELcum	226 dB Peak	188 dB SELcum	232 dB Peak	203 dB SELcum.
Otariid Pinnipeds (Sea Lions).	**Piers E17–E18 Measured**	75.9 meters	35.66 meters	**53.04 meters**	**23.47 meters**	18.29 meters.
	Piers E19–E20 Estimate	80 meters	40 meters	**60 meters**	**30 meters**	20 meters.

Notes:
[1] For the TTS and PTS criteria thresholds with dual criteria, the largest criteria distances (*i.e.,* more conservative) are shown in bold.
Threshold Source: NMFS 2016.
Isopleth Distance Sources: Estimated distances to threshold criteria for the implosion of two small piers were determined based on measured distance to threshold criteria from the implosion of Piers E17 and E18.

TABLE 6—ESTIMATED DISTANCES TO UNDERWATER BLASTING THRESHOLD CRITERIA FOR LEVEL A GI TRACT AND LUNG INJURY AND MORTALITY FOR IMPLOSION OF PIER E3, TWO SMALL PIERS AND FOUR SMALL PIERS

Species		GI tract		Lung [1]	Mortality [1]
	Threshold	237 dB Peak	104 psi	39.1 (15 kg)$^{1/3}$ (1 + [6/10.081])$^{1/2}$ = 122 Pa-sec	91.4 (15 kg)$^{1/3}$ (1 + [6/10.081])$^{1/2}$ = 285 Pa-sec
All Species	Piers E17–E18 Measured.	55 feet	55 feet	<40 feet	<40 feet.
	Pier Implosion Estimate.	27 meters (89 feet)	27 meters (89 feet)	<12 meters (<40 feet)	<12 meters (<40 feet).

Notes:
Lung injury and mortality threshold calculations are for a 15-kilogram (33-pound) juvenile fur seal, the smallest marine mammal with the potential to be present in the project area.
Threshold Source: Finneran and Jenkins 2012.
Isopleth Distance Sources: Estimated distances to threshold criteria for the implosion of piers were determined based on measured distance to threshold criteria from the implosions of Pier E4, Piers E17 to E18, Piers E11 to E13 and Piers E14 to E16.

For pile driving, the distance to the marine mammal threshold criteria for vibratory and impact driving were calculated based on hydroacoustic measurements collected during previous pile-driving activities for the SFOBB Project and other projects, involving similar activities under similar conditions. Measured sound pressure levels from other projects came from Caltrans' Compendium of Pile Driving Sound Data (Department 2007), which provides information on sound pressures resulting from pile driving measured throughout Northern California. Distances to marine mammal threshold criteria were calculated for all pile types and installation methods listed above. These distances were calculated using the NMFS-provided companion User Spreadsheet.

TABLE 7—NMFS USER SPREADSHEET INPUT VALUES FOR PILE DRIVING

Vibratory driving of steel piles	H-Pile (vibratory)	24 inch steel (vibratory)	36 inch steel (vibratory)
Spreadsheet Tab Used	(A) Non-Impulsive, Cont	(A) Non-Impulsive, Cont	(A) Non-Impulsive, Cont.
Source Level (RMS SPL)	150	165	170.

TABLE 7—NMFS USER SPREADSHEET INPUT VALUES FOR PILE DRIVING—Continued

Vibratory driving of steel piles	H-Pile (vibratory)	24 inch steel (vibratory)	36 inch steel (vibratory)
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5.
a) Activity Duration (h) within 24-h period	0.5	1	1.333333.
Propagation (xLogR)	15	15	15.
Distance of source level (meters)*	10	10	10.
Other factors.			
Impact driving of steel piles	**H-Pile (impact)**	**24 inch steel (impact)**	**36 inch steel (impact)**
Spreadsheet Tab Used	(E.1) Impact pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving.
Source Level (Single Strike/shot SEL)	160	167*	170.*
Weighting Factor Adjustment (kHz)	2	2	2.
a) Number of strikes in 1 h	200	450	600.
a) Activity Duration (h) within 24-h period	6	4	4.
Propagation (xLogR)	15	15	15.
Distance of source level (meters)*	10	10	10.
Other factors		Using Bubble Curtain*	Using Bubble Curtain.*
Pile proofing (impact)	**H-Pile (impact)**	**24 inch steel (impact)**	**36 inch steel (impact)**
Spreadsheet Tab Used	(E.1) Impact pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving.
Source Level (Single Strike/shot SEL)	160	177	180.
Weighting Factor Adjustment (kHz)	2	2	2.
a) Number of strikes in 1 h	20	20	20.
a) Activity Duration (h) within 24-h period	2	2	2.
Propagation (xLogR)	15	15	15.
Distance of source level (meters)*	10	10	10.
Other factors.			
Impact driving of concrete piles	**24 inch concrete (impact)**		**36 inch concrete (impact)**
Spreadsheet Tab Used	(E.1) Impact pile driving		(E.1) Impact pile driving.
Source Level (Single Strike/shot SEL)	160		160.*
Weighting Factor Adjustment (kHz)	2		2.
a) Number of strikes in 1 h	1200		1400.
a) Activity Duration (h) within 24-h period	5		5.
Propagation (xLogR)	15		15.
Distance of source level (meters)*	10		10.
Other factors			Using Bubble Curtain.*

* Attenuated value—Bubble curtain is assumed to provide 10dB of attenuation.

For calculation of SELcum threshold distances, the following assumptions were made:

- Only one type/size of pile will be installed on the same day;
- Only one pile installation method, impact or vibratory, will be performed on the same day;
- A maximum of four steel pipe piles will be installed (impact driving or vibratory) on the same day;
- A maximum of six H-piles will be installed (impact or vibratory) on the same day; and
- A maximum of two pile will be proof-tested with an impact hammer on the same day; administering a maximum of 20 strikes per pile.

The distances to the marine mammal threshold criteria for these pile driving and pile removal activities are shown in Table 8.

TABLE 8—DISTANCES TO LEVELS A AND B HARASSMENT THRESHOLD CRITERIA FOR IMPACT AND VIBRATORY PILE DRIVING AND PILE REMOVAL

Parameters				Level B ZOI radii (meters)		Level A ZOI radii (meters)				
Pile size and type	Drive method	Piles per day	Attenuation system	160 dB RMS	120 dB RMS	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
H-Pile	Vibratory	6	None	NA	1,000	1	1	2	1	1
24 inch steel	Vibratory	4	None	NA	Calculated Practical 2,000	13	1	19	8	1
36 inch steel	Vibratory	4	None	NA	Calculated Practical 2,000	33	3	49	20	1
H-Pile	Impact	6	None	100	NA	33	1	39	18	1
24 inch steel	Impact	4	Bubble Curtain	215	NA	127	5	151	68	5
36 inch steel	Impact	4	Bubble Curtain	541	NA	243	9	290	130	9
24 inch concrete	Impact	5	None	46	NA	97	3	115	52	4
36 inch concrete	Impact	5	Bubble Curtain	117	NA	107	4	127	57	4
H-Pile	Proof Testing	2	None	100	NA	3	0	4	2	0
24 inch steel	Proof Testing	2	None	1,000	NA	46	2	55	25	2

TABLE 8—DISTANCES TO LEVELS A AND B HARASSMENT THRESHOLD CRITERIA FOR IMPACT AND VIBRATORY PILE DRIVING AND PILE REMOVAL—Continued

Parameters				Level B ZOI radii (meters)		Level A ZOI radii (meters)				
Pile size and type	Drive method	Piles per day	Attenuation system	160 dB RMS	120 dB RMS	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
36 inch steel	Proof Testing	2	None	2,512	NA	74	3	88	39	3

Sources: Sound levels from the Department's Compendium of Pile Driving Sound Data (Department 2007). Distances were calculated using the NMFS-provided companion User Spreadsheet, available at *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*.

The distance to the 120 dB rms Level B Zone of Influence (ZOI) threshold for vibratory pile driving was calculated to be 10,000 meters for 24-inch (0.61-meter) diameter steel pipe piles and 21,544 meters for 36-inch (0.91-meter) diameter steel pipe piles. Previous monitoring for the SFOBB Project has shown background sound levels in the active portions of the Bay, near the project area, to range from 110 to 140 dB rms, with typical background levels in the range of 110 to 120 dB rms (Department 2015). During previous hydroacoustic monitoring for the SFOBB Project, it has not been possible to detect or distinguish sound from vibratory pile driving beyond 1,000 to 2,000 meters (3,280 to 6,562 feet) from the source (Rodkin 2009). Under all previous IHAs for the SFOBB Project, which included vibratory pile driving, the ZOI for this activity has been set at 2,000 meters (6,562 feet) or less (NOAA 2016). Furthermore, it unlikely that marine mammals in the Bay will detect or show response to this sound at distances greater than 2,000 meters (6,562 feet), because of the background sound levels in the Central Bay. Therefore, the practical, applied ZOI for the vibratory driving of 24-inch (0.61-meter) and 36-inch (0.91-meter) diameter steel pipe piles has been set at 2,000 meters (6,562 feet), as shown in Table 7.

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below in Table 8.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

No systematic line transect surveys of marine mammals have been performed in the Bay. Therefore, the in-water densities of harbor seals, California sea lions, and harbor porpoises were calculated based on 17 years of observations during monitoring for the SFOBB construction and demolition. Care was taken to eliminate multiple observations of the same animal, although this can be difficult and is likely that the same individual may have been counted multiple times on the same day. The amount of monitoring performed per year varied, depending on the frequency and duration of construction activities with the potential to affect marine mammals. During the 257 days of monitoring from 2000 through 2017 (including 15 days of baseline monitoring in 2003), 1,029 harbor seals, 83 California sea lions, and 24 harbor porpoises were observed in waters in the project vicinity in total. In 2015, 2016, and 2017, the number of harbor seals in the project area increased significantly. In 2017, the number of harbor porpoise in the project area also increased significantly. Therefore, a harbor seal density estimate was calculated for 2015–2017, and a harbor porpoise density estimate was calculated for 2017, which may better reflect the current use of the project area by these animals. These observations included data from baseline, pre-, during, and post-pile driving, mechanical dismantling, on-shore blasting, and off-shore implosion activities.

Insufficient sighting data exist to estimate the density of bottlenose dolphins. However, a single bottlenose dolphin has been observed regularly, south of the SFOBB east span since fall 2016. During monitoring performed in 2017 for the SFOBB, two bottlenose dolphins were observed south of the SFOBB.

Insufficient sighting data exist to estimate elephant seal densities in the Bay. Generally, only juvenile elephant seals enter the Bay and do not remain long. The most recent sighting near the project area was in 2012, on the beach at Clipper Cove on Treasure Island, when a healthy yearling elephant seal hauled out for approximately 1 day. Approximately 100 juvenile northern elephant seals strand in or near the Bay each year, including individual strandings at YBI and Treasure Island (less than 10 strandings per year).

Insufficient sighting data exist to estimate northern fur seal densities in the Bay. Only two to four northern fur seals strand in the Bay each year, and they are unlikely to occur in the project area.

The size of the areas monitored for marine mammals has increased over the 17 years of observations. The majority of pinniped monitoring has been focused within a 610-meter (2,000-foot) radius of the work area. Although some pinniped observations have been recorded at greater distances, in part because of recent monitoring of larger areas for harbor porpoise zones during pier implosion, a 2-square-kilometer area, corresponding with a 610-meter (2,000-foot) radial distance, was used for density calculations. Harbor porpoise sightings in the Bay have increased in recent years; however, the majority of harbor porpoise observations made during monitoring for the SFOBB Project have been at distances ranging from 2,438 to 3,048 meters (8,000 to 10,000 feet) from the work area. Therefore, harbor porpoise densities were calculated based on a 15-square-kilometer area, corresponding with a 2,438-meter (8,000-foot) radial distance, with land areas subtracted from the

area. Numbers used for density calculations are shown in Table 9. In the cases where densities were refined to capture a narrower range of years to be conservative, bold densities were used for take calculations.

TABLE 9—ESTIMATED IN-WATER DENSITY OF MARINE MAMMAL SPECIES IN SFOBB AREA

Species observed	Area of monitoring zone (square kilometer)	Days of monitoring	Number of animals observed	Density animals/square kilometer
Harbor seals, 2000–2017	2	257	1029	2.002.
Harbor Seals, 2015–2017	2	47	372	**3.957.**
California Sea Lions, 2000–2017	2	257	83	**0.161.**
Bottlenose Dolphins 2017	2	6	2	Insufficient sighting data exists to estimate density.
Harbor Porpoise, 2000–2017	3	257	24	0.031.
Harbor Porpoise, 2017	15	6	15	**0.167.**
Elephant Seal, 2000–2017	2	257	0	Insufficient sighting data exists to estimate density.
Northern Fur Seal, 2000–2017	2	257	0	Insufficient sighting data exists to estimate density.
Gray Whale, 2000–2017	2	257	0	Insufficient sighting data exists to estimate density.

Notes:
Densities for Pacific harbor seals, California sea lions, and harbor porpoises are based on monitoring for the east span of the SFOBB from 2000 to 2017.
A second set of Pacific harbor seal densities were calculated from the increase in sightings recorded from 2015 to 2017.
A second set of harbor porpoise densities were calculated for the increase in sightings that were recorded in 2017.
Bold densities were used for take calculations.
Sources: Department 2001, 2004b, 2013b, 2013c, 2014, 2015b, 2016, 2017; Perlman 2017.

For species without enough sightings to construct a density estimate, Caltrans uses information based on group size and frequency of sightings from previous years of work to inform the number of animals estimated to be taken, which is detailed in the Take Estimation section below.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Take From Pier Implosion

The numbers of harbor seals, sea lions and harbor porpoise that may be taken by implosion of Piers E19 and E20 were calculated based on distances to the marine mammal threshold criteria, duration of the activity, and the estimated density of these species in the ZOI.

The numbers of elephant seals, northern fur seals and bottlenose dolphin that may be taken by implosion of Piers E19 and E20 were determined based on distances to the marine mammal threshold criteria, duration of the activity, and sightings and occurrence of these species in the Bay, specifically near the project area. Distances to marine mammal threshold criteria were calculated based on the highest sound pressure levels generated during the previous pier implosion of Piers E17 and E18 (two-pier implosion event) . Gray whales were not considered for pier implosion activities as those activities will occur in late fall and early winter, when gray whales are not found in the Bay area.

The number of exposures of each species was calculated over the entire area of each Level A, Level B, and mortality threshold criteria zone for the proposed pier implosion event (Tables 10 through 12).

TABLE 10—LEVEL A PTS TAKE CALCULATIONS FOR IMPLOSION OF PIERS E19 AND E20

Species	Species density (animals/ square kilometer)	Species density (animals/ square meters)	Level A ZOI radii (meters)	Level A PTS ZOI area (square meters)	Level A PTS take	Number of implosion events	Level B take calculated
Harbor Seal	3.957	3.96E–06	70	29462.347	0.1166	1	0.1166
Sea Lion	0.161	1.61E–07	30	9118.458	0.0015	1	0.0015
Harbor Porpoise	0.167	1.67E–07	290	315798.484	0.0527	1	0.0527
Bottlenose Dolphin	NA	NA	40	5026.548	NA	1	NA
Elephant Seal	NA	NA	70	15393.804	NA	1	NA
Fur Seal	NA	NA	30	2827.43	NA	1	NA

TABLE 11—LEVEL B TTS TAKE CALCULATIONS FOR IMPLOSION OF PIERS E19 AND E20

Species	Species density (animals/ square kilometer)	Species density (animals/ square meters)	Level B ZOI radii (meters)	Level B TTS ZOI area (square meters)	Level B TTS take	Number of pier implosion events	Level B take calculated
Harbor Seal	3.957	3.96E–06	200	164964.771	0.6528	1	0.6528
Sea Lion	0.161	1.61E–07	60	23434.268	0.0038	1	0.0038
Harbor Porpoise	0.167	1.67E–07	830	2085701.996	0.3483	1	0.3483
Bottlenose Dolphin	NA	NA	120	45238.934	NA	1	NA
Elephant Seal	NA	NA	200	125663.706	NA	1	NA
Fur Seal	NA	NA	60	11309.73	NA	1	NA

TABLE 12—LEVEL B BEHAVIORAL TAKE CALCULATIONS FOR IMPLOSION OF PIERS E19 AND E20

Species	Species density (animals/ square kilometer)	Species density (animals/ square meters)	Level B ZOI radii (meters)	Level B behavioral ZOI area (square meters)	Level B behavioral take	Number of pier implosion events	Level B take calculated
Harbor Seal	3.957	3.96E–06	290	315798.486	1.2496	1	1.2496
Sea Lion	0.161	1.61E–07	80	36118.343	0.0058	1	0.0058
Harbor Porpoise	0.167	1.67E–07	1,220	4256937.444	0.7109	1	0.7109
Bottlenose Dolphin	NA	NA	200	125663.706	NA	1	NA
Elephant Seal	NA	NA	290	264207.942	NA	1	NA
Fur Seal	NA	NA	80	20106.19	NA	1	NA

TABLE 13—COMBINED ESTIMATED EXPOSURES OF MARINE MAMMALS TO THE PIER IMPLOSIONS FOR LEVELS A AND B, AND MORTALITY THRESHOLD CRITERIA

Species	Level B exposures for all implosions		Level A exposures [1]			Mortality [1]
	Behavioral response	Temporary threshold shift	Permanent threshold shift	Gastro-intestinal tract injury	Slight lung injury	
Pacific Harbor Seal	1	1	0	0	0	0
California Sea Lion	0	0	0	0	0	0
Northern Elephant Seal	0	0	0	0	0	0
Northern Fur Seal	0	0	0	0	0	0
Bottlenose Dolphin	0	0	0	0	0	0
Harbor Porpoise	1	0	0	0	0	0
Total	2	1	0	0	0	0

Note:
[1] No implosion will occur if any marine mammal is within the Level A or mortality threshold criteria zones.

Based on the distances to the marine mammal threshold criteria and estimated species density, it is not expected that GI tract, lung injury, or mortality could occur from the pier implosion event. Approximately two harbor seals (one by behavioral response and one by TTS) and one harbor porpoise (by behavioral response) may be taken by Level B harassment during the implosion Piers E19 and E20 (Table 12). No take of any other species is anticipated.

The estimated number of marine mammals to be exposed to implosion SPLs for each threshold criteria (Table 13) are based on current density estimates or occurrence of marine mammals in the project area (Table 9 through 12). However, the number of marine mammals in the area at any given time is highly variable. Animal movement depends on time of day, tide levels, weather, and availability and distribution of prey species. Therefore, Caltrans requests the following number of allowable harassment takes for each Level B harassment criteria threshold (Table 14).

TABLE 14—AMOUNT OF LEVEL B HARASSMENT TAKE REQUESTED FOR THE IMPLOSIONS OF PIERS E19 AND E20

Species	Level B harassment take [1]	
	Behavioral response	Temporary threshold shift
Pacific Harbor Seal	20	10
California Sea Lion	4	3
Northern Elephant Seal	2	1
Northern Fur Seal	2	1
Harbor Porpoise	5	5

TABLE 14—AMOUNT OF LEVEL B HARASSMENT TAKE REQUESTED FOR THE IMPLOSIONS OF PIERS E19 AND E20—Continued

Species	Level B harassment take [1]	
	Behavioral response	Temporary threshold shift
Bottlenose Dolphin	4	2
Total	42	25

Note:
[1] Pier implosion will be delayed if any marine mammals are detected within any of the Level A or mortality threshold criteria exclusion zones.

Pacific Harbor Seal: As discussed above, harbor seal is the most numerous marine mammal in the Bay. However, take calculated based on species density and the distances to the marine mammal threshold criteria indicated that only two harbor seals would be exposed to sound pressure levels that can result in Level B harassment (Table 13). One of those exposures would be within the Level B monitoring zone, and one would be within the TTS zone (Table 13). Based on previous monitoring the number of harbor seals in the water can vary greatly, depending on weather conditions or the availability of prey. For example, during Pacific herring runs further north in the Bay (near Richardson Bay) in February 2014, very few harbor seals were observed foraging near YBI or transiting through the project area for approximately 2 weeks. Sightings went from a high of 27 harbor seal individuals foraging or in transit in one day to no seals per day in transit or foraging through the project area (Department 2014). In 2015 and 2016, the number of harbor seal sighting in a single day in the project area increased up to 41 seals (Department 2015b, 2016). Because of this high degree of variability, and the observation of up to 41 seals in the project area in a single day Caltrans are requesting authorization for the take of 30 harbor seals by Level B harassment (20 by Level B behavioral response and 10 by Level B TTS) (Table 14).

California Sea Lion: As discussed above, California sea lion is the second most numerous marine mammal species in the Bay, after the harbor seal. However, take calculated based on species density and the distances to the marine mammal threshold criteria indicated that no sea lions would be exposed to sound pressure levels that can result in Level B harassment (Table 13). Based on previous monitoring the number of sea lions transiting through or foraging in the project area can vary greatly. Because of the high degree of variability, regular observation of sea lions in the project area, and because this species may travel in groups Caltrans are requesting authorization for the take of seven sea lions (four by Level B behavioral response and three by Level B TTS) (Table 14).

Harbor Porpoises: Based on the calculated density estimates and the distances to the marine mammal threshold criteria, one harbor porpoise (by behavioral response) may be taken by Level B harassment during the implosion of Piers E19 and E20 (Table 13). However the number of harbor porpoise in the Bay and their foraging range appears to be steadily increasing. This high-frequency cetacean has a large ZOI, because of its sensitivity to anthropogenic sound. Further, this species generally travels in either calf cow pairs or small pods of four to five porpoises. For these reasons Caltrans are requesting authorization for the take of 10 harbor porpoise (five by Level B behavioral response and five by Level B TTS) (Table 14).

Northern Elephant Seal: As discussed above, because of the infrequent observation of this species in the Bay, Caltrans estimates that no elephant seals will be exposed to SPLs that can result in Level B harassment (Table 13). However, the number of elephant seals that may enter and or strand in the Bay in a given year is highly variable; dependent on changes in oceanographic conditions, effecting water temperature and prey availability. Caltrans wants to ensure that the project has coverage for the incidental take of any species with the potential to be present in the project area. Therefore, Caltrans are requesting authorization for the take of three elephant seals (two by Level B behavioral response and one by Level B TTS) (Table 14).

Northern Fur Seal: As discussed above, northern fur seals are found infrequently in the Bay and are unlikely to be in the vicinity of the pier implosion. However, the number of fur seals that may enter and or strand in the Bay in a given year is highly variable; dependent on changes in oceanographic conditions, effecting water temperature and prey availability. Caltrans wants to ensure that the project has coverage for the incidental take of any species with the potential to be present in the project area. Therefore, they are requesting authorization for the take of three northern fur seals (two by Level B behavioral response and one by Level B TTS) (Table 14).

Bottlenose Dolphin: As discussed above, only small numbers of bottlenose dolphin occur in the project vicinity. Based on the low number of individuals in the Bay and the distances to the marine mammal threshold criteria Caltrans anticipates that no bottlenose dolphins would be exposed to SPLs that can result in Level B harassment. However, as discussed in Chapter 4, until 2016, most bottlenose dolphins in the Bay were observed in the western Bay, from the Golden Gate Bridge to Oyster Point and Redwood City, although one individual was observed frequently near the former Alameda Air Station (Perlman 2017). As of 2017, the same two individuals have been observed regularly near Alameda (Keener, pers. comm., 2017) and likely pass by the project area. If additional individuals begin using this eastern area of the Bay, the number of bottlenose sightings near the project area will likely increase. Caltrans wants to ensure that the project has coverage for the incidental take of any species with the potential to be present in the project area. Therefore, they are requesting authorization for the take of six bottlenose dolphins (four by Level B behavioral response and two by Level B TTS) (Table 14).

Take From Pile Driving

The numbers of marine mammals by species that may be taken by pile driving were calculated based on distance to the marine mammal threshold criteria, days of driving, and the estimated density of each species in the ZOI, for the species that density could be determined. The distances to the relevant Level A and B zones are listed above in Table 8. Because the sizes of piles, types of piles, or installation methods to be used are unknown at this time, the take estimate

has been prepared based on a worst case scenario. The Level B take estimate is based on 60 days of pile driving to install 200 piles, 36 inches (0.91 meters) in diameter, with a vibratory hammer, as this results in the largest Level B zone for a precautionary approach. The Level A take estimate is based on 60 days of pile driving to install 200 piles, 36 inches (0.91 meters) in diameter, with an impact hammer, which has a larger Level A zone than vibratory driving, using of an air bubble curtain sound attenuation system. The take of each species was calculated based on species density (Table 9), for the species that density could be determined, over the entire area of each threshold criteria zone as shown in Figures 14 and 15 in the application. The numbers used for take calculation are shown in Table 15.

TABLE 15—ESTIMATED TAKE OF MARINE MAMMALS FROM PILE DRIVING AND PILE REMOVAL ACTIVITIES

Species	Species density (animals/ square kilometer)	Species density (animals/ square meters)	Level B ZOI radii (meters)	Level B ZOI area (square meters)	Per day take Level B	Days of pile driving	Level B take calculated	Level B take requested
Harbor Seal	3.96	3.96E–06	2,000	9101027.61	36.01	60	2160.77	2161
Sea Lion	0.16	1.61E–07	2,000	9101027.61	1.47	60	87.92	88
Harbor Porpoise	0.17	1.67E–07	2,000	9101027.61	1.52	60	91.19	91
Bottlenose Dolphin	NA	NA	2,000	9101027.61	NA	60	NA	30
Elephant Seal	NA	NA	2,000	9101027.61	NA	60	NA	23
Gray Whale	NA	NA	2,000	9101027.61	NA	60	NA	4
Fur Seal	NA	NA	2,000	9101027.61	NA	60	NA	12
Total Level B Take								2,392

Species	Species density (animals/ square kilometer)	Species density (animals/ square meters)	Level A ZOI radii (meters)	Level A ZOI area (square meters)	Per day take Level A	Days of pile driving	Level A take calculated	Level A take requested [1]
Harbor Seal	3.96	3.96E–06	130	77907.73574	0.21	60	18.50	0
Sea Lion	0.16	1.61E–07	9	4302.570961	0.00	60	0.04	0
Harbor Porpoise	0.17	1.67E–07	290	293195.3612	0.04	60	2.94	0
Bottlenose Dolphin	NA	NA	9	4302.570961	NA	60	NA	0
Elephant Seal	NA	NA	130	77907.73574	NA	60	NA	0
Gray Whale	NA	NA	243	215669.2122	NA	60	NA	0
Fur Seal	NA	NA	9	4302.570961	NA	60	NA	0
Total Level A Take [1]								0

Caltrans estimates a maximum of 2,392 instances of take by Level B harassment may occur to seven stocks of marine mammal during pile-driving activities (Table 15). These individuals will be exposed temporarily to continuous (vibratory pile driving and removal) sounds greater than 120 dB rms and impulse (impact driving) sounds greater than 160 dB rms. The majority of the animals taken by Level B harassment will be harbor seals (Table 15), the most numerous marine mammals in the project area. Although Level A take of marine mammals was calculated based on distances to the threshold, density of the species, and duration of the activity; Caltrans does not anticipate any individuals will be taken by Level A harassment. With proposed monitoring and establishment of shutdown zones, discussed in the Proposed Mitigation section below, Caltrans proposes to avoid Level A harassment of marine mammals.

The number of takes requested by Caltrans are based on a calculation of marine mammal density multiplied by the daily isopleth multiplied by the number of days of pile driving. However, due to variability in sightings of northern elephant seal, northern fur seal, bottlenose dolphin, and gray whale, take estimates were adjusted using species specific monitoring data detailed below.

Northern Elephant Seal: Based on low number of elephant seal sightings in the project area, Caltrans anticipates that very few if any elephant seals would be exposed to continuous sounds greater than 120 dB rms and impulse sounds greater than 160 dB rms during pile driving. No elephant seals have been observed in the immediate project vicinity. However, the number of elephant seals that may enter and or stand in the Bay in a given year is highly variable; dependent of changes in oceanographic conditions, effecting water temperature and prey availability. Further, the size of the Level B harassment zone is large, extending 2,000 meters (6,562 feet) from the pile driving site. Pile driving may take place for up to 60 days and many of the driving days would be consecutive. Should an elephant seal or multiple elephant seals be in the vicinity of the project area for multiple days they could be taken several times. To ensure Caltrans has coverage for the incidental take of any species with the potential to be present in the project area, we are proposing to authorize take of 12 elephant seals by Level B harassment during pile driving activities (Table 15). This equates to the take of one elephant seal during 20 percent of the driving days.

Northern fur seal: No fur seals have been observed in the immediate project vicinity. Should a fur seal or multiple fur seals be in the vicinity of the project area for multiple days they could be taken several times. To ensure Caltrans has necessary coverage for occasion fur seals in the area, we propose to authorize take of up to six northern fur seals by Level B harassment during pile driving activities (Table 15). This equates to the take of one elephant seal during 10 percent of the driving days.

Bottlenose dolphin: Only small numbers of bottlenose dolphin occur in the project vicinity. Until 2016, most bottlenose dolphins in the Bay were observed in the western Bay, from the Golden Gate Bridge to Oyster Point and Redwood City, although one individual

was observed frequently near the former Alameda Air Station (Perlman 2017). As of 2017, the same two individuals have been observed regularly near Alameda (Keener, pers. comm., 2017) are likely pass by the project area. If additional individuals begin using this eastern area of the Bay, the number of bottlenose dolphin sightings near the project area will likely increase. It is possible that the same two resident bottlenose dolphins and or additional individuals could be taken multiple times during the up to 60 days of pile driving. Therefore, Caltrans is requesting authorization for the take of 90 bottlenose dolphins by Level B harassment during pile driving activities. This equates to the take of 1.5 bottlenose dolphins during each day of pile driving.

Gray whale: No gray whales have been observed within 2,000 meters (6,562 feet) of the project area, but they have been observed just north of Treasure Island and southwest of Oakland Middle Harbor. According to TMMC, two to six gray whales enter the Bay each year in late winter through spring (February through April), presumably to feed. Caltrans wants to ensure that the project has coverage for the incidental take of any species with the potential to be present in the project area. Therefore, Caltrans is requesting authorization for the take of 4 grey whales by Level B harassment during pile driving activities.

TABLE 16—COMBINED TOTAL TAKE REQUESTED FOR PIER IMPLOSION AND PILE-DRIVING ACTIVITIES

Species	Pier implosion Level B harassment take [1]		Pile driving Level B harassment take [1]	Total Level B harassment take [1]	Requested take as percent of stock abundance
	Behavioral response	Temporary threshold shift			
Pacific Harbor Seal	20	10	2,161	2,191	7
California Sea Lion	4	3	88	95	.03
Northern Elephant Seal	2	1	12	15	.01
Northern Fur Seal	2	1	6	9	.06
Harbor Porpoise	10	8	91	109	1.1
Bottlenose Dolphin	4	2	30	36	8
Gray Whale	0	0	4	4	.02

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

Pier Implosions—The decision to combine two smaller piers into single, sequential blast events will further reduce potential impacts on marine mammals. This will allow faster completion of the project and will reduce the total number of pier implosion events (days where pier implosions occur).

BAS—As described previously in this document, a BAS will be used around both piers during the implosion. Based on the results of acoustic monitoring for the previous pier implosions, BAS performance is anticipated to provide approximately 70 to 80 percent attenuation of implosion-related pressure waves.

Implosion shutdown zone—During the implosion of Piers E19 and E20, a project-specific monitoring plan will be implemented to avoid the potential for individual exposure to Level A harassment, and to document the number and species potentially exposed to Level B harassment. This plan will be similar to the Marine Foundation Removal Project Final Biological Monitoring Program, previously approved by NMFS, that was implemented during the implosions of Piers E6 to E18. In particular, monitors will observe the shutdown zone and will delay the implosion if any individuals are within this zone. The same procedure was implemented successfully for the implosions of Piers E3 through E18, and no marine mammals were exposed to SPLs above the Level A or mortality threshold criteria. This project-specific monitoring plan will be transmitted to NMFS before the implosions, for review and concurrence.

Pile driving—All steel pipe piles initially will be installed with a vibratory hammer. The vibratory hammer will be used to drive the majority of the total pile lengths. In the event that a pipe pile is installed entirely with a vibratory hammer, it still will be subject to final proof testing with an impact hammer. A maximum of 10 percent of the piles installed completely with a vibratory hammer may be proof-tested with an impact hammer, without

the use of a marine pile-driving energy attenuator. Proofing of piles will be limited to a maximum of two piles per day, for less than 1 minute per pile, administering a maximum of 20 blows per pile. Although both vibratory and impact pile driving have the potential to affect marine mammals, impact driving is expected to generate higher SPLs. Requiring the use of the vibratory hammer will reduce the duration of impact driving and potential exposure to higher SPLs.

Pile driving energy attenuator—Use of a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system), or other equally effective sound attenuation method (*e.g.,* dewatered cofferdam), will be required by Caltrans during impact driving of all steel pipe piles (with the exception of pile proof-testing) and during impact driving of 0.91-meter (36-inch) diameter concrete piles. Requiring the use of sound attenuation will reduce SPLs and the size of the ZOIs for Level A and Level B harassment.

Pile Driving Shutdown Zone—Before the start of impact pile-driving activities, the shutdown zones will be established. The shutdown zones are intended to include all areas where the underwater SPLs are anticipated to equal or exceed thresholds for injury—PTS Level A harassment thresholds for the specific species hearing groups, shown in Table 3. NMFS-approved observers will survey the shutdown zones for 30 minutes before pile-driving activities start. If marine mammals are found within the shutdown zones, pile driving will be delayed until the animal has moved out of the shutdown zone, either verified through sighting by an observer or by waiting until enough time has elapsed without a sighting, 15 minutes for pinnipeds and small cetaceans (harbor porpoise and bottlenose dolphin), and 30 minutes for gray whale, to be able to assume that the animal has moved beyond the zone. With implementation of this avoidance and minimization measure, exposure of marine mammals to SPLs that can result in PTS Level A harassment will be avoided.

A 10 meter shutdown zone for all marine mammals will also be implemented for in-water heavy machinery work that is not pile driving or pier implosion. Similarly, if a marine mammal for which take is not authorized is seen within the monitoring zone, operations will cease until the animal is seen leaving the zone or until 15 minutes have passed.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Marine Mammal Observations

Caltrans will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All protected species observers (PSOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. A minimum of two PSOs will be required for all pile driving activities. Caltrans will establish shutdown zones, similar to those detailed in Table 8, as well as a monitoring zone of 2,000 meters for all marine mammals. Caltrans will monitor the shutdown zone and monitoring zone 30 minutes before, during, and 30 minutes after pile driving, with observers located at the best practicable vantage points. Based on our requirements, Caltrans would implement the following procedures for pile driving:

- PSOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted; and
- The shutdown zone and observable portion of the monitoring zone around the pile will be monitored for the presence of marine mammals 30 min before, during, and 30 min after any pile driving activity.

Data Collection

We require that observers use approved data forms. Among other pieces of information, Caltrans will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, Caltrans will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);

- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and pier implosion activities associated from the Caltrans project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (TTS and behavioral disturbance), from underwater sounds generated from pier implosions and pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving or implosion occurs. A few marine mammals could experience TTS if they occur within the Level B TTS zone. However, TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Therefore, it is not considered an injury. In addition, even if an animal receives a TTS, the TTS would be a one-time event from a brief impulse noise (about 5 seconds), making it unlikely that the TTS would lead to PTS. If an animal undergoes a TTS from pier implosion, it is likely to recover quickly as there is only one implosion event proposed. Finally, there is no critical habitat or other biologically important areas in the vicinity of Caltrans' proposed controlled implosion areas (Calambokidis *et al.,* 2015).

No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, Caltrans proposes to use a blast attenuation system for the pier implosion, which it has previously used successfully. For pile driving activities, vibratory and impact hammers will be the primary methods of pier installation. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Caltrans will use a minimum of two PSOs stationed strategically to increase detectability of marine mammals, enabling a high rate of success in implementation of shutdowns to avoid injury.

Caltrans' proposed activities are localized and of relatively short duration (June to November). This duration does not overlap with breeding, pupping, or other biologically significant events for marine mammal species in the area. The project area is also very limited in scope spatially, as all work is concentrated on the edges of a single bridge expanse. These localized and short-term noise exposures may cause short-term behavioral modifications in seven marine mammal species. Moreover, the proposed mitigation and monitoring measures are expected to further reduce the likelihood of injury, as it is unlikely an animal would remain in close proximity to the sound source with small Level A isopleths. While the project area is known to be frequented by harbor seals and California sea lions, it is not an established breeding ground for local populations.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, and the decreased potential of prey species to be in the Project area during the construction work window, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to temporary reactions such as increased swimming speeds, increased surfacing time, flushing, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; Lerma 2014). Most likely, individuals will simply move

away from the sound source and be temporarily displaced from the areas of pile driving and implosions. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. For some stocks, such as harbor seal, more animal presence has increased in recent years, despite Caltrans' work in the area.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No more than 10 individuals per species are expected to incur TTS during pier implosion. No TTS is expected to occur during pile driving. The size of the zones in which TTS is expected to occur are small and will be heavily monitored per the measures outlined above in the Proposed Monitoring section;
- Level B harassment may consist of temporary modifications in behavior (*e.g.* temporary avoidance of habitat or changes in behavior);
- The lack of important feeding, pupping, or other biologically significant areas in the action area during the construction window;
- The small impact area relative to species range size;
- Mitigation is expected to minimize the likelihood and severity of the level of harassment; and
- The small percentage of the stock that may be affected by project activities (< eight percent for all stocks).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 16 above details the number of individuals that could be exposed to received noise levels that could cause TTS or Level B harassment for the proposed work at the project site relative to the total stock abundance. The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated instance of take occurred to a new individual. The total percent of the population (if each instance was a separate individual) for which take is requested is less than eight percent for all stocks (Table 16). Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily 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.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Caltrans for conducting pier implosion and pile driving activity at the San Francisco-Oakland Bay Bridge from May 2018–April 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for 1 year from May 15, 2018 through April 14, 2019.

2. This IHA is valid only for pier implosion and pile driving activities associated with the San Francisco—Oakland Bay Bridge.

3. General Conditions

(a) A copy of any issued LOA or IHA must be in the possession of the applicant, its designees, and work crew personnel operating under the authority of the issued LOA.

(b) The species authorized for taking are summarized in Table 17.

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 17 for numbers of take authorized.

TABLE 17—AUTHORIZED TAKE NUMBERS

Species	Total Level B harassment take
Pacific Harbor Seal	2,161
California Sea Lion	88
Northern Elephant Seal	12
Northern Fur Seal	6
Harbor Porpoise	91
Bottlenose Dolphin	30
Gray Whale	4

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(c) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA, unless authorization of take by Level A harassment is listed in condition 3(b) of this Authorization.

4. Mitigation Measures

The holder of this Authorization is required to implement the following mitigation measures.

(a) In-water pile driving and pile removal activities and the controlled

implosion of Piers E19 and E20 shall only be conducted during daylight hours and with enough time for pre and post activity monitoring, and with good visibility when the largest exclusion zone can be visually monitored.

(b) For controlled implosion of Piers E19 and E20, Caltrans shall install and use a Blast Attenuation System (BAS) prior to demolition to reduce the shockwave from the implosion.

(c) Establishment of shutdown zones

(i) For in-water heavy machinery work (such as debris removal or setting up the BAS), a minimum 10 m shutdown zone shall be implemented. If a marine mammal comes within 10 m of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Vibratory pile driving; (2) movement of the barge to the pile location; (3) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); (4) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull); or (5) the placement of sound attenuation devices around the piles.

(ii) For controlled implosion and associated test blasting, as well as pile driving, Caltrans shall establish monitoring zones that are appropriate to specific marine mammal functional hearing groups for each implosion scenario (See Tables 18 & 19 below).

TABLE 18—SHUTDOWN AND MONITORING ZONES FOR PIER IMPLOSIONS

Species/group	Level B behavioral response monitoring zone	Level B TTS monitoring zone	Level A injury and mortality exclusion zone
Pinniped and Dolphin	290 meters (951 feet)	200 meters (656 feet)	70 meters (230 feet).
Harbor Porpoise	1,220 meters (4,003 feet)	830 meters (2,723 feet)	290 meters (951 feet).

TABLE 19—SHUTDOWN AND MONITORING ZONES FOR PILE DRIVING

Pile type	Installation method	Attenuation system	Level A pinniped and dolphin exclusion zone	Level A porpoise and whale exclusion zone	Level B monitoring zone—all species
H-Pile	Vibratory	None	2 meters (7 feet)	1 meter (3 feet)	1,000 meters (3,280 feet).
24-inch Steel Pipe Pile	Vibratory	None	8 meters (26 feet)	19 meters (62 feet)	2,000 meters (6,562 feet).
36-inch Steel Pipe Pile	Vibratory	None	20 meters (98 feet)	49 meters (161 feet)	2,000 meters (6,562 feet).
H-Pile	Impact	None	18 meters (59 feet)	39 meters (128 feet)	100 meters (328 feet).
24-inch Steel Pipe Pile	Impact	Bubble Curtain	68 meters (223 feet)	151 meters (495 feet)	215 meters (705 feet).
36-inch Steel Pipe Pile	Impact	Bubble Curtain	130 meters (427 feet)	290 meters (951 feet)	541 meters (1,775 feet).
24-inch Concrete Pile	Impact	None	52 meters (171 feet)	115 meters (377 feet)	46 meters (151 feet).
36-inch Concrete Pile	Impact	Bubble Curtain	57 meters (187 feet)	127 meters (417 feet)	117 meters (384 feet).

(d) Shutdown Zone Monitoring for Mitigation Measures

(i) Pre-activity monitoring shall take place from 30 minutes prior to initiation of activity and post-activity monitoring shall continue through 30 minutes post-completion for construction activity and 60 minutes post-completion for implosion activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone, as described in Table 19 above.

(ii) A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(iii) If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving or implosion activities at that location shall be halted or delayed, respectively. If activity is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 30 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

(iv) Caltrans shall use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(v) If the number of authorized takes are reached, Caltrans will shut down if a marine mammal is sighted within or approaching the monitoring zone.

(vi) If a species for which take is not authorized is sighted within or approaching the monitoring zone, Caltrans will shut down.

5. Monitoring

(i) The holder of this Authorization is required to conduct marine mammal monitoring during pier implosion and pile driving and removal activities. Marine mammal monitoring and reporting shall be conducted in accordance with the monitoring measures in the application.

(a) For all pile driving activities, a minimum of two protected species observer (PSOs) shall be required, with at least one PSO stationed at the active pile driving rig or at the best vantage point(s) practicable to monitor the shutdown zone for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Other PSOs should be stationed at the best vantage point(s) practicable to observe the monitoring zone.

(b) For all pier implosion activities, a minimum of eight PSOs will be required. One PSO will be designated as the Lead PSO, who will receive updates from other PSOs on the presence or absence of marine mammals within the PSO. This Lead PSO will notify the Environmental Compliance Manager of a cleared shutdown zone before the start of the implosion(s). PSOs shall be positioned near the edge of each of the threshold criteria zones and shall utilize

boats, barges, and bridge piers and roadway.

(ii) Caltrans shall conduct briefings for construction supervisors and crews, the monitoring team, and Caltrans staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

(iii) Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. Caltrans shall adhere to the following conditions when selecting observers:

- Independent PSOs shall be used (*i.e.,* not construction personnel);
- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring; coordinator shall be designated. The lead observer must have prior experience working as a marine mammal observer during construction; and
- Caltrans shall submit PSO CVs for approval by NMFS;

Caltrans shall ensure that observers have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(iv) If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (2,000 m), activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the observation time period has elapsed.

6. Reporting

(i) Caltrans shall submit a draft report to NMFS [not later than 90 days following the end of construction activities OR 60 days prior to the issuance of any subsequent IHA for the project]. Caltrans shall provide a final report within 30 days following resolution of NMFS' comments on the draft report. Reports shall contain, at minimum, the following:

- Date and time that monitored activity begins and ends for each day conducted (monitoring period);
- Construction activities occurring during each daily observation period, including how many and what type of piles driven;
- Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
- Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions in each monitoring period (*e.g.,* sea state, tide state);
- For each marine mammal sighting:
  - Species, numbers, and, if possible, sex and age class of marine mammals;
  - Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
  - Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and
  - Estimated amount of time that the animals remained in the Level B zone;
- Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);
- Other human activity in the area within each monitoring period
- A summary of the following:
  - Total number of individuals of each species detected within the Level B Zone, and estimated as taken if correction factor appropriate;
  - Total number of individuals of each species detected within the Level A Zone and the average amount of time that they remained in that zone; and
  - Daily average number of individuals of each species (differentiated by month as appropriate) detected within the the Level B Zone, and estimated as taken, if appropriate.

(ii) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as a serious injury or mortality, Caltrans shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the following information:

a. Time and date of the incident;

b. Description of the incident;

c. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

d. Description of all marine mammal observations in the 24 hours preceding the incident;

e. Species identification or description of the animal(s) involved;

f. Fate of the animal(s); and

g. Photographs or video footage of the animal(s).

(iii) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Caltrans to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Caltrans may not resume their activities until notified by NMFS.

(iv) In the event that the Caltrans discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Caltrans shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator.

The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Caltrans to determine whether additional mitigation measures or modifications to the activities are appropriate.

(v) In the event that Caltrans discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Caltrans shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Caltrans shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed pier implosion and pile driving. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: April 9, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–07573 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG149

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrant further consideration. The Exempted Fishing Permit would allow commercial fishing vessels to land Atlantic halibut under the minimum size limit and in excess of the possession limit. This EFP is required to support an Atlantic halibut study by the University of Massachusetts, Dartmouth, School for Marine Science and Technology, and The Nature Conservancy to improve future halibut stock assessments.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before April 27, 2018.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on TNC Atlantic halibut EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''TNC Atlantic Halibut EFP.''

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232, *Spencer.Talmage@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Nature Conservancy (TNC) submitted a complete application for an Exempted Fishing Permit (EFP) on March 6, 2018, which requests a renewal of an EFP issued last year to collect biological samples of halibut. The project is funded through the Saltonstall-Kennedy Grant Program, and seeks to address identified information gaps in order to improve future Atlantic halibut stock assessments. Research focuses on characteristics such as stock structure, seasonal movements, behavior, and life history. The renewal application requests the same exemptions from the regulations that were approved for the 2017 fishing year. The exemptions include the Atlantic halibut possession limit, as described in § 648.86(c), and the Atlantic halibut minimum size limit, as described in § 648.83(a)(1).

The EFP would authorize 21 commercial fishing vessels to collect biological samples of halibut during regular fishing operations. A maximum of five halibut may be sampled per trip. Participating vessels may land halibut under the minimum size limit and/or above the possession limit provided these fish are transferred to participating researchers for additional data collection. The EFP issued for the 2017 fishing year allowed for a total sampling size of 250 halibut sampled across the entirety of the project. To date, TNC has sampled 132 halibut. The renewed EFP would increase the total sample size to 275. TNC requested this increase in order to fully utilize Saltonstall-Kennedy Grant Program funding. Sampling would include recording of fish length and weight, as well as removal of gonads, otoliths, and genetic material.

The exemption from the minimum size limit would allow researchers to collect data from all sizes of halibut, which is necessary to ensure that results of the project are accurate and reflective of the halibut population. The exemption from the possession limit is necessary to ensure that the researchers are able to obtain sufficient biological samples to conduct their research. No halibut above the possession limit or below the minimum size limit could be landed for sale.

Fishing under the EFP would occur during the 2018 fishing year, from May 1, 2018 through April 30, 2019. Participating vessels would use multiple gear types, including handline/jig, longline, sink gillnet, and otter trawl. Fishing would occur throughout both the Gulf of Maine and the Georges Bank Regulated Mesh Areas, primarily in statistical areas 514, 521, 522, 525, and 526.

If approved, the applicants may request minor modifications and extensions to the EFPs throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: April 9, 2018.

Jennifer M. Wallace,

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

[FR Doc. 2018–07621 Filed 4–11–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group; Notice of Advisory Committee Closed Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense.

ACTION: Notice of Advisory Committee closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Strategic Command Strategic Advisory Group will take place.

DATES: Day 1—Closed to the public Thursday, May 10, 2018, from 8:00 a.m. to 4:00 p.m. and Day 2—Closed to the public Friday, May 11, 2018, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Trefz, Jr., Designated Federal Officer, (402) 294–4102 (Voice), (402) 294–3128 (Facsimile), *john.l.trefz.civ@mail.mil* (Email). Mailing address is 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140. This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. Appendix), the Government Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, General John E. Hyten, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.140(c), the public or interested organizations may submit written statements to the membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: April 9, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–07590 Filed 4–11–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2017–IES–0095]

Privacy Act of 1974; System of Records

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled ''Impact Evaluation of Parent Messaging Strategies on Student Attendance (18–13–42).'' This system contains individually identifying information voluntarily provided by individuals and districts who participate in the impact study. The information contained in the records maintained in this system will be used to conduct a rigorous study of the effectiveness of a low-cost, parent-focused text messaging intervention, meant to reduce elementary school absenteeism and ultimately improve student achievement.

DATES: Submit your comments on this new system of records notice on or before May 14, 2018.

This new system of records will become applicable upon publication in the **Federal Register** on April 12, 2018, unless the new system of records notice needs to be changed as a result of public comment. The routine uses listed under ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' will become applicable on May 14, 2018, unless the new system of records notice needs to be changed as a result of public comment.

The Department will publish any significant changes to the system of records or routine uses that result from public comment.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency

documents, submitting comments, and viewing the docket, is available on the site under the ''help'' tab.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this modified system of records, address them to: Project's contracting officer representative (COR), Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, Room 4102, 550 12th Street SW, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Meredith Bachman, Project's COR, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, Room 4102, 550 12th Street SW, Washington, DC 20202, by telephone at 1–202–245–7494, or by email at *IES_SORN@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you may call the Federal Relay Service, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction: The information contained in the records maintained in this system will be used to conduct a rigorous study of the effectiveness of a low-cost, parent-focused text messaging intervention, meant to reduce elementary school absenteeism and ultimately improve student achievement.

The study will address the following central research questions: (1) What is the impact on student attendance of using text messaging to provide parents with basic information related to attendance? (2) For parents who do not respond to the messaging strategies that provide basic information, does a more intensive strategy work better to improve attendance? (3) Do adaptive interventions (*i.e.,* interventions that use more or less intensive strategies based on how parents respond) have effects on end-of-year attendance and achievement when compared to the districts' usual attendance related practices? (4) How is the messaging intervention implemented and what are its costs?

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 9, 2018.

Thomas Brock,

Commissioner, National Center for Education Research, Delegated the Duties of the Director of the Institute of Education Sciences.

SYSTEM NAME AND NUMBER

Impact Evaluation of Parent Messaging Strategies on Student Attendance (18–13–42).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education (the Department), Potomac Center Plaza, 550 12th Street SW, Washington, DC 20202.

SYSTEM MANAGER:

Project's COR, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, Room 4102, 550 12th Street SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The study is authorized under ssections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563) and section 8601 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (20 U.S.C. 7981) and the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235).

PURPOSE(S) OF THE SYSTEM:

The information contained in the records maintained in this system will be used to conduct a rigorous study of a low-cost, parent-focused text messaging intervention, meant to reduce elementary school absenteeism and ultimately improve student achievement.

The study will address the following central research questions: (1) What is the impact on student attendance of using text messaging to provide parents with basic information related to attendance? (2) For parents who do not respond to the messaging strategies that provide basic information, does a more intensive strategy work better to improve attendance? (3) Do adaptive interventions (*i.e.,* interventions that use more or less intensive strategies based on how parents respond) have effects on end-of-year attendance and achievement when compared to the districts' usual attendance related practices? (4) How is the messaging intervention implemented and what are its costs?

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will include individually identifying information about parents (or guardians) who consent to participate in the study and their elementary school aged children. The system will contain records on approximately 26,000 parents and 30,000 students from 4 school districts.

CATEGORIES OF RECORDS IN THE SYSTEM:

For parents or guardians this information will include, but will not necessarily be limited to, contact information (name, phone number, and home address), gender, educational background, employment status, and primary language spoken at home. For students this information will include, but will not necessarily be limited to, name, district-provided student ID, date of birth, gender, race/ethnicity, grade, eligibility for free/reduced-price lunches, English Learner status, individualized education plan status, number of days absent (excused, unexcused, and suspended), and math and reading assessment scores. Parents' or guardians' contact information will be used to send out the text messages.

Students' identifying information will be collected to extract attendance and academic assessment information from school district data sources.

RECORD SOURCE CATEGORIES:

The information contained in the records maintained in this system will be used to conduct a rigorous study of a low-cost, parent-focused text messaging intervention, meant to reduce elementary school absenteeism and ultimately improve student achievement. Data will be obtained on all participating students and their parents or guardians through administrative records maintained by the school districts and through the administration of a survey to a subset of approximately 2,000 parents or guardians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collection, reporting, and publication of data by the Institute of Education Sciences. Any disclosure of personally identifiable information from student education records that were obtained from school districts must also comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99), which protects the privacy of student education records.

(1) Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records disclosed from the system.

(2) Research Disclosure. The Director of the Institute of Education Sciences may disclose information from this system of records to qualified researchers solely for the purpose of carrying out specific research that is compatible with the purpose(s) of this system of records. The researcher must agree to maintain safeguards to protect the security and confidentiality, consistent with section 183(c) of the ESRA (20 U.S.C. 9573(c)) of the records disclosed from the system. When personally identifiable information from a student's education record will be disclosed to the researcher, under FERPA (20 U.S.C. 1232g(b)), the researcher also must agree to comply with the requirements in the applicable FERPA exception to consent.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system of records are maintained in a secure, password-protected electronic system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system will be indexed and retrieved by a unique number assigned to each individual that will be cross-referenced by the individual's name on a separate list.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department shall submit a retention and disposition schedule that covers the records contained in this system to the National Archives and Records Administration (NARA) for review. The records will not be destroyed until such time as NARA approves said schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security protocols for this system of records meet all required security standards issued by the National Institute of Standards and Technology (NIST). The secure, password protected electronic system utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. All physical access to the Department's site, where this system of records will be maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis and controls individual users' ability to access and alter records within the system.

RECORD ACCESS PROCEDURES:

If you wish to request access to your records, you must contact the system manager at the address listed above. Your requests must provide necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager at the address listed above. Your request must meet the requirements of the regulations in 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to inquire whether a record exists regarding you in this system, you must contact the system manager at the address listed above. You must provide necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–07641 Filed 4–11–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR17–60–001; PR17–60–002]

Atmos Pipeline-Texas; Notice of Technical Conference

Take notice that an informal technical conference concerning the above-captioned proceedings will be convened by phone on April 18, 2018, at 2:00 p.m. (EDT). The purpose of the teleconference will be to discuss comments filed in the proceeding.

All interested parties are invited to participate by phone. Please email Deirdra Archie at *deirdra.archie@ferc.gov* or call (202) 502–6819 by

Tuesday, April 17, 2018, to RSVP and to receive specific instructions on how to participate.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07552 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–11–000]

Commission Information Collection Activities (FERC–585); 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 soliciting public comment on the currently approved information collection, FERC–585 (Reporting of Electric Energy Shortages and Contingency Plans Under PURPA Section 206).

DATES: Comments on the collection of information are due June 11, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC18–11–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–585 (Reporting of Electric Energy Shortages and Contingency Plans Under PURPA [1] Section 206).

OMB Control No.: 1902–0138.

Type of Request: Three-year extension of the FERC–585 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–585 ''Reporting of Electric Energy Shortages and Contingency Plans under Public Utility Regulatory Policies Act of 1979'' to implement the statutory provisions of Section 206 of PURPA. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission, by rule, was to require each public utility to report to the Commission and any appropriate state regulatory authority:

- Any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and
- a contingency plan that would outline what circumstances might give rise to such occurrences.

In Order No. 575,[2] the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that during electric energy and capacity shortages:

- It will treat firm power wholesale customers without undue discrimination or preference; and
- it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of contingency plan for accommodating such shortages.

This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In Order No. 659,[3] the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that the means by which public utilities must comply with the requirements to report shortages and anticipated shortages is to submit this information electronically using the Office of Electric Reliability's pager system at *emergency@ferc.gov* in lieu of submitting an original and two copies with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate an appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to:

- Examine and approve or modify utility actions;
- prepare a response to anticipated disruptions in electric energy; and/or
- ensure equitable treatment of all public utility customers under the shortage situations.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.101.

Type of Respondents: Public Utilities.

Estimate of Annual Burden: [4] The Commission estimates the annual public reporting burden for the information collection as:

REPORTING OF ELECTRIC ENERGY SHORTAGES AND CONTINGENCY PLANS UNDER PURPA

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [5] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent (5) ÷ (1)
1	1	1	73 hrs.; $5,585	73 hrs.; $5,585	$5,585

[1] PURPA = Public Utility Regulatory Policies Act of 1979 (Pub. L. 95–617, 92 Statute 3117), enacted 11/9/1978.

[2] Final Rule in Docket RM92–12–000, issued on 1/13/1995.

[3] Final Rule in Docket RM05–19–000, issued on 5/27/2005.

[4] ''Burden'' is defined 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 Code of Federal Regulations 1320.3.

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: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07555 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC18–12–000]

Commission Information Collection Activities (FERC–566); 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 soliciting public comment on the currently approved information collection, FERC–566 (Annual Report of a Utility's 20 Largest Purchasers).

DATES: Comments on the collection of information are due June 11, 2018.

ADDRESSES: You may submit comments (identified by Docket No. IC18–12–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–566 (Annual Report of a Utility's 20 Largest Purchasers).

OMB Control No.: 1902–0114.

Type of Request: Three-year extension of the FERC–566 information collection requirements with no changes to the current reporting requirements.

Abstract: The Federal Power Act (FPA), as amended by the Public Utility Regulatory Policies Act of 1978 (PURPA), mandates federal oversight and approval of certain electric corporate activities to ensure that neither public nor private interests are adversely affected. Accordingly, the FPA proscribes related information filing requirements to achieve this goal. Such filing requirements are found in the Code of Federal Regulations (CFR), specifically in 18 CFR 131.31, and serve as the basis for the FERC–566.

FERC–566 implements FPA requirements that each public utility annually publish a list of the 20 purchasers which purchased the largest annual amounts of electric energy sold by such public utility during any of the three previous calendar years. The public disclosure of this information provides the information necessary to determine whether an interlocked position is with any of the 20 largest purchasers of electric energy. Similar to the Form 561,[1] the FPA identifies who must file the FERC–566 report and sets the filing deadline.

Type of Respondents: Public utility.

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–566 (ANNUAL REPORT OF A UTILITY'S 20 LARGEST PURCHASERS)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[3] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–566	300	1	300	4 hrs.; $306	1,200 hrs.; $91,800	$306

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.

[1] FERC Form No. 561 (Annual Report of Interlocking Directorates), OMB Control No. 1902–0099.

[2] "Burden" is defined 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 Code of Federal Regulations 1320.3.

[3] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $76.50 per Hour = Average Cost per Response. The figure comes from the 2017 FERC average hourly cost (for wages and benefits) of $76.50 (and an average annual salary of $158,754). Commission staff is using the FERC average salary because we consider any reporting completed in response to the FERC–566 to be compensated at rates similar to the work of FERC employees.

[5] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $76.50 per Hour = Average Cost per Response. The figure comes from the 2017 FERC average hourly cost (for wages and benefits) of $76.50 (and an average annual salary of $158,754). Commission staff is using the FERC average salary because we consider any reporting completed in response to the FERC–585 to be compensated at rates similar to the work of FERC employees.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07556 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–1–000]

Tektronix, Inc.; Notice of Termination of Proceeding

On May 20, 2016, Tektronix, Inc. (Tektronix) filed a Petition for Review of Denial of Adjustment Request, Request for Hearing, and Request for Confidential Treatment (Petition) under Subpart J of the Commission's Rules of Practice and Procedure.[1] Tektronix's Petition alleged that the Department of Energy (DOE) Office of Hearings and Appeals (OHA) improperly denied applications for various forms of relief from DOE energy conservation standards applicable to external power supplies.

On January 19, 2018, the Administrative Law Judge designated to serve as the presiding officer, Judge David H. Coffman, issued a Report to the Commission and reported that on January 16, 2018, Tektronix and DOE filed a Joint Notice of Satisfaction representing that OHA vacated its orders denying Tektronix's applications for relief. Accordingly, consistent with the Proposed Settlement filed on November 20, 2017, the Judge deemed the Petition and Tektronix's applications to OHA to be withdrawn.

Take notice that the proceeding in Docket No. RA16–1–000 is, as a consequence, deemed terminated.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07559 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.1004 and 385.1006 (2017).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14873-000]

Nushagak Cooperative, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On March 22, 2018, Nushagak Cooperative, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Nuyakuk River Hydroelectric Project (Nuyakuk River Project or project) to be located on the Nuyakuk River, near Dillingham, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission. The project would utilize approximately 218 acres of land owned by the U.S. Bureau of Land Management.

The proposed project would consist of the following new facilities: (1) A 100-foot-long, 20-foot-high intake structure; (2) a 1,200-foot-long, 50-foot-wide by 15-feet-tall concrete-lined power conduit; (3) a 100-foot-wide by 100-foot-long powerhouse forebay with a surface area of 0.23 acres; (4) a 100-foot-wide by 60-foot-long concrete powerhouse containing two 5 megawatt (MW) bulb-type turbines for a total installed capacity of 10 MW; (5) a 100-foot-wide, 500-foot-long tailrace discharging to the Nuyakuk River; (6) a project substation; (7) a 135-mile-long, 25 kilovolt transmission line extending from the substation to the communities of Aleknagik, Koliganek, Stuyahok, Ekwok, and Levelock; and (8) appurtenant facilities. The estimated annual generation of the Nuyakuk River Project would be 72.8 gigawatt-hours.

Applicant Contact: Mr. Bobby Armstrong, Nushagak Cooperative, Inc., P.O. Box 530, Dillingham, AK 99576; phone: (907) 842–5251.

FERC Contact: Julia Kolberg, phone: (202) 502–8261 or email: *Julia.kolberg@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 Days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14873–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14873) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07558 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL18–126–000; EL18–127–000; EL18–128–000; EL18–129–000; EL18–130–000]

Ontelaunee Power Operating Company, LLC; Liberty Electric Power, LLC; Dynegy Hanging Rock II, LLC; Dynegy Washington II, LLC; Dynegy Fayette II, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 5, 2018, the Commission issued an order in Docket Nos. EL18–126–000, EL18–127–000, EL18–128–000, EL18–129–000, and EL18–130–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Ontelaunee Power Operating Company, LLC, Liberty Electric Power, LLC, Dynegy Hanging Rock II, LLC, Dynegy Washington II, LLC, and Dynegy Fayette II, LLC's reactive power rates may be unjust and unreasonable. *Ontelaunee*

Power Operating Company, LLC, et al., 163 FERC ¶ 61, 014 (2018).

The refund effective date in Docket Nos. EL18–126–000, EL18–127–000, EL18–128–000, EL18–129–000, and EL18–130–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL18–126–000, EL18–127–000, EL18–128–000, EL18–129–000, and EL18–130–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07554 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–2–000]

Fluke Corporation; Notice of Termination of Proceeding

On July 8, 2016, Fluke Corporation (Fluke) filed a Petition for Review of Denial of Adjustment Request, Request for Hearing, and Request for Confidential Treatment (Petition) under Subpart J of the Commission's Rules of Practice and Procedure.[1] Fluke's Petition alleged that the Department of Energy (DOE) Office of Hearings and Appeals (OHA) inappropriately denied applications for various forms of relief from DOE energy conservation standards applicable to external power supplies.

On January 19, 2018, the Administrative Law Judge designated to serve as the presiding officer, Judge David H. Coffman, issued a Report to the Commission and reported that on January 16, 2018, Fluke and DOE filed a Joint Notice of Satisfaction representing that OHA vacated its orders denying Fluke's applications for relief. Accordingly, consistent with the Proposed Settlement filed on November 20, 2017, the Judge deemed the Petition and Fluke's applications to OHA to be withdrawn.

[1] 18 CFR 385.1004 and 385.1006 (2017).

Take notice that the proceeding in Docket No. RA16–2–000 is, as a consequence, deemed terminated.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07553 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RA16–3–000]

Avocent Corporation; Notice of Termination of Proceeding

On August 4, 2016, Avocent Corporation (Avocent) filed a Petition for Review of Denial of Adjustment Request, Request for Hearing, and Request for Confidential Treatment (Petition) under Subpart J of the Commission's Rules of Practice and Procedure.[1] Avocent's Petition alleged that the Department of Energy (DOE) Office of Hearings and Appeals (OHA) inappropriately denied Avocent's February 9, 2016 applications for various forms of relief from DOE energy conservation standards applicable to external power supplies.

On March 23, 2017, the Administrative Law Judge designated to serve as the presiding officer, Judge David H. Coffman, issued a Report to the Commission and reported that on March 17, 2017, Avocent and DOE filed a Joint Notice of Satisfaction representing that OHA vacated its orders denying Avocent's applications for relief. Accordingly, consistent with the Proposed Settlement filed on February 6, 2017, the Judge deemed the Petition and Avocent's applications to OHA to be withdrawn.

Take notice that the proceeding in Docket No. RA16–3–000 is, as a consequence, deemed terminated.

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07560 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.1004 and 385.1006 (2017).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at PJM Interconnection, L.L.C. Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and Commission staff may attend upcoming PJM Interconnection, L.L.C. (PJM) Members Committee and Markets and Reliability Committee meetings, as well as other PJM committee, subcommittee or task force meetings.[1] The Commission and Commission staff may attend the following meetings:

PJM Members Committee

- April 19, 2018 (Wilmington, DE)
- May 14–16, 2018 (National Harbor, MD)
- June 21, 2018 (Wilmington, DE)
- July 26, 2018 (Wilmington, DE)
- September 27, 2018 (Audubon, PA)
- October 25, 2018 (Wilmington, DE)
- December 6, 2018 (Wilmington, DE)

PJM Markets and Reliability Committee

- April 19, 2018 (Wilmington, DE)
- May 24, 2018 (Wilmington, DE)
- June 21, 2018 (Wilmington, DE)
- July 26, 2018 (Wilmington, DE)
- August 23, 2018 (Audubon, PA)
- September 27, 2018 (Audubon, PA)
- October 25, 2018 (Wilmington, DE)
- December 6, 2018 (Wilmington, DE)
- December 20, 2018 (Audubon, PA)

PJM Market Implementation Committee

- May 2, 2018 (Audubon, PA)
- June 6, 2018 (Audubon, PA)
- July 11, 2018 (Audubon, PA)
- August 8, 2018 (Audubon, PA)
- September 12, 2018 (Audubon, PA)
- October 10, 2018 (Audubon, PA)
- November 7, 2018 (Audubon, PA)
- December 12, 2018 (Audubon, PA)

The discussions at each of the meetings described above may address matters at issue in pending proceedings before the Commission, including the following currently pending proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER12–2708, *Potomac-Appalachian Transmission Highline, LLC. et al.*

[1] For example, PJM subcommittees and task forces of the standing committees (Operating, Planning and Market Implementation) and senior standing committees (Members and Markets and Reliability) meet on a variety of different topics; they convene and dissolve on an as-needed basis. Therefore, the Commission and Commission staff may monitor the various meetings posted on the PJM website.

Docket No. ER13–535, *PJM Interconnection, L.L.C.*
Docket No. EL14–37, *PJM Interconnection, L.L.C.*
Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket Nos. ER14–1461, EL14–48, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket Nos. EL15–73, ER16–372, *PJM Interconnection, L.L.C.*
Docket No. EL15–79, *TranSource, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Maryland and Delaware State Commissions* v. *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C.*
Docket Nos. ER15–2562, ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL16–49, *Calpine Corporation, et al.,* v. *PJM Interconnection, L.L.C.*
Docket Nos. EL16–71, ER17–179, *Monongahela Power Company, et al., PPL Electric Utilities Corporation*
Docket Nos. EL16–96, ER16–736, ER16–2401, *PJM Interconnection, L.L.C.*
Docket No. EL17–22, *Independent Market Monitor for PJM Interconnection, L.L.C.* v. *American Electric Power Corporation*
Docket No. EL17–31, *Northern Illinois Municipal Power Agency* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–32, *Old Dominion Electric Cooperative* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–36, *Advanced Energy Management Alliance* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–37, *American Municipal Power, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–62, Potomac Economics, Ltd. v. *PJM Interconnection, L.L.C.*
Docket No. EL17–64, *Energy Storage Association* v. *PJM Interconnection,* L.L.C.
Docket No. EL17–65, *Renewable Energy Systems America* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–68, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–75, *Advanced Energy Economy*
Docket No. EL17–82, *The Independent Market Monitor for PJM* v. *PJM Interconnection, L.L.C.*
Docket No. EL17–94, *New York Power Authority* v. *PJM Interconnection, L.L.C. and PJM Transmission Owners*
Docket No. ER17–211, *Mid-Atlantic Interstate Transmission, LLC*
Docket Nos. ER17–214, ER17–216, *PJM Interconnection, L.L.C.*
Docket No. ER17–217, *PJM Interconnection, L.L.C.*
Docket No. ER17–349, *PJM Interconnection, L.L.C.*
Docket No. ER17–725, *PJM Interconnection, L.L.C.*
Docket No. ER17–775, *PJM Interconnection, L.L.C.*
Docket No. ER17–905, *New York Independent System Operator, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. ER17–950, *PJM Interconnection, L.L.C.*
Docket No. ER17–1016, *PJM Interconnection, L.L.C.*
Docket No. ER17–1138, *PJM Interconnection, L.L.C.*
Docket No. ER17–1420, *PJM Interconnection, L.L.C.*
Docket No. ER17–1567, *PJM Interconnection, L.L.C.*
Docket No. ER17–2073, *PJM Interconnection, L.L.C.*
Docket No. ER17–2267, *PJM Interconnection, L.L.C.*
Docket No. ER17–2218, *PJM Interconnection, L.L.C.*
Docket No. ER17–2220, *Midcontinent Independent System Operator, Inc.*
Docket No. ER17–2291, *PJM Interconnection, L.L.C.*
Docket No. EL18–7, *American Electric Power Service Corporation* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL18–26, *EDF Renewable Energy, Inc.* v. *Midcontinent Independent System Operator, Inc., Southwest Power Pool, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL18–34, *PJM Interconnection, L.L.C.*
Docket No. EL18–61, *Public Citizen, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. ER18–86, *PJM Interconnection, L.L.C.*
Docket No. ER18–87, *PJM Interconnection, L.L.C.*
Docket No. ER18–88, *PJM Interconnection, L.L.C.*
Docket No. ER18–136, *Midcontinent Independent System Operator, Inc.*
Docket No. ER18–137, *PJM Interconnection, L.L.C.*
Docket No. ER18–815, *PJM Interconnection, L.L.C.*
Docket Nos. ER18–459, ER18–460, *PJM Interconnection, L.L.C. and Ohio Valley Electric Corporation*
Docket No. ER18–579, *PJM Interconnection, L.L.C.*
Docket No. ER18–614, *PJM Interconnection, L.L.C.*
Docket No. ER18–663, *PJM Interconnection, L.L.C.*
Docket No. ER18–932, *PJM Interconnection, L.L.C.*
Docket No. ER18–934, *PJM Interconnection, L.L.C.*
Docket No. ER18–680, *PJM Interconnection, L.L.C.*
Docket No. ER18–870, *PJM Interconnection, L.L.C.*
Docket No. ER18–988, *PJM Interconnection, L.L.C.*
Docket No. ER18–1131, *PJM Interconnection, L.L.C.*
Docket No. ER18–1148, *PJM Interconnection, L.L.C.*
Docket No. ER18–1175, *PJM Interconnection, L.L.C.*
Docket No. ER18–1245, *PJM Interconnection, L.L.C.*

For additional meeting information, see: *http://www.pjm.com/committees-and-groups.aspx* and *http://www.pjm.com/Calendar.aspx.*

The meetings are open to stakeholders. For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: April 6, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–07557 Filed 4–11–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9976–67–OW]

Notice of Funding Availability (NOFA) for Applications for Credit Assistance Under the Water Infrastructure Finance and Innovation Act (WIFIA) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funding availability.

SUMMARY: In the Consolidated Appropriations Act, 2018, signed by the President on March 23, 2018, Congress provided at least $55 million in budget authority for the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) program to cover the subsidy required to provide a much larger amount of credit assistance. The Environmental Protection Agency (EPA) estimates that this budget authority may provide approximately $5.5 billion in credit assistance and may finance approximately $11 billion in water infrastructure investment, while covering increased costs associated with implementing a larger program. The purpose of this notice of funding availability (NOFA) is to solicit letters of interest (LOIs) from prospective borrowers seeking credit assistance from EPA.

DATES: The LOI submittal period will begin on April 12, 2018 and end at 12 p.m. (noon) EDT on July 6, 2018.

ADDRESSES: Prospective borrowers should submit all LOIs electronically via email at: *wifia@epa.gov* or via EPA's SharePoint site. To be granted access to the SharePoint site, prospective borrowers should contact *wifia@epa.gov* and request a link to the SharePoint site, where they can securely upload their LOIs. Requests to upload documents should be made no later than 12:00 p.m. (noon) EDT on July 3, 2018.

EPA will notify prospective borrowers that their letter of interest has been received via a confirmation email.

Prospective borrowers can access additional information, including the WIFIA program handbook and application materials, on the WIFIA website: *https://www.epa.gov/wifia/.*

SUPPLEMENTARY INFORMATION: EPA will evaluate and select proposed projects described in the LOIs using the selection criteria established in statute and regulation, and further described in this NOFA as well as the WIFIA program handbook. This NOFA establishes relative weights that will be used in the current LOI submittal period for the selection criteria and outlines the process that prospective borrowers should follow to be considered for WIFIA credit assistance. In addition, EPA reserves the right to make additional awards under this announcement, consistent with Agency policy and guidance, if additional funding is available after the original selections are made.

For a project to be considered during a selection round, EPA should receive a LOI, preferably via email or SharePoint, before the corresponding deadline listed above. EPA is only able to accept emails of 25 MB or smaller with unzipped attachments. If necessary due to size restrictions, prospective borrowers may submit attachments separately, as long as they are received by the deadline.

When writing a LOI, prospective borrowers should fill out the WIFIA Letter of Interest form and follow the guidelines contained on the WIFIA program website: *https://www.epa.gov/wifia/wifia-application-materials-and-resources.* Prospective borrowers should provide the LOI and any attachments as Microsoft Word documents or searchable PDF files, whenever possible, to facilitate EPA's review. Additionally, prospective borrowers should ensure that financial information, including the pro forma financial statement, is in a formula-based Microsoft Excel document. Section V of this NOFA provides additional details on the contents of the LOIs.

EPA will invite each prospective borrower whose project proposal is selected for continuation in the process to submit a final application. Final applications should be received by EPA within 365 days of the invitation to apply.

EPA will host a series of webinars to provide further information about submitting a LOI. The webinar schedule and registration directions can be found on the WIFIA program website: *www.epa.gov/wifia.*

Prospective borrowers with questions about the program or interest in meeting with WIFIA program staff may send a request to *wifia@epa.gov.* EPA will meet with all prospective borrowers interested in discussing the program, but only prior to submission of a LOI.

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I. Background

Congress enacted WIFIA as part of the Water Resources Reform and Development Act of 2014 (WRRDA). Codified at 33 U.S.C. 3901–3914, WIFIA authorizes a federal credit program for water infrastructure projects to be administered by EPA. WIFIA authorizes EPA to provide federal credit assistance in the form of secured (direct) loans or loan guarantees for eligible water infrastructure projects.

The WIFIA program's mission is to accelerate investment in our nation's water and wastewater infrastructure by providing long-term, low-cost, supplemental credit assistance under customized terms to creditworthy drinking water and wastewater infrastructure projects of national and regional significance.

II. Program Funding

Congress appropriated at least $55 million in funding to cover the subsidy cost of providing WIFIA credit assistance. The subsidy cost covers the Federal government's risk that the loan may not be paid back. EPA anticipates that the average subsidy cost for WIFIA-funded projects will be relatively low, therefore, this funding can be leveraged into a much larger amount of credit assistance. EPA estimates that this appropriation will allow it to provide approximately $5.5 billion [1] in long-term, low-cost financing to water and wastewater projects and accelerate approximately $11 billion in infrastructure investment around the country.

Recognizing the need that exists in both small and large communities to invest in infrastructure, Congress stipulated in statute that EPA set aside 15% of the budget authority appropriated each year for small communities, defined as systems that serve a population of less than 25,000. Of the funds set aside, any amount not obligated by June 1 of the fiscal year for which budget authority is set aside may be used for any size community. Regardless of whether EPA obligates these funds by June 1 of the fiscal year for which budget authority is set aside, EPA will endeavor to use 15% of its budget authority for small communities.

In addition to assisting both large and small projects and communities, WIFIA may be an attractive borrowing mechanism for a variety of different borrower and credit types. EPA anticipates that municipalities, private entities, project financings, and State Revolving Fund programs will benefit from the low cost and debt structuring flexibilities that WIFIA loans can offer.

III. Eligibility Requirements

The WIFIA statute and implementing rules set forth eligibility requirements for prospective borrowers, projects, and project costs. The requirements outlined below are described in greater detail in the WIFIA program handbook.

A. Eligible Applicants

Prospective borrowers must be one of the following in order to be eligible for WIFIA credit assistance:

(i) A corporation;
(ii) A partnership;
(iii) A joint venture;
(iv) A trust;
(v) A Federal, State, or local governmental entity, agency, or instrumentality;
(vi) A tribal government or a consortium of tribal governments; or
(vii) A State infrastructure financing authority.

B. Eligible Projects

The WIFIA statute authorizes EPA to provide credit assistance for a wide

[1] This estimated loan volume is provided for reference only. Consistent with the Federal Credit Reform Act of 1990 and the requirements of the Office of Management and Budget, the actual subsidy cost of providing credit assistance is based on individual project characteristics and calculated on a project-by-project basis. Thus, actual lending capacity may vary.

variety of projects. Projects must be one of the following in order to be eligible for WIFIA credit assistance:

(i) One or more activities that are eligible for assistance under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)), notwithstanding the public ownership requirement under paragraph (1) of that subsection;

(ii) One or more activities described in section 1452(a)(2) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(2));

(iii) A project for enhanced energy efficiency in the operation of a public water system or a publicly owned treatment works;

(iv) A project for repair, rehabilitation, or replacement of a treatment works, community water system, or aging water distribution or waste collection facility (including a facility that serves a population or community of an Indian reservation);

(v) A brackish or sea water desalination project, including chloride control, a managed aquifer recharge project, a water recycling project, or a project to provide alternative water supplies to reduce aquifer depletion;

(vi) A project to prevent, reduce, or mitigate the effects of drought, including projects that enhance the resilience of drought-stricken watersheds;

(vii) Acquisition of real property or an interest in real property—

(a) If the acquisition is integral to a project described in paragraphs (i) through (v); or

(b) Pursuant to an existing plan that, in the judgment of the Administrator, would mitigate the environmental impacts of water resources infrastructure projects otherwise eligible for assistance under this section;

(viii) A combination of projects, each of which is eligible under paragraph (i) or (ii), for which a State infrastructure financing authority submits to the Administrator a single application; or

(ix) A combination of projects secured by a common security pledge, each of which is eligible under paragraph (i), (ii), (iii), (iv), (v), (vi), or (vii), for which an eligible entity, or a combination of eligible entities, submits a single application.

C. Eligible Costs

As defined under 33 U.S.C. 3906 and described in the WIFIA program handbook, eligible project costs are costs associated with the following activities:

(i) Development-phase activities, including planning, feasibility analysis (including any related analysis necessary to carry out an eligible project), revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(ii) Construction, reconstruction, rehabilitation, and replacement activities;

(iii) The acquisition of real property or an interest in real property (including water rights, land relating to the project, and improvements to land), environmental mitigation (including acquisitions pursuant to 33 U.S.C. 3905(8)), construction contingencies, and acquisition of equipment; and

(iv) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction. Capitalized interest on WIFIA credit assistance may not be included as an eligible project cost.

D. Threshold Requirements

For a project to be considered for WIFIA credit assistance, a project must meet the following five criteria:

(i) The project and obligor shall be creditworthy;

(ii) A project shall have eligible project costs that are reasonably anticipated to equal or exceed $20 million, or for a project eligible under paragraphs (2) or (3) of 33 U.S.C. 3905 serving a community of not more than 25,000 individuals, project costs that are reasonably anticipated to equal or exceed $5 million;

(iii) Project financing shall be repayable, in whole or in part, from State or local taxes, user fees, or other dedicated revenue sources that also secure the senior project obligations of the project; shall include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and may have a lien on revenues subject to any lien securing project obligations;

(iv) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a tribal government or consortium of tribal governments, the project that the entity is undertaking shall be publicly sponsored; and

(v) The applicant shall have developed an operations and maintenance plan that identifies adequate revenues to operate, maintain, and repair the project during its useful life.

E. Federal Requirements

All projects receiving WIFIA assistance must comply, if applicable, with Federal requirements and regulations, including (but not limited to):

(i) American Iron and Steel Requirement, 33 U.S.C. 3914, *https://www.epa.gov/cwsrf/state-revolving-fund-american-iron-and-steel-ais-requirement*;

(ii) Labor Standards, 33 U.S.C. 1372, *https://www.dol.gov/whd/govcontracts/dbra.htm*;

(iii) National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq., https://www.epa.gov/nepa*;

(iv) Floodplain Management, Executive Order 11988, 42 FR 26951, May 24, 1977, *https://www.archives.gov/federal-register/codification/executive-order/11988.html*;

(v) Archeological and Historic Preservation Act, 16 U.S.C. 469–469c, *https://www.nps.gov/archeology/tools/laws/ahpa.htm*;

(vi) Clean Air Act, 42 U.S.C. 7401 *et seq., https://www.epa.gov/clean-air-act-overview*;

(vii) Clean Water Act, 33 U.S.C. 1251 *et seq., https://www.epa.gov/aboutepa/about-office-water*;

(viii) Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq., https://www.fws.gov/ecological-services/habitat-conservation/cbra/Act/index.html*;

(ix) Coastal Zone Management Act, 16 U.S.C. 1451 *et seq., https://coast.noaa.gov/czm/about/*;

(x) Endangered Species Act, 16 U.S.C. 1531 *et seq., https://www.fws.gov/endangered/*;

(xi) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 12898, 59 FR 7629, February 16, 1994, *https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf*;

(xii) Protection of Wetlands, Executive Order 11990, 42 FR 26961, May 25, 1977, as amended by Executive Order 12608, 52 FR 34617, September 14, 1987, *https://www.epa.gov/cwa-404*;

(xiii) Farmland Protection Policy Act, 7 U.S.C. 4201 *et seq., https://www.nrcs.usda.gov/wps/portal/nrcs/detail/?cid=nrcs143_008275*;

(xiv) Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, as amended, *https://www.fws.gov/*;

(xv) Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq., https://www.fisheries.noaa.gov/resource/document/magnuson-stevens-fishery-conservation-and-management-act*;

(xvi) National Historic Preservation Act, 16 U.S.C. 470 *et seq., https://www.nps.gov/archeology/tools/laws/NHPA.htm*;

(xvii) Safe Drinking Water Act, 42 U.S.C. 300f *et seq., https://www.epa.gov/ground-water-and-drinking-water*;

(xviii) Wild and Scenic Rivers Act, 16 U.S.C. 1271 *et seq., https://rivers.gov/*;

(xix) Debarment and Suspension, Executive Order 12549, 51 FR 6370, *https://www.archives.gov/federal-register/codification/executive-order/12549.html*;

(xx) Demonstration Cities and Metropolitan Development Act, 42 U.S.C. 3301 *et seq.,* as amended, and Executive Order 12372, 47 FR 30959, *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning*;

(xxi) Drug-Free Workplace Act, 41 U.S.C. 8101 *et seq., https://webapps.dol.gov/elaws/asp/drugfree/screen4.htm;*

(xxii) New Restrictions on Lobbying, 31 U.S.C. 1352, *https://www.epa.gov/grants/lobbying-and-litigation-information-federal-grants-cooperative-agreements-contracts-and-loans*;

(xxiii) Prohibitions relating to violations of the Clean Water Act or Clean Air Act with respect to Federal contracts, grants, or loans under 42 U.S.C. 7606 and 33 U.S.C. 1368, and Executive Order 11738, 38 FR 25161, September 12, 1973, *https://www.archives.gov/federal-register/codification/executive-order/11738.html*;

(xxiv) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq., https://www.gpo.gov/fdsys/pkg/FR-2005-01-04/pdf/05-6.pdf*;

(xxv) Age Discrimination Act, 42 U.S.C. 6101 *et seq., https://www.eeoc.gov/laws/statutes/adea.cfm*;

(xxvi) Equal Employment Opportunity, Executive Order 11246, 30 FR 12319, September 28, 1965, *https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm*;

(xxvii) Section 13 of the Clean Water Act, Public Law 92–500, codified in 42 U.S.C. 1251, *https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi*;

(xxviii) Section 504 of the Rehabilitation Act, 29 U.S.C. 794, supplemented by Executive Orders 11914, 41 FR 17871, April 29, 1976 and 11250, 30 FR 13003, October 13, 1965, *https://www.epa.gov/ocr/external-civil-rights-compliance-office-title-vi*;

(xxix) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq., https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice*; and

(xxx) Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements, 73 FR 15904, *https://www.epa.gov/resources-small-businesses.*

Detailed information about some of these requirements is outlined in the WIFIA program handbook. Further information can be found at the links above.

IV. Types of Credit Assistance

Under WIFIA, EPA is permitted to provide credit assistance in the form of secured (direct) loans or loan guarantees. The maximum amount of WIFIA credit assistance to a project is 49 percent of eligible project costs. Each prospective borrower should list the estimated total capital costs of the project, broken down by activity type and differentiating between eligible project costs and ineligible project costs in the LOI and application.

V. Letters of Interest and Applications

Each prospective borrower will be required to submit a LOI and, if invited, an application to EPA in order to be considered for approval. This section describes the LOI submission and application submission.

A. Letter of Interest

Prospective borrowers seeking a WIFIA loan must submit a LOI describing the project fundamentals and addressing the WIFIA selection criteria.

The primary purpose of the LOI is to provide adequate information to EPA to: (i) Validate the eligibility of the prospective borrower and the prospective project, (ii) perform a preliminary creditworthiness assessment, (iii) perform a preliminary engineering feasibility assessment, and (iv) evaluate the project against the selection criteria. Based on its review of the information provided in the LOI, EPA will invite prospective borrowers to submit applications for their projects. Prospective borrowers are encouraged to review the WIFIA program handbook to help create the best justification possible for the project and a cohesive and comprehensive LOI submittal.

Prospective borrowers should utilize the LOI form on the WIFIA website and ensure that sufficient detail about the project is provided for EPA's review. EPA will notify a prospective borrower if its project is deemed ineligible as described in Section III of this NOFA.

Below is guidance on what should be included in the LOI.

A. *Prospective Borrower Information.* In this section, the prospective borrower describes the entity seeking WIFIA assistance, including its legal name, address, website, Dun and Bradstreet Data Universal Number System (DUNS) number, and employer/taxpayer identification number numbers. In addition, the prospective borrower provides information on the project's organizational structure, experience, and readiness to proceed.

In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, or a tribal government or consortium of tribal governments, the project that the entity is undertaking must be publicly sponsored. Public sponsorship means that the recipient can demonstrate, to the satisfaction of the EPA, that the prospective borrower has consulted with the affected State, local, or tribal government in which the project is located, or is otherwise affected by the project and that such government supports the proposed project. A prospective borrower can show support by including a certified letter signed by the approving State, tribal, or municipal department or similar agency; governor, mayor or other similar designated authority; statute or local ordinance, or any other means by which government approval can be evidenced.

B. *Project Plan.* In this section, the prospective borrower provides a general description of the project, including its location, population served, permit number(s), purpose, design features, and development schedule. The prospective borrower describes how the project can be categorized as one of the project types eligible for WIFIA assistance as described in the program handbook. The prospective borrower includes other relevant information that could affect the development of the project, such as community support, pending legislation, or litigation. In this section, the prospective borrower summarizes the status of the project's environmental review, engineering report, and other approvals or analyses that are integral to the project's development.

C. *Project Operations and Maintenance Plan.* In this section, the prospective borrower describes its plan for operating, maintaining, and repairing the project post-completion, discusses the sources of revenue used to finance these activities, and provides an estimate of the useful life of the project.

D. *Financing Plan.* In this section, the prospective borrower indicates the requested type and amount WIFIA credit assistance. In addition, it details the proposed sources and uses of funds for the project. The discussion of proposed financing should identify the source(s) of revenue or other security that would be pledged to the WIFIA

assistance. As part of the description of its financial condition, the prospective borrower should include the year-end audited financial statements for the past three years, as available. Additionally, the prospective borrower describes the credit characteristics of the project and how the senior obligations of the project will achieve an investment-grade rating as well as the anticipated rating on the WIFIA instrument. It also includes a summary financial pro forma, presented in a formula-based Microsoft Excel document, as well as revenue and expense projections for the life of the WIFIA debt.

E. *Selection Criteria.* In this section, the prospective borrower describes the potential policy benefits achieved using WIFIA assistance with respect to each of the WIFIA program selection criteria. These criteria and their weights are enumerated in Section VII of this NOFA and further explained in the WIFIA program handbook.

F. *Contact Information.* In this section, the prospective borrower identifies the point of contact with whom the WIFIA program should communicate regarding the LOI. To complete its evaluation, WIFIA program staff may contact a prospective borrower regarding specific information in the LOI.

G. *Certifications.* In this section, the prospective borrower certifies that it will abide by all applicable laws and regulations, including NEPA, the Federal Water Pollution Control Act, the American Iron and Steel requirements, and Federal labor standards, among others if selected to receive funding.

H. *SRF Notification.* In this section, the prospective borrower acknowledges that EPA will notify the State infrastructure financing authority in the State in which the project is located that it submitted a LOI and provide the submitted LOI and source documents to that authority. The prospective borrower may opt out of having its LOI and source documents shared.

B. Application

After EPA concludes its evaluation of the LOIs, a selection committee will invite prospective borrowers to apply based on the scoring of the selection criteria, while taking into consideration geographic and project diversity. The selection committee may choose to combine multiple Letters of Interests or separate projects from a prospective borrower based on the creditworthiness review and may offer less WIFIA assistance than requested in the LOI.

An invitation to apply for WIFIA credit assistance does not guarantee EPA's approval, which remains subject to a project's continued eligibility, including creditworthiness, the successful negotiation of terms acceptable to EPA, and the availability of funds at the time at which all necessary recommendations and evaluations have been completed. However, the purpose of EPA's LOI review is to pre-screen prospective borrowers to the extent practicable. In doing this, it is expected that EPA will only invite projects to apply if it anticipates that those projects are able to obtain WIFIA credit assistance.

Applications should be submitted using the form provided on the WIFIA website: *https://www.epa.gov/wifia/wifia-application-materials-and-resources.* The purpose of the application is to provide the WIFIA program with the materials necessary to underwrite the loan. Underwriting performed by the WIFIA team will include a thorough evaluation of the project's plan of finance and underlying economics, including a detailed assessment of the project's cash flow and proposed credit terms. The WIFIA team will review the inputs and assumptions in the financing plan, the revenue and expenditures in the financing plan, the project's ability to meet WIFIA loan repayment obligations, and project risks and mitigants, among other things.

Detailed information needs for the application are listed in the application form and described in the WIFIA program handbook.

VI. Fees

There is no fee to submit a LOI. The final fee rule, Fees for Water Infrastructure Project Applications under WIFIA, 40 CFR 35.10080, was signed by EPA on June 19, 2017, and establishes the fees related to the provision of federal credit assistance under WIFIA. Each invited applicant must submit, concurrent with its application, a non-refundable Application Fee of $25,000 for projects serving communities of not more than 25,000 individuals or $100,000 for all other projects. Applications will not be evaluated until the Application Fee is paid. For successful applicants, this fee will be credited toward final payment of a Credit Processing Fee, assessed following financial close, to reimburse the EPA for actual engineering, financial, and legal costs. In the event a final credit agreement is not executed, the borrower is still required to reimburse EPA for the costs incurred. Borrowers may finance these fees with WIFIA credit assistance.

VII. Selection Criteria

This section specifies the criteria and process that EPA will use to evaluate and award applications for WIFIA assistance.

The selection criteria described below incorporate statutory eligibility requirements, supplemented by WIFIA regulations at 40 CFR 35.10055. EPA has also identified the following strategic objectives as priorities for this LOI submittal period:

(i) Provide for clean and safe drinking water: EPA is working to strengthen its implementation of the Safe Drinking Water Act to ensure we protect and build upon the enormous public health benefits achieved through the provision of safe drinking water throughout the country. The Agency's highest priorities include reducing exposure to lead in the nation's drinking water systems, ensuring continuous compliance with contaminant limits, responding quickly to emerging concerns, and improving the nation's aging and insufficient drinking water infrastructure.

(ii) Repair, rehabilitate, and replace aging infrastructure and conveyance systems: Many communities face formidable challenges in providing adequate and reliable water and wastewater infrastructure services. Existing water and wastewater infrastructure in some of these communities is aging, and investment is not always keeping up with the needs. EPA estimates the national funding need for capital improvements for such facilities totals approximately $740 billion over the next 20 years. In many cases, meeting these needs will require significant increases in capital investment.

EPA's priorities reflect water sector challenges that require innovative tools to assist municipalities in managing and adapting to our most pressing public health and environmental challenges. These priorities are reflected in the scoring methodology of the selection criteria below, described in greater detail in the WIFIA program handbook.

The WIFIA selection criteria are divided into three categories that represent critical considerations for selecting projects: Project Impact, Project Readiness, and Borrower Creditworthiness. Each criterion within a category can provide a range of points with the maximum number of points indicated. Each category can provide up to 100 points out of a total of 300 available points, and the category-specific and overall scores will help inform the selection committee's deliberations within the overall WIFIA framework. For the Project Readiness

and Borrower Creditworthiness categories, criteria scores are supplemented by points awarded from the preliminary engineering feasibility analysis and preliminary creditworthiness assessment, described in the WIFIA program handbook. In order to reflect priorities and give greater consideration to a class of projects to reduce exposure to lead in the nation's drinking water systems or ensure continuous compliance with contaminant limits, EPA has added a criterion (ix) to the Project Impact category of criteria in accordance with 40 CFR 35.10055(b). The criteria are as follows:

Project Impact

(i) *15 points:* The extent to which the project is nationally or regionally significant, with respect to the generation of economic and public benefits, such as (1) the reduction of flood risk; (2) the improvement of water quality and quantity, including aquifer recharge; (3) the protection of drinking water, including source water protection; and (4) the support of international commerce. 33 U.S.C. 3907(b)(2)(A); 40 CFR 35.10055(a)(1).

(ii) *5 points:* The extent to which the project uses new or innovative approaches. 33 U.S.C. 3907(b)(2)(D); 40 CFR 35.10055(a)(3).

(iii) *5 points:* The extent to which the project (1) protects against extreme weather events, such as floods or hurricanes; or (2) helps maintain or protect the environment: 33 U.S.C. 3907(b)(2)(F); 40 CFR 35.10055(a)(4) and (5).

(iv) *5 points:* The extent to which the project serves regions with significant energy exploration, development, or production areas: 33 U.S.C. 3907(b)(2)(G); 40 CFR 35.10055(a)(6).

(v) *10 points:* The extent to which a project serves regions with significant water resource challenges, including the need to address (1) water quality concerns in areas of regional, national, or international significance; (2) water quantity concerns related to groundwater, surface water, or other water sources; (3) significant flood risk; (4) water resource challenges identified in existing regional, State, or multistate agreements; and (5) water resources with exceptional recreational value or ecological importance. 33 U.S.C. 3907(b)(2)(H); 40 CFR 35.10055(a)(7).

(vi) *10 points:* The extent to which the project addresses identified municipal, State, or regional priorities. 33 U.S.C. 3907(b)(2)(I); 40 CFR 35.10055(a)(8).

(vii) *20 points:* The extent to which the project addresses needs for repair, rehabilitation or replacement of a treatment works, community water system, or aging water distribution or wastewater collection system. 40 CFR 35.10055(a)(12).

(viii) *10 points:* The extent to which the project serves economically stressed communities, or pockets of economically stressed rate payers within otherwise non-economically stressed communities. 40 CFR 35.10055(a)(13).

(ix) *20 points:* The extent to which the project reduces exposure to lead in the nation's drinking water systems or ensures continuous compliance with contaminant limits. 40 CFR 35.10055(b).

Project Readiness

(i) *50 points:* The readiness of the project to proceed toward development, including a demonstration by the obligor that there is a reasonable expectation that the contracting process for construction of the project can commence by not later than 90 days after the date on which a Federal credit instrument is obligated for the project under [WIFIA]. 33 U.S.C. 3907(b)(2)(J); 40 CFR 35.10055(a)(9).

(ii) *50 points:* Preliminary engineering feasibility analysis score. 33 U.S.C. 3907(a)(2); 33 U.S.C. 3907(a)(6); 40 CFR 35.10015(c); 40 CFR 35.10045(a).

Borrower Creditworthiness

(i) *10 points:* The likelihood that assistance under [WIFIA] would enable the project to proceed at an earlier date than the project would otherwise be able to proceed. 33 U.S.C. 3907(b)(2)(C); 40 CFR 35.10055(a)(2).

(ii) *10 points:* The extent to which the project financing plan includes public or private financing in addition to assistance under [WIFIA]. 33 U.S.C. 3907(b)(2)(B); 40 CFR 35.10055(a)(10).

(iii) *10 points:* The extent to which assistance under [WIFIA] reduces the contribution of Federal assistance to the project. 33 U.S.C. 3907(b)(2)(K); 40 CFR 35.10055(a)(11).

(iv) *10 points:* The amount of budget authority required to fund the Federal credit instrument made available under [WIFIA]. 33 U.S.C. 3907(b)(2)(E).

(v) *60 points:* Preliminary creditworthiness assessment score. 33 U.S.C. 3907(a)(1); 40 CFR 35.10015(c); 40 CFR 35.10045(a)(1) and (4) and (b).

In addition to the selection criteria score, EPA is required by 33 U.S.C. 3902(a) to ''ensure a diversity of project types and geographical locations.''

Following analysis by WIFIA program staff, a final score is calculated for each project. Projects will be selected in order of score, subject, however, to the requirement to ensure a diversity of project types and geographical locations.

The scoring scales and guidance used to evaluate each project against the selection criteria are available in the WIFIA program handbook. Prospective borrowers considering WIFIA should review the WIFIA program handbook and discuss how the project addresses each of the selection criteria in the LOI submission.

Authority: 33 U.S.C. 3901–3914; 40 CFR part 35.

Dated: April 4, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–07513 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0007; FRL–9975–56]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 14, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

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

information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. New Active Ingredients

1. *File Symbol:* 73729–E. *Docket ID number:* EPA–HQ–OPP–2018–0087. *Applicant:* Imerys Filtration Minerals, Inc., 2500 Miguelito Rd., Lompoc, CA 93436. *Product name:* Imergard WP. *Active ingredient:* Insecticide—Expanded perlite at 100.0%. *Proposed use:* For use indoors and outdoors to control mosquitoes. *Contact:* BPPD.

2. *File Symbol:* 80286–EA. *Docket ID numbers:* EPA–HQ–OPP–2017–0708 and EPA–HQ–OPP–2017–0709. *Applicant:* ISCA Technologies, Inc., 1230 W. Spring St., Riverside, CA 92507. *Product name:* Hook RPW. *Active ingredients:* Attractant—4-methyl-5-nonanone at 3.000%; Attractant—4-methyl-5-nonanol at 27.000%; and Insecticide—cypermethrin at 3.000%. *Proposed use:* For control of red palm weevil. *Contact:* BPPD.

3. *File Symbol:* 71840–E.O.. *Docket ID number:* EPA–HQ–OPP–2018–0059. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. *Product name:* Trunemco Nematode Management. *Active ingredients:* Systemic acquired resistance (SAR) inducer—cis-Jasmone (2-Cyclopenten-1-one, 3-methyl-2-(2Z)-2-pentenyl-) at 0.88% and *Bacillus amyloliquefaciens* strain MBI 600 at 1.00%. *Proposed use:* Seed treatment on corn, cotton, and soybean. *Contact:* BPPD.

4. *File Symbol:* 40230–G. *Docket ID number:* EPA–HQ–OPP–2018–0051. *Applicant:* AgBioChem, Inc., 3750 North 1020 East, Provo, UT 84604. *Product name:* Galltrol-GM. *Active ingredient:* Bactericide—*Rhizobium radiobacter* strain K1026–R at 0.03%. *Proposed use:* For control of crown gall disease in germinating seeds, roots, stems, and cuttings. *Contact:* BPPD.

5. *File Symbol:* 71840–GN. *Docket ID number:* EPA–HQ–OPP–2018–0059. *Applicant:* BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709. *Product name:* Jasmone Technical Concentrate. *Active ingredient:* Systemic acquired resistance (SAR) inducer—cis-Jasmone (2-Cyclopenten-1-one, 3-methyl-2-(2Z)-2-pentenyl-) at 93.00%. *Proposed use:* For manufacturing end-use pesticide products containing cis-Jasmone. *Contact:* BPPD.

6. *EPA Registration Numbers:* 7969–198, 7969–251, 7969–197, 7969–199. *Docket ID number:* EPA–HQ–OPP–2017–0310. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Boscalid. *Product type:* Fungicide. *Proposed use:* Brassica, leafy greens, subgroup 4–16B; celtuce; fennel, Florence; kohlrabi; leafy petiole vegetable, subgroup 22B; leafy greens, subgroup 4–16A; pea and bean, dried shelled, except soybean, subgroup 6C; pea and bean, succulent shelled, subgroup 6B; vegetable, brassica, head and stem, group 5–16; vegetable, cucurbit, group 9; vegetable, root, except sugar beet, subgroup 1B; vegetable, fruiting, group 8–10. *Contact:* RD

Authority: 21 U.S.C. 346a.

Dated: March 20, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–07643 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2017–0008; FRL–9975–58]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before May 14, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov*; Anita Pease, Antimicrobials Division (7510P), main telephone number: (703) 305–7090, email address: *ADFRNotices@epa.gov*; or Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. New Uses

1. *File Symbol:* 1677–ELI. *Docket ID number:* EPA–HQ–OPP–2018–0070. *Applicant:* Ecolab, Inc., 1 Ecolab Place, St. Paul, MN 55102. *Active ingredient:* Dodecylbenzenesulfonic acid at 96%. *Product name:* BIO–SOFT S–101 MUP. *Product type:* Antimicrobial. *Proposed use:* Manufacturing Use Antimicrobial product for use in the formulation of sanitizer, disinfectant, and antimicrobial/biocidal formulations/products. *Contact:* AD.

2. *File Symbol:* 39967–RUI. *Docket ID number:* EPA–HQ–OPP–2018–0044. *Applicant:* LanXess Corporation, 111 RIDC Park West Drive Pittsburgh, PA 15275–1112. *Active ingredient:* Penflufen. *Product type:* Antimicrobial. *Product name:* Preventol A800 Technical Fungicide. *Proposed use:* Fungicide Used for the Preservation of Wood composite products, wood products intended for above ground and in-ground contact, wood stains. *Contact:* AD.

3. *File Symbol:* 39967–RUO. *Docket ID number:* EPA–HQ–OPP–2018–0044. *Applicant:* LanXess Corporation, 111 RIDC Park West Drive, Pittsburgh, PA 15275–1112. *Active ingredient:* Penflufen. *Product type:* Antimicrobial. *Product name:* Preventol A800 Preservative. *Proposed use:* Fungicide Used for the Preservation of Wood composite products, wood products intended for above ground and in-ground contact, wood stains. *Contact:* AD.

4. *EPA Registration Numbers:* 7969–198, 7969–251, 7969–197, 7969–199. *Docket ID number:* EPA–HQ–OPP–2017–0310. *Applicant:* BASF Corporation, P.O. Box 13528, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Boscalid. *Product type:* Fungicide. *Proposed use:* Brassica, leafy greens, subgroup 4–16B; celtuce; fennel, Florence; kohlrabi; leafy petiole vegetable, subgroup 22B; leafy greens, subgroup 4–16A; pea and bean, dried shelled, except soybean, subgroup 6C; Pea and bean, succulent shelled, subgroup 6B; vegetable, brassica, head and stem, group 5–16; vegetable, cucurbit, group 9; vegetable, root, except sugar beet, subgroup 1B; vegetable, fruiting, group 8–10. *Contact:* RD.

5. *File Symbols:* 8329–RRE, 8329–RRN, and 8329–RRR. *Docket ID number:* EPA–HQ–OPP–2018–0093. *Applicant:* Clarke Mosquito Control Products, Inc., 675 Sidwell Ct., St. Charles, IL 60174. *Active ingredient:* l-carvone. *Product type:* Insecticide. *Proposed use:* Wide-area mosquito adulticide. *Contact:* BPPD.

6. *EPA File Symbol:* 92587–R. *Docket ID number:* EPA–HQ–OPP–2018–0067. *Applicant:* QTEK, LLC, 20316 Chassell Painesdale Road, Chassell, MI 49916. *Product name:* Surfion® Additive. *Active ingredient:* Cupric Oxide at 3.19%. *Product type:* Antimicrobial. *Proposed use:* End use Antimicrobial Product for use as a bacteriostatic and fungistatic additive for use in the manufacture and preservation of commodity products. *Contact:* AD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 20, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–07640 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0731; FRL–9976–68–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; EPA's Voluntary Natural Gas STAR Methane Challenge Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''EPA's Voluntary Natural Gas STAR Methane Challenge Program'' (EPA ICR No. 2547.01, OMB Control No. 2060–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** (81 FR 90355) on December 14, 2016 during a 60-day comment period, and no comments were received. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 14, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2016–0731, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Justin Pryor, Office of Atmospheric Programs, Climate Change Division, (6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9258; fax number: 202–343–2342; email address: *Pryor.Justin@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: The Natural Gas STAR Methane Challenge Program is a voluntary program sponsored by the U.S. Environmental Protection Agency (EPA) that provides an innovative voluntary mechanism through which oil and natural gas companies can make specific, ambitious commitments to reduce methane emissions. This Program is an integral part of the EPA's ongoing commitment to address methane emissions and global climate change, and was developed through extensive stakeholder engagement and support from companies and trade organizations in the oil and gas industry. Methane is the primary component of natural gas and a potent greenhouse gas. The Program works to encourage oil and natural gas companies to go above and beyond existing regulatory action and make meaningful and transparent commitments to yield significant methane emissions reductions in a quick, flexible, cost-effective way. Transparency in comprehensively tracking company commitments through the non-confidential data reported by Methane Challenge partners is a key feature of the Program, and enables partners to highlight emissions reductions achieved through voluntary action taken. Implementation of the Methane Challenge Program's two commitment options, the Best Management Practice Commitment and the ONE Future Emissions Intensity Commitment, improves operational efficiency, saves partner companies money, and enhances the protection of the environment.

Forms: Methane Challenge Program partners are required to sign and submit to EPA a Partnership Agreement (PA) that describes the terms of participation in the Program. The PA forms covered under this ICR include: Methane Challenge Program Partnership Agreement—Best Management Practice Commitment; and, Methane Challenge Program Partnership Agreement—ONE Future Commitment. Partners must complete and submit a Methane Challenge Implementation Plan within six months of signing the MOU. The Implementation Plan forms covered under this ICR include: Methane Challenge Program Implementation Plan Template—BMP Commitment; and, Methane Challenge Program Implementation Plan Template—ONE Future Commitment. After one full calendar year of participation in the Program, EPA requires partners to submit a specific set of data documenting the previous year's methane emissions, activity data, and reduction activities. The annual reporting forms covered under this ICR include: Best Management Practice Commitment Reporting Forms. The annual reporting forms for the ONE Future Commitment Option are to be developed but will follow the requirements set forth in the following document, available on the program website: Supplemental Technical Information for ONE Future Commitment Option. Upon becoming a partner in the Methane Challenge Program, companies are given an opportunity to draft and submit a Historical Actions Fact Sheet, which provides information on historical methane reduction actions taken prior to joining Methane Challenge. A two-page fact sheet template is made available to partner companies and allows entry of up to five key methane mitigation activities, including text, photos, and graphics. Submitting this document is *not* a requirement of the Methane Challenge Program partnership. The fact sheet covered under this ICR is: Historical Actions Fact Sheet Template.

Respondents/affected entities: The Natural Gas STAR Methane Challenge Program is open to companies in the oil production, and production, gathering and boosting, processing, transmission and storage, and distribution segments of the natural gas industry.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 58 (total projected partners over the three-year ICR period).

Frequency of response: Annual.

Total estimated annual burden: 2,978 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated annual cost: $268,952, which includes $0 annualized capital or operation & maintenance costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–07542 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9975–50]

Environmental Modeling Public Meeting; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Environmental Modeling Public Meeting (EMPM) will be held on Wednesday, May 23, 2018. This Notice announces the location and time for the meeting and provides tentative agenda topics. The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, and exposure for pesticide risk assessments in a regulatory context.

DATES: The meeting will be held on May 23, 2018 from 9:00 a.m. to 4:30 p.m. Requests to participate in the meeting must be received on or before April 23, 2018.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Building), First Floor Conference Center (S–1200), 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Rebecca Lazarus or Andrew Shelby, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0520 and (703) 347–0119; fax number: (703) 305–0204; email address: *lazarus.rebecca@epa.gov* and *shelby.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting NAICS code 11.
- Utilities NAICS code 22.
- Professional, Scientific and Technical NAICS code 54.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

On a biannual interval, an EMPM is held for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums/.*

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2009–0879, must be received on or before April 23, 2018.

IV. Tentative Theme for the Meeting

Quantitative Use of Surface Water Monitoring Data: The 2018 Spring EMPM will provide a forum for presentations on methods for assessing pesticide monitoring data in surface waters. Potential topics include quantitative use of chemical surface water monitoring data in exposure/risk assessment, calibration of water quality models using surface water data, comparisons of chemical monitoring and modeling data, chemical removal efficacy of drinking water and sewage treatment and monitoring data for agricultural, urban, forestry and aquatic pesticide applications. Updates on ongoing topics will also be provided.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 29, 2018.

Marietta Echeverria,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2018–07642 Filed 4–11–18; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities: Proposed Collection; Comment Request; Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, OGE seeks comment on the development of a Generic Information Collection Request for the collection of qualitative feedback on agency service delivery for approval under the Paperwork Reduction Act. This notice announces OGE's intent to submit this collection to the Office of Management and Budget for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by June 11, 2018.

ADDRESSES: Comments may be submitted to OGE by any of the following methods:

Email: usoge@oge.gov (Include reference to ''Fast Track Generic Clearance comment'' in the subject line of the message.)

FAX: 202–482–9237, Attn: Grant Anderson.

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Grant Anderson, Assistant Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Grant Anderson at the U.S. Office of Government Ethics; telephone: 202–482–9318; TTY: 800–877–8339; FAX: 202–482–9237; Email: *ganderso@oge.gov.*

SUPPLEMENTARY INFORMATION:

Title: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: To be determined.

Needs and Uses: The proposed information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the agency's commitment to improving service delivery. Qualitative feedback means information that provides useful insights on perceptions and opinions, but is not a statistical survey that yields quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

OGE expects to use various methods (*e.g.,* focus groups, customer satisfaction surveys, comment cards), to solicit feedback. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public and other agency stakeholders. If this information is not collected, vital feedback from customers and stakeholders on the agency's services will be unavailable.

The agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial;
- The collections are focused on the awareness, understanding, attitudes, preferences, or experiences of the public or other stakeholders in order to improve existing or future services, products, or communication materials;
- Personally identifiable information (PII) is collected only to the extent necessary;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release to the public;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections submitted under this generic clearance will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Action: New information collection request (generic).

Type of Review: New.

Affected Public: Individuals; Business or Other For-Profit Institutions; Not-For-Profit Institutions; State or Local Government.

Estimated Annual Number of Respondents: 45,000.

Projected average burden estimates for the next three years:

Average Expected Annual Number of Activities: 40.

Average Number of Respondents per Activity: 1,125.

Responses per Respondent: 1.

Annual Responses: 45,000.

Average Minutes per Response: 3 minutes.

Annual Burden Hours: 2,250 hours.

Frequency: On occasion.

Request for Comments: Agency and public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE generic information collection request. The comments will also become a matter of public record.

Approved: April 6, 2018.

David J. Apol,

General Counsel and Acting Director, U.S. Office of Government Ethics.

[FR Doc. 2018–07537 Filed 4–11–18; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2018–0033, NIOSH–311]

Draft—National Occupational Research Agenda for Public Safety

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for comment.

SUMMARY: The National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention announces the availability of a draft NORA Agenda entitled *National Occupational Research Agenda for Public Safety* for public comment. To view the notice and related materials, visit *https://www.regulations.gov* and enter CDC–2018–0033 in the search field and click ''Search.''

DATES: Electronic or written comments must be received by June 11, 2018.

ADDRESSES: You may submit comments, identified by CDC–2018–0033 and docket number NIOSH–311, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* Follow the instructions for submitting comments.
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998.

Instructions: All submissions received in response to this notice must include

the agency name and docket number [CDC–2018–0033; NIOSH–311]. All relevant comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 155, Cincinnati, OH 45226–1998.

FOR FURTHER INFORMATION CONTACT: Emily Novicki (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop E–20, 1600 Clifton Road NE, Atlanta, GA 30329, phone (404) 498–2581 (not a toll free number).

SUPPLEMENTARY INFORMATION: The National Occupational Research Agenda (NORA) is a partnership program created to stimulate innovative research and improved workplace practices. The national agenda is developed and implemented through the NORA sector and cross-sector councils. Each council develops and maintains an agenda for its sector or cross-sector.

Background: The National Occupational Research Agenda for Public Safety is intended to identify the research, information, and actions most urgently needed to prevent occupational injuries. The National Occupational Research Agenda for public safety provides a vehicle for stakeholders to describe the most relevant issues, gaps, and safety and health needs for the public safety sector. Each NORA research agenda is meant to guide or promote high priority research efforts on a national level, conducted by various entities, including: government, higher education, and the private sector.

The first National Occupational Research Agenda for Public Safety was published in 2009 for the second decade of NORA (2006–2016). This draft is an updated agenda for the third decade of NORA (2016–2026). The revised agenda was developed considering new information about injuries and illnesses, the state of the science, and the probability that new information and approaches will make a difference. As the steward of the NORA process, NIOSH invites comments on the draft *National Occupational Research Agenda for Public Safety.* Comments expressing support or with specific recommendations to improve the Agenda are requested. A copy of the draft Agenda is available at *https://www.regulations.gov* (see Docket Number CDC–2018–0033).

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2018–07374 Filed 4–11–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18UF; Docket No. CDC–2018–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Evidence to Inform Standards that Ensure Turnout Gear Remains Protective Throughout Its Lifecycle* that will provide data that links turnout gear use conditions to its resulting performance characteristics.

DATES: CDC must receive written comments on or before June 11, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0032 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

Evidence to Inform Standards that Ensure Turnout Gear Remains Protective Throughout Its Lifecycle—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Institute for Occupational Safety and Health (NIOSH) has been tasked to assure safe

and healthful working conditions for men and women (Occupational Safety and Health Act, 1970, Pub. L. 91–596 (Section 20[a][1])). The National Personal Protective Technology Laboratory focuses on improving personal protective equipment across many industries, including the fire services. NIOSH seeks to request a three-year Office of Management and Budget approval to gather data about Personal Protective Equipment (PPE) use conditions.

Turnout gear is a type of PPE used by the 1.1 million U.S. fire fighters to shield the body from carcinogens, flames, heat, and chemical/biological agents. It serves as a barrier to external hazards while simultaneously allowing for the escape of metabolic heat to prevent elevated core body temperatures. To provide the necessary performance characteristics, turnout gear design is complex, consisting of three major layers that work as a composite—a thermal liner, a moisture barrier, and an outer shell.

Consensus standards provide performance requirements and retirement criteria for turnout gear. The retirement criteria is based on visual inspections and a 10-year age cap with visual inspection being less effective for the moisture barrier and thermal liner layers. Recent data of turnout gear donated from fire departments demonstrates that turnout gear from 2 to 10 years old was unable to meet all performance requirements. Thus, under the current retirement criteria, turnout gear that may not be protective against all hazards is being used by fire fighters.

Intuitively, the use conditions to which turnout gear would be exposed to when used by a large or medium metropolitan fire department would be very different from those of a smaller department. However, the absence of scientific data to link performance to use conditions (*e.g.,* number and type of washings, number of fire-related calls) provides a barrier to transitioning to an alternative approach to retirement.

This study will obtain a statistically meaningful sample of turnout gear from three fire departments. The use conditions for the sampled turnout gear will be determined, and the gear will be subjected to established performance requirements. For each set of gear, its performance will be directly linked to its use condition history. This combined lab and field data will help determine if there is a relationship between turnout and gear use conditions. As well as the ability for turnout, gear too effectively protect the user.

The use conditions for each set of sampled gear will be determined by:

(1) Reviewing fire department records, practices, and policies;

(2) surveying the fire fighters assigned to each set of sampled gear to obtain one-month of retrospective information about the use conditions to which it was likely exposed; and

(3) a 6-month prospective data collection where the fire fighters assigned to each set of sampled gear provide information about their shift-specific exposures.

The survey will provide details about the use conditions (*e.g.,* number and type of launderings, repair history, and exposure to fire-related calls) specific to the fire fighters who used the sampled turnout gear. The data produced by this study will be used to improve confidence that turnout gear will remain protective throughout its lifecycle. Samples of 300 individuals will be collected from three fire departments. The time required to complete a data collection instrument will be about 30 minutes for the paper retrospective study and 10 minutes for each electronic prospective survey to be completed at the end of each shift, which is estimated to be 60 shifts over a 6-month period.

The following table provides an estimate of the annualized burden hours. The estimated total hours for this information collection is 3,150, over a three-year timeframe, with a maximum of 300 people.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Individual Fire Fighter	Turnout Gear Safety Survey—Retrospective Exposures for past month.	100	1	30/60	50
	Turnout Gear Safety Survey—Prospective Exposures for six months.	100	60	10/60	1,000
Total	.....	.....	.....	.....	1,050

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–07562 Filed 4–11–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0200; Docket No. CDC–2018–0030]

Proposed Data Collections Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Coal Workers' Health Surveillance Program (CWHSP). The CWHSP is a congressionally-mandated medical examination program for monitoring the health of coal miners and was originally established under the Federal Coal Mine Health and Safety

Act of 1969 with all subsequent amendments (the Act).

DATES: CDC must receive written comments on or before June 11, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0030 by any of the following methods:

• *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: *Submit all Federal comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Coal Workers' Health Surveillance Program (CWHSP), OMB Number 0920–0020, expires 06/30/2018—Extension—for National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

NIOSH would like to extend the Coal Workers' Health Surveillance Program (CWHSP) data collection project. This request incorporates all components of the CWHSP. Those components includes Coal Workers' X-ray Surveillance Program (CWXSP), B Reader Program, Enhanced Coal Workers' Health Surveillance Program (ECWHSP), Expanded Coal Workers' Health Surveillance Program, and National Coal Workers' Autopsy Study (NCWAS).

The CWHSP is a congressionally mandated medical examination program for monitoring the health of coal miners and was originally established under the Federal Coal Mine Health and Safety Act of 1969 with all subsequent amendments (the Act). The Act provides the regulatory authority for the administration of the CWHSP. This Program, which operates in accordance with 42 CFR part 37, is useful in providing information for protecting the health of and also in documenting trends and patterns in the prevalence of coal workers' pneumoconiosis ('black lung' disease) among miners employed in U.S. coal mines. The total estimated annualized burden hours of 20,281 is based on the following collection instruments:

• Coal Mine Operator Plan (2.10) and Coal Contractor Plan (2.18)—Under 42 CFR part 37, every coal operator and coal contractor in the U.S. must submit a plan approximately every 4 years, providing information on how they plan to notify their miners of the opportunity to obtain the medical examination. Completion of this form with all requested information (including a roster of current employees) takes approximately 30 minutes.

• Radiographic Facility Certification Document (2.11)—X-ray facilities seeking NIOSH approval to provide miner radiographs under the CWHSP must complete an approval packet including this form that requires approximately 30 minutes for completion.

• Miner Identification Document (2.9)—Miners who elect to participate in the CWHSP must fill out this document, which requires approximately 20 minutes. This document records demographic and occupational history, as well as information required under the regulations in relation to the examinations.

• Chest Radiograph Classification Form (2.8)—NIOSH utilizes a radiographic classification system developed by the International Labour Office (ILO) in the determination of pneumoconiosis among coal miners. Physicians (B Readers) fill out this form regarding their interpretations of the radiographs (each image has at least two separate interpretations, and approximately 7% of the images require additional interpretations). Based on prior practice it takes the physician approximately three minutes per form.

• Physician Application for Certification (2.12)—Physicians taking the B Reader examination are asked to complete this registration form, which provides demographic information as well as information regarding their medical practices. It typically takes the physician about 10 minutes to complete this form.

• Guidelines for Spirometry in the ECWHSP Mobile (Internal use, no form number assigned)—Miners (both active and former) participating in the ECWHSP component of the Program are offered a spirometry test. This form is administered by a NIOSH employee (or contractor) in the ECWHSP Mobile Unit during the initial intake process and takes approximately five minutes to complete. This information is required to make sure that the spirometry test can be done safely and that the miner is physically capable of performing the spirometry maneuvers.

• Spirometry Facility Certification Document (2.14)—This form is analogous to the Radiographic Facility Certification Document (2.11) and records the spirometry facility equipment/staffing information. Spirometry facilities seeking NIOSH approval to provide miner spirometry testing under the CWHSP must complete an approval packet, which includes this form. It is estimated that it will take approximately 30 minutes

for this form to be completed at the facility.

• Respiratory Assessment Form (2.13)—This form is designed to assess respiratory symptoms and certain medical conditions and risk factors. It is estimated that it will take approximately five minutes for this form to be administered to the miner by an employee at the facility.

• Spirometry Results Notification Form (2.15)—This form is used to: Collect information that will allow NIOSH to identify the miner in order to provide notification of the spirometry test results; assure that the test can be done safely; record certain factors that can affect test results; provide documentation that the required components of the spirometry examination have been transmitted to NIOSH for processing; and conduct quality assurance audits and interpretation of results. It is estimated that it will take the facility approximately 20 minutes to complete this form.

• Pathologist Invoice—Under the NCWAS, the invoice submitted by the pathologist must contain a statement that the pathologist is not receiving any other compensation for the autopsy. Each participating pathologist may use their individual invoice as long as this statement is added. It is estimated that only 5 minutes is required for the pathologist to add this statement to the standard invoice that they routinely use.

• Pathologist Report—Under the NCWAS, the pathologist must submit information found at autopsy, slides, blocks of tissue, and a final diagnosis indicating presence or absence of pneumoconiosis. The format of the autopsy reports is variable depending on the pathologist conducting the autopsy. Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request for a clinical abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the pathologist's report.

• Consent, Release and History Form (2.6)—This form documents written authorization from the next-of-kin to perform an autopsy on the deceased miner. A minimum of essential information is collected regarding the deceased miner including an occupational history and a smoking history. From experience, it is estimated that 15 minutes is required for the next-of-kin to complete this form.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Coal Mine Operator	2.10	388	1	30/60	194
Coal Mine Contractor	2.18	575	1	30/60	288
X-ray Facility Supervisor	2.11	40	1	30/60	20
Coal Miner	2.9	14,560	1	20/60	4,854
Coal Miner	No form	14,560	1	15/60	3,640
B Reader Physician	2.8	10	3014	3/60	1,507
Physicians taking the B Reader Examination.	2.12	100	1	10/60	17
Spirometry Facility Supervisor	2.14	100	1	30/60	50
Spirometry Facility Employee	2.13	14,560	1	5/60	1,214
Spirometry Technician	2.15	14,560	1	20/60	4,854
Coal Miner	No form	14,560	1	15/60	3,640
Pathologist	Invoice—No standard form	1	1	5/60	1
Pathologist	Pathology Report—No standard form.	1	I	5/60	1
Next-of-kin for deceased miner	2.6	1	1	15/60	1
Total					20,281

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–07563 Filed 4–11–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Intergovernmental Reference Guide (IRG).

OMB No.: 0970–0209.

Description: The Intergovernmental Reference Guide (IRG) is a centralized and automated repository of state and tribal profiles, which contains high-level descriptions of each state and the tribal child support enforcement (CSE) program. These profiles provide state and tribal CSE agencies, and foreign countries with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

The IRG information collection activities are authorized by: (1) 42 U.S.C. 652(a)(7), which requires the federal Office of Child Support Enforcement (OCSE) to provide technical assistance to state child support enforcement agencies to help them establish effective systems for collecting child and spousal support; (2) 42 U.S.C. 666(f), which requires states to enact the Uniform Interstate Family Support Act; (3) 45CFR 301.1, which defines an intergovernmental case to include cases between states and tribes; (4) 45 CFR309.120, which requires a tribal child support program to include intergovernmental procedures in its tribal IV–D plan; and (5) 45 CFR 303.7, which requires state child support agencies to provide services in intergovernmental cases.

Respondents: All state and tribal CSE agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total Burden hours
Intergovernmental Reference Guide: State Profile Guidance—(States and Territories)	54	18	0.3	291.6
Intergovernmental Reference Guide: Tribal Profile Guidance	62	18	0.3	334.8
Total				626.4

Estimated Total Annual Burden Hours: 626.4 hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–07574 Filed 4–11–18; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program: Guidance for Submitting an Annual or Final Report to the Secretary.

OMB No.: Renewal of Collection OMB Control No. 0970–0409, Expiration Date 10/31/18.

Description: Section 511(e)(8)(A) of Title V of the Social Security Act requires that grantees under the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program for states and jurisdictions submit an annual report to the Secretary of Health and Human Services regarding the program and activities carried out under the program, including such data and information as the Secretary shall require. Section 511(h)(2)(A) further states that the requirements for the MIECHV grants to tribes, tribal organizations, and urban Indian organizations are to be consistent, to the greatest extent practicable, with the requirements for grantees under the MIECHV program for states and jurisdictions.

The Administration for Children and Families, Office of Child Care, in collaboration with the Health Resources and Services Administration, Maternal and Child Health Bureau, has awarded grants for the Tribal Maternal, Infant, and Early Childhood Home Visiting Program (Tribal Home Visiting). The Tribal Home Visiting discretionary grants support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance measures in six legislatively-mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

Tribal Home Visiting grantees have been notified that in every year of their grant, after the first year, they must comply with the requirement for submitting an Annual Report to the Secretary that should feature activities carried out under the program during the past reporting period and a final report to the Secretary during the final year of their grant. In order to assist grantees with meeting the requirements of the Annual and Final Report to the Secretary, ACF created guidance for grantees to use when writing their reports. The existing guidance (OMB Control No. 0970–0409, Expiration Date 10/31/18) provides sections where grantees must address the following:

- Update on Home Visiting Program Goals and Objectives
- Update on the Implementation of Home Visiting Program in Targeted Community(ies)
- Progress toward Meeting Legislatively Mandated Benchmark Requirements
- Update on Rigorous Evaluation Activities
- Home Visiting Program Continuous Quality Improvement (CQI) Efforts
- Administration of Home Visiting Program
- Technical Assistance Needs

The proposed data collection form is as follows: ACF is requesting approval to renew and update the existing Tribal Home Visiting Guidance for Submitting an Annual or Final Report to the Secretary (OMB Control No. 0970–0409) that will include instructions for grantees to submit either an annual or final report on the progress of their program to the Secretary, depending on the reporting period.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Managers (The information collection does not include direct interaction with individuals or families that receive the services).

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Total responses	Average burden hours per response	Total annual burden hours
Annual/Final Report to the Secretary (depending on reporting period)	25	1	1	50	1,250

Estimated Total Annual Burden Hours: 1,250.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–07522 Filed 4–11–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0001]

Annual Public Meeting; Reagan-Udall Foundation for the Food and Drug Administration

AGENCY: Reagan-Udall Foundation for the Food and Drug Administration.

ACTION: Notice of annual meeting.

SUMMARY: The Reagan-Udall Foundation (the Foundation) for the Food and Drug Administration (FDA), which was created by Title VI of the Food and Drug Administration Amendments Act of 2007, is announcing its annual public meeting. The Foundation will discuss its activities and how it supports FDA.

DATES: The public meeting will be held on May 4, 2018, from 10 a.m. until 12 noon. Registration to attend the meeting must be received by May 3, 2018, at 5 p.m. Eastern Time. Requests for oral presentations must be received before May 2, 2018, at 5 p.m. Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information. The public is also invited to submit written comments by sending them via email to Elisabeth Shaefer (see **FOR FURTHER INFORMATION CONTACT**) before May 3, 2018, at 5 p.m. Eastern Time.

ADDRESSES: The public meeting will be held at Alston & Bird, 950 F St. NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Elisabeth Shaefer, Executive Assistant to the Executive Director, Reagan-Udall Foundation for the FDA, 202–849–2255, *eshaefer@reaganudall.org.*

SUPPLEMENTARY INFORMATION:

I. Background

The Reagan-Udall Foundation for the FDA is an independent 501(c)(3) not-for-profit, organization created by Congress to advance the mission of FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development; accelerate innovation, and enhance product safety. With the ultimate goal of improving public health, the Foundation provides a unique opportunity for different sectors (FDA, patient groups, academia, other government entities, and industry) to work together in a transparent way to create exciting new research and engagement projects to advance regulatory science.

The Foundation acts as a neutral third party to establish novel, scientific collaborations. Much like any other independently developed information, FDA evaluates the scientific information from these collaborations to determine how the Foundation projects can help the Agency to fulfill its mission.

Foundation projects currently include: Innovation in Medical Evidence Development and Surveillance, a public-private partnership that allows researchers to study drug safety concerns of interest to public health; an Expanded Access Navigator that offers instructional material and resources for physicians, patients, and their caregivers on how to access investigational drugs outside of clinical trials; and a new joint Foundation and FDA regulatory science fellowship program.

II. Topics for Discussion at the Public Meeting

FDA Commissioner, Dr. Scott Gottlieb, will deliver a keynote address, followed by a panel discussion on the ''Evolution of FDA Science and Engagement'' and the role of the Foundation. Panelists will include the current FDA Commissioner, Dr. Scott Gottlieb, and former FDA Commissioners Drs. Robert Califf and Andrew C. von Eschenbach. The panel moderator will be Susan Dentzer, President and Chief Executive Officer of the Network for Excellence in Health Innovation. Find the meeting agenda at *https://reaganudall.org/public-meeting.*

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website to register: *https://reaganudall.org/public-meeting.* Persons interested in attending this public meeting must register online by May 3, 2018, at 5 p.m. Eastern Time.

If you need special accommodations due to a disability, please contact Elisabeth Shaefer (see **FOR FURTHER INFORMATION CONTACT**) no later than May 1, 2018.

Requests for Oral Presentations: Interested persons may present comments at the public meeting. Comments will be scheduled to begin approximately at 11:30 a.m. Time allotted for comments may be limited to 3 minutes, dependent on the number of requests received. Those desiring to make oral comments should notify Elisabeth Shaefer (see **FOR FURTHER INFORMATION CONTACT**) by May 2, 2018. Please include a brief statement of the general nature of the comments you wish to present along with your name, address, telephone number, and email address. The contact person will notify individuals regarding their request to speak by May 3, 2018.

Dated: April 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07544 Filed 4–11–18; 8:45 am]

BILLING CODE 4161–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1076]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 14, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0563. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice

OMB Control Number 0910–0563—Extension

Congress enacted section 562 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–1), which directed FDA to ensure that it had adequate dispute resolution procedures to provide for appropriate review of scientific controversies between the FDA and members of regulated industry, including possible review by a scientific advisory committee. To implement this provision, we amended the general appeal regulation applicable across all FDA components (21 CFR 10.75; Internal Agency review of decisions) to provide for advisory committee review (§ 10.75(b)(2)). At the same time, and also consistent with the mandates of section 562 of the FD&C Act, we adopted an approach whereby specific implementation procedures regarding scientific controversy associated with review of certain FDA decisions are detailed in center-issued guidance.

Accordingly, FDA developed the guidance entitled, ''Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice.'' We intend the guidance to inform manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes about scientific and technical issues relating to current good manufacturing practice (CGMP). Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements or during FDA's assessment of corrective actions undertaken as a result of such inspections. The guidance recommends procedures that we believe encourage open and prompt discussion of disputes and lead to their resolution. The guidance describes procedures for raising such disputes to the Office of Regulatory Affairs and Center levels and for requesting review by the dispute resolution (DR) panel. The guidance is available on our website at: *https://www.fda.gov/downloads/drugs/guidances/ucm070279.pdf,* along with additional information regarding the resolution of scientific disputes at FDA.

In the **Federal Register** of October 27, 2017 (82 FR 49832), we published a notice soliciting public comment on the proposed collection of information. Although no comments were received, we are reconsidering the usefulness of the guidance document in light of changing Agency procedures. Consistent with our regulations at 21 CFR part 10.115 we invite comment on our guidance documents at any time. Ultimately, as our resources permit, we hope to either revise, replace, or withdraw the subject guidance document, however, until that time the guidance remains available. Accordingly, we are seeking to extend OMB approval of the information collection and estimate the burden as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Annual frequency per response	Total annual responses	Average burden per response	Total hours
Requests for tier-one DR	2	1	2	30	60
Requests for tier-two DR	1	1	1	8	8
Total					68

[1] There are no capital costs or operating and maintenance costs associated with this collection.

As reflected in table 1, we estimate only a nominal burden for the information collection and assume: (1) That two manufacturers will submit two requests annually for tier-one DR; (2) that there will be one appeal to the DR panel (tier-two DR); (3) that it will take respondents approximately 30 hours to prepare and submit each tier-one DR request; and (4) that it will take approximately 8 hours to prepare and submit each tier-two DR request. We base this estimate on our experience with the information collection. There has been no increase in the burden

estimate since the previous OMB approval.

Dated: April 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07543 Filed 4–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6162]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Notification of the Intent To Use An Accredited Person Under the Accredited Persons Inspection Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 14, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0569. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notification of the Intent To Use An Accredited Person Under the Accredited Persons Inspection Program

OMB Control Number 0910–0569—Extension

Section 201 of the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250) amended section 704 of the Federal Food, Drug, and Cosmetic Act by adding paragraph (g) (21 U.S.C. 374(g)). This amendment authorized FDA to establish a voluntary third-party inspection program applicable to manufacturers of class II or class III medical devices who meet certain eligibility criteria. In 2007, the program was modified by the Food and Drug Administration Amendments Act of 2007 by revising eligibility criteria and by no longer requiring prior approval by FDA. To reflect the revisions, FDA modified the title of the collection of information and on March 2, 2009, issued a guidance entitled ''Manufacturer's Notification of the Intent to Use an Accredited Person Under the Accredited Persons Inspection Program Authorized by Section 228 of the Food and Drug Administration Amendments Act of 2007.'' This guidance superseded the Agency's previous guidance regarding requests for third-party inspection and may be found on the internet at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM085252.pdf.* The guidance is intended to assist device establishments in determining whether they are eligible to participate in the Accredited Persons (AP) Program and, if so, how to submit notification of their intent to use the program. The AP Program applies to manufacturers who currently market their medical devices in the United States and who also market or plan to market their devices in foreign countries. Such manufacturers may need current inspections of their establishments to operate in global commerce.

There are approximately 8,000 foreign and 10,000 domestic manufacturers of medical devices. Approximately 5,000 of these firms only manufacture class I devices and are, therefore, not eligible for the AP Program. In addition, 40 percent of the domestic firms do not export devices and therefore are not eligible to participate in the AP Program. Further, 10 to 15 percent of the firms are not eligible due to the results of their previous inspection. FDA estimates there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion under the AP Program. Based on communications with industry, FDA estimates that on an annual basis approximately 10 of these manufacturers may use an AP in any given year.

In the **Federal Register** of November 21, 2017 (82 FR 55379), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 U.S.C. section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notification regarding use of an AP—374(g)	10	1	10	15	150

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since the last approval of this information collection, we have updated the estimated number of respondents from 20 to 10 respondents per year, based on the reduced number of notifications received in recent years. This adjustment has resulted in a 150-hour reduction to the total hour burden estimate.

Dated: April 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07619 Filed 4–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1387]

Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff.'' This draft guidance provides FDA's current thinking on expanding the abbreviated 510(k) program for demonstrating substantial equivalence for premarket notification (510(k)) submissions. The intent of the draft guidance is to describe an optional program for certain well understood device types, where a submitter could demonstrate that a new device meets FDA-identified performance criteria instead of directly comparing the performance of the new device to a specific, submitter-identified predicate device as part of a demonstration of substantial equivalence. This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by July 11, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1387 for ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

For Center for Devices and Radiological Health-regulated devices: Sonja Fulmer, Office of the Center Director, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5421, Silver Spring, MD 20993–0002, 301–402–5979.

For Center for Biologics Evaluation and Research-regulated devices: Stephen Ripley, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has explained and clarified, through the guidance entitled, ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]'' (Ref. 1), how it makes substantial equivalence decisions under section 513(i)(1)(A) of the Federal, Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(i)(1)(A)). Substantial equivalence is rooted in comparisons between new devices and predicate devices. However, the FD&C Act does not preclude FDA from using performance criteria to facilitate this comparison. If a legally marketed device performs at certain levels relevant to its safety and effectiveness, and a new device meets or exceeds those levels of performance for the same characteristics, FDA could find the new device as safe and effective as the legally marketed device. Instead of reviewing data from direct comparison testing between the two devices, FDA could support a finding of substantial equivalence with data showing the new device meets or exceeds the level of performance of appropriate predicate device(s). Under the approach expanded in this guidance, a submitter could satisfy the requirement to compare its device with a legally marketed device by, among other things, demonstrating conformance to performance criteria established in FDA-recognized consensus standards, FDA guidance, and/or special controls.

Use of this approach may also streamline the review of 510(k) submissions, thereby reducing burdens on the Agency and possibly review times on individual submissions. In addition, this approach may facilitate healthcare professionals and patients making better informed decisions, by helping ensure a device cleared through this pathway meets a transparent set of performance criteria. At the same time, this approach satisfies the statutory standard for demonstrating substantial equivalence. As a result, this expanded approach is intended to promote the public health by helping patients gain more timely access to new medical devices that are high quality, safe, and effective. FDA welcomes public input on device types for which FDA should consider identifying performance criteria and evidence-based suggestions on what the performance criteria should be.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This draft guidance document is also available at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm* or *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Expansion of the Abbreviated 510(k) Program: Demonstrating Substantial Equivalence Through Performance Criteria; Draft Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17038 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807, subpart E have been approved under OMB control number 0910–0120 and the collections of information in the guidance document ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

V. Reference

The following reference is on display in the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''The 510(k) Program: Evaluating Substantial Equivalence in Premarket Notifications [510(k)]—Guidance for Industry and Food and Drug Administration Staff,'' July 28, 2014, available at: *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM284443.*

Dated: April 9, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07564 Filed 4–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1030]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Allergen Labeling and Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 14, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0792. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Allergen Labeling and Reporting

OMB Control Number 0910–0792—Extension

This information collection supports third-party disclosure requirements of food allergen labeling, as well as the reporting associated with the submission of petitions and notifications seeking exemptions from the labeling requirements for ingredients derived from major food allergens under section 403(w)(6) and (7) of the FD&C Act (21 U.S.C. 343(w)(6) and (7)). The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II, Pub. L. 108–282) amended the FD&C Act by defining the term ''major food allergen'' and stating that foods regulated under the FD&C Act are misbranded unless they declare the presence of each major food allergen on the product label using the name of the food source from which the major food allergen is derived. Section 403(w)(1) of the FD&C Act sets forth the requirements for declaring the presence of each major food allergen on the product label. Section 201(qq) of the FD&C Act (21 U.S.C. 321(qq)) defines a major food allergen as ''[m]ilk, egg, fish (*e.g.,* bass, flounder, or cod), Crustacean shellfish (*e.g.,* crab, lobster, or shrimp), tree nuts (*e.g.,* almonds, pecans, or walnuts), wheat, peanuts, and soybeans'' and also as a food ingredient that contains protein derived from such foods. The definition excludes any highly refined oil derived from a major food allergen and any ingredient derived from such highly refined oil.

In some cases, the production of an ingredient derived from a major food allergen may alter or eliminate the allergenic proteins in that derived ingredient to such an extent that it does not contain allergenic protein. In addition, a major food allergen may be used as an ingredient or as a component of an ingredient such that the level of allergenic protein in finished food products does not cause an allergic response that poses a risk to human health. Therefore, FALCPA provides two mechanisms through which such ingredients may become exempt from the labeling requirement of section 403(w)(1) of the FD&C Act. An ingredient may obtain an exemption through submission and approval of a petition containing scientific evidence that demonstrates that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(6) of the FD&C Act). Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

A. Third-Party Disclosure

The labeling requirements of section 403(w)(1) of the FD&C Act apply to all packaged foods sold in the United States that are regulated under the FD&C Act, including both domestically manufactured and imported foods. As noted, section 403(w)(1) of the FD&C Act requires that the label of a food product declare the presence of each major food allergen. We estimate the information collection burden of the third-party disclosure associated with food allergen labeling under section 403(w)(1) of the FD&C Act as the time needed for a manufacturer to review the labels of new or reformulated products for compliance with the requirements of section 403(w)(1) of the FD&C Act and the time needed to make any needed modifications to the labels of those products.

The primary user of the allergen information disclosed on the label or labeling of food products is the consumer that purchases the food product. Consumers will use the information to help them make choices concerning their purchase of a food product, including choices related to substances that the consumer wishes to avoid due to their potential to cause adverse reactions. Additionally, we intend to use the information to determine whether a manufacturer or other supplier of food products is meeting its statutory obligations. Failure of a manufacturer or other supplier of food products to label its products in compliance with section 403(w)(1) of the FD&C Act may result in a product being misbranded under the FD&C Act and the manufacturer or packer and the product subject to regulatory action.

B. Reporting

Under section 403(w)(6) and (7) of the FD&C Act, interested parties may request from us a determination that an ingredient is exempt from the labeling requirement of section 403(w)(1) of the FD&C Act. An ingredient may obtain an exemption through submission and approval of a petition containing scientific evidence that demonstrates that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(6) of the FD&C Act). This section also states that the burden shall be on the petitioner to provide scientific evidence (including the analytical method used to produce the evidence) that demonstrates that such food ingredient, as derived by the method specified in the petition, does not cause an allergic response that poses a risk to human health. Alternately, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

Our document entitled ''Food Allergen Labeling Exemption Petitions and Notifications: Guidance for Industry,'' sets forth our recommendations with regard to the information that an interested party should submit in such a petition or notification. The guidance states that to evaluate these petitions and notifications, we will consider scientific evidence that describes: (1) The identity or composition of the ingredient; (2) the methods used to produce the ingredient; (3) the methods used to characterize the ingredient; (4) the intended use of the ingredient in food; and (5) either (a) for a petition—data and information, including the expected level of consumer exposure to the ingredient, that demonstrate that the ingredient, when manufactured and used as described, does not cause an allergic response that poses a risk to human health; or (b) for a notification, data and information that demonstrate that the ingredient, when manufactured as described, does not contain allergenic protein, or documentation of a previous determination under a process under section 409 of the FD&C Act that the ingredient does not cause an allergic response that poses a risk to human health.

We use information submitted in petitions and notifications to determine whether the ingredient satisfies the criteria of section 403(w)(6) and (7) of the FD&C Act for granting the exemption.

In the **Federal Register** of December 12, 2017 (82 FR 58407), we published a

60-day notice inviting public comment on the proposed extension of this collection of information. One comment was received that expressed support for the information collection but did not otherwise respond to the topics solicited, nor did the comment suggest we revise our burden estimate. We therefore retain the currently approved estimate of the associated burden for the information collection, which is as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

FD&C act section/activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
403(w)(1); review labels for compliance with food allergen labeling requirements	77,500	1	77,500	1	77,500
403(w)(1); redesign labels to comply with food allergen labeling requirements	3,875	1	3,875	16	62,000
Total					139,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Using a labeling cost model to estimate the number of new or reformulated products sold in the United States, annually, that are affected by the requirements of section 403(w)(1) of the FD&C Act, we estimate there are 690,000 Universal Product Codes (UPCs) of FDA-regulated foods and approximately 85,000 UPCs of FDA-regulated dietary supplements for a total of 775,000 UPCs. We assume an annual entry rate of 10 percent for new or reformulated UPCs (77,500), and assume 5 percent of labels may be redesigned (3,875). We estimate an average burden for the review of labels for compliance with the food allergen labeling requirements under section 403(w)(1) of the FD&C Act to be 1 hour, and we estimate 16 hours for the redesign of a label. Together we estimate a total annual hourly burden of 139,500 in third-party disclosure.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C act section/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(w)(6); petition for exemption	5	1	5	100	500
403(w)(7); notification	5	1	5	68	340
Total					840

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the number of petitions and notifications received in recent years, we assume that we will receive five petitions and five notifications annually, over the next 3 years. Assuming an association of one respondent to each petition or notification, we estimate that five respondents will each submit one petition and five respondents will each submit one notification, as reported in table 2, rows 1 and 2.

We base our estimate of the average burdens per response reported in table 2 on our experience with other petition processes. We estimate that a petition would take, on average, 100 hours to develop and submit. Therefore, we estimate that the burden associated with petitions will be 500 hours annually (5 petitions × 100 hours per petition).

The burden of a notification involves collecting documentation that a food ingredient does not pose an allergen risk. Either we can make a determination that the ingredient does not cause an allergic response that poses a risk to human health under a premarket approval or notification program under section 409 of the FD&C Act, or the respondent would submit scientific evidence demonstrating that the ingredient when manufactured as described does not contain allergenic protein. We estimate that it would take a respondent 20 hours to prepare and submit a notification based on our determination under a process under section 409 of the FD&C Act that the ingredient does not cause an allergic response. We estimate that it would take a respondent approximately 100 hours to prepare a notification submitting scientific evidence (including the analytical method used) that demonstrates that the food ingredient (as derived by the method specified in the notification, where applicable) does not contain allergenic protein. We have no data on how many notifications would be based on our determination that the ingredient does not cause an allergic response or based on scientific evidence that demonstrates that the food ingredient does not contain allergenic protein. Therefore, we estimate that three of the five notifications would be based on scientific evidence, and two of the five notifications would be based on our determination. The average time per notification is then estimated to be 68 hours (2 × 20 hours + 3 × 100 hours)/5). Therefore, we estimate that the burden associated with notifications will be 340 hours annually (5 notifications × 68 hours per notification), as reported in table 2. The burden estimate has not increased since the initial OMB approval.

Dated: April 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–07545 Filed 4–11–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that a National Advisory Council on Migrant Health (NACMH) meeting has been scheduled. This meeting will be open to the public. The agenda for the NACMH meeting can be obtained by contacting the Designated Federal Officer (DFO) or accessing the NACMH website: *https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh/index.html.*

DATES: The meeting will be held on May 8, 2018, 8:30 a.m.–5:30 p.m., and May 9, 2018, 9:30 a.m.–5:30 p.m.

ADDRESSES: The address for the meeting is Holiday Inn Downtown Yakima, 802 East Yakima Ave., Yakima, WA 98901. Phone Number: 509–494–7000.

FOR FURTHER INFORMATION CONTACT: All requests for information regarding the NACMH should be sent to Esther Paul, DFO, NACMH, HRSA, in one of three ways: (1) Send a request to the following address: Esther Paul, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, 16N38B, Rockville, Maryland 20857; (2) call (301) 594–4300; or (3) send an email to *epaul@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The NACMH is a non-discretionary advisory body mandated by the Public Health Service Act (PHSA), Title 42 U.S.C. 218, to advise, consult with, and make recommendations to the Secretary of HHS and the Administrator of HRSA regarding the organization, operation, selection, and funding of migrant health centers and other entities funded under section 330(g) of the PHSA (42 U.S.C. 254b). The Charter requires NACMH to meet at least twice per year to discuss services and issues related to the health of migrant and seasonal agricultural workers and their families and to formulate their recommendations to the HHS Secretary and HRSA Administrator.

Agenda: The agenda includes an overview of NACMH's general business activities. NACMH will also hear presentations from a Federal official and experts on issues facing agricultural workers, including the status of agricultural worker health at the local and national levels. Topics addressed at this meeting include:

I. Migrant and Seasonal Agricultural Worker Regional Health Issues/Trends; and

II. Occupational and Environmental Hazards and Injuries Impacting Migrant and Seasonal Agricultural Worker Health.

In addition, NACMH will hold a session where migratory and seasonal agricultural workers will comment on matters affecting the health of migratory and seasonal agricultural workers. This session is scheduled for Tuesday, May 8, 2018, from 1:30 p.m. to 5:00 p.m. at the Holiday Inn Downtown Yakima, Yakima, WA. Agenda items are subject to change as priorities dictate.

Members of the public will not be able to provide oral comments during the meeting. Written questions or comments for the NACMH may be sent to the DFO by April 24, 2018, using the address and phone number provided above. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the DFO at least 10 days prior to the meeting.

Dated: April 6, 2018.

Lori Roche,

Acting Deputy Director, Division of the Executive Secretariat.

[FR Doc. 2018–07523 Filed 4–11–18; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made on the part of Brandi M. Baughman, Ph.D., postdoctoral fellow in the Center for Integrative Chemical Biology and Drug Discovery, Division of Chemical Biology and Medicinal Chemistry, University of North Carolina at Chapel Hill (UNC). Dr. Baughman engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant R01 GM100919. The administrative actions, including debarment for a period of two (2) years, were implemented beginning on March 19, 2018, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr. P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Brandi M. Baughman, Ph.D., University of North Carolina at Chapel Hill: Based on an assessment conducted by UNC, Respondent's admission, and analysis conducted by ORI in its oversight review, ORI found that Dr. Baughman, postdoctoral fellow in the Center for Integrative Chemical Biology and Drug Discovery, Division of Chemical Biology and Medicinal Chemistry, UNC, engaged in research misconduct in research supported by NIGMS, NIH, grant R01 GM100919. A previous notice of research misconduct findings based on Respondent's prior admission (*Fed. Reg.* 82(117):28078–28079, 2017 July 20) included eleven (11) figures in *PLoS One* 11(10):e0164378, 2016 in research supported by the National Institute of Environmental and Health Sciences (NIEHS), NIH, and the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH. The Respondent has signed a statement confirming that she committed no additional instances of data manipulation.

ORI found that Respondent engaged in research misconduct by falsifying data that were included in the first submission of a manuscript to *ACS Chem. Biol.* (hereafter referred to as the ''Manuscript'') and in the final published version: Baughman, B.M., Pattenden, S.G., Norris, J.L., James, L.I., & Frye, S.V. ''The L3MBTL3 methyl-lysine reader domain functions as a dimer.'' *ACS Chem. Biol.* 11:722–728, 2016 (hereafter referred to as ''*ACS* 2016''). The paper was retracted in: *ACS Chem. Biol.* 13(1):281, 2018 Jan 19.

Respondent falsely reused and relabeled 14 individual Western blot images from an unrelated experiment conducted in September 2013 showing pulldown with biotin-UNC1215 using 0401 and HeLa overexpressed FL L3MBTL3 lysates (hereafter referred to as the ''9/13 experiment'') to falsely represent Western blot analysis of GFP.Flag co-IP experiments in GFP–WT lysates in Figure 3 of the Manuscript and a supplementary analysis of co-IPs with FullL–D274A in Figure 6 of *ASC* 2016. Specifically, Respondent used Western blot band images from:

- Lanes 3 and 4 (GFP input and GFP Bn-1215 IP; 9/13 experiment) to represent:

○ Lanes 1 and 2 (GFP:FLAG co-IP experiments in 3MBT–GFP lysates in the presence or absence of D381A; Figure 3, Manuscript)

○ N = 3 in Figure S6, *ACS* 2016

• Lanes 5 and 6 (GFP/Flag Input and GFP/FlagIP; 9/13 experiment) to represent:

○ Lanes 3 and 4 (GFP:Flag co-IP experiments in FL–GFP–WT lysates; Figure 3, Manuscript)

○ N = 1 in Figure S6, *ACS* 2016

• Lanes 9 and 10 (mCherry input and mCherry Bn-1215 IP; 9/13 experiment) to represent:

○ Lanes 5 and 6 (GFP:FLAG co-IP experiments in FL–GFP lysates in the presence or absence of D381A; Figure 3, Manuscript)

• Lanes 11 and 12 (mCherry/Flag input and mCherry/Flag IP; 9/13 experiment) to represent:

○ Lanes 7 and 8 (GFP:FLAG co-IP experiments in FL–GFP WT lysates; Figure 3, Manuscript)

• lanes 13 and 14 (mCherry/Flag IP unbound and mCherry/Flag BN–1215; 9/13 experiment) to represent:

○ Lanes 9 and 10 (GFP:FLAG co-IP experiments in FL–GFP lysates in the presence or absence of D274A; Figure 3, manuscript

○ N = 2 in Figure S6, *ACS* 2016

Dr. Baughman entered into a Voluntary Exclusion Agreement. The following administrative actions have been implemented for a period of two (2) years, beginning on March 19, 2018:

(1) Because Dr. Baughman knew when she signed the 2017 Agreement with ORI that there was an additional paper with falsified figures, she agreed to exclude herself voluntarily from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); this Agreement supersedes the terms of the previous supervision Agreement that included three (3) years of research supervision, which began on May 17, 2017; and

(2) Dr. Baughman agreed to exclude herself voluntarily from serving in any advisory capacity to the U.S. Public Health Service (PHS) including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Wanda K. Jones,

Interim Director, Office of Research Integrity.

[FR Doc. 2018–07521 Filed 4–11–18; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0391]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 11, 2018.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0391 and project title for reference, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Hospital Preparedness Program Data Collection.

Type of Collection: Extension.

OMB Number: 0990–0391—Hospital Preparedness Program (HPP) within the Division of National Healthcare Preparedness Programs (NHPP).

Abstract: The Hospital Preparedness Program (HPP) within the Division of National Healthcare Preparedness Programs (NHPP), in the Office of Emergency Management (OEM), Office of Assistant Secretary for Preparedness and Response (ASPR), in the Department of Health and Human Services is seeking clearance by the Office of Management of Budget (OMB) for an extension on Generic Data Collection Form. The Generic Data Collection Form will serve as the foundation for assessment and evaluation for HPP stakeholders, recipients, and sub-recipient programs and performance under the HPP Cooperative Agreement (CA) Program. Program data are gathered from recipients for both ad-hoc episodic reporting as well as required reporting as part of the HPP Cooperative Agreement. Ad-hoc reporting includes but is not limited to Coalition Assessment Tool (CAT) Data Collection Tool, Impact Survey, HPP Partner Survey, CA after action reports, Ebola and Other Special Pathogens. Required reporting include: Mid-Year and End-of-Year Progress Reports and other similar information collections (ICs) that account for recipient spending and program performance on all activities conducted in pursuit of achieving the HPP Cooperative Agreement goals.

As part of its health care sector preparedness and response obligations, HPP actively collaborates with The Centers for Disease Control and Prevention (CDC) Public Health Emergency Preparedness (PHEP) Program in order to realize health care preparedness and response goals. As part of the HPP Cooperative Agreement, the HPP data collection supports the U.S. public health and health care systems' ability to prepare for and to respond effectively to public health emergencies within the United States and associated territories and freely associated states. Recent public health threats of potentially catastrophic proportion underscore the importance of effective planning and response capabilities that can be applied to all hazards. As new threats to public health and health care emerge, ASPR must ensure that health and medical systems are not only integral parts of emergency response activities but also part of emergency preparedness planning with all relevant partners. Increased cooperation among responders, including state and local public health officials, emergency medical services (EMS), health care coalitions (HCCs), and private health care organizations, ensure the nation is better prepared to respond to all hazards. State public health departments and the mostly private sector health care delivery systems are now recognized as essential partners in emergency response and they have increased abilities to identify

and mitigate potential threats to the public's health. The HPP data collection provides key health care and public health data to support technical assistance. The data collections also help to identify resources to support state, local, and territorial public health departments, HCCs, and health care organizations, and they help to show measurable and sustainable progress toward achieving the preparedness and response capabilities that promote prepared and resilient communities.

This generic data collection effort is crucial to HPP's decision-making process regarding the continued existence, design and funding levels of this program. Results from these data analyses enable HPP to monitor health care emergency preparedness and progress towards national preparedness and response goals. HPP supports priorities outlined by the National Preparedness Goal (the Goal) established by the Department of Homeland Security (DHS) in 2005.[1] The Goal guides entities at all levels of government in the development and maintenance of capabilities to prevent, protect against, respond to and recover from major events. Additionally, the Goal will assist entities at all levels of government in the development and maintenance of the capabilities to identify, prioritize and protect critical infrastructure.

This request is for 3 years; for annual and ad-hoc reporting.

ANNUALIZED BURDEN HOUR TABLE

Forms (If necessary)	Respondents (If necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Generic and Future Program Data Information Collection(s).	HPP Awardees and Sub-awardees.	62	1	58	3,596
Total			1		3,596

Date: April 6, 2018.

Terry Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–07534 Filed 4–11–18; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0313]

Agency Emergency Information Collection Clearance Request for Public Comment

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherrette.funn@hhs.gov,* or call the Reports Clearance Office on (202) 795–7714. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 7 days.

Proposed Project: National Blood Collection & Utilization Survey (NBCUS), OMB No. 0990–0313, Emergency Information Collection Clearance Request, Reinstatement with change.

Office: HHS, Office of the Assistant Secretary for Health, Office of HIV/AIDS & Infectious Disease Policy.

Abstract: The NBCUS is a biennial survey of the blood collection and utilization community to produce reliable and accurate estimates of national and regional collections, utilization and safety of all blood products. The survey questionnaire will be mailed to approximately 2,800 institutions that include hospitals and blood collection facilities selected from the American Hospital Association (AHA) annual survey database and AABB member list of blood collection facilities. The survey includes a core of standard questions on blood collection, processing, and utilization practices to allow for comparison with data from previous surveys. Questions to specifically address emerging and developing issues and technologies in blood collection and utilization are included.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Hospitals, blood collection centers, cord blood banks	2,800	1	1	2,800

Terry Clark,

Asst Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–07535 Filed 4–11–18; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 16, 2018.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 3:45 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases.

Date: May 16, 2018.

Closed: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: 2:00 p.m. to 4:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases.

Date: May 16, 2018.

Open: 1:00 p.m. to 2:15 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition.

Date: May 16, 2018.

Closed: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 2:30 p.m. to 4:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Karl F. Malik, Ph.D., Acting Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, *malikk@niddk.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page:*www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 9, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07613 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Aging.

Date: May 17, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of

Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: May 17, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Award for Sustaining Outstanding Achievement in Research (SOAR) SEP.

Date: May 24, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Darcy, 1515 Rhode Island Ave. NW, Washington, DC 20005.

Contact Person: Crina Frincu, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Suite 662, Bethesda, MD 20892, *cfrincu@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 9, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07612 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice to Close Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Extramural Loan Repayment Program for Clinical Researchers.

Date: April 24, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713, (Virtual Meeting).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Officer, Division of Extramural Research and Training, National Institutes of Environmental Health Sciences, Research Triangle Park, NC 27709, Bethesda, MD 20892, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 9, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07614 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: May 8–9, 2018.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@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: April 6, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07608 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Systems of Biology.

Date: May 10, 2018.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, NationalInstitutes of Health, HHS)

Dated: April 9, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07609 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Clinical Trials.

Date: May 17, 2018.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 9, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07610 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning Grant (R34).

Date: May 3, 2018.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Chelsea D. Boyd, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852–9834, 240–669–2081, *chelsea.boyd@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–07611 Filed 4–11–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

U.S. Immigration and Customs Enforcement

Announcement of Program for the Private Sector To Participate in Trade-Related Training of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement Personnel; Correction

AGENCY: U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security.

ACTION: General notice; correction.

SUMMARY: CBP and ICE published a document in the **Federal Register** of February 16, 2018, concerning the process to solicit, evaluate, and select interested parties in the private sector to fulfill agency needs for instruction and related instructional materials for trade-related training, pursuant to section 104 of the Trade Facilitation and Trade Enforcement Act of 2015. The document contained incorrect contact information.

DATES: This correction is effective April 12, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Josephson, Trade Transformation Office, U.S. Customs & Border Protection, at 571–468–5108.

Correction

In the **Federal Register** of February 16, 2018, in FR Doc. 2018–03233, on page 7064, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to agency-designated personnel below:

CBP: Keith Josephson (571–468–5108).

ICE: Special Agent Nadine Andrews (703–603–3955).

All other information contained in the notice remains unchanged.

Dated: April 9, 2018.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2018–07581 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3395–EM; Docket ID FEMA–2018–0001]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Florida (FEMA–3395–EM), dated October 8, 2017, and related determinations.

DATES: The amendment was issued on April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–07598 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1816]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the

respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 27, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Douglas ..	Town of Castle Rock (17–08–1320P).	The Honorable Jennifer Green. Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	Utilities Department, 175 Kellogg Court, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2018 ...	080050
Douglas ..	Unincorporated areas of Douglas County (17–08–1320P).	The Honorable Roger Partridge, Chairman, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Douglas County Planning Department, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2018 ...	080049
Jefferson	City of Westminster (17–08–1102P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2018 ...	080008
Fairfield ..	City of Norwalk (17–01–2751P).	The Honorable Harry W. Rilling, Mayor, City of Norwalk, 125 East Avenue, Norwalk, CT 06851.	Planning and Zoning Department, 125 East Avenue, Norwalk, CT 06851.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	090012
Fairfield ..	City of Stamford (18–01–0055P).	The Honorable David Martin, Mayor, City of Stamford, 888 Washington Boulevard, Stamford, CT 06904.	City Hall, 888 Washington Boulevard, Stamford, CT 06904.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2018	090015
Fairfield ..	Town of Trumbull (17–01–1576P).	The Honorable Vicki A. Tesoro, First Selectman, Town of Trumbull Board of Selectmen, 5866 Main Street, Trumbull, CT 06611.	Town Hall, 5866 Main Street, Trumbull, CT 06611.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2018 ...	090017
Florida:						
Charlotte	Unincorporated areas of Charlotte County (17–04–7102P).	The Honorable Bill Truex, President, Charlotte County Board of Commissioners, 18500 Murdock Circle, Suite 536, Port Charlotte, FL 33948.	Charlotte County Community Development Department, 18500 Murdock Circle, Port Charlotte, FL 33948.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2018	120061
Collier.	Unincorporated areas of Collier County (18–04–0709P).	The Honorable Penny Taylor, Chair, Collier County Board of Commissioners, 3299 Tamiami Trail East, Suite 303, Naples, FL 34112.	Collier County Administrative Building, 3301 East Tamiami Trail, Building F, 1st Floor, Naples, FL 34112.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	120067

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Duval	City of Jacksonville (17–04–6148P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32002.	Development Services Department, 214 North Hogan Street, Suite 2100, Jacksonville, FL 32002.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	120077
Lee	Town of Fort Myers Beach (17–04–7870P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 7, 2018 ...	120673
Lee	Town of Fort Myers Beach (18–04–0640P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	120673
Manatee	City of Bradenton (18–04–1119P).	The Honorable Wayne H. Poston, Mayor, City of Bradenton, 101 Old Main Street West, Bradenton, FL 34205.	City Hall, 101 Old Main Street West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 15, 2018	120155
Manatee	City of Bradenton Beach (18–04–0582P).	The Honorable John Chappie, Mayor, City of Bradenton Beach, 107 Gulf Drive North, Bradenton Beach, FL 34217.	Building and Planning Department, 107 Gulf Drive North, Bradenton Beach, FL 34217.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2018 ...	125091
Manatee.	Unincorporated areas of Manatee County (18–04–1119P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 15, 2018	120153
Pasco	City of Port Richey (18–04–0510P).	The Honorable Dale Massad, Mayor, City of Port Richey, 6333 Ridge Road, Port Richey, FL 34668.	Building and Development Services Department, 6333 Ridge Road, Port Richey, FL 34668.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	120234
Sarasota.	Unincorporated areas of Sarasota County (18–04–0312P).	The Honorable Nancy Detert, Chair, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Planning and Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2018	125144
Georgia:						
Douglas ..	City of Douglasville (17–04–6806P).	The Honorable Rochelle Robinson, Mayor, City of Douglasville, 6695 Church Street, Douglasville, GA 30134.	City Hall, 6695 Church Street, Douglasville, GA 30134.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2018 ...	130305
Douglas ..	Unincorporated areas of Douglas County (17–04–6806P).	The Honorable Ramona Jackson Jones, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, Douglasville, GA 30134.	Douglas County Development Services Department, 8700 Hospital Drive, Douglasville, GA 30134.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2018 ...	130306

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Richmond	Augusta-Richmond County (17–04–3443P).	The Honorable Hardie Davis, Jr, Mayor, Augusta-Richmond County, 535 Telfair Street, Augusta, GA 30901.	Augusta-Richmond County Planning and Development Department, 535 Telfair Street, Augusta, GA 30901.	*https://msc.fema.gov/portal/advanceSearch.*	May 25, 2018	130158
Kentucky:						
Fayette ...	Lexington-Fayette Urban County Government (18–04–0043P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	LFUCG Phoenix Building, 101 East Vine Street, Lexington, KY 40507.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 7, 2018 ...	210067
North Carolina:						
Durham ..	Unincorporated areas of Durham County (17–04–2721P).	The Honorable Wendy Jacobs, Chair, Durham County Board of Commissioners, 200 East Main Street, 2nd Floor, Durham, NC 27701.	Durham County Stormwater Services Department, 101 City Hall Plaza, Durham, NC 27701.	*https://msc.fema.gov/portal/advanceSearch.*	Feb. 21, 2018	370085
Wayne	City of Goldsboro, (16–04–6905P).	The Honorable Chuck Allen, Mayor, City of Goldsboro, P.O. Drawer A, Goldsboro, NC 27533.	City Hall, 200 North Center Street, Goldsboro, NC 27530.	*http://www.msc.fema.gov/lomc.*	Apr. 6, 2018 ...	370255
Wayne	Unincorporated areas of Wayne County, (16–04–6905P).	The Honorable Bill Pate, Chairman, Wayne County Board of Commissioners, 224 East Walnut Street, Goldsboro, NC 27530.	Wayne County Manager's Office, 224 East Walnut Street, Goldsboro, NC 27533.	*http://www.msc.fema.gov/lomc.*	Apr. 6, 2018 ...	370254
Oklahoma:						
Grady	City of Chickasha (17–06–2589P).	Mr. John Noblitt, Manager, City of Chickasha, 117 North 4th Street, Chickasha, OK 73018.	City Hall, 117 North 4th Street, Chickasha, OK 73018.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 11, 2018	400234
Tulsa	City of Tulsa (18–06–0209P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, 15th Floor, Tulsa, OK 74103.	Planning and Development Department, 175 East 2nd Street, 4th Floor, Tulsa, OK 74103.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	405381
Pennsylvania:						
Lancaster	Township of Warwick (18–03–0392P).	Mr. Daniel L. Zimmerman, Manager, Township of Warwick, P.O. Box 308, Lititz, PA 17543.	Township Hall, 315 Clay Road, Lititz, PA 17543.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 15, 2018	421786
South Carolina:						
Berkley ...	Unincorporated areas of Berkley County (17–04–5508P).	The Honorable William W. Peagler, III, Berkley County Supervisor, P.O. Box 6122, Moncks Corner, SC 29461.	Berkeley County Planning and Zoning Department, 1003 Highway 52, Moncks Corner, SC 29461.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	450029

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Jasper	City of Hardeeville (17–04–7055P).	The Honorable Harry Williams, Mayor, City of Hardeeville, 205 Main Street, Hardeeville, SC 29927.	Building Department, 205 Main Street, Hardeeville, SC 29927.	*https://msc.fema.gov/portal/advanceSearch.*	May 24, 2018	450113
Richland	City of Columbia (17–04–5518P).	The Honorable Stephen K. Benjamin, Mayor, City of Columbia, P.O. Box 147, Columbia, SC 29217.	Department of Utilities and Engineering, 1136 Washington Street, Columbia, SC 29201.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	450172
Richland	City of Forest Acres (17–04–5518P).	The Honorable Frank Brunson, Mayor, City of Forest Acres, 5209 North Trenholm Road, Forest Acres, SC 29206.	City Hall, 5209 North Trenholm Road, Forest Acres, SC 29206.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	450174
South Dakota:						
Lawrence	City of Spearfish (18–08–0192P).	The Honorable Dana Boke, Mayor, City of Spearfish, 625 North 5th Street, Spearfish, SD 57783.	City Hall, 625 North 5th Street, Spearfish, SD 57783.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 13, 2018	460046
Texas:						
Bell	City of Belton (17–06–2281P).	The Honorable Marion Grayson, Mayor, City of Belton, P.O. Box 120, Belton, TX 76513.	City Hall, 333 Water Street, Belton, TX 76513.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2018 ...	480028
Bexar	City of San Antonio (17–06–2974P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2018 ...	480045
Collin	City of McKinney (17–06–4217P).	The Honorable George Fuller, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	Engineering Department, 221 North Tennessee Street, McKinney, TX 75069.	*https://msc.fema.gov/portal/advanceSearch.*	May 21, 2018	480135
Collin	City of Plano (17–06–4151P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	May 21, 2018	480140
Collin	City of Richardson (17–06–4151P).	The Honorable Paul Voelker, Mayor, City of Richardson, 411 West Arapaho Road, Richardson, TX 75080.	Capital Projects Department, 411 West Arapaho Road, Richardson, TX 75080.	*https://msc.fema.gov/portal/advanceSearch.*	May 21, 2018	480184
Collin	Town of Prosper (18-06-0355P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Services Department, 409 East 1st Street, Prosper, TX 75078.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	480141
Dallas	City of Dallas (17–06–3383P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Floodplain Management Department, 320 East Jefferson Boulevard, Room 301, Dallas, TX 75203.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	480171

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Dallas	City of Farmers Branch (17–06–3383P).	The Honorable Robert C. Dye, Mayor, City of Farmers Branch, 13000 William Dodson Parkway, Farmers Branch, TX 75234.	City Hall, 13000 William Dodson Parkway, Farmers Branch, TX 75234.	*https://msc.fema.gov/portal/advanceSearch.*	May 29, 2018	480174
Ellis	City of Waxahachie (17–06–1666P).	The Honorable Kevin Strength, Mayor, City of Waxahachie, 401 South Rogers Street, Waxahachie, TX 75165.	Public Works Department, 401 South Rogers Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	480211
Ellis	Unincorporated areas of Ellis County (17–06–1666P).	The Honorable Carol Bush, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	480798
El Paso ..	City of El Paso (18–06–0885P).	Mr. Tommy Gonzales, Manager, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 801 Texas Avenue, El Paso, TX 79901.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 12, 2018	480214
Fort Bend	City of Rosenberg (17–06–3041P).	The Honorable William T. ''Bill'' Benton, Mayor, City of Rosenberg, P.O. Box 32, Rosenberg, TX 77471.	City Hall, 2110 4th Street, Rosenberg, TX 77471.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 12, 2018	480232
Fort Bend	Unincorporated areas of Fort Bend County (17–06–3041P).	The Honorable Robert Hebert, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 301 Jackson Street, Richmond, TX 77469.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 12, 2018	480228
Tarrant ...	Town of Westlake (17–06–3364P).	The Honorable Laura Wheat, Mayor, Town of Westlake, 1500 Solana Boulevard, Building 7, Suite 7200, Westlake, TX 76262.	Planning and Development Department, 1500 Solana Boulevard, Building 7, Suite 7200, Westlake, TX 76262.	*https://msc.fema.gov/portal/advanceSearch.*	May 31, 2018	480614
Travis	City of Pflugerville (17–06–3914P).	The Honorable Victor Gonzales, Mayor, City of Pflugerville, P.O. Box 589, Pflugerville, TX 78691.	Development Services Department, 201–B East Pecan Street, Pflugerville, TX 78691.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 18, 2018	481028
Williamson.	City of Leander (17–06–3902P).	The Honorable Christopher Fielder, Mayor, City of Leander, P.O. Box 319, Leander, TX 78646.	City Hall, 200 West Willis Street, Leander, TX 78641.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2018 ...	481536
Utah:						
Box Elder	City of Perry City (17–08–1022P).	The Honorable Kevin Jeppsen, Mayor, City of Perry City, 3005 South 1200 West, Perry City, UT 84302.	City Hall, 3005 South 1200 West, Perry City, UT 84302.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	490010
Virginia:						
Wise	City of Norton (18–03–0175P).	The Honorable William J. Mays, Mayor, City of Norton, P.O. Box 618, Norton, VA 24273.	City Hall, 618 Virginia Avenue Northwest, Norton, VA 24273.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2018 ...	510108

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Wise	Unincorporated areas of Wise County (18–03–0175P).	Mr. Shannon C. Scott, Wise County Administrator, P.O. Box 570, Wise, VA 24293.	Wise County Building and Zoning Department, 206 East Main Street, Room 210, Wise, VA 24293.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 6, 2018 ...	510174
Wyoming:						
Teton	Unincorporated areas of Teton County (17–08–0693P).	The Honorable Mark Newcomb, Chairman, Teton County Board of Commissioners, P.O. Box 3594, Jackson, WY 83001.	Teton County Engineering Department, 320 South King Street, Jackson, WY 83001.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 14, 2018	560094

[FR Doc. 2018–07602 Filed 4–11–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3396–EM; Docket ID FEMA–2018–0001]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3396–EM), dated December 8, 2017, and related determinations.

DATES: This amendment was issued April 3, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective December 29, 2017.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–07599 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0021; OMB No. 1660–0112]

Agency Information Collection Activities: Proposed Collection; Comment Request; FEMA Preparedness Grants: Transit Security Grant Program (TSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Transit Security Grant Program (TSGP) which is a FEMA grant program that focuses on transportation infrastructure protection activities.

DATES: Comments must be submitted on or before June 11, 2018.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online:* Submit comments at *www.regulations.gov* under Docket ID FEMA–2018–0021. Follow the instructions for submitting comments.

(2) *Mail:* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Copeland, Section Chief, FEMA, Grant Programs Directorate, 202–786–0810. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Transit Security Grant Program (TSGP) is a FEMA grant program that focuses on transportation infrastructure protection activities. The collection of information for TSGP is mandated by Section 1406, Title XIV of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135), which directs the Secretary to establish a program for making grants to eligible public transportation agencies for security improvements. Additionally, information is collected in accordance with Section 1406(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135(c)) which authorizes the Secretary to determine the requirements for grant recipients, including application requirements.

Collection of Information

Title: FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0112.

FEMA Forms: FEMA Form 089–4, TSGP Investment Justification; FEMA Form 089–4A, TSGP Investment Justification Background Document; FEMA Form 089–4B, TSGP Five-Year Security Capital and Operational Sustainment Plan.

Abstract: The TSGP is an important component of the Department's effort to enhance the security of the Nation's critical infrastructure. The program provides funds to owners and operators of transit systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

Affected Public: Business or other for-profit; State, local, or Tribal government.

Estimated Number of Respondents: 123.

Estimated Number of Responses: 492.

Estimated Total Annual Burden Hours: 5,781 hours.

Estimated Total Annual Respondent Cost: $275,349.03.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $807,190.20.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: April 4, 2018.

Rachel Frier,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2018–07539 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4337–DR; Docket ID FEMA–2018–0001]

Florida; Amendment No. 15 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4337–DR), dated September 10, 2017, and related determinations.

DATES: The amendment was issued on April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–07600 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4341–DR; Docket ID FEMA–2018–0001]

Seminole Tribe of Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Seminole Tribe of Florida (FEMA–4341–DR), dated September 27, 2017, and related determinations.

DATES: The amendment was issued on April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Willie G. Nunn as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–07601 Filed 4–11–18; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–1640–0036]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security, Science and Technology, Research and Development Partnerships Group, Office of Public-Private Partnerships

AGENCY: Science and Technology (S&T) Directorate, Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comment.

SUMMARY: The DHS S&T invites the general public to comment on the DHS S&T Industry Outreach Information data collection form for the Public-Private Partnerships Office (P3), which resides within the Research and Development Partnerships Group (RDP). DHS/S&T/RDP/P3 is responsible for coordinating the collection of Industry Information. P3 collects relevant information from companies, including their contact and product information. Any and all information provided by companies is completely voluntary; companies are not required to submit any requested information.

The DHS/S&T/RDP/P3 invites interested persons to comment on the following form and instructions for the DHS/S&T/RDP/P3: DHS S&T Industry Outreach Information Form. Interested persons may receive a copy of the Form by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until May 14, 2018.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–1640–0036, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: S&TPRA@st.dhs.gov.* Please include docket number DHS–1640–0036 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Office—Mary Cantey, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number DHS–1640–0036 All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: DHS/S&T/RDP/P3 System Owner: Melanie Cummings, *melanie.cummings@hq.dhs.gov,* (202) 254–5616 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information collected in this form is used by both DHS/S&T/RDP/P3 and R&D program managers in support of technology scouting and commercialization efforts, program formulation and planning, and investment decision making. P3 operates under the authority in 6 U.S.C. 193. Prior to making any investment decisions regarding R&D funding, DHS S&T conducts planning activities not only to determine the need for an R&D investment but also ensure awareness of all possible solutions to the operational challenge that requires the investment. Technology scouting and commercialization inform these planning activities by providing information on current industry capabilities. This information is gathered from a number of sources, including the information provided by companies on the Industry Outreach Form. P3 shares the information received from companies with R&D program managers, who may be able to apply a company's technical capabilities or technologies to their specific project or program. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

The first page of the form requests basic contact information on a company, including business name; mailing address; phone number; email address; company website address; and the company classification (size, North American Industry Classification System code, etc.). The form also requests information to help S&T assess and inform its industry outreach efforts, including how and where a company heard about S&T and any previous experiences working with S&T. The second page of the form requests information about the technical capabilities (technology or service) a company offers, including the current stage of the technology, its current technology and/or manufacturing readiness level, and why the capability is unique and valuable to DHS. All information requested in the form is necessary for determining to which R&D programs the company or product may be of interest, alignment to current and future needs of S&T and its customers in the homeland security enterprise, and how best to partner with the company.

Overview of this Information Collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* DHS S&T Industry Outreach Information Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—DHS S&T Industry Outreach Information Form (DHS Form 026–01)).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Private sector companies who are making significant investments in innovative technology development with whom S&T seeks to leverage those investments to meet the needs of the homeland security enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 312.

b. *An estimate of the time for an average respondent to respond:* .050 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 156 burden hours.

Dated: April 4, 2018.

Rick Stevens,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. 2018–07623 Filed 4–11–18; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X.LLAK910000.L13100000.DB0000. LXSINSSI0000]

2018 Call for Nominations, North Slope Science Initiative, Science Technical Advisory Panel, Alaska

AGENCY: North Slope Science Initiative, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations to serve on the North Slope Science Initiative's (NSSI) 15-member Science Technical Advisory Panel (Panel). The Panel advises the NSSI Oversight Group on technical issues such as identifying and prioritizing inventory, monitoring, and research needs across the North Slope of Alaska and the adjacent marine environment.

DATES: All public nominations and applications for membership on the panel must be received no later than May 29, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Gleason, Office of Communications, North Slope Science Initiative, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513, 907–271–3335, email *blm_ak_nssi_communications@blm.gov.* People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Section 348 of the Energy Policy Act of 2005, Public Law 109–58, created the NSSI, its Oversight Group, and 15-member Science Technical Advisory Panel to coordinate inventories, monitoring, and research for a better understanding of terrestrial, aquatic, and marine ecosystems of the North Slope of Alaska. The NSSI works to minimize duplication of monitoring and research efforts, share financial resources and expertise, identify and prioritize information needs, and ensure through appropriate peer review that the science conducted by participating agencies and organizations is of the highest technical quality.

As an advisory body, the Science Technical Advisory Panel represents diverse professions and interests, including the oil and gas industry, subsistence users, Alaska Native entities, conservation organizations, and academia. A diverse membership helps maintain and improve public and agency access to accumulated and ongoing research as well as contemporary and traditional local knowledge.

Duties of the Panel are solely advisory to the Oversight Group. Panel members serve for three-year terms, appointed by the Secretary of the Interior.

To Nominate or Apply

Nomination forms and instructions are available from the NSSI website (*http://www.northslopescience.org*) and the Office of Communications, North Slope Science Initiative (see **FOR FURTHER INFORMATION CONTACT** section). Completed nomination forms/applications and a minimum of one letter of reference should describe the nominee's experience and qualifications to serve on the Science Technical Advisory Panel. Science Technical Advisory Panel members receive no monetary compensation, but will be reimbursed for necessary travel, lodging, and per diem expenses for participating in announced meetings under Federal Travel Regulations and Federal Advisory Committee Act guidelines.

The Oversight Group includes the Alaska Regional or State Directors of the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, the National Marine Fisheries Service, and the Bureau of Land Management; the commissioners of the Alaska Departments of Natural Resources and Fish and Game; the Mayor of the North Slope Borough; and, the President of the Arctic Slope Regional Corporation. Advisory members of the Oversight Group include the Regional Executive of the U.S. Geological Survey; the Deputy Director, U.S. Arctic Research Commission; the Alaska Regional Director, National Weather Service; and the Regional Coordinator for the National Oceanographic and Atmospheric Administration. The Panel's charter may be found here *https://northslopescience.org/files/STAP/160620_STAP_Charter.pdf.*

Public Availability of Nomination/Application Information

Before including your address, phone number, email address, or other personal identifying information in your nomination/application package, you should be aware that your entire nomination/application package—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 1784.4–1; 5 U.S.C. Appendix 2

Ted Murphy,

Associate State Director, Alaska.

[FR Doc. 2018–07625 Filed 4–11–18; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-25340; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before March 24, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by April 27, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before March 24, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State Historic Preservation Officers:

CALIFORNIA

Napa County

Napa County Infirmary, 2344 Old Sonoma Rd., Napa, SG100002380

MONTANA

Fergus County

Lewistown Satellite Airfield Historic District (Boundary Increase IV), Fox Ln. off MT 19, Grass Range vicinity, BC100002382

NEW YORK

Essex County

Gooley Club, Gooley Club Rd., Newcomb vicinity, SG100002383

Nassau County

Hempstead Town Hall, 1 Washington St., Hempstead, SG100002384

Mitchel Air Base and Flight Line, Roughly Charles Lindbergh Blvd., Ellington Ave., East & West Rds., Garden City, SG100002385

New York County

Wilbraham, The, 284 5th Ave., New York, SG100002386

Schoharie County

Jenkins, Daniel Webster, House, 207 Church St., Central Bridge, SG100002387

Suffolk County

Sisters of St. Joseph Motherhouse, Brentwood, 1725 Brentwood Rd., Brentwood, SG100002388

Wading River Radio Station, 408 North Side Rd., Wading River, SG100002389

Ulster County

Pilgrim Furniture Company Factory, 2 S Prospect St., Kingston, SG100002390

VIRGINIA

Amherst County

Emmanuel Baptist Church, 205 Sandidges Rd., Amherst vicinity, SG100002391

WASHINGTON

King County

Lewis, Hannah, House, 2317 13th Avenue East, Seattle, SG100002392

Kitsap County

Yama & Nagaya Village, Near the SW corner of NE Country Club Rd. & Fort Ward Hill Rd. NE, Bainbridge Island, SG100002393

Pend Oreille County

Boundary Hydroelectric Project, 1198 Boundary Dam Access Rd., Metaline vicinity, SG100002394

WISCONSIN

Washington County

Barton Elementary School, 614 School Pl., West Bend, SG100002395

Nominations submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

MICHIGAN

Wayne County

U.S. Post Office, Court House, and Custom House, 231 W Lafayette Blvd., Detroit, SG100002381

WYOMING

Carbon County

Medicine House Site, Address Restricted, Hanna vicinity, SG100002396

Authority: Section 60.13 of 36 CFR part 60.

Dated: March 28, 2018.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program and Keeper, National Register of Historic Places.

[FR Doc. 2018–07548 Filed 4–11–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Radio Frequency Micro-Needle Dermatological Treatment Devices and Components Thereof, DN 3308;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Syneron Medical Ltd.; Candela Corporation and Massachusetts General Hospital on April 9, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency micro-needle dermatological treatment devices and components thereof. The complaint names as respondents: Invasix, Inc. of Irvine, CA; Invasix, Ltd. of Israel; Inmode Md, Ltd. of Irvine, CA; Ilooda Co., Ltd. of Korea; Cutera, Inc. of Brisbane, CA; Emvera Technologies, Llc of Cedartown, GA; Rohrer Aesthetics, Llc of Homewood, AL; Lutronic, Corp of Korea; Lutronic, Inc. of Burlington, MA; Endymed Medical Inc. of New York, NY; Endymed Medical Ltd. of Israel; Sung Hwan E & B Co., Ltd. of Korea; Aesthetics Biomedical, Inc. of Phoenix, AZ; Cartessa Aesthetics of Hockessin, DE; Jeisys Medical, Inc. of Korea; Perigee Medical Llc of Tracy, CA; Lumenis Ltd. of Israel; and Pollogen Ltd. of Israel. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States

relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (Docket No. 3308) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electonic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: April 9, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–07628 Filed 4–11–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held April 30, 2018, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Pinnacle Plan Design, 2201 E. Camelback Road, Suite 200, Phoenix, AZ 85016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (703) 414–2163.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Pinnacle Plan Design, 2201 E. Camelback Road, Suite 200, Phoenix, AZ 85016, on April 30, 2018, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: April 5, 2018.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2018–07580 Filed 4–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0003]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection Report of Multiple Sale or Other Disposition of Pistols and Revolvers—ATF F 3310.4

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit 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. The proposed collection OMB 1140–0067 (Report of Multiple Sale or Other Disposition of Pistols and Revolvers—ATF F 3310.4) is being revised due to a change in burden, since there is an increase in the number of respondents, responses, and total burden hours. The proposed information collection is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 11, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Ed Stely, Branch Chief, Tracing Operations and Records Management Branch, National Tracing Center Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Edward.Stely@atf.gov,* or by telephone at 304–260–1515.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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. *Information Collection (check justification or form 83):* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers

3. *The agency form number, and the applicable component of the Department sponsoring the collection:*

Form/Collection number (if applicable): ATF F 3310.4.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other (if applicable): Federal Government, State, Local, or Tribal Government.

Abstract: This information collection documents certain sales or other dispositions of handguns for law enforcement purposes, and determines if the buyer is involved in an unlawful activity, or is a person prohibited by law from obtaining firearms.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 77,905 respondents will respond approximately 5.85244 times to this information collection, and it will take each respondent approximately 15 minutes to complete the required form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 113, 984 hours which is equal to 77,905 (# of respondents) * 5.85244 (# of responses per respondent) * .25 (15 minutes).

7. *An Explanation of the Change in Estimates:* The increase in the number of respondents by 4,106, the total responses by 126,768 and the IC burden hours by 31,692, are due to a revision of agency estimates and a general increase in the number of respondents since the last renewal in 2015.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE 3E.405A, Washington, DC 20530.

Dated: April 9, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–07551 Filed 4–11–18; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Clean Water Act

On April 5, 2018, the Department of Justice lodged a proposed Amendment to the Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan for Sanitary Sewer Overflows (''Amendment to the Global Decree'') with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States et al.* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* Civil Action No. C–1–02–107. On April 3, 2018, the U.S. Environmental Protection Agency, the Ohio Environmental Protection Agency, and the Ohio River Valley Water Sanitation Commission (collectively, ''regulators'') conditionally approved defendants' proposal to modify their Wet Weather Improvement Plan (''WWIP'') to (a) change the date for submission of the required Phase 2 schedule to June 30, 2018, and (b) require Defendants to implement a ''bridge schedule'' of specified remedial measures expected to cost approximately $49 million by December 31, 2019. The regulators' approval is conditioned on the Court's entry of this Amendment to the Global Decree.

The publication of this notice opens a period for public comment on the proposed Amendment to the Global Decree, which is available for public review as described below. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* D.J. Ref. No. 90–5–1–6–341A. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Amendment to the Global Decree and the related modifications to the WWIP may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Amendment to the Global Decree and the associated WWIP modifications upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.50 (25 cents per page reproduction cost, applicable only to

requests for a paper copy) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–07604 Filed 4–11–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0260]

Agency Information Collection Activities: Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: 2018 Police Public Contact Survey (PPCS)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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. The proposed information collection was previously published in the **Federal Register** on Thursday, December 21, 2017, allowing a 60-day comment period. Following publication of the 60-day notice, the Bureau of Justice Statistics received three requests for the survey instrument, a statement of support for the collection, and a question regarding arrest-related deaths, which are outside of the scope of the PPCS.

DATES: Comments are encouraged and will be accepted for 30 days until May 14, 2018.

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 Anthony Whyde, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Anthony.Whyde@usdoj.gov;* telephone: 202–307–0711).

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:* Reinstatement of the Police Public Contact Survey, with changes, a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2018 Police Public Contact Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is PPCS–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be persons 16 years or older living in households located throughout the United States sampled for the National Crime Victimization Survey (NCVS). The PPCS will be conducted as a supplement to the NCVS in all sample households for a six (6) month period. The PPCS is one component of the BJS effort to fulfill the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The goal of the collection is to report national statistics that provide a better understanding of the types, frequency, and outcomes of contacts between the police and the public, public perceptions of police behavior during the contact, and the conditions under which police force may be threatened or used. BJS plans to publish this information in reports and reference it when responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 118,714. About 80% of respondents (92,597) will have no police contact and will complete the short interview with an average burden of three minutes. Among the 20% of respondents (26,117) who experienced police contact, the time to ask the detailed questions regarding the nature of the contact is estimated to take an average of 10 minutes. Respondents will be asked to respond to this survey only once during the six month period. The burden estimate is based on data from prior administrations of the PPCS.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 8,983 total burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 6, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–07524 Filed 4–11–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Record of Decision: Proposed United States Penitentiary and Federal Prison Camp, Letcher County, Kentucky

I. Introduction

This document provides a Record of Decision (ROD) pursuant to the National Environmental Policy Act of 1969 as amended (NEPA), documenting my decision regarding the proposal by the United States (U.S.) Department of Justice, Federal Bureau of Prisons (Bureau) to acquire a site up to 800 acres in size and construct and operate a U.S. Penitentiary (USP) and Federal Prison Camp (FPC) in Letcher County, Kentucky. The ROD describes the rationale for selecting Modified Alternative 2-Roxana as the chosen alternative.

The Bureau's decision is based on information and analysis contained in the Final Supplemental Revised Final Environmental Impact Statement (RFEIS) issued September 2017, the Draft Supplemental RFEIS issued March 2017, the RFEIS issued April 2016, the Draft EIS issued February 2015, technical studies, and comments from federal and state agencies, elected officials, organizations, and individuals.

The purpose of this ROD is to publish the Agency's decision with respect to the environmental review process. Nothing in this ROD should be taken as an indication that the Bureau intends to proceed (or not to proceed) with the development of a federal correctional facility in Letcher County. Such decision will be made at the appropriate time.

II. Background

The Bureau prepared an EIS to evaluate the potential environmental effects of site acquisition and development of the USP and FPC at two potential locations in Letcher County: Alternative 1—Payne Gap and Alternative 2—Roxana. The No Action Alternative was also evaluated. The Draft EIS was published in February 2015 and the Final EIS was published in July 2015.

In consideration of comments received on the Final EIS, the Bureau withdrew the July 2015 Final EIS and prepared a RFEIS. The RFEIS corrected inconsistencies in the Final EIS, provided more complete discussion of some topics addressed in the Final EIS, and provided more complete responses to comments received on the Draft EIS than were provided in the Final EIS. Also, as a result of Final EIS comments received, the Bureau confirmed that written notice of availability of the Final EIS had not been directly provided to at least twenty-two parties who had requested it; therefore, these parties received less than the intended, full 30-day review period on the Final EIS. By publishing the RFEIS and providing a 30-day review period, all interested parties were afforded a new review period. The March 2016 RFEIS was published on April 1, 2016. The 2016 RFEIS made no change to the proposed action. As did the withdrawn Final EIS, the 2016 RFEIS evaluated Alternative 1—Payne Gap, Alternative 2—Roxana, and the No Action alternative.

The Bureau was originally considering acquiring approximately 700 acres at the Roxana site or 750 acres at Payne Gap for this project. Following publication of the March 2016 RFEIS, in which Alternative 2—Roxana was identified as the preferred alternative, the Bureau removed two parcels of land at the Roxana site from acquisition consideration, resulting in a proposed site of approximately 570 acres. The Bureau conducted a number of detailed studies at the Roxana site and determined this smaller site size would be a viable alternative for constructing and operating a USP, FPC, and ancillary facilities. However, the reduction in site size necessitated modifying the facilities layout evaluated for Alternative 2—Roxana in the 2016 RFEIS. The Bureau prepared a Supplemental RFEIS to assess new circumstances and information relevant to potential environmental impacts as a result of the modifications to the Roxana site size and facilities layout under Modified Alternative 2—Roxana. The Draft Supplemental RFEIS analyzed Modified Alternative 2—Roxana and the No Action Alternative. Alternative 2—Roxana from the 2016 RFEIS was eliminated from further evaluation because the original site configuration was no longer feasible. The Draft Supplemental RFEIS was published in March 2017, and the Final Supplemental RFEIS was published in September 2017.

III. Purpose and Need for the Project

The purpose of the proposed federal correctional facility in Letcher County is to develop additional high-security facilities to increase capacity for current inmate populations in the Mid-Atlantic Region based on the need for additional bed space. The Bureau has studied the need for an additional high-security penitentiary and an associated federal prison camp in the Mid-Atlantic Region, and has continually updated inmate population totals throughout the EIS process. The overall prisoner population is declining. On June 13, 2017, the U.S. Department of Justice Deputy Attorney General testified before the House Committee on Appropriations that the federal inmate population has declined 14 percent, totaling 30,000 inmates, over the last four years. Although the inmate population has been declining in recent years, as of November 28, 2017, the size of the total inmate population in the Bureau's institutions exceeds the rated capacity of its prisons by 14 percent, with its high-security level institutions (USPs) at an approximate 29 percent overcrowded rate. Based on recent U.S. Department of Justice policy changes in prosecution priorities, the Bureau's Fiscal Year 2018 total inmate population is projected to increase to approximately a 16 percent overcrowded rate, and high-security level institutions population is projected to remain at 29 percent overcrowded.

There is a continuing need for additional high-security male facilities in the Mid-Atlantic Region, where every existing high-security male facility has been operating, and continues to operate, above its rated capacity. As of November 28, 2017, the four high-security male facilities in this region housed approximately 4,797 high-security male inmates, but their total rated capacity is 3,441 inmates. Therefore, the Bureau has determined the Mid-Atlantic Region high-security male facilities are overcrowded and exceed rated capacity by 39 percent.

Overcrowding in the Mid-Atlantic Region facilities compromises the mission of the Bureau. The Bureau faces challenges in providing for inmates' care and safety in crowded conditions, as well as the safety of Bureau staff and surrounding communities, within budgeted levels. Provision of a new USP and FPC with additional high-security bed space in Letcher County would meet the need to ensure a safe and secure environment for both staff and inmates, particularly as it applies to higher security inmates, within the Mid-Atlantic Region, afford the Bureau continued management of inmates originating from the region, allowing those inmates to remain close to family, which aids in the rehabilitation process.

The Bureau proposes to acquire up to 800 acres in Letcher County to construct and operate a USP, FPC, and associated ancillary facilities. The ancillary facilities would include a central utility plant, outdoor firing range, outside warehouse, staff training building, garage/landscape building, access roads, and parking lots. A non-lethal/lethal fence and site lighting would also be installed. The proposed USP would house approximately 960 high-security male inmates, and the FPC would house approximately 256 minimum-security male inmates for a total population of approximately 1,216 inmates. Together both facilities would employ approximately 300 full-time staff upon operation. Development of the USP and FPC in Letcher County is proposed to provide an additional USP and FPC for mission support to increase capacity for current inmate populations in the Mid-Atlantic Region and reduce the overcrowding in this region's high-security male facilities.

IV. Alternatives Considered

A. No Action Alternative

The No Action Alternative is defined as a decision by the Bureau not to proceed with the proposed action.

Under this alternative, the Bureau would not acquire land to construct and operate a new USP and FPC to house a portion of the federal inmate population and would result in a continuation of the status quo, with existing USPs in the Mid-Atlantic Region remaining overcrowded at current levels and their associated FPCs remaining at or near capacity. Selection of the No Action Alternative would avoid environmental impacts associated with development and operation of the proposed USP and FPC.

The No Action Alternative does not meet the purpose of and need for the proposed action because it does not address the Bureau's need to provide additional capacity to reduce current overcrowding of the federal inmate population in other federal correctional facilities in the Mid-Atlantic Region, particularly in the high-security male facilities.

B. Alternative Project Locations Within Geographic Area of Interest

The Bureau has a continuing need for additional high-security male facilities within the Mid-Atlantic Region. None of the existing federal lands or facilities in the Mid-Atlantic Region within the jurisdiction of the Bureau have sufficient space to accommodate the development of the proposed facilities. In addition, no reasonable alternatives for the use of existing land or facilities outside of the jurisdiction of the Bureau were identified within the Mid-Atlantic Region.

The Letcher County Planning Commission contacted the Bureau with an offer of potential sites for a new USP and FPC in Letcher County. The Letcher County Planning Commission identified four potential locations that could meet the needs of the Bureau, and brought these sites to the attention of the Bureau to determine if the Bureau had an interest in developing a new facility at one of the locations. Between 2008 and 2010, the Bureau conducted two site reconnaissance studies to collect preliminary data on the four sites that have been offered by members of the community to determine their suitability for development based on site conditions, infrastructure and utilities, and environmental resources. Based on the initial analyses, the Bureau determined the four sites, referred to as Meadow Branch, Payne Gap, Roxana, and Van/Fields, should be studied in more detail in a feasibility study.

During the initial phase of the feasibility study, changes with the offeror of the Meadow Branch site resulted in the removal of the site from consideration by the Bureau; therefore, no detailed analysis of the site was included in the feasibility study. The remaining three sites were assessed for potential impacts to infrastructure and environmental resources, including archaeological sites and historic architectural resources, wetlands, and geological conditions. The feasibility study highlighted potential concerns with development of each site, as well as estimated costs of development of each site in relation to infrastructure improvement and site preparation (*i.e.,* excavation and/or fill and grading activities). Based on the analysis in the feasibility study, that was completed in 2012, the Bureau determined that there were no constraints that would prevent development of any of the three sites. Changes with the offeror of the Van/Fields site during the final stages of the feasibility study eliminated this site from further consideration. The Bureau carried forward the remaining two sites, Payne Gap and Roxana, for analysis in the EIS.

1. Alternatives Evaluated in the Draft EIS, Final EIS, and 2016 RFEIS

2.

Two action alternatives and the No Action Alternative were evaluated in the February 2015 Draft EIS, July 2015 Final EIS, and March 2016 RFEIS.

Alternative 1—Payne Gap

Development of a USP and FPC at the Payne Gap site (Alternative 1) would involve acquisition of approximately 753 acres located in eastern Letcher County, approximately 7 miles northeast of the city of Whitesburg, along the Kentucky and Virginia border. The proposed site is situated on a gently sloped to steeply sloped upland land form, and is covered with secondary growth forests. The original topography of portions of the site has been altered by past surface and deep mining and by associated mining activities such as spoil piles, roads, and fill piles. No active mining is occurring on site. The proposed facilities layout for Alternative 1 consists of developing the north half of the Payne Gap site with the USP, FPC, and ancillary buildings, and accessing the site from U.S. Route 119. To accommodate the USP, FPC, ancillary buildings, and roads, Alternative 1 would require more extensive rock excavation and fill to level and prepare the site for construction than would Alternative 2.

Alternative 2—Roxana

Development of a USP and FPC at the Roxana site (Alternative 2) would have involved acquisition of approximately 700 acres located in western Letcher County, approximately 7.5 miles west of Whitesburg. The site is forested except for a large open area near the center of the site created from past surface mining activities. No active mining is occurring on site. The Bureau proposed constructing the FPC in the north portion of the Roxana site and the USP and ancillary buildings in the central portion of the site. The proposed facilities layout included an access road extending along the east side of the facilities from KY 588.

3. Alternatives Evaluated in 2017 Draft and Final Supplemental RFEIS

The 2017 Draft and Final Supplemental RFEIS analyzed Modified Alternative 2—Roxana and the No Action Alternative. Alternative 1—Payne Gap was incorporated by reference. Alternative 2—Roxana from the 2016 RFEIS was eliminated from further evaluation because the original site configuration was no longer feasible.

Modified Alternative 2—Roxana

Under Modified Alternative 2—Roxana, the Bureau would acquire approximately 570 acres of land at Roxana. Because of the reduced site size, the Bureau modified the facilities layout evaluated for Alternative 2—Roxana in the 2016 RFEIS. In the modified facilities layout under this alternative compared with the 2016 alternative, the FPC would be situated closer to the USP and the access road would extend from KY 588 along the west side of the FPC rather than the east side.

C. Preferred Alternative

Modified Alternative 2—Roxana best meets Bureau operational and security requirements while minimizing potential environmental and other impacts and is considered the Preferred Alternative. Modified Alternative 2—Roxana best meets the purpose of the proposed action by providing an additional high-security penitentiary and an associated prison camp to increase capacity for current inmate populations in the Mid-Atlantic Region. In addition, Modified Alternative 2—Roxana satisfies the continuing need for additional high-security facilities within this region, despite recent declines in other than high-security in-mate population groups, to reduce the demonstrated overcrowding that compromises the mission of the Bureau.

Although both the Payne Gap and Roxana sites accommodate the required facilities, Modified Alternative 2—Roxana is the Preferred Alternative because it would have, on balance,

fewer impacts to the human and natural environment as compared with Alternative 1—Payne Gap evaluated in the 2016 RFEIS. Both build alternatives would have direct adverse impacts to topography, geology, and soils; however, much greater site preparation work would be required at the Payne Gap site. Except for the potential impact to the natural gas infrastructure, Modified Alternative 2—Roxana would have less than significant impacts to infrastructure and utilities, while Alternative 1—Payne Gap would have significant impacts to potable water capacity, wastewater treatment capacity, and natural gas infrastructure. Under Modified Alternative 2—Roxana, impacts to streams and forest would be less than those under Alternative 1—Payne Gap. Development of the proposed action under Alternative 1—Payne Gap would impact approximately 100 more acres of summer habitat of federally listed bat species when compared with Modified Alternative 2—Roxana.

D. Avoidance, Minimization, and Mitigation Measures

The Bureau will implement the following avoidance, minimization, and mitigation measures and best management practices to reduce the environmental impacts of the Selected Alternative. No mitigation is required for socioeconomics and environmental justice, as the Selected Alternative would not result in adverse impacts to socioeconomics, environmental justice populations, or children, and no mitigation is required for cultural resources, as the Preferred Alternative would have no impact to National Register of Historic Places—listed or eligible cultural resources.

1. Land Use and Zoning

(a) Provide an open space and vegetative buffer between the USP and FPC to maintain visual compatibility with surrounding properties.

(b) Design and locate the facilities to reduce the visual presence of the facility from neighboring properties.

(c) Maintain a 125-foot buffer between FPC construction activities and the Whitaker property.

(d) Maintain a 100-foot buffer between access road construction activities and the Frazier Cemetery.

(e) Use full cutoff light fixtures to minimize off-site adverse impacts of lighting.

2. Topography, Geology, and Soils

(a) Prepare a Stormwater Pollution Prevention Plan with a soil erosion and sediment control plan and submit it to the Kentucky Department for Environmental Protection, Division of Water for approval prior to construction.

(b) Implement construction-period and permanent surface water and stormwater control plans to manage runoff.

(c) Phase the construction of the USP, FPC, and ancillary facilities to occur at different times to minimize soil disturbance by only clearing areas necessary for the current phase of construction.

(d) Re-vegetate disturbed areas following the completion of construction to minimize the erosion of exposed soil.

3. Community Facilities and Services

(a) Discuss the development of a Memorandum of Understanding with the Whitesburg Police Department and Mayor of Whitesburg to determine the department's status and what steps may be taken to offset potential impacts to Whitesburg Police Department operations or its equipment.

4. Transportation and Traffic

(a) Require the selected construction contractor to perform an assessment of routing of construction traffic to the site.

(b) Route construction vehicles so gross vehicle weight does not exceed Kentucky Transportation Cabinet maximum weight limitations.

(c) Bond the roads where limitations may be exceeded and repair the roads upon completion of construction.

(d) Develop and implement a maintenance of traffic plan to maintain traffic flow when construction equipment is being transported to the site.

5. Air Quality

(a) Implement best management practices, including but not limited to periodic soil wetting, use of alternatively fueled equipment, use of other emissions controls applicable to on-site equipment, and reduction of equipment and construction vehicle idling time, to reduce air emissions.

(b) Obtain an air quality permit from the Kentucky Department for Environmental Protection for air emission sources in compliance with Kentucky Administrative Regulations, Title 401, Chapter 52, Section 040 (401 KAR 52: 040), State-origin Permits.

6. Noise

(a) Use noise bellows systems on pile driving equipment.

(b) Schedule louder construction activities from mid-morning to mid-afternoon for less intrusive times.

(c) Limit construction activities to daytime hours to the extent feasible.

(d) Implement a blasting plan and informing local community about blasting activity dates.

7. Infrastructure and Utilities

(a) Pay natural gas infrastructure owners for costs associated with closure, abandonment, and/or relocation of the wells and associated pipelines.

(b) Comply with applicable federal and state regulations regarding the permanent closure and abandonment of gas wells and the relocation of the pipes.

8. Water Resources

(a) Pay a fee into the in-lieu fee mitigation program managed by the Kentucky Department of Fish and Wildlife Resources.

(b) Prepare and implement a Groundwater Protection Plan in compliance with Kentucky Administrative Regulations, Title 401, Chapter 5, Section 37 (401 KAR 5: 037), Groundwater Protection Plans.

9. Biological Resources

(a) Implement the following Reasonable and Prudent Measure stipulated in the U.S. Fish and Wildlife Service (USFWS) Biological Opinion (BO) regarding potential impacts to the Indiana bat, northern long-eared bat, and gray bat from the Preferred Alternative: The Bureau shall ensure that the project will occur as designed, planned, and documented in the Biological Assessment and this BO.

(b) Comply with the following Term and Condition, which implements the above Reasonable and Prudent Measure, specified in the BO: The Bureau shall ensure that the project will occur as designed, planned, and documented in the Biological Assessment and this BO.

(c) Incorporate the following Conservation Measures documented in the Biological Assessment in project design and construction:

(i.) Contribute to the Imperiled Bat Conservation Fund as compensatory mitigation for adverse effects on Indiana bats and northern long-eared bats.

(ii.) Develop and implement a Kentucky Division of Water-approved erosion and sediment control plan.

(iii.) Avoid tree removal during June and July.

(iv.) Avoid blasting from November 15 through March 31.

(v.) Conduct construction activities from April 15 through October 31 in suitable Indiana bat and/or northern long-eared bat habitat during daylight hours.

(vi.) Direct construction lighting toward construction activities and away from forested habitat during any nighttime construction activities.

(vii.) Require construction contractors to inspect vehicles and equipment to ensure visible plant and seed material has been removed prior to entering the project area.

(viii.) Install the facility's outdoor lights with full cutoff fixtures (emit no direct up light).

(x.) Fence off the feature identified as potential hibernaculum and installing warning signs around the area to prevent disturbance.

(d) Incorporate the required reporting/monitoring requirements from the USFWS BO into the Monitoring and Enforcement Program (MEP) for the project, is described in Section VII of this ROD.

10. Hazardous Materials and Waste

(a) Comply with applicable federal and state regulations regarding the management of hazardous materials and waste.

(b) Use, store, and properly dispose of batteries and containerized pesticides, herbicides, paints, and solvents.

(c) Comply with Kentucky Administrative Regulations, Title 401, Chapter 100, Section 30 (401 100: 030), Remediation Requirements, for the remediation of three identified locations of petroleum releases from a petroleum extraction operation, and submit all associated cleanup reports and records to the Kentucky Department for Environmental Protection (DEP) Division of Waste Management, Superfund Branch—Petroleum Cleanup Section in accordance with the procedures outlined in DEP 7097C, Closure Report for Petroleum Releases and Exempt Petroleum Tank Systems.

(d) Design facilities intended for human occupancy to prevent occupant exposures to radon above the USEPA action level of 4 pCi/L (picocuries per liter).

(e) Incorporate the following Bureau Technical Design Guidelines in the design of the outdoor firing range to prevent lead contamination outside of the range itself: Safety baffles, berms and backstops to contain bullets to a designated area; impoundments, traps, and other structures to catch lead particles; and stormwater systems to gather runoff and allow infiltration within the range bermed area.

(f) Perform regular maintenance of the above range features.

11. Climate

(a) In consideration of Executive Order 13693, Planning for Federal Sustainability in the Next Decade, and the Council on Environmental Quality's Final NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions, design and construction of the USP and FPC will comply with the design and operation standards and practices included in the following:

(i) U.S. Green Building Council's Leadership in Environmental and Energy Design (LEED) prerequisites and credits for Silver certification.

(ii) 10 CFR 433, Energy Efficient Standards for the Design and Construction of New Federal Commercial and Multi-family High Rise Residential Buildings.

(iii) 10 CFR 436 Federal Energy Management and Planning Programs.

(iv) IEEE Standard 739—IEEE (Institute of Electrical and Electronics Engineers) Recommended Practice for Energy Conservation and Cost Effective Planning in Industrial Facilities.

VI. Decision

Based on consultation with consulting agencies; consideration of potential environmental consequences; Bureau operational, security, and management needs for current Mid-Atlantic Region facilities; public comments on the February 2015 Draft EIS, July 2015 Final EIS, March 2016 RFEIS, March 2017 Draft Supplemental RFEIS, and September 2017 Final Supplemental RFEIS; and my being apprised of the material and information contained in the 2016 RFEIS and 2017 Final Supplemental RFEIS, I have decided to select Modified Alternative 2—Roxana, as summarized above and described in detail within the 2017 Final Supplemental RFEIS, for the proposed land acquisition and development of a USP and FPC in Letcher County. Development of the proposed project under Modified Alternative 2—Roxana is contingent on the availability of funding sufficient to proceed.

VII. Rationale

My decision is based on the following factors:

The Bureau has a continuing need for additional safe and secure facilities in the Mid-Atlantic Region, where every existing high-security facility is operating above its rated capacity and their associated FPCs are at or near capacity, thereby compromising the mission of the Bureau. In response, the Bureau has committed resources to identifying, evaluating, acquiring, and developing a site for an additional USP and associated FPC for mission support.

Development of the USP and FPC is proposed as a means of reducing inmate overcrowding at other federal correctional facilities in the Mid-Atlantic Region. Each alternative plan was evaluated against operational, environmental, and infrastructure criteria until a preferred alternative was identified that best met project objectives while accommodating security considerations, logistics, and costs. Development of the USP and FPC under Modified Alternative 2—Roxana best meets the project's goals and objectives, and because development of this alternative would have fewer impacts on the human and natural environment, it is considered by the Bureau to be the environmentally preferable alternative.

Construction and operation of the proposed USP and FPC under Modified Alternative 2—Roxana will result in significant impacts to topography, geology and soils, and less than significant impacts to land use, community facilities and services, transportation and traffic, air quality, noise, infrastructure and utilities, water resources, biological resources, and hazardous materials and waste, as defined by NEPA. While construction and operation of the proposed USP and FPC under Modified Alternative 2—Roxana will cause unavoidable impacts, construction and operation activities will comply with all federal statutes, implementing regulations, Executive Orders, and other consultation, review, and permit requirements potentially applicable to this project. Any unavoidable adverse impacts to land use, topography, geology and soils, community facilities and services, transportation and traffic, air quality, noise, infrastructure and utilities, water resources, biological resources, and hazardous materials and waste will be controlled, reduced, or eliminated by the avoidance, minimization, and mitigation measures identified in Section IV.D of this ROD. The project will comply with the regulatory requirements of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

The Bureau will coordinate with the U.S. Army Corps of Engineers on permit requirements and will obtain all required permits for the placement of fill material and potential disturbance of wetlands and other waters of the U.S. prior to construction. In addition, the Bureau will comply with the Terms and Conditions implementing the Reasonable and Prudent Measures specified in the USFWS BO for project effects on the Indiana bat and the northern long-eared bat in accordance with Section 7 of the Endangered Species Act (16 U.S.C. 1531–1544).

The Bureau will develop and implement a Monitoring and Enforcement Program (MEP) to ensure that the proposed avoidance, minimization, and mitigation measures

documented within this ROD are implemented as part of the project. The MEP will identify the timing, responsibility, and method of implementation of the proposed measures, as well as any required monitoring and enforcement activities. As part of this program, each project contractor will be required to implement the mitigation measures arising from its project activities. The Bureau or its authorized agencies will inspect and monitor these measures to ensure compliance. The Bureau will implement any mitigation measures required for USP and FPC operation. The Bureau will maintain the MEP throughout project implementation and will include the MEP in the project administrative record. Any continuing obligations will be maintained by the Bureau.

Development of the proposed USP and FPC under Modified Alternative 2—Roxana will result in beneficial impacts by reducing crowded conditions in federal correctional facilities within the Mid-Atlantic Region, particularly in high-security male facilities, by providing a much-needed new facility to meet existing inmate housing needs. Beneficial impacts to the local economy of Letcher County will also be realized due to the addition of a 300-person workforce for the facility and the associated gains in expenditures and tax revenues.

The Bureau will rely upon public utility authorities for the provision of water and sewage treatment services. Positive economic benefits will accrue to these utility authorities from the provision of such services. Plans for the expansion of utility capacities will be fully coordinated with all appropriate agencies.

Prior to making my final decision, I carefully considered comments received following the publication of the 2016 RFEIS, and comments received prior to expiration of the 30-day review period on the 2017 Final Supplemental RFEIS. The comments and responses thereto are hereby acknowledged and measures to avoid, minimize, and mitigate potential adverse impacts are documented within Section IV.D of this ROD.

In addition, I have carefully considered potential environmental justice impacts of the proposed action as discussed in the 2016 RFEIS, together with comments concerning environmental justice submitted during the EIS and Supplemental RFEIS process. Pursuant to Executive Order 12898, Federal agencies are required to make achieving environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of their programs, policies, and activities on minority and low-income populations. As concluded in the 2016 RFEIS, I have determined that the proposed action will not result in either a disparate or significantly adverse impact to any low-income or minority population to which Executive Order 12898 is applicable.

VIII. Conclusion

After consulting with Bureau staff and being appraised of material in the Draft EIS, 2016 RFEIS, and 2017 Final Supplemental RFEIS, it is my decision that the Bureau select Modified Alternative 2—Roxana for the land acquisition and development of a USP and FPC in Letcher County.

Mark S. Inch,

Director, Federal Bureau of Prisons.

[FR Doc. 2018–07311 Filed 4–11–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0073]

Proposed Extension of Information Collection; Mine Mapping and Records of Opening, Closing, and Reopening of Mines

AGENCY: Mine Safety and Health Administration, 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 consultation program 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 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. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Mine Mapping and Records of Opening, Closing, and Reopening of Mines.

DATES: All comments must be received on or before June 11, 2018.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2018–0004.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th Floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101 (a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

The information collection addressed by this notice is intended to protect miners by assuring that up-to-date, accurate mine maps contain the information needed to clarify the best alternatives for action during an emergency operation. Coal mine operators routinely use maps to create safe and effective development plans.

Mine maps are schematic depictions of critical mine infrastructure, such as water, power, transportation, ventilation, and communication systems. Using accurate, up-to-date maps during a disaster, mine emergency personnel can locate refuges for miners and identify sites of explosion potential; they can know where stationary equipment was placed, where ground was secured, and where they can best begin a rescue operation. During a disaster, maps can be crucial to the safety of the emergency personnel who must enter a mine to begin a search for survivors.

Mine maps may describe the current status of an operating mine or provide

crucial information about a long-closed mine that is being reopened.

Title 30 CFR 75.1200 requires each underground coal mine operator to have an accurate and up-to-date map of such mine drawn to scale and stored in a fireproof repository in an area on the surface of the mine chosen by the mine operator to minimize the danger of destruction by fire or other hazards. Sections 75.1200–1, 75.1201, 75.1202, 75.1202–1, and 75.1203 specify the information which must be shown on the map. The maps must be certified by a registered engineer or surveyor; kept continuously up-to-date by temporary notations and revised and supplemented to include the temporary notations at intervals not more than 6 months; and made available for inspection by a representative of the Secretary, State coal mine inspectors, miners and their representatives, operators of adjacent coal mines, and persons owning, leasing, or residing on surface areas of such mines or areas adjacent to such mines. These maps are essential to the planning and safe operation of the mine. In addition, these maps provide a graphic presentation of the locations of working sections and the locations of fixed surface and underground mine facilities and equipment, escapeway routes, coal haulage and man and materials haulage entries and other information essential to mine rescue or mine fire fighting activities in the event of mine fire, explosion or inundations of gas or water. The information is essential to the safe operation of adjacent mines and mines approaching the worked out areas of active or abandoned mines. Section 75.372 requires underground mine operators to submit three copies of an up-to-date mine map to the District Manager at intervals not exceeding 12 months during the operating life of the mine.

Title 30 CFR 75.1204 and 75.1204–1 require that whenever an underground coal mine operator permanently closes or abandons a coal mine, or temporarily closes a coal mine for a period of more than 90 days, the operator shall file with MSHA a copy of the mine map revised and supplemented to the date of closure. Maps are retained in a repository and are made available to mine operators of adjacent properties. The maps are necessary to provide an accurate record of underground areas that have been mined to help prevent active mine operators from mining into abandoned areas that may contain water or harmful gases.

Title 30 CFR 77.1200, 77.1201 and 77.1202 require surface coal mine operators to maintain an accurate and up-to-date map of the mine and specifies the information to be shown on the map, the acceptable range of map scales, that the map be certified by a registered engineer or surveyor, that the map be available for inspection by the Secretary or his authorized representative. These maps are essential for the safe operation of the mine and provide essential information to operators of adjacent surface and underground mines. Properly prepared and effectively utilized surface mine maps can prevent outbursts of water impounded in underground mine workings and/or inundations of underground mines by surface impounded water or water and or gases impounded in surface auger mining worked out areas.

Title 30 CFR 75.373 and 75.1721 require that after a mine is abandoned or declared inactive and before it is reopened, mine operations shall not begin until MSHA has been notified and has completed an inspection. Section 75.1721 specifies that once the mine operator notifies the MSHA District Manager on the intent to reopen a mine all preliminary plans must be submitted in writing prior to development of the coalbed unless or until all preliminary plans are approved.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Mine Mapping and Records of Opening, Closing, and Reopening of Mines. MSHA 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 MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th Floor via the East elevator.

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 request for collection of information contains provisions for Mine Mapping and Records of Opening, Closing, and Reopening of Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0073.

Affected Public: Business or other for-profit.

Number of Respondents: 614.

Frequency: On occasion.

Number of Responses: 267.

Annual Burden Hours: 5,650 hours.

Annual Respondent or Recordkeeper Cost: $7,620,554.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2018–07547 Filed 4–11–18; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before May 14, 2018.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Email: zzMSHA-comments@dol.gov*. Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor (Secretary) determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2018–003–M.

Petitioner: Ciner Wyoming LLC, P.O. Box 513, 254 County Road 4–6, Green River, Wyoming 82935.

Mine: Big Island Mine, MSHA I.D. No. 48–00154, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing standard to establish an alternative method. The petitioner alleges that application of the standards as currently enforced will result in a diminution of safety to miners.

The petitioner states that:

(1) Mining operations at the Big Island Mine do not involve pillar recovery workings, longwall faces, or short-wall faces. Thus, at the Big Island Mine, 30 CFR 57.22305 prohibits the use of nonpermissible equipment ''in or beyond the last open crosscut.'' The term ''last open crosscut'' is not defined by statue or regulation.

(2) The petitioner has formulated a methodology, set forth in this petition that provides operational certainty regarding the location of the last open crosscut and corresponding permissibility boundary for the petitioner's mining operation unique to the Big Island Mine, and minimizes the employees' exposure to red-zone hazards.

(3) Though the petitioner contends that its current mining methodology is compliant with all aspects of 30 CFR 57.22305, the petitioner proposes this alternative methodology to provide operational certainty for the location of the permissibility boundary, and in return, to ensure that the requirements of 30 CFR 57.22305 are satisfied.

In addition, the alternative methodology eliminates unnecessary movement of the continuous miner, which in turn reduces mine personnel exposure to red-zone hazards

(4) The petitioner proposes the following alternative method:

(i) The Big Island Mine is a Category III mine as defined in 30 CFR 57.22003(a)(3).

(ii) Methane is not capable of forming explosive mixtures at levels below 5 percent in an environment with normal atmospheric levels of approximately 20 percent oxygen as defined in 30 CFR 57.22003(a)(3).

(iii) The quantity of air coursed through continuous miner sections meets or exceeds the 9,000 cubic feet per minute requirement as defined in 30 CFR 57.22213.

(iv) When the continuous miner is cutting ore, nonpermissible equipment will be staged outby the nonpermissible equipment staging boundary (NPESB).

(v) The continuous miner is equipped with a methane monitor as defined in 30 CFR 57.22308.

(vi) Pursuant to 30 CFR 57.22308, all methane monitors will (1) give warning at 1.0 percent methane; (2) automatically de-energize electrical equipment, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR part 18 and prevent starting such equipment when methane levels reach 1.5 percent; and (3) automatically de-energize electrical equipment when power to a sensor is interrupted.

(vii) If the presence of methane is detected at or above 1.0 percent, immediate action will be taken to shut down equipment in the affected area, and ventilation changes will be made to reduce the methane, pursuant to 30 CFR 57.22234.

(viii) Nonpermissible equipment may be operated inby the NPESB to service the continuous miner (including loading bolts) only when the continuous miner is not cutting ore. A competent person, as defined in 30 CFR 57.22002, will monitor for methane immediately before and during use of nonpermissible equipment to service the continuous miner. The competent person will utilize an approved testing device pursuant to 30 CFR 57.22227(a). Methane monitoring devices used for measuring methane, other gases, and contaminants in mine air will be approved by MSHA under applicable requirements of 30 CFR parts 18, 21, 22, 23, 27, and 29. Such devices will be maintained in accordance with the manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(ix) When operating nonpermissible equipment inby the NPESB, such equipment will not travel inby the permissibility boundary (PB).

(x) Competent personnel engaged in the use of nonpermissible equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible equipment.

(xi) As the continuous miner advances a room in a development sequence, the petitioner will install foam curtains on the crosscut outby the last open crosscut, defined herein as the last open crosscut perpendicular to the direction of the room being mined and at the boundary of intake and return air systems. Guidance for the application of foam to installed curtains will be provided.

(5) The requested modification in this petition would eliminate undue risk of injury caused by retreating the

continuous miner for purposes of conducting maintenance, including the elimination of pinch points, red zones, manual lifting, and the carrying and hauling of bits, roof support materials and repair components. Nonpermissible equipment will be able to service the continuous miner near its cutting location, greatly reducing the risks associated with these tasks, with a concomitant risk from methane ignition.

The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method will guarantee that no less than the same measure of protection is afforded the miners at the Big Island Mine.

Docket Number: M–2018–005–C.

Petitioner: Hamilton County Coal, LLC, 18033 County Road 500E, Dahlgren, Illinois 62828–4294.

Mine: Hamilton Mine No. 1, MSHA I.D. No. 11–03203, located in Hamilton County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased to 1,200 feet for supplying power to continuous mining machines, roof bolting machines, section ventilation fans, and shuttle cars.

The petitioner states that:

(1) Petitioner is developing longwall panels as part of a continuing mining cycle. The development panels consist of a multiple entry system with crosscut centers not to exceed a maximum of 250 feet to improve roof and abutment pressure control during longwall mining. Ventilation is also improved by limiting the number of stoppings, which have a built-in ventilation pressure loss factor.

(2) The trailing cables will apply to ⅜ American Wire Gauge (AWG) three phase 995-volt Alternating Current (AC) continuous mining machine, No. 2 AWG three phase 995-volt AC roof bolting machines, No. 2 AWG three phase 480-volt AC roof bolting machines, No. 2 AWG three phase 995-volt AC section ventilation fans, and ⅔ AWG 600-volt Direct Current (DC) shuttle cars.

(3) The trailing cables for 995-volt AC continuous mining machines will not be smaller than ⅜ AWG.

(4) The trailing cables for the 995-volt AC roof bolting machines will not be smaller than No. 2 AWG.

(5) The trailing cables for 995-volt AC section ventilation fans will not be smaller than No. 2 AWG.

(6) The trailing cables for 600-volt DC shuttle cars will not be smaller than ⅔ AWG.

(7) All circuit breakers used to protect No. 2 AWG 995-volt trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting of the circuit breakers will be sealed to ensure that the setting on these breakers cannot be changed, and these breakers will have permanent legible labels. Each label will identify these circuit breakers as being suitable for protecting the No. 2 AWG cables.

(8) Replacement circuit breakers and/or instantaneous trip units used to protect the No. 2 AWG 995-volt trailing cables will be calibrated to trip at 800 amperes and this setting will be sealed.

(9) All circuit breakers used to protect No. 2 AWG 480-volt trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 450 amperes. The trip setting of these circuit breakers will be sealed to ensure that the settings on these breakers cannot be changed, and these breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the No. 2 AWG cables.

(10) Replacement circuit breakers and/or instantaneous trip units, used to protect the No. 2 AWG 480-volt trailing cables will be calibrated to trip at 450 amperes, and this setting will be sealed.

(11) All circuit breakers used to protect ⅜ AWG 995-volt trailing cables exceeding 900 feet in length will have instantaneous trip units to trip at 1,830 amperes. The trip setting of these circuit breakers will be sealed to ensure that the settings on these breakers cannot be changed, and these breakers will have permanent legible labels. Each label will identify the circuit breaker as being suitable for protecting the ⅜ AWG cable.

(12) Replacement circuit breakers and/or instantaneous trip units used to protect the ⅜ AWG 995-volt trailing cables will be calibrated to trip at 1,830 amperes, and this setting will be sealed.

(13) All circuit breakers used to protect ⅔ AWG 600-volt DC trailing cables exceeding 850 feet in length will have instantaneous trip units to trip at 900 amperes. The trip setting of these circuit breakers will be sealed to ensure that the settings on these breakers cannot be changed, and these breakers will have permanent legible labels. Each label shall identify the circuit breaker as being suitable for protecting the ⅔ AWG cable.

(14) Replacement circuit breakers and/or instantaneous trip units used to protect the ⅔ AWG 600-volt trailing cables will be calibrated to trip at 900 amperes and this setting will be sealed.

(15) All components that provide short circuit protection will have sufficient interruption rating in accordance with the maximum calculated fault currents available.

(16) During each production day, persons designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operation condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the stipulated settings.

(17) Any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced.

(18) Each splice or repair in the trailing cable will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The splice or repair will comply with 30 CFR 75.603 and 75.604 requirements. The outer jacket of each splice or repair will be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame-resistant.

(19) Permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protective device. These labels will warn miners not change or alter these short-circuit settings and any sign of tempering with the specially calibrated breaker or trip unit will require the replacement of the circuit breaker with another calibrated, sealed and/or locked trip unit.

(20) In the event the mining method or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Also, additional precautions will be taken to ensure that haulage roads and trailing cable storage areas are situated to minimize contact of the trailing cable with continuous miners, loading machines, shuttle cars, roof bolters, and section ventilation fans. Moreover, trailing cable anchors on cable reel equipment will be of a permanent type that minimizes the tensile forces on the trailing cables.

(21) Where the method of mining would require that trailing cables cross roadways or haulage ways, the cable will be securely supported from the mine roof or a substantial bridge for equipment to pass over the cables will be provided and used.

(22) Excessive cable will be stored behind the anchor(s) on equipment that

use cable reels to prevent cables from overheating.

(23) The petitioner's alternative method will not be implemented until all miners who have been designated to examine the integrity of seals or locks and to verify the short-circuit settings and proper procedure for examining trailing cables for defects and damage have received the training specified above.

(24) The equipment listed in this petition will comply with all other applicable requirements of the Federal Mine Safety and Health Act of 1977 and the applicable requirements of 30 CFR part 75.

(25) Within 60 days after this petition is final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The proposed revisions will specify task training for miners designated to examine the trailing cables for safe operation condition and verify that the short circuit settings of the circuit interrupting device(s) that protect the affected trailing cables do not exceed the settings specified above. The training will include the following:

a. Mining methods and operating procedures that will protect the trailing cables against damage.

b. The proper procedure for examining the trailing cable to ensure that the cables are in safe operating condition by a visual inspection of the entire cable, observing the insulation, the integrity of the splices, and nicks and abrasions.

c. The hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables.

d. How to verify that the circuit interrupting device(s) protecting the trailing cables are properly set and maintained.

e. How to protect the trailing cables against damage caused by overheating due to excessive cable stored on the cable reel(s) and adjusting stored cable behind the cable anchor(s) as tramming distances change. The procedures as specified in 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2018–07546 Filed 4–11–18; 8:45 am]

BILLING CODE 4520–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meetings

DATE: Week of April 9, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of April 9

Thursday, April 12, 2018

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

Entergy Nuclear Vermont Yankee, LCC, and Entergy Nuclear Operations, Inc; Vermont Yankee Nuclear Power Station) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

Additional Information

By a vote of 3–0 on April 9, 2018, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on April 12, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0981 or via email at *Denise.McGovern@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Wendy.Moore@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: April 9, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–07685 Filed 4–10–18; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 38–115, Representative Payee Survey

AGENCY: Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection (ICR), Representative Payee Survey, RI 38–115.

DATES: Comments are encouraged and will be accepted until May 14, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0208) was previously published in the **Federal Register** on June 9, 2017, at 82 FR 26817, allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget

is particularly interested in comments that:

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

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

RI 38–115 is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Analysis:

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Representative Payee Survey.

OMB Number: 3206–0208.

Frequency: Annually.

Affected Public: Individual or Households.

Number of Respondents: 11,000.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 3,667.

U.S. Office of Personnel Management.

Jeff T.H. Pon,

Director.

[FR Doc. 2018–07607 Filed 4–11–18; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2018–142 and CP2018–203]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 17, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2018–142 and CP2018–203; *Filing Title:* USPS Request to Add Priority Mail Contract 430 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 6, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* April 17, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–07620 Filed 4–11–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83010; File No. SR–NASDAQ–2017–087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify the Listing Requirements Related to Special Purpose Acquisition Companies To Reduce Round Lot Holders on Nasdaq Capital Market for Initial Listing From 300 to 150 and Eliminate Public Holders for Continued Listing From 300 to Zero, Require $5 Million in Net Tangible Assets for Initial and Continued Listing on Nasdaq Capital Market, and Impose a Deadline To Demonstrate Compliance With Initial Listing Requirements on All Nasdaq Markets Within 30 Days Following Each Business Combination

April 6, 2018.

On September 20, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''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 modify the listing requirements related to Special Purpose Acquisition Companies (''SPAC'') to reduce round lot holders on Nasdaq Capital Market for initial listing from 300 to 150 and eliminate the public holders required for continued listing from 300 to zero, require $5 million net tangible assets for initial and continued listing on Nasdaq

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Capital Market, and impose a deadline to demonstrate compliance with initial listing requirements on all Nasdaq Markets to within 30 days following each business combination. The proposed rule change was published for comment in the **Federal Register** on October 11, 2017.[3] In response, the Commission received six comments on the proposal.[4] On November 22, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 9, 2018.[5] The Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change on January 9, 2018 (''OIP'').[6] The Commission received three additional comments in response to the OIP, including a comment letter from Nasdaq.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on October 11, 2017. April 9, 2018 is 180 days from that date, and June 8, 2018 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letters. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates June 8, 2018, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2017–087).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07528 Filed 4–11–18; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 81816 (October 4, 2017), 82 FR 47269 (October 11, 2017) (''Notice'').

[4] *See* Letters to Brent J. Fields, Secretary, Commission, from Jeffrey M. Solomon, Chief Executive Officer, Cowen and Company, LLC, dated October 19, 2017; Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated October 25, 2017; Sean Davy, Managing Director, Capital Markets Division, SIFMA, dated October 31, 2017; Akin Gump Strauss Hauer & Feld LLP, dated November 1, 2017; Steven Levine, Chief Executive Officer, EarlyBirdCapital, Inc., dated November 3, 2017; and Christian O. Nagler and David A. Curtiss, Kirkland & Ellis LLP, dated November 9, 2017.

[5] *See* Securities Exchange Act Release No. 82142 (November 22, 2017), 82 FR 56293 (November 28, 2017).

[6] *See* Securities Exchange Act Release No. 82478 (January 9, 2018), 83 FR 2278 (January 16, 2018).

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors, dated January 25, 2018; Paul D. Tropp, Freshfields Bruckhaus Deringer US LLP, dated January 30, 2018; and Arnold Golub, Deputy General Counsel, Nasdaq, dated February 23, 2018.

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83006; File No. SR–ISE–2018–30]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rules 700, 2008, and 2009

April 6, 2018.

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 March 29, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rules 700, Days and Hours of Business, at Section (c); 2008, Days and Hours of Business; and 2009, Terms of Index Option Contracts, Supplementary Material .07, Nonstandard Expirations Pilot Program.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to establish that transactions in expiring p.m.-settled broad-based index options, including Weekly Expirations and End of Month (''EOM'') options, may be effected on the Exchange only until 4:00 p.m. (Eastern Time) on the last trading day.[3] The terms of p.m.-settled broad-based index options specify that their exercise settlement value is based on the index value derived from the closing prices of component stocks.

Currently, ISE Rule 700(c) provides that broad-based index options may trade until 4:15 p.m. each business day. The Exchange now proposes to add language to Rule 700(c) to establish that on the last trading day transactions in expiring p.m.-settled broad-based index options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:00 p.m. (Eastern Time). The same new language is proposed to be added to Rules 2008, Trading Sessions, and 2009, Terms of Index Option Contracts, at Supplementary Material .07(d), Weekly Expirations and EOM Trading Hours. The proposed new language is substantively identical to language in Rule 24.9(e), Weekly Expirations and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The listing and trading of p.m.-settled options on broad-based indexes with nonstandard expiration dates, including Weekly Expirations and EOM options, has been approved by the Commission on a pilot basis for an initial period of twelve months expiring on February 1, 2019 (the ''Nonstandard Expirations Pilot Program'' or ''Pilot Program''). *See* Supplementary Material .07 of Rule 2009 and Securities Exchange Act Release No. 82612 (February 1, 2018), 83 FR 5470 (February 7, 2018) (SR–ISE–2017–111). To date, no Weekly Expirations or EOM options have been listed on the Exchange.

EOM Trading Hours on the Last Trading Day, of the Cboe Exchange, Inc. (CBOE). The 4:00 p.m. close of trading would apply only on the last trading day of the expiring p.m.-settled options.

As CBOE explained in the proposed rule change adopting current CBOE Rule 24.9(e), Weekly Expirations and EOM options which are p.m.-settled are priced in the market based on corresponding futures values. On the last day of trading, the closing prices of the component stocks (which are used to derive the exercise settlement value) are known at 4:00 p.m. (Eastern Time) (or soon after) when the equity markets close. Despite the fact that the exercise settlement value is fixed at or soon after 4:00 p.m. (Eastern Time), if trading in expiring Weekly Expirations and EOMs were to continue for an additional fifteen minutes until 4:15 p.m. (Eastern Time) they would not be priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring Weekly Expiration and EOM series would continue to move and be priced in response to changes in corresponding futures prices. Because of the potential pricing divergence that could occur between 4:00 and 4:15 p.m. on the final trading day in expiring Weekly Expirations and EOMs (*e.g.,* switch from pricing off of futures to cash), the Exchange believes that, in order to mitigate potential investor confusion, it is appropriate to cease trading in expiring Weekly Expirations and EOMs at 4:00 p.m. on the last day of trading.[4]

Because the potential pricing divergence issue applies to all ISE-listed p.m.-settled options, including but not limited to the Weekly Expiration and EOM series listed on ISE, the Exchange proposes to add the exception providing for a 4:00 close of trading on the last trading day before expiration to ISE's Rule 700(c) which sets forth the trading hours for all broad-based index options, and Rule 2008, Trading Sessions, in addition to Rule 2009, Supplementary Material .07(d).

Thus, as revised, Rule 700(c) would provide that options on a broad-based index, as defined in ISE Rule 2001, may be traded on the Exchange until 4:15 p.m. each business day, except that that on the last trading day, transactions in expiring p.m.-settled broad-based index options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:00 p.m. (Eastern Time). The exception would also be added to Rule 2008(a) which currently provides, in relevant part, that except as otherwise provided in Rule 2008 or under unusual conditions as may be determined by the President or his designee, transactions in index options may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time). Finally, the same change would be made to Supplementary Material .07(d) of Rule 2009, which currently provides that transactions in Weekly Expirations and EOMs may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] 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 conforming the trading hours on the last trading day of Weekly Expiration and EOM options to the trading hours on CBOE. The existence of dissimilar closing times applicable to different options exchanges would likely lead to confusion for options investors and broker-dealers. Additionally, preventing continued trading on a p.m.-settled broad-based index option after the exercise settlement value has been fixed eliminates potential confusion and thereby protects investors and the public interest. The Exchange notes that p.m.-settled options on the S&P 500 index and on p.m.-settled XSP [sic] options cease trading at 4:00 p.m. Eastern Time on the last day of trading pursuant to CBOE Rule 24.6, Days and Hours of Business, Interpretations and Policies .04.

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. Specifically, the Exchange does not believe the proposal will impose any burden on intramarket competition as all market participants will be treated in the same manner with respect to trading hours of expiring p.m.-settled broad-based index options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 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[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately conform the trading hours on the final trading day in expiring p.m.-settled broad-based index options to those of another exchange, eliminate a potential source of confusion on the part of the investing public, as well as avoid potential pricing divergence difficulties that could occur between 4:00 and 4:15 p.m. (Eastern Time). The Exchange's proposal does not raise new issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the

[4] *See* Securities Exchange Act Release No. 64243 (April 7, 2011), 76 FR 20771 (April 13, 2011) (SR–CBOE–2011–038) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Close of Trading Hours for Expiring End of Week and End of Month Expirations).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change as operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–30 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–ISE–2018–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–30, and should be submitted on or before May 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07526 Filed 4–11–18; 8:45 am]

BILLING CODE 8011–01–P

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83007; File No. SR–NASDAQ–2017–128]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Western Asset Total Return ETF

April 6, 2018.

On December 20, 2017, The Nasdaq Stock Market LLC (''Nasdaq'') 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 list and trade shares (''Shares'') of the Western Asset Total Return ETF (''Fund''), a series of Legg Mason ETF Investment Trust (''Trust''), under Nasdaq Rule 5735 (Managed Fund Shares). The proposed rule change was published for comment in the **Federal Register** on January 9, 2018.[3] On February 21, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Exchange's Description of the Proposed Rule Change[7]

The Exchange proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (''1940 Act''). The Fund will be a series of the Trust.[8]

Legg Mason Partners Fund Advisor, LLC will be the investment manager (''Manager'') to the Fund. Western Asset Management Company will serve as the sub-adviser to the Fund (''Sub-Adviser'') and Western Asset Management Company Limited in London, Western Asset Management Company Pte. Ltd. in Singapore, and Western Asset Management Company Ltd in Japan will each serve as sub-sub-advisers to the Fund (collectively, ''Sub-Sub-Advisers'' and each, a ''Sub-Sub-Adviser'').[9] Legg Mason Investor Services, LLC (''Distributor'') will be the distributor of the Fund's Shares. The Manager, each of the Sub-Advisers, and the Distributor are wholly-owned subsidiaries of Legg Mason, Inc. (''Legg Mason''). The Exchange states that an entity that is not affiliated with Legg Mason, and which is named in the Registration Statement, will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82439 (Jan. 3, 2018), 83 FR 1062 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82757, 83 FR 8532 (Feb. 27, 2018). The Commission designated April 9, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] For a complete description of the Exchange's proposal, *see* the Notice, *supra* note 3.

[8] The Trust filed a registration statement on Form N–1A with the Commission with respect to the Fund but withdrew it on February 14, 2018. *See* Post-Effective Amendment No. 27 to the Registration Statement on Form N–1A for the Trust (File Nos. 333–206784 and 811–23096) as filed on August 8, 2017 (''Registration Statement'') and Request for Withdrawal of Post-Effective Amendments Nos. 27, 31, 33, 35, 36 and 38 to the Trust's Registration Statement filed on Form N–1A as filed on February 14, 2018.

[9] References to ''Sub-Adviser'' or ''Sub-Advisers'' hereinafter include the Sub-Adviser and each applicable Sub-Sub-Adviser.

[10] According to the Exchange, none of the Manager or any of the Sub-Advisers is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer. The Exchange states that each of the Manager and the Sub-Advisers has implemented and will maintain a fire wall with respect to its

Continued

The Fund will be an actively managed exchange-traded fund (''ETF''). According to the Exchange, the investment objective of the Fund will be to seek to maximize total return, consistent with prudent investment management and liquidity needs. Although the Fund may invest in securities and Debt (as defined below) of any maturity, the Fund will normally maintain an average effective duration within 35% of the average duration of the U.S. bond market as a whole (generally, this bond market range is 2.5 to 7 years) as estimated by the Sub-Adviser.[11]

A. Principal Investments

According to the Exchange, under Normal Market Conditions,[12] the Fund will seek to achieve its investment objective by investing at least 80% of its net assets in a portfolio comprised of (i) U.S. or foreign fixed income securities (as described below); (ii) U.S. or foreign Debt (as described below); (iii) ETFs[13] that provide exposure to such U.S. or foreign fixed income securities, Debt, or other Principal Investments (as described below); (iv) derivatives[14] that (a) provide exposure to such U.S. or foreign fixed income securities, Debt, and other Principal Investments, (b) are used to risk manage the Fund's holdings,[15] or (c) are used to enhance returns, such as through covered call strategies; (v) U.S. or foreign equity securities of any type acquired in reorganizations of issuers of fixed income securities or Debt held by the Fund (''Work Out Securities'');[16] (vi) U.S. or foreign non-convertible preferred securities (other than trust preferred securities, which the Fund may invest in but which are treated as fixed income securities under Nasdaq Rule 5735(b)(1)(B)) (''Non-Convertible Preferred Securities'');[17] (vii) warrants[18] on U.S. or foreign fixed income securities; (viii) warrants on U.S. or foreign equity securities that are attached to, accompany, or are purchased alongside investments in U.S. or foreign fixed income securities issued by the issuer of the warrants (''Equity-Related Warrants'');[19] (ix) cash and cash equivalents;[20] and (x) foreign currencies (collectively, the ''Principal Investments;'' and the equity elements of the Principal Investments, which consist of ETFs that provide exposure to fixed income securities, Debt, or other Principal Investments; Work Out Securities; Non-Convertible Preferred Securities; and Equity-Related Warrants, collectively referred to as ''Principal Investment Equities'').

The Exchange states that fixed income securities may consist of the following: (i) U.S. or foreign corporate debt securities, including notes, bonds, debentures, trust preferred securities, and commercial paper issued by corporations, trusts, limited partnerships, limited liability companies, and other types of non-governmental legal entities; (ii) U.S. government securities, including

broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio prior to implementation. In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (i) the Manager or any of the Sub-Advisers registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (ii) any new manager or sub adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio prior to implementation and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[11] The Exchange states that the average effective duration of the Fund may fall outside of its expected range due to market movements, and that if this happens, the Sub-Advisers will take action to bring the Fund's average effective duration back within its expected range within a reasonable period of time.

[12] The term ''Normal Market Conditions'' has the meaning set forth in Nasdaq Rule 5735(c)(5). In addition, the Exchange states that the Fund may vary from ordinary parameters on a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods). In those situations, the Fund may depart from its principal investment strategies and may, for example, hold a higher than normal proportion of its assets in cash and cash equivalents. During such periods, the Fund may not be able to achieve its investment objective. The Fund may also adopt a defensive strategy and hold a significant portion of its assets in cash and cash equivalents when the Manager or any Sub-Adviser believes securities, Debt, and other instruments in which the Fund normally invests have elevated risks due to political or economic factors, heightened market volatility or in other extraordinary circumstances that do not constitute ''Normal Market Conditions.''

[13] The Exchange states that the ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705(b)), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705(a)), and Managed Fund Shares (as described in Nasdaq Rule 5735). According to the Exchange, the Fund will not invest in ETFs that are not registered as investment companies under the 1940 Act. The ETFs held by the Fund will invest in fixed income securities, Debt, and money-market instruments to which the Fund seeks exposure. The Exchange represents that all such ETFs will trade on markets that are members of the Intermarket Surveillance Group (''ISG'') or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Exchange states that the Fund will not invest in leveraged, inverse, or inverse leveraged ETFs.

[14] The Exchange states that derivatives will include: (i) Swaps and security-based swaps, futures, options, options on futures, and swaptions that are traded on an exchange, trading facility, swap execution facility or alternative trading system (a) that is a member of the ISG, which includes all U.S. national securities exchanges and most futures exchanges, (b) that is subject to a comprehensive surveillance sharing agreement with the Exchange, or (c) that is not an ISG member and with which the Exchange does not have a comprehensive surveillance sharing agreement (''Exchange-Traded Derivatives''); and (ii) swaps and security-based swaps, options, options on futures, swaptions, forwards, and similar instruments that are traded in the over-the-counter (''OTC'') market and are either centrally cleared or cleared bilaterally (''OTC Derivatives). Specifically, the Exchange states that derivatives that the Fund may enter into include: (A) OTC deliverable and non-deliverable foreign exchange forward contracts; (B) exchange-listed futures contracts on securities (including Treasury Securities and foreign government securities), commodities, indices, interest rates, financial rates, and currencies; (C) exchange-listed or OTC options or swaptions (*i.e.,* options to enter into a swap) on securities, commodities, indices, interest rates, financial rates, currencies, and futures contracts; and (D) exchange-listed or OTC swaps (including total return swaps) on securities, commodities, indices, interest rates, financial rates, currencies, and debt, and credit default swaps on single names, basket, and indices (both as protection seller and as protection buyer).

[15] According to the Exchange, the risk management uses of derivatives will include managing (i) investment-related risks; (ii) risks due to fluctuations in securities prices, interest rates, or currency exchanges rates; (iii) risks due to the credit-worthiness of an issuer; and (iv) the effective duration of the Fund's portfolio.

[16] According to the Exchange, Work Out Securities will generally be traded in the OTC market or may be listed on an exchange that may or may not be an ISG member.

[17] According to the Exchange, Non-Convertible Preferred Securities may be listed on either an ISG member exchange (or an exchange with which the Exchange has a comprehensive surveillance sharing agreement) or a non-ISG member exchange, or be unlisted and trade in the OTC market.

[18] The Exchange states that the Fund may hold warrants that provide the right to purchase fixed income securities or equity securities, and such warrants may be traded in the OTC market or may be listed on an exchange, including an exchange that is not an ISG member. According to the Exchange, the Fund expects that most of the warrants it holds will be attached to related fixed income securities.

[19] According to the Exchange, the Fund's interests in Equity-Related Warrants will be similar to the Fund's interest in Work Out Securities in that they reflect interests in equity securities that are held solely in connection with investments in fixed income securities.

[20] According to the Exchange, cash equivalents consist of the following, all of which have maturities of less than three months: U.S. government securities; certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances; repurchase agreements and reverse repurchase agreements; and bank time deposits. In addition, cash equivalents consist of money market funds registered under the 1940 Act and money market funds that are not registered under the 1940 Act but that comply with Rule 2a–7 under the 1940 Act (together, ''Money Market Funds''), money market ETFs, and commercial paper having maturities of 360 days or less.

obligations of, or securities guaranteed by, the U.S. government, its agencies, or government-sponsored entities (''GSEs''); (iii) sovereign debt securities, including fixed income securities issued by governments, agencies, or instrumentalities and their political subdivisions; securities issued by government-owned, controlled, or sponsored entities; interests in entities organized and operated for the purpose of restructuring the investment instruments issued by such entities; Brady Bonds; and fixed income securities issued by supranational entities such as the World Bank; (iv) U.S. or foreign mortgage-backed securities (''MBS''); (v) U.S. or foreign asset-backed securities (''ABS''); [21] (vi) municipal securities, which include general obligation bonds, revenue bonds, housing authority bonds, private activity bonds, industrial development bonds, residual interest bonds, tender option bonds, tax and revenue anticipation notes, bond anticipation notes, tax-exempt commercial paper, municipal leases, participation certificates and custodial receipts; (vii) zero coupon securities; (viii) pay-in-kind securities; (ix) deferred interest securities; (x) U.S. or foreign structured notes and indexed securities, including securities that have demand, tender or put features, or interest rate reset features; and (xi) U.S. or foreign inflation-indexed or inflation-protected securities, which include, among others, U.S. Treasury Inflation Protected Securities. The securities may pay fixed, variable, or floating rates of interest or, in the case of instruments such as zero coupon bonds, do not pay current interest but are issued at a discount from their face values.

The Exchange states that the Fund may invest in debt instruments (''Debt'') that may be deemed not to be ''securities,'' as defined in the Act, which will be comprised primarily of the following: (i) U.S. or foreign bank loans and participations in bank loans; (ii) U.S. or foreign loans by non-bank lenders and participations in such loans; (iii) U.S. or foreign loans on real estate secured by mortgages and participations (without guarantees by a GSE); and (iv) participations in U.S. or foreign loans and/or other extensions of credit, such as guarantees, made by governmental entities or financial institutions. Debt may be partially or fully secured by collateral supporting the payment of interest and principal, or unsecured and/or subordinated to other instruments. Debt may relate to financings for highly-leveraged borrowers. The Fund may acquire an interest in Debt by purchasing participations in and/or assignments of portions of loans from third parties or by investing in pools of loans, such as collateralized debt obligations.

With respect to fixed income securities and Debt, the Fund may invest in restricted instruments, such as Rule 144A and Regulation S securities, which are subject to resale restrictions that limit purchasers to qualified institutional buyers, as defined in Rule 144A under the Securities Act of 1933, as amended (''Securities Act'') or non-U.S. persons, within the meaning of Regulation S under the Securities Act.

The Exchange states that, as a result of the Fund's use of derivatives and to serve as collateral, the Fund may also hold significant amounts of Treasury Securities, cash, and cash equivalents and, in the case of derivatives that are payable in a foreign currency, the foreign currency in which the derivatives are payable.

The Exchange states that the Fund may, without limitation, enter into repurchase arrangements and borrowing and reverse repurchase arrangements, purchase and sale contracts, buybacks and dollar rolls,[22] and spot currency transactions. The Fund may also, subject to required margin and without limitation, purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions, where the securities or instruments will not be delivered or paid for immediately.

B. Other Investments

According to the Exchange, under Normal Market Conditions, the Fund will seek its investment objective by investing at least 80% of its net assets in a portfolio of the Principal Investments. The Fund may invest its remaining assets exclusively in: (i) U.S. or foreign exchange-listed or OTC convertible fixed income securities; and (ii) OTC Derivatives and Exchange-Traded Derivatives that do not satisfy the Fund's primary uses for derivatives, which are to (A) provide exposure to such U.S. or foreign fixed income securities, Debt and other Principal Investments, (B) risk manage the Fund's holdings, and (C) enhance returns.

C. Investment Restrictions

According to the Exchange, the Fund may invest up to 30% of its assets in Non-Convertible Preferred Securities, Equity-Related Warrants, and Work Out Securities. The Fund will not invest in equity securities other than Principal Investment Equities. Principal Investment Equities consist of (i) Non-Convertible Preferred Securities, Equity-Related Warrants, and Work Out Securities, which are limited to 30% of the Fund's assets in the aggregate, and (ii) shares of ETFs that provide exposure to fixed income securities, Debt, or other Principal Investments, which are subject to no limits.

The Exchange states that while the Fund will invest principally in fixed income securities and Debt that are, at the time of purchase, investment grade, the Fund may invest up to 30% of its net assets in below investment grade fixed income securities and Debt. For these purposes, ''investment grade'' is defined as investments with a rating at the time of purchase in one of the four highest rating categories of at least one nationally recognized statistical ratings organization (''NRSRO'').[23]

According to the Exchange, the Fund may invest in fixed income securities, equity securities, or Debt issued by both U.S. and non-U.S. issuers (including issuers in emerging markets). However, the Fund will not invest: (i) More than 30% of its total assets directly in fixed income securities, equity securities, or Debt of non-U.S. issuers; or (ii) more than 25% of its total assets directly in non-U.S. dollar denominated fixed income securities, equity securities, or Debt.[24]

The Exchange states that the Fund may invest a substantial portion of its

[21] According to the Exchange, the MBS and ABS in which the Fund will invest make periodic payments of interest and/or principal on underlying pools of mortgages, government securities, or, in the case of ABS, loans, leases, and receivables other than real estate. The Fund may also invest in stripped ABS or MBS, which represent the right to receive either payments of principal or payments of interest on real estate receivables, in the case of MBS, or non-real estate receivables, in the case of ABS.

[22] According to the Exchange, the Fund may enter into a forward roll transaction (also referred to as a mortgage dollar roll) with the intention of entering into an offsetting transaction whereby, rather than accepting delivery of the security on the specified date, the Fund sells the security and agrees to repurchase a similar security at a later time.

[23] The Exchange states that unrated fixed income securities or Debt may be considered investment grade if, at the time of purchase, and under Normal Market Conditions, the applicable Sub-Adviser determines that such securities are of comparable quality based on a fundamental credit analysis of the unrated security or Debt instrument and comparable NRSRO-rated securities.

[24] The Exchange states that, for purposes of these concentration limits only, derivatives, warrants, and ETFs traded on U.S. exchanges that provide indirect exposure to fixed income securities, equity securities, or Debt (as applicable) of non-U.S. issuers or to fixed income securities, equity securities, or Debt (as applicable) denominated in currencies other than U.S. dollars will not be counted in calculating the Fund's holdings in non-U.S. issuers or in non-U.S. dollar denominated securities or Debt.

net assets in ABS and MBS. However, the Fund will not invest more than 30% of the fixed income portion of the Fund's portfolio in non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities (''Private ABS/MBS'').

According to the Exchange, the Fund may not concentrate its investments (*i.e.,* invest more than 25% of the value of its total assets) in securities of issuers in any one industry. The Exchange states that this restriction will be interpreted to permit investment without limit in the following: Obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities; securities of state, territory, possession, or municipal governments and their authorities, agencies, instrumentalities, or political subdivisions; and repurchase agreements collateralized by any such obligations.

In addition, the Exchange states that the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager or the Sub-Advisers.[25] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets.

According to the Exchange, the Fund's investments in derivatives will be consistent with the Fund's investment objective and will not be used for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it will not be operated as a ''leveraged ETF,'' (*i.e.,* it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index).

The Exchange states that under Normal Market Conditions, the Fund will satisfy the following requirements, on a continuous basis measured at the time of purchase: (i) Component securities that in the aggregate account for at least 75% of the fixed income weight of the Fund's portfolio each will have a minimum original principal amount outstanding of $100 million or more; (ii) no fixed income security held in the portfolio (excluding Treasury Securities and GSE Securities)[26] will represent more than 30% of the fixed income weight of the Fund's portfolio, and the five most heavily weighted portfolio securities (excluding Treasury Securities and GSE Securities) will not in the aggregate account for more than 65% of the fixed income weight of the Fund's portfolio; (iii) the Fund's portfolio (excluding exempted securities) will include a minimum of 13 non-affiliated issuers; (iv) at least 75% of the investments in securities issued by emerging market issuers will have a minimum original principal amount outstanding of $200 million or more; and (v) at least 75% of investments in bank loans or corporate loan assets[27] will be in senior loans with an initial deal size of $100 million or greater.

D. Application of Generic Listing Requirements

The Exchange states that it submitted the proposed rule change because the Fund will not meet all of the ''generic'' listing requirements of Nasdaq Rule 5735(b)(1). The Exchange states that the Fund will meet all such requirements except those described below,[28] and the Exchange has proposed that the Fund will comply with certain alternative limits described below.

(i) The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1) to use the aggregate gross notional value of derivatives when calculating the weight of such derivatives or the exposure that such derivatives provide to underlying reference assets, including the requirements in Rules 5735(b)(1)(D)(i) and (ii),[29] 5735(b)(1)(E),[30] and 5735(b)(1)(F).[31] Instead, the Exchange proposed that for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1), and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value or exposure of its derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets.

(ii) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the fixed income portion of the Fund's portfolio. Instead, the Exchange proposed that the Fund will limit its holdings in Private ABS/MBS to no more than 30% of the weight of the fixed income portion of the Fund's portfolio. The Exchange states that, for purposes of this requirement, the weight of the Fund's exposure to Private ABS/MBS referenced indirectly through investments in derivatives held by the Fund will be calculated based on the mark-to-market value or exposure of such derivatives.

(iii) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(iv) that component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal

[25] In reaching liquidity decisions, the Manager or Sub-Advisers (as applicable) may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[26] The terms ''Treasury Securities'' and ''GSE Securities'' as used herein have the meanings set forth in Nasdaq Rule 5735(b)(1)(B).

[27] These include senior loans, syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers, and participation interests.

[28] The Exchange notes that the Fund will comply with the applicable requirements of Nasdaq Rule 5735(b)(1) with respect to all commercial paper held by the Fund. In addition, in accordance with Nasdaq Rule 5735(b)(1)(B), to the extent that the Fund holds securities that convert into fixed income securities, the fixed income securities into which any such securities are converted will meet the criteria of Nasdaq Rule 5735(b)(1)(B) after converting.

[29] Rules 5735(b)(1)(D)(i) and (ii) impose certain limitations on investments in listed derivatives, and require that, for purposes of calculating such limitations, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

[30] Rule 5735(b)(1)(E) imposes a 20% limitation on investments in OTC derivatives and requires that, for purposes of calculating such limitation, a portfolio's investments in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

[31] Rule 5735(b)(1)(F) requires that, to the extent listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Rule 5735(b)(1)(A) (which contains generic listing standards for the equity components of the portfolio) and 5735(b)(1)(B) (which contains generic listing standards for the fixed income components of the portfolio), respectively.

amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. Instead, the Exchange proposed that the fixed income portion of the portfolio other than Private ABS/MBS will comply with the 90% requirement in Rule 5735(b)(1)(B)(iv), and that Private ABS/MBS held by the Fund will not comply with such requirement. The Exchange states that, for purposes of this requirement, the weight of the Fund's exposure to any fixed income securities referenced in derivatives held by the Fund will be calculated based on the mark-to-market value or exposure of such derivatives.

(iv) The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1)(A) [32] with respect to the Fund's investments in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants. Instead, the Exchange proposed that (a) the Fund's investments in equity securities other than Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants will comply with the requirements in Nasdaq Rule 5735(b)(1)(A); [33] and (b) the aggregate weight of the Fund's investments in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants will not exceed 30% of the Fund's net assets.

(v) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(E) that, on both an initial and continuing basis, no more than 20% of the assets in the Fund's portfolio may be invested in over-the-counter derivatives. Instead, the Exchange proposed that: (a) There be no limit on the Fund's investments in ''Interest Rate Derivatives'' [34] and ''Currency Derivatives'' [35] entered into with broker-dealers, banks, and other financial intermediaries; and (b) the aggregate weight of the Fund's investments in all other OTC Derivatives (excluding Interest Rate Derivatives and Currency Derivatives) will not exceed 10% of the Fund's net assets (calculated based on the mark-to-market value or exposure of such other OTC Derivatives).

(vi) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that, in the aggregate, at least 90% of the weight of the Fund's holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options and swaps for which the Exchange may obtain information via the ISG, from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. Instead, the Exchange proposed that no more than 10% of the net assets of the Fund will be invested in Exchange-Traded Derivatives whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Exchange states that, for purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value or exposure of such Exchange-Traded Derivatives.

(vii) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the Fund's portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the Fund's portfolio (including gross notional exposures). Instead, the Exchange proposed that (a) the Fund's investments in futures and options contracts (including options on futures) referencing Eurodollars and sovereign debt issued by the United States (*i.e.,* Treasury Securities) and other ''Group of Seven'' countries [36] that are listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement (''Eurodollar and G–7 Sovereign Futures and Options'') will not be subject to the requirements in Nasdaq Rule 5735(b)(1)(D)(ii); and (b) the Fund's investments in Exchange-Traded Derivatives other than Eurodollar and G–7 Sovereign Futures and Options will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) (for purposes of this requirement, the weight of the applicable Exchange-Traded Derivatives will be calculated based on the mark-to-market value or exposure of such Exchange-Traded Derivatives).

II. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2017–128 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [37] 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

[32] Rule 5735(b)(1)(A)(i) requires that U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) of the equity portion of the portfolio meet the following criteria initially and on a continuing basis (subject to certain exclusions for Exchange Traded Derivative Securities and Linked Securities, as such terms are defined in Nasdaq Rules 5735(c)(6) and 5710, respectively): (a) Component stocks that in the aggregate account for at least 90% of the equity weight of the portfolio each shall have a minimum market value of at least $75 million; (b) component stocks that in the aggregate account for at least 70% of the equity weight of the portfolio each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months; (c) the most heavily weighted component stock shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks shall not exceed 65% of the equity weight of the portfolio; (d) where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; and (e) except for non-exchange traded American Depositary Receipts (which may consist of up to 10% of the equity weight of the portfolio), equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. Further, Rule 5735(b)(1)(A)(ii) requires that Non-U.S. Component Stocks (as such term is defined in Nasdaq Rule 5705) of the equity portion of the portfolio meet the following criteria initially and on a continuing basis: (a) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million; (b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (c) the most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio; (d) where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks (subject to certain exclusions for Exchange Traded Derivative Securities and Linked Securities); and (e) each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

[33] According to the Exchange, the other equity securities that the Fund will invest in will consist of ETFs (including money market ETFs) that provide exposure to fixed income securities, Debt, and other Principal Investments, and the weight of such ETFs in the Fund's portfolio will not be limited.

[34] The Exchange states that ''Interest Rate Derivatives'' are comprised of interest rate swaps, swaptions (*i.e.,* options on interest rate swaps), rate options, and other similar derivatives, and may be Exchange-Traded Derivatives or OTC Derivatives.

[35] The Exchange states that ''Currency Derivatives'' are comprised of deliverable and non-deliverable currency forwards, swaps and options on currencies, and similar currency or foreign exchange derivatives, and may be Exchange-Traded Derivatives or OTC Derivatives.

[36] The ''Group of Seven'' (or ''G–7'') countries consist of the United States, Canada, France, Germany, Italy, Japan, and the United Kingdom.

[37] 15 U.S.C. 78s(b)(2)(B).

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 comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[38] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, 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.'' [39]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, 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 proposal is consistent with Section 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 views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[40]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved May 3, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 17, 2018. 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,[41] in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission seeks comment on the statements of the Exchange contained in the Notice and any other issues raised by the proposed rule change.

In this regard, the Commission specifically seeks comment on the proposed cutoff time for redemption requests and creation orders. In the Notice, the Exchange states that all redemption requests and creation orders for creation units of the Fund must be received by the Distributor within one hour after the closing time of the regular trading session on the Exchange (ordinarily between 4:00 p.m., E.T. and 5:00 p.m., E.T.) in order to receive the net asset value (''NAV'') on the next business day immediately following the date the order was placed.[42] The Exchange also states that the Fund will cause to be published, through the National Securities Clearing Corporation, on each business day, prior to the opening of trading on the Exchange (currently, 9:30 a.m., E.T.), the identity and the required number (as applicable) of deposit/redemption securities and the amount of cash applicable to creation orders and redemption requests received in proper form.[43] Based on this description, the Commission notes that market participants that submit redemption requests or creation orders on a given business day will not know the contents of the deposit/redemption securities that will be applicable to their request until the following business day and will receive the following business day's NAV. Accordingly, the Commission seeks comment on how the proposed cutoff time for redemption requests and creation orders would affect the opportunity for an effective and efficient arbitrage process and whether the proposed cutoff time is consistent with the maintenance of fair and orderly markets and the requirements of Section 6(b)(5) of the Act.

In addition, the Commission specifically seeks comment on whether the proposed portfolio composition, including the limitations thereon, is sufficient to support a determination that the proposal is consistent with the Act. For example, as discussed above, the Exchange notes that the Fund will not meet the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS, in the aggregate, account for no more than 20% of the weight of the fixed income portion of the Fund's portfolio. Instead, the Exchange proposes to limit the Fund's investments in Private ABS/MBS to 30% of the weight of the fixed income portion of its portfolio. In addition, the Exchange states that the Fund's investments in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants, which may constitute up to 30% of the Fund's net assets, will not comply with the generic listing requirements for portfolio investments in equity securities set forth in Nasdaq Rule 5735(b)(1)(A). The Commission seeks commenters' views on these aspects of the proposal, and whether the Exchange's statements and representations support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2017–128 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–2017–128. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official

[38] *Id.*

[39] 15 U.S.C. 78f(b)(5).

[40] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[41] *See* Notice *supra* note 3.

[42] *See* Notice, *supra* note 3, at 1072.

[43] *See id.*

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–128 and should be submitted on or before May 3, 2018. Rebuttal comments should be submitted by May 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07527 Filed 4–11–18; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83005; File No. SR–Phlx–2018–28]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1101A

April 6, 2018.

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 March 28, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1101A, Terms of Option Contracts, Section (b)(vii)(4) in order to clarify trading hours of expiring Weekly Expirations and End of Month (''EOM'') options on the last trading day.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify trading hours of expiring Weekly Expirations and EOM options on the last trading day.[3] Currently, Rule 1101A(b)(vii)(4) provides that Transactions in Weekly Expirations and EOMs may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:15 p.m. (Eastern Time). A separate rule, Rule 1101A(c), applies to index option trading hours specifically on the day of expiration. That rule provides that, unless the Board of Directors has established different hours of trading for certain index options, such option shall trade until 4:00 p.m. on the business day of expiration or, in the case of an option contract expiring on a day that is not a business day, the business day prior to the expiration date.

The Board of Directors has not established different hours of trading specifically for expiration days for Weekly Expirations and EOMs. In order to clarify that the trading hours set forth in Weekly Expirations and EOMs in Rule 1101A(b)(vii)(4) do not apply on expiration day pursuant to Rule 1101A(c), the Exchange proposes to add language to Rule 1101A(b)(vii)(4) stating that on the last trading day, transactions in expiring Weekly Expirations and EOMs may be effected on the Exchange between the hours of 9:30 a.m. (Eastern Time) and 4:00 p.m. (Eastern Time). The language proposed to be added is based on a comparable rule of Cboe Exchange, Inc. (''CBOE'').[4]

As CBOE explained in the proposed rule change adopting current CBOE Rule 24.9(e), Weekly Expirations and EOM options which are p.m.-settled are priced in the market based on corresponding futures values. On the last day of trading, the closing prices of the component stocks (which are used to derive the exercise settlement value) are known at 4:00 p.m. (Eastern Time) (or soon after) when the equity markets close. Despite the fact that the exercise settlement value is fixed at or soon after 4:00 p.m. (Eastern Time), if trading in expiring Weekly Expirations and EOMs were to continue for an additional fifteen minutes until 4:15 p.m. (Eastern Time) they would not be priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring Weekly Expiration and EOM series would continue to move and be priced in response to changes in corresponding futures prices. Because of the potential pricing divergence that could occur between 4:00 and 4:15 p.m. on the final trading day in expiring Weekly Expirations and EOMs (*e.g.,* switch from pricing off of futures to cash), the Exchange believes that, in order to mitigate potential investor confusion, it is appropriate to cease trading in expiring Weekly Expirations and EOMs at 4:00 p.m. on the last day of trading.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to 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. As noted above, the proposed rule change will state clearly the trading hours of expiring Weekly Expirations and EOM options on the last trading day for those options directly in the section of the rulebook dealing with those types of options. The added clarity will protect

[3] The Exchange also proposes to place the caption to Rule 1101A(b)(vii) in bold type, to conform that caption to the other rule section captions in Rule 1101A(b) for ease of reading.

[4] CBOE Rule 24.9(e)(4) provides that ''[o]n the last trading day, transactions in expiring Weekly Expirations and EOMs may be effected on the Exchange between the hours of 8:30 a.m. (Chicago time) and 3:00 p.m. (Chicago time).''

[5] *See* Securities Exchange Act Release No. 64243 (April 7, 2011), 76 FR 20771 (April 13, 2011) (SR–CBOE–2011–038) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Close of Trading Hours for Expiring End of Week and End of Month Expirations).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

investors and the public interest by eliminating any potential for ambiguity or confusion on the part of the investing public regarding last trading day trading hours for these options. As noted above, the proposed new language regarding trading hours on the last trading day of Weekly Expiration and EOM options tracks similar CBOE language, thereby protecting investors and the public interest by eliminating any additional potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by eliminating a potential ambiguity in the Exchange's rules and setting forth clearly the last trading day trading hours for Weekly Expirations and EOM options in the section of the index options rules dealing specifically with those options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 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 [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative for 30 days after the date of 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 proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to immediately conform the trading hours for its Nonstandard Expirations Pilot Program to that of another exchange's Nonstandard Expirations Pilot Program, eliminate a potential source of confusion on the part of the investing public, as well as avoid potential pricing divergence difficulties that could occur between 4:00 and 4:15 p.m. (Eastern Time). The Exchange's proposal does not raise new issues. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–Phlx–2018–28 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–Phlx–2018–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–28, and should be submitted on or before May 3, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–07525 Filed 4–11–18; 8:45 am]

BILLING CODE 8011–01–P

[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 the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The 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).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15468 and #15469; MICHIGAN Disaster Number MI–00064]

Administrative Declaration of a Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 03/30/2018.

Incident: Severe Storms and Flooding.

Incident Period: 02/19/2018 through 02/21/2018.

DATES: Issued on 03/30/2018.

Physical Loan Application Deadline Date: 05/29/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 12/31/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Arenac, Berrien, Ingham, Kalamazoo

Contiguous Counties:

Michigan Allegan, Barry, Bay, Branch, Calhoun, Cass, Clinton, Eaton, Gladwin, Iosco, Jackson, Livingston, Ogemaw, Saint Joseph, Shiawassee, Van Buren.

Indiana La Porte, St Joseph

The Interest Rates are:

	Percent
For Physical Damage	
Homeowners with Credit Available Elsewhere	3.625
Homeowners without Credit Available Elsewhere	1.813
Businesses with Credit Available Elsewhere	7.160
Businesses without Credit Available Elsewhere	3.580
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.580
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15468 6 and for economic injury is 15469 0.

The States which received an EIDL Declaration # are Michigan, Indiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: March 30, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–07617 Filed 4–11–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15470 and # 15471; CALIFORNIA Disaster Number CA–00284]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 04/03/2018.

Incident: Pico Rivera Corsica Apartment Complex Fire.

Incident Period: 02/22/2018.

DATES: Issued on 04/03/2018.

Physical Loan Application Deadline Date: 06/04/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles

Contiguous Counties:

California: Kern, Orange, San Bernardino, Ventura

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.625
Homeowners Without Credit Available Elsewhere	1.813
Businesses With Credit Available Elsewhere	7.160
Businesses Without Credit Available Elsewhere	3.580
Non-Profit Organizations With Credit Available Elsewhere	2.500
Non-Profit Organizations Without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.580
Non-Profit Organizations Without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15470 5 and for economic injury is 15471 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: April 3, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–07618 Filed 4–11–18; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[STB Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act (FACA).

DATES: The meeting will be held on Thursday, April 26, 2018, at 9:00 a.m. E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at 395 E Street SW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Michael Higgins (202) 245–0284; *Michael.Higgins@stb.gov.* [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339].

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail, including coal, ethanol, and other biofuels.

Establishment of a Rail Energy Transportation Advisory Committee, Docket No. EP 670. The purpose of this meeting is to continue discussions regarding issues such as rail

performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items for this meeting include a performance measures review, industry segment updates by RETAC members, a presentation on energy transportation logistics, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR part 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may be announced through the Board's website at *www.stb.gov.*

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Michael Higgins, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Michael.Higgins@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: April 6, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–07533 Filed 4–11–18; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces that the United States Trade Representative has determined not to list any countries as denying fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

FOR FURTHER INFORMATION CONTACT: Scott Pietan, International Procurement Negotiator, *Scott_Pietan@ustr.eop.gov* or 202–395–9646, or Arthur Tsao, Assistant General Counsel, *Arthur_N_Tsao@ustr.eop.gov* or 202–395–6987.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (*codified at* 49 U.S.C. 50104), requires the United States Trade Representative to decide whether any foreign country has denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the government of such country. The Office of the U.S. Trade Representative has not received any complaints or other information that indicates that U.S. products, suppliers, or bidders are being denied fair market opportunities in such airport construction projects. As a consequence, the United States Trade Representative has decided not to list any countries as denying fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Jamieson Greer,

Chief of Staff, Office of the United States Trade Representative.

[FR Doc. 2018–07592 Filed 4–11–18; 8:45 am]

BILLING CODE 3190–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2018–32]

Petition for Exemption; Summary of Petition Received; FlightScan Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–1065 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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 edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 6, 2018.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2017–1065.

Petitioner: FlightScan Corporation.

Section(s) of 14 CFR Affected: §§ 45.23(b); 45.29(b)(3); 91.9(b); 91.105(a)(2), (b); 91.107; 91.109; 91.113(b); 91.119; 91.121; 91.203; 91.205(b)(13), (14), (15) & (17); 91.207.

Description of Relief Sought: The petitioner is requesting relief in order to operate the Schiebel CAMCOPTER S–100, a medium risk (ICAO Risk Class III) vertical takeoff and landing (VTOL) Unmanned Aircraft System (UAS), with a maximum takeoff weight of 440 pounds. The requested operation would allow the petitioner to provide commercial aerial monitoring during the day of critical national infrastructure beyond the visual line of sight (BVLOS) in the United States, as stipulated in

section 2210 of the FAA Extension, Safety, and Security Act of 2016.

[FR Doc. 2018–07578 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–30]

Petition for Exemption; Summary of Petition Received; Cruiser Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0148 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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 edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Clarence Garden (202) 267–7489, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0148

Petitioner: Cruiser Aircraft, Inc.

Section(s) of 14 CFR Affected: 21.190(c)(2)

Description of Relief Sought: Cruiser Aircraft, Inc., as the authorized representative of Czech Sport Aircraft a.s. (CSA), is seeking an exemption from Title 14 of the Code of Regulations Section 21.190(c)(2) to the extent necessary to allow Sport Cruiser special light sport-aircraft (SLSA) manufactured by CSA that otherwise comply with the applicable consensus standard to be certified or deemed airworthy without a manufacturer's instruction prohibiting instrument flight rules (IFR) operation.

[FR Doc. 2018–07575 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–24]

Petition for Exemption; Summary of Petition Received; Embraer Executive Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0088 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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 edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Barksdale (202) 267–7977, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0088.

Petitioner: Embraer Executive Aircraft, Inc.

Section(s) of 14 CFR Affected: 91.9(a), 61.55(g), and 61.3(a)(1).

Description of Relief Sought: Embraer Executive Aircraft, Inc. requests an exemption from the requirements of 14 CFR §§ 91.9(a) and 61.3(a)(1). This exemption, if granted, would apply to N-registered aircraft that require two

pilots and would permit Embraer to allow foreign licensed customer pilots to serve as second-in-command pilots under the applicable guidelines of § 61.55(g) and in accordance with the applicable provisions of ''Recommended Practices and Guidelines for Evaluation Flights in the US.'' published by GAMA.

[FR Doc. 2018–07577 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifteenth RTCA SC–229 406 MHz ELT Joint Plenary With EUROCAE Working Group 98

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

ACTION: Fifteenth RTCA SC–229 406 MHz ELT Joint Plenary with EUROCAE Working Group 98.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifteenth RTCA SC–229 406 MHz ELT Joint Plenary with EUROCAE Working Group 98.

DATES: The meeting will be held June 18–22, 2018, 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifteenth RTCA SC–229 406 MHz ELT Joint Plenary with EUROCAE Working Group 98. The agenda will include the following:

Monday June 18, 2018, 9:00 a.m.–5:00 p.m.

1. Welcome/Introductions/Administrative Remarks/DFO FAA Statement
2. Agenda Overview and Approval
3. Minutes Toulouse Meeting Review and Approval
4. Week's Plan
5. Working Group of the Whole Meeting (Rest of the Day) to Review the Structure Changes

Tuesday June 19, 2018, 9:00 a.m.–5:00 p.m.

6. Working Group of the Whole Meeting to Review the Structure Changes

Wednesday June 20, 2018, 9:00 a.m.–5:00 p.m.

7. Working Group of the Whole Meeting to Review the Structure Changes

Thursday June 21, 2018, 9:00 a.m.–5:00 p.m.

8. Working Group of the Whole Meeting to Review the Structure Changes

Friday June 22, 2018, 9:00 a.m.–4:00 p.m.

9. Action Item Review
10. Consider a Motion to Open Final Review and Comment/Open Consultation on the Revision to RTCA/DO–204B, EUROCAE ED–62B
11. Future Meeting Plans and Dates for Formal Frac/Open Consultation
12. Presentations
13. Other Business
14. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 9, 2018.

Michelle Swearingen,

Systems and Equipment Standards Branch, AIR–6B0, Policy and Innovation Division, AIR–600, Federal Aviation Administration.

[FR Doc. 2018–07570 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth RTCA SC–236 Wireless Airborne Intra Communications (WAIC) Joint Plenary With EUROCAE Working Group 96

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

ACTION: Fifth RTCA SC–236 Wireless Airborne Intra Communications (WAIC) Joint Plenary with EUROCAE Working Group 96.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifth RTCA SC–236 Wireless Airborne Intra Communications (WAIC) Joint Plenary with EUROCAE Working Group 96.

DATES: The meeting will be held May 22 1:00 p.m.–5:00 p.m. and May 23–25, 2018, 9:00 a.m.–5:00 p.m.

ADDRESSES: The meeting will be held at: Airbus, Saint Martin du Touch, 26 Chemin de l'Espeissière, 31300 Toulouse.

FOR FURTHER INFORMATION CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifth RTCA SC–236 Wireless Airborne Intra Communications (WAIC) Joint Plenary with EUROCAE Working Group 96. The agenda will include the following:

Tuesday, May 22, 2018 1:00 p.m.–5:00 p.m.

1. Welcome/Administrative Duties
2. IPR/Membership Call–Out and Introductions
3. Acceptance of Meeting Minutes for the Third Joint Plenary of SC–236/WG–96 Held at RTCA in February 2018
4. Review Plenary Agenda and Sub-Working Group Schedule Including Delivery Schedule for White Paper and Mops
5. Break Into Sub–Working Group Meetings When Plenary Business Complete

Wednesday, May 23–Thursday, May 24, 2018, 9:00 a.m.–5:00 p.m.

6. Continue With Plenary or Sub-Working Group Meetings

Friday, May 25, 2018, 9:00 a.m.–5:00 p.m.

7. Continue With Plenary or Sub-Working Group Meetings
8. Reports of the Sub-Working Groups
9. Status and Review of the Draft Paper SC–236 Intermediate Report (Dedicated for ICAO Job Card)
10. Review of Special Committee Schedule
11. Approve Changes and Updates to the Terms of Reference
12. New Business Discussions
13. Review of Action Items
14. Plan for Next Meeting
15. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Registration is required for attendance. Persons wishing to register, to present statements, or to obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on April 9, 2018.

Michelle Swearingen,

Systems and Equipment Standards Branch, AIR–6B0, Policy and Innovation Division, AIR–600, Federal Aviation Administration.

[FR Doc. 2018–07571 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–29]

Petition for Exemption; Summary of Petition Received; Turtles Fly Too, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 2, 2018.

ADDRESSES: Send comments identified by docket number FAA–2017–1167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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 edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, (202) 267–9677, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 6, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2017–1167.

Petitioner: Turtles Fly Too, Inc.

Section(s) of 14 CFR Affected: § 61.113(c).

Description of Relief Sought: The petitioner seeks relief from § 61.113(c) to the extent necessary to allow Turtles Fly Too to reimburse its volunteer pilots for fuel costs incurred while conducting charitable flights for humanitarian assistance to animals.

[FR Doc. 2018–07576 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirty Third RTCA SC–217 Aeronautical Databases Joint Plenary With EUROCAE Working Group 44

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

ACTION: Thirty Third RTCA SC–217 Aeronautical Databases Joint Plenary with EUROCAE Working Group 44.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Thirty Third RTCA SC–217 Aeronautical Databases Joint Plenary with EUROCAE Working Group 44.

DATES: The meeting will be held June 18–21, 2018, 9:00 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION, CONTACT: Rebecca Morrison at *rmorrison@rtca.org* or 202–330–0654, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Thirty Third RTCA SC–217 Aeronautical Databases Joint Plenary with EUROCAE Working Group 44. The agenda will include the following:

Monday June 18, 2018, 9:00 a.m.–5:00 p.m.

1. Opening Plenary Session
   - A. Co–Chairmen's Remarks and Introductions
   - B. Housekeeping & Meeting Logistics
   - C. DFO Statement and RTCA/EUROCAE IP and Membership Policies
   - D. Approve Minutes From 32nd Meeting of SC–217/WG–44
   - E. Review And Approve Meeting Agenda for 33rd Meeting of SC–217/WG–44
   - F. Action Item List Review
2. Working Group Sessions

Tuesday, June 19, 2018, 9:00 a.m.–5:00 p.m.

3. Working Group Sessions

Wednesday June 20, 2018, 9:00 a.m.–5:00 p.m.

4. Working Group Sessions

Thursday June 21, 2018, 9:00 a.m.–5:00 p.m.

5. Working Group Sessions
6. Closing Plenary Session
   - A. Meeting Wrap-Up: Main Conclusions and Way Forward
   - B. Review of Action Items
   - C. FRAC Readiness Assessment/Approval
   - D. Next Meetings
   - E. Future of SC–217/WG–44
   - F. Consider and Review Any TOR Changes for SC–217/WG–44
   - G. Any Other Business
7. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 9, 2018.

Michelle Swearingen,

Systems and Equipment Standards Branch, AIR–6B0, Policy and Innovation Division, AIR–600, Federal Aviation Administration.

[FR Doc. 2018–07569 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Solicitation of Nominations for Membership for the U.S. Maritime Transportation System National Advisory Committee

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of solicitation for membership.

SUMMARY: Pursuant to authority delegated by the Secretary of Transportation (Secretary) to the Maritime Administrator (Administrator), the Maritime Administration (MARAD) requests nominations for membership on the U.S. Maritime Transportation System National Advisory Committee (Committee or MTSNAC).

DATES: Nominations for immediate consideration for appointment must be received on or before 5:00 p.m. ET on May 29, 2018. After that date, MARAD will continue to accept applications under this notice for a period of up to 2 years from the deadline to fill any vacancies that may arise. The Agency encourages nominations submitted any time before the deadline.

ADDRESSES: Interested candidates may submit a completed application by one of the following methods:

- *Email: MTSNAC@dot.gov,* subject line: MTSNAC Application.
- *Mail:* MARAD–MTSNAC Designated Federal Officer, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, please include name, mailing address and telephone number.

FOR FURTHER INFORMATION CONTACT: Jeffrey Flumignan, Designated Federal Officer, at *MTSNAC@dot.gov* or at (212) 668–2064. Please visit the MTSNAC website at *http://www.marad.dot.gov/ports/marine-transportation-system-mts/marine-transportation-system-national-advisory-committee-mtsnac/.*

SUPPLEMENTARY INFORMATION:

I. Who should be considered for nomination as MTSNAC members?

The MARAD seeks nominations for consideration to fill open positions on the Committee for the upcoming 2018–2020 charter term, and will continue to accept nominations under this notice on an on-going basis for 2 years for consideration to fill vacancies that may arise during the charter term. Member appointment terms run for two years concurrently with the Committee charter. Members will be selected in accordance with applicable Agency guidelines based upon their ability to advise the Administrator on marine transportation issues. Members will be selected with a view toward a varied perspective of the marine transportation industry, including (1) active mariners; (2) vessel operators; (3) ports and terminal operators; (4) shippers or beneficiary cargo owners; (5) shipbuilders; (6) relevant policy areas such as innovative financing, economic competitiveness, performance monitoring, safety, labor, and environment; (7) freight customers and providers; and (8) government bodies. Registered lobbyists are prohibited from serving on Federal Advisory Committees in their individual capacities. The prohibition does not apply if registered lobbyists are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.) or State or local governments. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81).

II. Do MTSNAC members receive compensation and/or per diem?

Committee members will receive no salary for the participation in MTSNAC activities. While attending meetings or when otherwise engaged in Committee business, members may be reimbursed for travel and per diem expenses as permitted under applicable Federal travel regulations. Reimbursement is subject to funding availability.

III. What is the process for submitting nominations?

Individuals can self-apply or be nominated by any individual or organization. To be considered for the MTSNAC, nominators should submit the following information:

(1) Contact Information for the nominee, consisting of:

a. Name
b. Title
c. Organization or Affiliation
d. Address
e. City, State, Zip
f. Telephone number
g. Email address

(2) Statement of interest limited to 250 words on why the nominee wants to serve on the MTSNAC and the unique perspectives and experiences the nominee brings to the Committee;

(3) Resume limited to 3 pages describing professional and academic expertise, experience, and knowledge, including any relevant experience serving on advisory committees, past and present; and

(4) An affirmative statement that the nominee is not a federally registered lobbyist seeking to serve on the Committee in their individual capacity and the identity of the interests they intend to represent if appointed as member of the Committee; and

(5) Optional letters of support.

Please do not send company, trade association, organization brochures, or any other promotional information. Materials submitted should total five pages or less and must be in a 12 font, formatted in Microsoft Word or PDF. Should more information be needed, MARAD staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources. If you are interested in applying to become a member of the Committee, send a completed application package by email to *MTSNAC@dot.gov* or by mail to MTSNAC–DFO, Room W21–310, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Applications must be received on or before 5:00 p.m. ET on March 31, 2018; however, candidates are encouraged to send application any time before the deadline.

IV. How will MARAD select MTSNAC members?

A selection team comprised of representatives from MARAD will review the application packages. The selection team will make recommendations regarding membership to the Administrator based on the following criteria: (1) Professional or academic expertise, experience, and knowledge; (2) stakeholder representation; (3) availability and willingness to serve; and (4) relevant experience in working in committees and advisory panels. Nominations are open to all individuals

without regard to race, color, religion, sex, national origin, age, mental or physical disability, marital status, or sexual orientation.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

* * * * *

By Order of the Maritime Administrator.

Dated: April 9, 2018.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–07565 Filed 4–11–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2018 Tax Counseling for the Elderly (TCE) Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2018 by visiting: *IRS.gov* (key word search—''TCE'') or through *Grants.gov*. The deadline for submitting an application package to the IRS for the Tax Counseling for the Elderly (TCE) Program is May 31, 2018. All applications must be submitted through *Grants.gov*.

ADDRESSES: Internal Revenue Service, Grant Program Office, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *tce.grant.office@irs.gov* .

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year. Because applications are being solicited before the FY 2019 budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Dated: March 29, 2018.

Carol Quiller,

Chief, Grant Program Office IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2018–07568 Filed 4–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Nonconventional Source Production Credit Reference Price for Calendar Year 2017

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the reference price for the nonconventional source production credit for calendar year 2017.

FOR FURTHER INFORMATION CONTACT: Martha Garcia, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone Number (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The credit period for nonconventional source production credit ended on December 31, 2013 for facilities producing coke or coke gas (other than from petroleum based products). However, the reference price continues to apply in determining the amount of the enhanced oil recovery credit under section 43 of title 26 of the U.S.C., the marginal well production credit under section 45I of title 26 of the U.S.C., and the percentage depletion in case of oil and natural gas produced from marginal properties under section 613A of title 26 of the U.S.C.

The reference price under section 45K(d)(2)(C) of title 26 of the U.S.C. for calendar year 2017 applies for purposes of sections 43, 45I, and 613A for taxable year 2018.

Reference Price: The reference price under section 45K(d)(2)(C) for calendar year 2017 is $48.05.

Christopher T. Kelley,

Special Counsel (Passthroughs and Special Industries).

[FR Doc. 2018–07579 Filed 4–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application for Federal Financial Assistance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the application package for the 2019 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2018 by visiting: *IRS.gov* (key word search— ''VITA Grant''). Application packages are available on May 1, 2018 by visiting *Grants.gov* and searching with the Catalog of Federal Domestic Assistance (CFDA) number 21.009. The deadline for applying to the IRS through *Grants.gov* for the Community VITA Matching Grant Program is May 31, 2018. All applications must be submitted through *Grants.gov*.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West Peachtree St. NW, Suite 1645, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *Grant.Program.Office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Consolidated Appropriations Act, 2018, Public Law 115–141.

Dated: March 29, 2018.

Carol Quiller,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2018–07567 Filed 4–11–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the

Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before May 14, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Employee Representative's Quarterly Railroad Tax Return.

OMB Control Number: 1545–0002.

Type of Review: Extension without change of a currently approved collection.

Abstract: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Form: CT–2.

Affected Public: Individuals and Households.

Estimated Total Annual Burden Hours: 132.

2. Title: Revenue Procedure 2017–52; 2017–1; 2017–3, Rulings and determination letters—26 CFR 601–.201.

OMB Control Number: 1545–1522.

Type of Review: Extension without change of a currently approved collection.

Abstract: Rev. Proc. 2017–52 (1) introduces a pilot program expanding the scope of letter rulings available from the Internal Revenue Service (Service) to include rulings on the tax consequences of a distribution of stock and securities of a controlled corporation under § 355 for a specified period of time (see section 6 of this revenue procedure), (2) provides procedures for taxpayers requesting these rulings, and (3) clarifies procedures for taxpayers requesting rulings on significant issues relating to these transactions.

These previously approved Revenue Procedures explain how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service. This information is required to evaluate and process the request for a letter ruling or determination letter.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 326,436.

Authority: 44 U.S.C. 3501 et seq.

Dated: April 9, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–07594 Filed 4–11–18; 8:45 am]

BILLING CODE 4830–01–P

United States Institute of Peace

Notice of Meeting

Agency: United States Institute of Peace.

Date/Time: Friday, April 20, 2018 (10:00 a.m.–12:15 p.m.).

Location: 2301 Constitution Avenue NW, Washington, DC 20037.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: April 20, 2018 Board Meeting: Chairman's Report; Vice Chairman's Report; President's Report; Approval of Minutes of the One Hundred and Sixty Fifth Meeting (January 19, 2018) of the Board of Directors; Reports from USIP Board Committees; Iraq Trip Report; and Central Asia: Multiple Connections report.

Contact: William B. Taylor, Executive Vice President: *wtaylor@usip.org*

Dated: April 5, 2018.

William B. Taylor,

Executive Vice President.

[FR Doc. 2018–07538 Filed 4–11–18; 8:45 am]

BILLING CODE 6820–AR–P

FEDERAL REGISTER

Vol. 83 Thursday,

No. 71 April 12, 2018

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for the Island Marble Butterfly and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2016–0145; 4500030113]

RIN 1018–BB96

Endangered and Threatened Wildlife and Plants; Endangered Status for the Island Marble Butterfly and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the island marble butterfly (*Euchloe ausonides insulanus*) as an endangered species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). In total, approximately 812 acres (329 hectares) on the south end of San Juan Island, San Juan County, Washington, fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species and its critical habitat. The effect of this rule will be to add this species to the List of Endangered and Threatened Wildlife and to designate critical habitat for the island marble butterfly under the Act. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the island marble butterfly.

DATES: We will accept comments received or postmarked on or before June 11, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 29, 2018.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2016–0145, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2016–0145; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Eric V. Rickerson, State Supervisor, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503; telephone 360–753–9440; or facsimile 360–534–9331. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes the listing of the island marble butterfly (*Euchloe ausonides insulanus*) as an endangered species and the designation of critical habitat. The island marble butterfly is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule was precluded by other higher priority listing activities. This proposed rule reassesses all available information regarding the status of and threats to the island marble butterfly.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The island marble butterfly faces the following threats:

- Habitat loss and degradation from plant succession and invasion by plants that displace larval host plants; browsing by black-tailed deer, European rabbits, and brown garden snails; and storm surges;
- Predation by native spiders and nonnative wasps, and incidental predation by black-tailed deer; and
- Vulnerabilities associated with small population size and environmental and demographic stochasticity, and other chance events that increase mortality or reduce reproductive success.
- Existing regulatory mechanisms and conservation efforts do not address the threats to the island marble butterfly to the extent that listing is not warranted.

Under the Endangered Species Act, any species that is determined to be an endangered or threatened species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We prepared an economic analysis of the proposed designation of critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation. We hereby announce the availability of the draft economic analysis and seek public review and comment.

Peer review. We have requested comments from independent specialists to ensure that we based our proposed listing determination and critical habitat designation on scientifically sound data, assumptions, and analyses. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of the island marble butterfly habitat,

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change, and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the island marble butterfly and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(10) Information on the extent to which the description of potential economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the one of the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date listed above in **DATES** and must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we have sought the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that we base our listing determination and critical habitat designation on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and stressors to the island marble butterfly. We have invited comment from the peer reviewers during this public comment period; these reviews will be available on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2016–0145, along with other public comments on this proposed rule.

Previous Federal Actions

In 2006, we published a 90-day finding (71 FR 7497, February 13, 2006),

and a 12-month not-warranted finding (71 FR 66292, November 14, 2006) on a 2002 petition from the Xerces Society for Invertebrate Conservation (Xerces), Center for Biological Diversity, Friends of the San Juans, and Northwest Ecosystem Alliance. The history of that petition and previous Federal actions in response to that petition are summarized in our 2006 12-month finding.

On August 24, 2012, we received a second petition from Xerces dated August 22, 2012, requesting that we emergency list the island marble butterfly as an endangered species and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as such and included the requisite identification information from the petitioner, required (at that time) at 50 CFR 424.14(a). Included in the petition was supporting information regarding the subspecies' taxonomy, ecology, historical and current distribution, current status, and what the petitioner identified as actual and potential causes of decline.

On March 6, 2013, we received a notice of intent to sue from Xerces for failure to complete the finding on the petition within 90 days. On January 28, 2014, we entered into a settlement agreement with Xerces stipulating that we would complete the 90-day finding before September 30, 2014. The Service published a 90-day finding in the **Federal Register** on August 19, 2014 (79 FR 49045). In that finding, we concluded that the petition presented substantial scientific information indicating that listing the island marble butterfly may be warranted. The settlement agreement did not specifically stipulate a deadline for a subsequent 12-month finding.

We received a notice of intent to sue from Xerces dated September 5, 2014, stating Xerces' intent to file suit to compel the Service to issue a finding pursuant to 16 U.S.C. 1533(b)(3)(B) (a ''12-month finding'') as to whether the listing of the island marble butterfly is warranted, not warranted, or warranted but precluded. We entered into a settlement agreement with Xerces on April 6, 2015, stipulating that we would submit a 12-month finding to the **Federal Register** for publication on or before March 31, 2016. Our 12-month finding that determined listing of the island marble butterfly was warranted but precluded by higher priority listing actions was published in the **Federal Register** on April 5, 2016 (81 FR 19527). Therefore, the island marble butterfly was added to the list of candidate species with a listing priority number (LPN) of 3 based on our finding that the species faces threats that are imminent and of high magnitude.

Background

Species Information

Taxonomy and Species Description

The island marble butterfly (*Euchloe ausonides insulanus*) is a subspecies of the large marble butterfly (*E. ausonides*) in the Pieridae family, subfamily Pierinae, which primarily consists of yellow and white butterflies. The island marble butterfly was formally described in 2001, by Guppy and Shepard based on 14 specimens collected between 1859 and 1908 on or near Vancouver Island, British Columbia, Canada, and is geographically isolated from all other *E. ausonides* subspecies. The taxonomic status of the island marble butterfly is not in dispute. *Euchloe ausonides insulanus* is recognized as a valid subspecies by the Integrated Taxonomic Information System (ITIS 2015a, entire) based on the phenotypic differences documented in Guppy and Shepard 2001. In this document, we refer to the island marble butterfly as a species because subspecies are treated as species for the purposes of evaluating taxa for listing under the Act.

Island marble butterflies are approximately 1.75 inches (in) (4.5 centimeters (cm)) long (Pyle 2002, p. 142) and are differentiated from other subspecies of the large marble butterfly by their larger size and the expanded marbling pattern of yellow and green on the underside of the hindwings and forewings (Guppy and Shepard 2001, p. 159). Immature stages of the island marble butterfly have distinctly different coloration and markings from *Euchloe ausonides;* specifically, the third and fourth larval instars (instars are the larval stages between molting events) have a white spiracular stripe (a stripe that runs along the side of a caterpillar) subtended (bordered below) by a yellow-green subspiracular stripe and a green-yellow ventral area, which is different from the stripe colors and patterns described for *E. ausonides* (James and Nunnallee 2011, pp. 102–103; Lambert 2011, p. 15). The island marble butterfly is also behaviorally distinct; large marble butterflies pupate (enter the final stage of larval development before transforming into a butterfly) directly on their larval host plants, whereas the island marble butterflies leave their host plants to find a suitable pupation site up to 13 feet (ft) (4 meters (m)) away from their larval host plants (Lambert 2011, p. 19).

Distribution

The island marble butterfly was historically known from just two areas along the southeast coast of Vancouver Island, British Columbia, Canada, based on 14 museum records: the Greater Victoria area at the southern end of Vancouver Island; and near Nanaimo and on adjacent Gabriola Island, approximately 56 miles (mi) (90 kilometers (km)) north of Victoria. The last known specimen of the island marble butterfly from Canada was collected in 1908 on Gabriola Island, and the species is now considered extirpated from the province (COSEWIC 2010, p. 6). Reasons for its disappearance from Canada are unknown. Hypotheses include increased parasitoid loads (the number of individual deadly parasites within an individual caterpillar) associated with the introduction of the cabbage white butterfly (Shepard and Guppy 2001, p. 38) or heavy grazing of natural meadows by cattle and sheep, which severely depressed its presumed larval food plant (SARA 2015).

After 90 years without a documented occurrence, the island marble butterfly was rediscovered in 1998 on San Juan Island, San Juan County, Washington, at least 9 mi (15 km) east of Victoria across the Haro Strait. Subsequent surveys in suitable habitat across Southeast Vancouver Island and the Gulf Islands in Canada (see COSEWIC 2010, p. 5), as well as the San Juan Islands and six adjacent counties in the United States (Whatcom, Skagit, Snohomish, Jefferson, Clallam, and Island Counties), revealed only two other occupied areas. One of these occupied areas was centered on San Juan Island and the other on Lopez Island, which is separated from San Juan Island by just over 0.5 mi (1 km) at its closest point. These occupied areas were eventually determined to comprise five populations, as described in detail in our 2006 12-month finding (71 FR 66292, November 14, 2006). Since 2006, the number and distribution of populations has declined. Four of the five populations that once spanned San Juan and Lopez Islands have not been detected in recent years, and the species is now observed only in a single area centered on American Camp, a part of San Juan Island National Historical Park that is managed by the National Park Service (NPS). The island marble butterfly likely also uses the lands adjoining or near American Camp, as there have been at least two observations of island marble butterflies flying along the boundaries of these

adjoining lands in 2015 (Potter 2015a, *in litt.*).

No current records exist of any life-history stage of the island marble butterfly except at or near American Camp at San Juan Island National Historical Park. Therefore, we consider only American Camp and the immediately adjacent areas to be occupied at the time of this proposed listing. However, because of the island marble butterfly's cryptic nature and its dispersal ability, its distribution is somewhat uncertain, and we seek any new information regarding the island marble butterfly's distribution (see Information Requested, above).

Survey Effort

Extensive surveys have been conducted in British Columbia, Canada, since 2001, with an estimated 500 survey hours conducted by professional surveyors and 2,000 survey hours by volunteer butterfly enthusiasts (COSEWIC 2010, p. v). During these surveys, neither the island marble butterfly nor suitable habitat was detected (COSEWIC 2010, p. vi). The species has been considered extirpated in British Columbia since 1910, and was formally designated extirpated in 1999 by the Canadian Government (COSEWIC 2000, p. iii).

In the United States, surveys for the island marble butterfly have also been extensive. In 2005 and 2006, we partnered with NPS, Washington Department of Fish and Wildlife (WDFW), Washington Department of Natural Resources (WDNR), the University of Washington, and the Xerces Society to survey for the presence of the island marble butterfly during the adult flight period (when eggs are laid and larvae are active; early April–late June). Qualified surveyors conducted approximately 335 individual surveys at more than 160 sites in potentially suitable habitat across 6 counties (Clallam, Jefferson, Island, San Juan, Skagit, and Whatcom) and on 16 islands (Miskelly and Potter 2005, pp. 5, 7–16; Miskelly and Fleckenstein 2007, pp. 4, 10–19). Outside of American Camp, sites were defined primarily by ownership, although some exceptionally large sites were subdivided and received unique site names. All surveys followed a set of standardized protocols to ensure they were conducted when butterflies had the highest likelihood of being detected (see Miskelly and Potter 2005, p. 4). Island marble butterflies were considered present at sites where eggs, larvae, or adults of the species were detected. These surveys documented five populations distributed across San Juan and Lopez Islands, including the single population persisting today centered on American Camp (Miskelly and Fleckenstein 2007, pp. 4–5).

Annual surveys conducted outside of American Camp from 2007–2012 focused on areas with suitable habitat on San Juan and Lopez Islands. These surveys generally included previously occupied sites, when accessible, in order to document whether or not island marble butterflies persisted at the sites where they were detected in 2005 and 2006. After years of observing a rangewide decline in available island marble butterfly habitat and dwindling island marble butterfly detections, WDFW determined that there was not enough suitable habitat remaining outside of American Camp to warrant continued widespread survey efforts on San Juan and Lopez Islands. Therefore, surveys in 2013 and 2014 focused solely on assisting with monitoring at American Camp and surveying lands directly adjacent to the park (Potter 2015a *in litt.*). Surveys to monitor the status of the population centered on American Camp have been conducted annually from 2004 to 2015, although the effort has varied through time (see ''Abundance,'' below, for additional information).

In 2015, in addition to annual population monitoring at American Camp, the Service funded an extensive survey of sites on San Juan Island outside of American Camp. Areas surveyed included those sites where island marble butterflies had previously been detected, as well as areas with suitable habitat with no prior detections. Researchers conducted 134 individual surveys at a total of 48 sites, including 24 sites where the island marble butterfly had been previously documented. The survey yielded no detections of the island marble butterfly outside of American Camp.

Multiple years of extensive surveys conducted across formerly occupied sites have failed to detect the species. However, it is possible that the island marble butterfly continues to exist at a handful of small isolated sites where surveyors were not granted access or were unable to survey during suitable conditions (Miskelly and Potter 2005, entire; Miskelly and Fleckenstein 2007, entire; Miskelly and Potter 2009, entire; Hanson *et al.* 2009, entire; Hanson *et al.* 2010, entire; Potter *et al.* 2011, entire; Vernon and Weaver 2012, entire; Weaver and Vernon 2014, entire; Potter 2015a *in litt.;* Vernon 2015a, entire).

Abundance

In our 2006 12-month finding, we estimated the abundance of island marble butterflies to be ''probably less than 500 butterflies, and possibly as low as 300 individuals'' (71 FR 66292, November 14, 2006, p. 66295). These numbers were based on limited data, and their accuracy is uncertain. Since 2006, there have been several efforts to either directly estimate population size or evaluate changes in relative abundance through time (described below). In addition, captive-rearing and release of butterflies was initiated in 2013, and since that time, 301 captive-raised butterflies have been released at American Camp to supplement the population (see the discussions of conservation efforts under Factors A and C, below, for more details).

Site Occupancy—The number of sites where the island marble butterfly is detected each year is a useful indicator of coarse-scale changes in abundance. The island marble butterfly has been recorded at a total of 63 individual sites since rangewide surveys began in 2005: The species was found at 37 sites in and around American Camp and 26 sites outside of American Camp (Miskelly and Potter 2005, pp. 7–14; Miskelly and Fleckenstein 2007, pp. 14–19; Miskelly and Potter 2009, pp. 7–8, 10–11; Hanson *et al.* 2009, pp. 10–11, 24–28; Hanson *et al.* 2010, pp. 12–13, 26–30; Potter *et al.* 2011, pp. 10–23, 15–23; Potter 2012, unpublished; Potter 2013, unpublished; Vernon and Weaver 2012, pp. 4–7; Weaver and Vernon 2014, pp. 5–8). The number of occupied sites recorded at American Camp is somewhat confounded by changes in survey methods and effort through time (see ''Survey Effort,'' above). We recognize this as a potential source of uncertainty, but note that both transect data and anecdotal observations suggest a population decline at American Camp since monitoring began in 2004 (see *Transect Counts,* below).

The largest number of concurrently occupied sites reported was 25 in 2007, 10 of which were outside of American Camp (Miskelly and Potter 2009, pp. 7–8, 10–11; Potter *et al.* 2011, pp. 15–16). The number of occupied sites declined every year from 2007 to 2011, with the species detected at only seven sites in 2011, only one of which was outside of American Camp. In 2015, adult island marble butterflies were detected at only four of the regularly monitored sites at American Camp, the fewest occupied sites ever recorded, and no adults, eggs, or larvae were detected outside of the greater American Camp area (Potter 2015a *in litt.,* NPS 2015a, entire; Vernon 2015b, entire), although there were two observations of single adult butterflies flying just beyond the boundary of the park that were not recorded in formal

surveys by NPS (Potter 2015a, *in litt.*). Island marble butterflies were detected as eggs in six additional research plots at American Camp (Lambert 2015d, p. 4), but none of the eggs tracked in the research plots survived to the fifth larval instar (Lambert 2015d, p. 13). In 2016, larval habitat for the island marble butterfly at American Camp increased substantially, and survivorship of individuals tracked from eggs through fifth instar larvae increased from zero in 2015 to 3 percent in 2016 (Lambert 2016a, pp. 10, 21).

The reasons for the precipitous decline in the number of occupied sites since 2005 are not known with certainty, but the near-complete loss of habitat outside of American Camp in some years is likely a principal cause. Habitat loss has been caused by road maintenance, mowing, cultivation of land, intentional removal of host plants, improperly timed restoration activities, development, landscaping, deer browse, and livestock grazing (Miskelly and Potter 2006, p. 6; Miskelly and Fleckenstein 2007, p. 6; Miskelly and Potter 2009, p. 9; Hanson *et al.* 2009, p. 18; Hanson *et al.* 2010, p. 21; Potter *et al.* 2011, p. 13).

Transect Counts—Counts along transects can provide a measure of relative abundance, which can be useful in assessing changes in the population among sites and through time (Peterson 2010, pp. 12–13). From 2004 to 2008, Lambert (2009) counted adult island marble butterflies along transects at American Camp (14 established in 2004 and an additional 2 (for a total of 16) established in 2005), finding a consistent and significant decline in the number of adults observed: They counted 270 in 2004, 194 in 2005, 125 in 2006, 71 in 2007, and 63 in 2008 (Lambert 2009, p. 5). These raw counts were also translated to relative encounter rates that account for differences in survey effort across years, and these encounter rates also showed a marked decline until 2016 (USFWS 2016). Four of these transects were monitored by NPS almost continuously from 2004 to 2016 (one transect was not monitored from 2009 to 2011), and relative encounter rates were calculated that accounted for transect length and the number of times the transect was surveyed each year. The relative encounter rate on these transects declined substantially between 2004 and 2015, from almost 2 butterflies per 100 meters surveyed in 2004 to approximately 0.3 butterflies per 100 meters in 2015 (USFWS 2016). Survey results for 2016 improved across the three transects consistently monitored at American Camp, with approximately 0.6 butterflies per 100 meters. While an observation of 0.6 butterflies per 100 meters reflects an improvement from recent years, this improvement does not reverse the overall decline observed since monitoring began in 2004.

Mark-Release-Recapture—Mark-release-recapture (MRR) studies were conducted at American Camp in 2008 and 2009 (and at one additional site on San Juan Island—the Pear Point Gravel Quarry, which is no longer occupied) (Peterson 2009, 2010; entire). These studies sought to address several demographic questions and to assess whether transect counts were a reliable method to estimate changes in the population through time (Peterson 2009, p. 3). MRR population estimates were generated for three focal areas at American Camp in 2009: The west end of American Camp (estimated 50 individuals), American Camp below the Redoubt (estimated 39 individuals), and the dunes at American Camp (estimated 24 individuals). However, because American Camp was not surveyed in its entirety, these areas represent an unquantified fraction of the occupied habitat at American Camp; therefore, we cannot extrapolate from this information to estimate the rangewide population.

In summary, monitoring efforts have varied since 2008, but reports from NPS indicate an ongoing decrease in the relative abundance of the island marble butterfly at American Camp, suggesting that total numbers continue to decline (Vernon and Weaver 2012, pp. 5–6; Weaver and Vernon 2014, p. 6). While reliable and precise rangewide population estimates have not been produced for this species, the available evidence suggests that the species has a very small population that has declined substantially since monitoring began in 2004.

Habitat

The island marble butterfly has three known host plants, all in the mustard family (Brassicaceae). One is native, *Lepidium virginicum* var. *menziesii* (Menzies' pepperweed), and two are nonnative: *Brassica rapa* (no agreed-upon common name, but sometimes called field mustard; hereafter referred to as field mustard for the purposes of this document) (ITIS 2015b, entire), and *Sisymbrium altissimum* L. (tumble mustard) (Miskelly 2004, pp. 33, 38; Lambert 2011, p. 2).

All three larval host plants occur in open grass- and forb-dominated vegetation systems, but each species is most robust in one of three specific habitat types: Menzies' pepperweed at the edge of low-lying coastal lagoon habitat; field mustard in upland prairie habitat, disturbed fields, and disturbed soils, including soil piles from construction; and tumble mustard in sand dune habitat (Miskelly 2004, p. 33; Lambert 2011, pp. 24, 121–123). While each larval host plant can occur in the other habitat types, female island marble butterflies select specific host plants in each of the three habitat types referenced above, likely because certain host plants are more robust in each habitat type during the flight season (Miskelly 2004, p. 33; Lambert 2011, pp. 24, 41, 50, 54–57, 121–123).

Adults primarily nectar (forage) on their larval host plants (Potter 2015e, pers. comm.), but use a variety of other nectar plants including:

- *Abronia latifolia* (yellow sand verbena),
- *Achillea millefolium* (yarrow),
- *Amsinckia menziesii* (small-flowered fiddleneck),
- *Cakile edentula* (American sea rocket),
- *Cerastium arvense* (field chickweed),
- *Erodium cicutarium* (common stork's bill),
- *Geranium molle* (dovefoot geranium),
- *Hypochaeris radicata* (hairy cat's ear),
- *Lomatium utriculatum* (common lomatium),
- *Lupinus littoralis* (seashore lupine),
- *Myosotis discolor* (common forget-me-not),
- *Ranunculus californicus* (California buttercup),
- *Rubus ursinus* (trailing blackberry),
- *Taraxacum officinale* (dandelion),
- *Toxicoscordion venenosum* (death camas, formerly known as *Zigadenus venenosus*), and
- *Triteleia grandiflora* (Howell's brodiaea, formerly *Brodiaea howellii*)

(Miskelly 2004, p. 33; Pyle 2004, pp. 23–26, 33; Miskelly and Potter 2005, p. 6; Lambert 2011, p. 120; Vernon and Weaver 2012, Appendix 12; Lambert 2015a, p. 2, Lambert 2015b, *in litt.*). Of these additional nectar resources, island marble butterflies are most frequently observed feeding on yellow sand verbena, small-flowered fiddleneck, and field chickweed (Potter 2015e, pers. comm.). Adults primarily use low-statured, white flowering plants such as field chickweed as mating sites (Lambert 2014b, p. 17).

Biology

The island marble butterfly life cycle comprises four distinct developmental phases: Egg, larva, chrysalis, and butterfly. Development from egg to chrysalis takes approximately 38 days and includes five instars (phases of

larval development between molts) (Lambert 2011, p. 7). Female island marble butterflies produce a single brood per year, and prefer to lay their eggs individually on the unopened terminal flower buds of their larval host plants (Lambert 2011, pp. 9, 48, 51). Gravid female butterflies appear to select plants with many tightly grouped flower buds over host plants with fewer buds, and they tend to avoid laying eggs on inflorescences (flower heads) where other island marble butterflies already have deposited eggs (Lambert 2011, p. 51). However, the number of eggs laid on a single host plant has been observed to vary with the density and distribution of host plants and may also be affected by host plant robustness as well as the age of the individual female butterfly (Parker and Courtney 1984, entire; Lambert 2011, pp. 9, 53, 54).

First instar larvae are able to feed only on tender portions of the host plant, such as developing flower buds and new growth, and initially move no more than a few centimeters from where they hatch before they must feed; thus, larvae that hatch from eggs located more than a few centimeters from a host plant's flower heads often starve before reaching a suitable food source (Lambert 2011, pp. 12–13). The limited locomotion of newly hatched larvae and their reliance on tender flower buds as a food resource leads to a concentration of early-instar larvae near the tips of their larval host plants (Lambert 2011, p. 13). Larvae become more mobile in later instars, and their better developed mouthparts allow them to consume older, tougher plant material. Eventually, they may move to stems of other nearby host plants to forage (Lambert 2011, pp. 15–17).

The fifth (last) instar larvae ''wander'' through standing vegetation, never touching the ground, as they search for a suitable site to pupate (form a chrysalis) (Lambert 2011, p. 20). The greatest distance a fifth instar larva has been observed to move from its final larval host plant was 4 meters, but few observations exist (Lambert 2011, p. 19). Fifth instar larvae select slender dry stems in the lower canopy of moderately dense vegetation as sites for pupation and entering diapause, a state of suspended development (Lambert 2011, p. 21).

Island marble butterflies spend the largest portion of their annual life cycle in diapause as chrysalids. They enter diapause in midsummer and emerge as butterflies in the spring of the following year. One island marble chrysalis remained in diapause for 334 days (11 months) (Lambert 2011, p. 22). Extremely low survivorship at early life-history stages has been found in recent years (*e.g.,* of 136 and 226 individual eggs tracked in 2014 and 2015, respectively, zero survived to pupation; Lambert 2015d, p. 13).

Adult island marble butterflies emerge from early April to mid-June and live an estimated 6 to 9 days (Lambert 2011, pp. 50, 180). Males emerge 4 to 7 days before females and patrol hillsides in search of mates (Lambert 2011, p. 47). Male island marble butterflies are attracted to white (ultraviolet-reflecting) objects that may resemble females and have been observed to investigate white flowers (*e.g.,* field chickweed and yarrow), white picket fences, and white lines painted on the surface of roads (Lambert 2011, p. 47). When a male locates a receptive female, mating may occur hundreds of meters from the nearest larval host plant, increasing the potential extent of adult habitat to include a varied array of plants and vegetative structure (Lambert 2011, p. 48). Individual adult island marble butterflies seldom disperse distances greater than 0.4 mi (0.6 km), with the greatest documented dispersal distance being 1.2 mi (1.9 km) (Peterson 2010, pp. 3, 12).

Island marble butterflies exhibit strong site fidelity and low dispersal capacity and, when considered on the whole, exist as a group of spatially separated populations that interact when individual members move from one occupied location to another (Miskelly and Potter 2009, p. 14; Lambert 2011, p. 147). For the island marble butterfly, a population is defined as a group of occupied sites close enough for routine genetic exchange between individuals. Thus, occupied areas separated by distances greater than 3 mi (4.8 km) with no intervening suitable habitat and a low likelihood of genetic exchange are considered to be separate populations (Miskelly and Potter 2009, p. 12). Five potential populations of island marble butterflies were identified and described in detail in the 2006 12-month finding (71 FR 66292, November 14, 2006, p. 66294): American Camp and vicinity, San Juan Valley, Northwest San Juan Island, Central Lopez Island, and West Central Lopez Island. As described previously, only the population at American Camp has been detected since 2012.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or threatened species. The Act defines an endangered species as ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Section 4(a)(1) requires the Secretary to determine whether a species is an endangered species or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

To inform the determination, we complete a status assessment in relation to the five factors using the best available scientific and commercial data. The status assessment provides a thorough description and analysis of the stressors, regulatory mechanisms, and conservation efforts affecting individuals, populations, and the species. We use the terms ''stressor'' and ''threat'' interchangeably, along with other similar terms, to describe anything that may have a negative effect on the island marble butterfly. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. The mere identification of threats that could affect the island marble butterfly is not sufficient to compel a finding that listing is appropriate. Rather, we evaluate the effects of the threats in light of the exposure, timing, and scale of the threats, both individually and cumulatively, and any existing regulatory mechanisms or conservation efforts that may ameliorate or exacerbate the threats in order to determine if the species meets the definition of an endangered species or threatened species.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Since we first analyzed stressors to the island marble butterfly's habitat on San Juan and Lopez Islands in 2006, the species' distribution has contracted, and it is now known only from American Camp and the immediate vicinity on

San Juan (see ''Distribution,'' above). Island marble butterfly larval habitat in natural landscapes, such as that found at American Camp, is patchy at best, making it difficult to estimate the acreage of larval host plants. Additionally, larval host plants are early successional species that thrive in disturbed habitats. This can result in larval habitat patches that may be present one year and gone the next, depending on the level of disturbance present on the landscape.

Development

Residential development occurs on both San Juan and Lopez Islands, primarily on private lands. Habitat loss from development affects the island marble butterfly by reducing the availability of secure habitat that will persist long enough for the island marble butterfly to complete its life cycle. Development may also affect the known occupied range of the island marble butterfly by constraining the amount of stepping-stone habitat (patches of habitat too small to maintain an established population, but large enough to allow for connectivity between larger suitable patches) for dispersal. In addition, mowing or removal of host plants (*e.g.,* for landscaping around developments) may also remove habitat or prevent its establishment. Because female island marble butterflies selectively lay their eggs on the inflorescences (flowering head) of tall, robust plants (Lambert 2011, p. 55), mowing host plants reduces the availability of suitable oviposition (egg laying) sites for the island marble butterfly.

Within American Camp, which is protected by NPS regulations (see Factor D discussion, below), development is not a threat to the island marble butterfly. However, residential development was a threat to island marble butterfly habitat in the Cattle Point Estate and Eagle Cove developments adjacent to American Camp. These areas accounted for 199 ac (81 ha) of island marble butterfly habitat, or 18 percent of occupied habitat in 2006, which are now unoccupied due to habitat loss (Potter 2015a, *in litt.*) associated with development (*e.g.,* mowing, landscaping, or removal of host plants) (Miskelly and Potter 2005, p. 6; Miskelly and Fleckenstein 2007, p. 6; Hanson *et al.* 2009, p. 9).

In 2006, we noted that development was occurring less rapidly in the areas to the north and west of American Camp and on Lopez Island where lands comprised small, rural farms with pastures and low-density residential properties. We concluded that these areas, containing about 361 ac (146 ha), or 32 percent of the occupied habitat as of 2006, would be managed in a way that was compatible with island marble butterfly habitat. Since that time, the amount of farmland in San Juan County has decreased, with the greatest loss of farmland in San Juan County attributed to the subdivision of larger farms into smaller parcels, which have then been developed (San Juan County Agricultural Resources Committee 2011, p. 23). While there are no estimates of the amount of potential habitat for the island marble butterfly lost specifically to development, habitat loss outside of American Camp from a variety of sources has been substantial (Miskelly and Potter 2005, p. 6; Miskelly and Fleckenstein 2007, p. 6; Miskelly and Potter 2009, p. 9; Hanson *et al.* 2009, pp. 18–19; Potter *et al.* 2011, pp. 13–14; Potter 2015a, *in litt.*). In addition to development of former agricultural lands, perhaps more significant are the management practices on these lands that effectively preclude recolonization by island marble butterflies or create population sinks (habitat patches that attract dispersing individuals, but do not allow them to complete their life cycle and reproduce) (see ''Agricultural Practices,'' below). We conclude that development has substantively contributed to the extirpation of the island marble butterfly outside of American Camp and remains one of several factors impeding successful recolonization of previously occupied habitats; however, because American Camp is protected from development by NPS regulations and is where the species solely occurs, development is not a threat currently acting on the remaining extant population of the species.

Road Construction

In our 2006 12-month finding (71 FR 66292, November 14, 2006), we evaluated the impact of a planned road relocation project (Cattle Point Road relocation project) through American Camp. Cattle Point Road is the only point of access for residents at the southeast tip of San Juan Island and traverses the slope of Mount Finlayson, effectively bisecting occupied island marble butterfly habitat at the park. We estimated that the relocation would cause temporary loss of as much as 13 ac (5 ha) of island marble butterfly habitat due to clearing and removal of larval host plants, although there was no known breeding habitat along the highway at that time. We concluded that the road realignment was likely to proceed with little mortality to the island marble butterfly.

Since 2006, we have worked closely with NPS and the Federal Highway Administration (FHA) to ensure that project impacts were avoided or minimized. Once the project began, in 2015, the Service, NPS, and WDFW actively surveyed the road alignment to remove host plants before they could attract oviposition by female island marble butterflies and to rescue island marble butterfly eggs and larva from any larval host plants that might have been overlooked. Island marble butterfly larval habitat in natural landscapes, such as that found at American Camp, is patchy at best, making it difficult to estimate the acreage of larval host plants. While the area affected by road construction was estimated to be 13 ac (5 ha), larval host plants did not occur in dense patches across the construction site. As a result of these efforts, far less suitable habitat for island marble butterflies was temporarily lost than we anticipated in 2006, and impacts to the island marble butterfly population were significantly reduced and potentially completely avoided.

Habitat restoration will continue for several years; once it is completed, we anticipate that the project will be a net benefit to the quantity and quality of island marble butterfly habitat in the project area due to early coordination with the FHA and the proactive conservation measures they implemented throughout the process. These conservation measures included the proactive removal of all larval host plants from the footprint of the project described above (so that butterflies do not lay eggs on plants bound to be destroyed) and the reseeding of larval and nectar host plant species in the disturbed areas as their revegetation strategy. These measures will both increase the quantity and improve the quality of the habitat surrounding the finished project. In conclusion, road construction is not currently a threat to the island marble butterfly.

Road Maintenance

Road maintenance that destroys or negatively affects island marble butterfly larval host plants has been a concern since 2005, when it was documented as destroying occupied larval habitat both on San Juan and Lopez Islands (Miskelly and Potter 2005, p. 6). For example, in 2005, at Fisherman's Bay tombolo (a narrow beach landform that connects the mainland to an island) on Lopez Island, road maintenance crews deposited a quantity of sand on occupied larval host plants in an effort to reduce the fire

hazard of the vegetation in preparation for a Fourth of July fireworks display. In addition to the deposition of sand on occupied habitat, the remainder of the site was mowed by road maintenance crews, removing all remaining larval host plants. There were no detections of the island marble butterfly in 2006, a single detection at the tombolo in 2007, and none since (Miskelly and Potter 2009, p. 21; Potter *et al.* 2011, p. 16; Potter 2015a, *in litt.*).

Roadside maintenance has resulted in the destruction of suitable habitat on Lopez Island and outside of American Camp on San Juan Island (Miskelly and Potter 2005, p. 6). Despite changes in roadside maintenance practices to address habitat loss, these protections were not implemented uniformly throughout San Juan County, nor were they implemented with the immediacy necessary to allow for widespread persistence of island marble habitat along roadsides (Potter 2016, pers. comm.). However, because roadside maintenance at American Camp will be conducted in close coordination with the Service, we conclude that whereas habitat loss associated with road maintenance activities could be one of several factors impeding successful recolonization of previously occupied habitats, it likely will have only minor impacts on the island marble butterfly, given its current distribution. We do not expect these impacts to change within American Camp in the future.

Vegetation Management

The island marble butterfly is present year round and largely stationary while in its early developmental phases, becoming most visible when it becomes a winged adult. The cryptic egg, larval, and chrysalis forms make island marble butterflies vulnerable to land management and restoration practices when those practices overlap occupied areas. For example, in 2005, NPS conducted a prescribed fire intended to restore native prairie, and this fire burned through the occupied habitat during the butterfly's developmental stage and likely killed all eggs and larvae within the affected area. Similarly, the use of herbicides for the purpose of vegetation restoration in occupied island marble butterfly habitat has been documented (Potter *et al.* 2011, p. 14). Although the direct effects of herbicides on island marble butterflies have not been studied, indiscriminate application of herbicides in areas occupied by eggs or larvae is likely to result in mortality through elimination of larval host plants and primary food resources.

Since 2010, the Service, NPS, WDFW, and other partners have cooperated closely to achieve vegetation management and restoration goals while also conserving the island marble butterfly and its habitat, including nonnative larval host plants. As a result, vegetation management has not resulted in significant harm to island marble butterflies since 2010. The island marble butterfly is vulnerable to vegetation management or restoration practices that are improperly timed or poorly sited. However, this vulnerability does not, by itself, result in impacts to the species. Currently, vegetation management does not have a significant impact on the species because the ongoing collaboration between cooperating partners has adequately minimized the impacts of vegetation management actions at American Camp.

Agricultural Practices

Agricultural activities that include tilling of the soil have been identified as a stressor for the island marble butterfly (Potter *et al.* 2011, p. 14). Removal or destruction of habitat by conversion from an agricultural condition that provides suitable habitat (*e.g.,* old field pasture) for island marble butterfly to an agricultural condition that does not allow the island marble butterfly to complete its life cycle (*e.g.,* active cropping) has likely led to the decline of occupied island marble butterfly habitat outside of American Camp and continues to contribute to the curtailment of the former range of the species. The species has not been detected since 2012 at any previously occupied agricultural sites that have been surveyed (Potter *et al.* 2011, pp. 15–16; Potter 2012, unpublished data; Potter 2013, unpublished data; Vernon 2015b *in litt.,* entire). In addition, no new occupied sites in agricultural areas have been detected during surveys conducted in 2015 (Vernon 2015a, entire).

Practices on San Juan and Lopez Islands that require tilling the soil, such as grain farming, can promote growth of the host plant field mustard during the island marble flight period if tilling takes place during fall and winter months (*e.g.,* December through February) allowing field mustard seeds in the seed bank to germinate and mature in synchrony with the needs of the island marble butterfly. Because cereal crops compete with field mustard, the array of established plants can result in a diffuse number of larval host plants at a density attractive to female island marble butterflies searching for an oviposition site. When actively cropped agricultural areas with larval host plants occur near occupied habitat, they can create an ''ecological trap'' if dispersing females lay eggs where the larvae do not have adequate time to complete their life cycle before the crop is harvested and the site is tilled for replanting the following spring (Hanson *et al.* 2009, pp. 18–19; Miskelly and Potter 2009, p. 14).

Similarly, grazing can produce an ecological trap if females lay eggs in suitable habitat that is then consumed by livestock (see ''Livestock Herbivory,'' below). However, since the 1980s, farming on San Juan Island has trended toward small market gardens, and large, livestock-based farms have been reduced (San Juan County Agricultural Resources Committee 2011, p. 16). Livestock grazing does not currently overlap any areas known to be occupied by the island marble butterfly; thus, it is not currently a threat to the species, although it could become a threat in the future if the island marble butterfly were to become reestablished in areas where grazing takes place. The best available scientific and commercial information does not indicate that agricultural practices currently affect the island marble butterfly because the known population occurs on NPS lands that are not managed for agricultural use.

Plant Succession and Competition With Invasive Species

All of the known larval host plants for the island marble butterfly are annual mustard species that are dependent on open, early-successional conditions for germination (Lambert 2011, p. 149). Disturbance or active management maintains these conditions; otherwise, plant succession and invasion by weedy native and nonnative plants greatly inhibit germination and growth of larval host plants. These processes of vegetation change thus degrade and reduce the availability of habitat required by the island marble butterfly to complete its life cycle.

Succession of open, low-statured vegetation to woody plants is a natural process in the absence of anthropogenic burning or other forms of disturbance. The cessation of Native American burning in the mid-1800s resulted in the loss of prairie habitat in western Washington, including the San Juan archipelago, due to tree and shrub encroachment (Hamman *et al.,* 2011, p. 317). Prairies were repeatedly burned during historical times by Native Americans for a variety of reasons, and areas used for cultivation of food plants, such as *Camassia leichtlinii* or *C. quamash* (great camas and common camas, respectively) may have been

burned on an annual basis (Beckwith 2004, pp. 54–55; Boyd 1999, entire; Chappell and Kagan 2001, p. 42).

Early estimates of the size of the prairie at American Camp suggest it may have been as large as 1,500 acres (ac) (607 hectares (ha)) when the first Europeans arrived (Douglas 1853, entire). Today, the prairie is estimated to be 695 ac (281 ha) due, in part, to succession and encroachment of Douglas-fir trees (*Pseudotsuga menziesii*) and other woody vegetation (Rochefort *et al.* 2012, p. 9). Reclaiming and maintaining open prairie habitat at American Camp requires active management to control Douglas-fir trees and other woody species (Rochefort *et al.* 2012, p. 4).

Two of the three known larval hosts for the island marble butterfly are introduced species that self-propagate into open, disturbed areas: Field mustard and tumble mustard. In the absence of active restoration or disturbance, other weedy plant species, as well as woody plants and trees, are likely to colonize the site, eventually outcompeting the early-successional host plants. At American Camp, where remnant prairie habitat persists, weedy species such as *Elymus repens* (quack grass), *Holcus lanatus* (velvet grass), *Cirsium arvense* (Canada thistle), and *Vicia sativa* (common vetch), among others, outcompete the larval host plants in the absence of disturbance.

Competition with nonnative species also affects host plants in sand dune habitat. The sand dunes represent a unique habitat type for the island marble butterfly that includes open, shifting sands easily colonized by the larval host plant, tumble mustard (Lambert 2011, p. 42). While Menzies' pepperweed and field mustard also occasionally occur in dune habitat, tumble mustard is the host plant that occurs there most commonly, is most robust in this habitat type, and can create continuous stands of larval host plants under optimal conditions (Lambert 2011, pp. 42, 65). When nonnative species such as Canada thistle, hairy cat's ear, and *Rumex acetosella* (sheep sorrel) colonize the sandy dune habitat, the dunes become increasingly stable and the effect is a reduction in the available germination sites for tumble mustard (Weaver and Vernon 2014, pp. 5, 9). Canada thistle has the greatest potential to negatively affect dune habitat where it is stabilizing the sand and facilitating establishment of grasses, which, in turn, displace tumble mustard (Rochefort 2010, p. 28; Weaver and Vernon 2014, p. 9).

Conditions for larval host plants continue to be degraded through plant succession and invasion throughout the range of the island marble butterfly. Loss of habitat conditions favorable for larval host plants, and thus habitat loss for the island marble butterfly, occurs in at least two of three habitat types at American Camp, the only area where the island marble butterfly is currently known to persist (Weaver and Vernon 2014, pp. 5, 9). Loss of potentially suitable but not currently occupied habitat resulting from succession also occurs in any areas outside of American Camp where these processes take place. Due to the extremely limited numbers and range of the island marble butterfly, any further loss of habitat may lead to further decline of the species and preclude its establishment in new areas.

Herbivory

Herbivory by Deer: Black-tailed deer (*Odocoileus hemionus columbianus*) are common in the San Juan Island archipelago. At the single occupied site where island marble butterfly is currently known to exist, black-tailed deer numbers appear to be increasing (Lambert 2014a, p. 3). Browsing deer prefer flowering plants when available, and tend to select stems on the tops or sides of plants over the stems that emerge lower on the stalk (Anderson 1994; p. 107; Lambert 2015c, *in litt.,* Thomas 2015, pers. obs.). Specifically, at study sites where island marble butterflies exist, deer browse selectively on robust larval host plants with several inflorescences of compact flower buds—the same plant characteristics preferred by female island marble butterflies as egg-laying sites (Lambert 2011, p. 103). The effect of deer browse on larval host plants is three-fold. First, it destroys suitable egg-laying habitat; second, it stimulates rapid growth of lateral (side) stems on the plant, rendering the plant less likely to support an individual butterfly from egg to late-instar larva; and third, continual browsing of the flowering portion of the plant reduces seed production, resulting in fewer larval host plants over time (Lambert 2011, p. 10; Lambert 2014a, p. 10; Lambert 2015d, p. 17). Deer browse, which stimulates rapid lateral stem growth, results in increased mortality when eggs are laid on the flowers of lateral stems on the larval host plants (Lambert 2011, p. 10). Immobile, early-instar larvae of island marble butterfly present on these stems are left behind as the stems grow away from them. When the larvae can no longer access the tender tissues at the developing tips of the plant that they require for survival, they die from starvation (Lambert 2011, p. 10, Lambert 2015e, *in litt.*).

The destructive effects of deer browse on larval habitat are common where surveys have taken place throughout the known range of the island marble butterfly (Miskelly and Fleckenstein 2007, p. 6; Miskelly and Potter 2009, pp. 11, 15; Hanson *et al.* 2009, pp. 4, 13, 19–20; Hanson *et al.* 2010, pp. 21–22; Potter *et al.* 2011, pp. 5, 13; Lambert 2011, p. 104; Lambert 2014a, entire; Weaver and Vernon 2014, p. 10; Vernon and Weaver 2012, p. 9; Lambert 2015d, pp. 17–18). At American Camp, herbivory by deer has affected 95 percent of field mustard plants in some years (Lambert 2011, p. 127). Deer exclusion fencing has been erected to protect suitable habitat at American Camp to counteract the impacts of deer browse, but the fencing has not been fully effective at excluding deer, and deer have continued to consume occupied larval host plants (see ''Habitat Conservation and Restoration,'' below).

Habitat loss attributable to herbivory by deer is ongoing and extensive throughout the current and former range of the island marble butterfly, and may be increasing, with substantial impacts to the species (Lambert 2011, pp. 85–104; Lambert 2014a, p. 3; Lambert 2015d, pp. 14–18). The effect of habitat loss due to deer herbivory is compounded by the effect of inadvertent predation when the larval host plants are occupied by eggs or larvae (see ''Incidental Predation'' under the Factor C discussion, below).

Herbivory by Livestock: Livestock readily consume field mustard, which is often cultivated in pastures as a way to improve forage for cows and sheep (Smart *et al.* 2004, p. 1; McCartney *et al.* 2009, p. 436). There is no livestock grazing at American Camp, but livestock pastures are present on San Juan and Lopez Islands in areas that may contain suitable habitat for dispersing island marble butterflies. When cattle or sheep are present on lands where field mustard is grown, they readily consume the flower heads, stems, and stalk of the plant, destroying suitable island marble butterfly habitat (Miskelly and Potter 2009, p. 15; Hanson *et al.* 2009, p. 20; Hanson *et al.* 2010, p. 21). Like conversion of old field pastures to active cropping, cultivation of field mustard as a forage species for livestock potentially creates an ecological trap for the island marble butterfly when cultivation takes place within dispersal distance of an occupied site, and female island marble butterflies lay eggs in a patch of field mustard that is later consumed or trampled by livestock before any larvae can complete their life cycle (see

''Incidental Predation'' under Factor C, below, for further discussion). In conclusion, loss of potential habitat to livestock grazing can prevent reestablishment and persistence of suitable habitat for the species outside of American Camp. However, because livestock grazing is not permitted on American Camp where the species occurs, herbivory by livestock is not a threat currently acting on the remaining population of the species.

Herbivory by Rabbits: The European rabbit, *Oryctolagus cuniculus,* is a common invasive species in the San Juan Islands (Hall 1977, entire; Burke Museum 2015). At American Camp, European rabbits have been established for more than a century, following their introduction to San Juan Island during the late 1800s (Couch 1929, p. 336). Grazing by European rabbits, when they proliferate, affects both vegetative structure and composition, reducing both the number and kind of plant species near their warrens (network of burrows) (Eldridge and Myers 2001, pp. 329, 335). Herbivory by European rabbits negatively affects the recruitment and establishment of larval host plants; where rabbits occur at American Camp, few larval host plants for the island marble butterfly persist due to the intense grazing pressure (Radmer 2015, *in litt.*). When larval host plants do germinate near European rabbit warrens, they are consumed before the plants are large enough for female island marble butterflies to recognize and use them.

Population monitoring of European rabbits has been conducted at American Camp from 1985 to 2015, documenting an estimated population high of approximately 1,750 rabbits in 2006, and a low of fewer than 100 in 2012. From 2009 through 2012, the population was estimated to be 100 animals or fewer, and the condition of vegetation in the affected area had ''changed dramatically'' with the reduction in rabbit grazing pressure (West 2013, pp. 2, 4). The most recent population estimate, in 2015, was approximately 500 animals, indicating that the rabbit population at American Camp is currently on the rise (West 2015, *in litt.*). If European rabbits remain uncontrolled at American Camp, their population is likely to fluctuate but continue expanding overall in the next decade, similar to the patterns documented in the past 30 years of monitoring data. The majority of the European rabbit population has been, and may continue to be, centered on a single large field near the middle of American Camp, surrounded by areas that include island marble butterfly habitat. As their population grows, we expect the impacts of European rabbits to expand, encroaching upon and destroying additional island marble butterfly habitat.

Herbivory by Brown Garden Snails: The nonnative brown garden snail (*Cornu aspersum,* formerly *Helix aspersa*) is a generalist herbivore that has been reported to occur in great numbers in some areas where island marble butterfly previously occurred (*e.g.,* Pear Point Gravel Pit or 'La Farge' and San Juan Valley), where it feeds on field mustard and tumble mustard, the two most common larval host plants for the island marble butterfly (Hanson *et al.* 2010, p. 18; Potter *et al.* 2011, p. 13). State biologists removed hundreds of snails that were feeding on larval host plants at Pear Point in 2010, when the island marble butterfly still occupied this site (Potter *et al.* 2011, p. 13). The brown garden snail has extremely high reproductive potential; it matures within 2 years and can produce more than 100 eggs five or six times each year (Vernon 2015c, p. 1). The number of brown garden snails observed on San Juan Island has increased substantially between the years of 2009 and 2015 (Potter *et al.* 2011, p. 13; Vernon 2015c *in litt.,* entire).

In 2015, the brown garden snail was observed in San Juan Valley, a site formerly occupied by the island marble butterfly, and in 2016, the brown garden snail was documented in the South Beach area at American Camp by a Service biologist (Vernon 2015c *in litt.,* entire; Vernon 2015a, p. 4; Reagan 2016, pers. obs.). High numbers of brown garden snails have been documented in highly disturbed sites previously occupied by island marble butterfly, and since our 2016 12-month finding (81 FR 19527) was published, they have been found invading the natural areas in American Camp currently occupied by the island marble butterfly and its host plants (Shrum 2017, pers. comm.). This most recent development indicates that brown garden snail is now well established within American Camp and the habitat currently used by the island marble butterfly, raising the likelihood that herbivory by the brown garden snail will result in habitat loss or degradation to an extent that can affect the butterfly's survival and reproductive success. While there are no documented accounts of snails directly consuming island marble butterfly eggs or larvae, the brown garden snail poses a threat to the island marble butterfly by consuming larval host plants, whether those plants are occupied or not. Therefore, herbivory by brown garden snails is detrimental to the butterfly's overall survival and reproductive success because it can both reduce the quantity of suitable host plants available and cause incidental mortality of individuals.

Storm Surges

The nearshore lagoon habitat for island marble butterfly is close to sea level. Three intermittently occupied sites are in lagoons along the northeastern edge of American Camp, where they are partially protected from tidal surges that arrive from the west. One of these lagoons had the highest relative encounter rate of all monitored transects at American Camp in 2015, and raw counts at this site represented roughly 50 percent of the adult island marble butterflies recorded during annual monitoring for that year. Storm surges, attributable to the combined forces of high tides and high-wind storm events, inundate these low-lying lagoon areas intermittently, as evidenced by the deposition of driftwood logs along the shoreline. These events have occurred with some regularity through time, but the most recent episodes of inundation have been particularly destructive of nearshore island marble butterfly habitat. A storm surge event in the winter of 2006 resulted in the deposition of gravel substrate and driftwood over an island marble butterfly research plot where the one native larval host plant, Menzies' pepperweed, had been established, reducing the number of plants by more than 50 percent (Lambert 2011, pp. 145–146). This same storm surge likely destroyed any butterflies that were overwintering in nearshore habitat as chrysalids and had a local population-level impact; low numbers of individual island marble butterflies, eggs, and larvae were detected at the site for several years following the event (Lambert 2011, p. 99; Lambert 2015f, *in litt.*).

The frequency of storm surges large enough to inundate the lagoons and destroy island marble butterfly habitat has previously been relatively low, but since 2006, at least one storm surge event (in 2009) was strong enough to inundate the low-lying habitat (Whitman and MacLennan 2015, *in litt.*). The frequency of these events is expected to increase with sea-level rise associated with climate change (see Factor E discussion, below). In turn, we anticipate a concomitant increase in the potential for destruction of low-lying habitat for the island marble butterfly—approximately 15 to 20 percent of the species' habitat in American Camp (Lambert 2011, p. 145; Adeslman *et al.* 2012, pp. 79–86; Whitman and

MacLennan 2015, *in litt.;* NOAA 2015a, entire; NOAA 2015b, entire).

The Menzies' pepperweed (the native host plant) occurs almost exclusively in the low-lying nearshore habitat, and female island marble butterflies have been observed to deposit eggs on only a single species of larval host plant at any one site. (Despite close observations of ovipositing females, researchers have not observed females depositing eggs on more than one type of larval host plant at any one site.) Therefore, if this habitat type is lost, an unknown proportion of diversity—in habitat use or adaptive potential—in the island marble butterfly could be lost as well. Furthermore, low-lying habitat comprises an estimated 15–20 percent of habitat for the species at American Camp, a considerable proportion of the restricted range of the species. Due to the small size of the remaining known population of the island marble butterfly and the importance of this low-lying habitat demonstrated by high encounter rates during surveys, loss or degradation of this habitat will likely lead to a further decline of the species.

Habitat Conservation and Restoration

San Juan Island National Historical Park has been implementing conservation measures for the island marble butterfly since shortly after its rediscovery in 1998. From 2003 through 2006, the NPS created experimental prairie disturbances and vegetation plots to better understand how to manage the prairie and create island marble butterfly habitat. This work resulted in recommendations for the best method of reducing the cover of invasive grasses by using prescribed fire followed by herbicide treatment (Lambert 2006, p. 110). However, the work was not reproduced at larger scales, nor was it continued in ways sufficient to maintain adequate habitat on the landscape over time.

In 2006, we finalized a conservation agreement with NPS for the island marble butterfly that contained several conservation actions that would be applied to manage habitat for the species into the future. The agreement, which expired in September of 2016, committed NPS to: (1) Restore native grassland ecosystem components of the landscape at American Camp through active management, including the use of prescribed fire, and create a mosaic of early-successional conditions by restoring up to 10 acres per year; and (2) avoid impacts to island marble butterflies, eggs, larvae, and host plants during the implementation of all NPS management actions by working in habitat that was not occupied by island marble butterflies. All vegetation treatment would be conducted in the fall after the island marble butterfly has entered diapause. NPS is working with the Service to extend the conservation agreement. We expect the history of collaborative conservation of the island marble butterfly by NPS and the Service to continue for the foreseeable future.

From 2007 through 2011, NPS managed encroaching plant species using multiple methods to open up areas where larval host plants could naturally germinate from the seed bank (NPS 2013, pp. 7–11). NPS also planted more than 100,000 native grass plugs in mechanically treated areas (NPS 2013, p. 7), which improved the native composition of the prairie grassland features but did not result in increased cover of the larval host plants needed to support the island marble butterfly. The Service continued to work collaboratively with NPS to develop annual work plans each year from 2013 through 2016; these work plans are addenda to the 2006 conservation agreement for the island marble butterfly. The goals and actions identified in the work plans have changed, sometimes annually, in response to new information, adaptive management needs, available funding, and other concerns. The 2013–2016 work plans identified and enacted several conservation actions to address threats related to the destruction, modification, and curtailment of island marble butterfly habitat at American Camp. Prescribed fire, deer fencing of essential habitat, management of invasive species, and experimental habitat restoration were all implemented per annual work plans during this period.

These work plans initially included the use of prescribed fire in small blocks (up to one acre) to disturb grassland habitat in an effort to encourage larval host plant patches to establish from the seed bank. These prescribed fire events resulted in very low germination of the larval host plants, leading NPS to conclude that few larval host plant seeds persist in the seed bank. In response, later annual work plans recommended seeding the larval host plant species after a prescribed burn. The 2016 annual work plan also included recommendations for the development of novel methods for creating island marble butterfly habitat. Despite the temporary lapse of the conservation agreement with NPS, the Service and NPS continue to work together to conserve the island marble butterfly and a work plan for 2017 is currently under development.

In 2013, the Service funded the installation of deer exclusion fencing at American Camp in an effort to reduce deer herbivory on larval host plants (and the incidental consumption of eggs and larvae; see discussion in Factor E) and to increase suitable oviposition sites. Deer fencing was included in each year's annual work plan since 2013 and continues to be employed as an exclusion technique. Approximately 23 acres have been fenced since deer exclusion efforts began in 2013 (Shrum 2015a, *in litt.*).

The various forms of deer exclusion fencing that have been used have resulted in mixed success in preventing deer from consuming larval host plants. For example, in 2015, electrified fencing alone proved ineffective at excluding deer at three of five research sites at American Camp (Lambert 2015d, p. 17). However, electric and wire-mesh fencing combined have reduced deer herbivory on larval host plants when compared to years when exclusion fencing was not employed (Lambert 2015d, p. 17). In one large expanse of habitat at American Camp, the distribution of field mustard was essentially limited to the fenced areas in 2015, although environmental conditions shifted substantively in 2016, allowing for a large flush of persistent field mustard beyond the fenced areas (Lambert 2014a, p. 23; Lambert 2015a, p. 5; Lambert 2015d, p. 17; Lambert 2016, p. 35). Despite these challenges, deer exclusion fencing remains an important tool for protecting island marble butterfly habitat, especially early in the flight season when we expect survivorship to be the highest (Lambert 2015d, p. 19). For example, in 2016 (after the publication of our 12-month finding on April 5, 2016 (81 FR 19527)), deer were completely excluded from research sites at American Camp for the first time, resulting in a quarter acre of restored habitat for host plants, and increased survival in island marble butterflies on field mustard than in previous years (Lambert 2016, p. 11).

The annual work plans have also included efforts to control weedy native and nonnative species and encroaching woody plants. Specifically, NPS has removed hundreds of Douglas-fir trees and dozens of acres of *Rubus armeniacus, R. laciniatus* (blackberry), *Symphoricarpos albus* (snowberry), and *Crataegus monogyna* (one-seeded hawthorn) from the American Camp prairie. These actions have slowed the invasion of native and nonnative species and encroachment by woody plants and created early-successional conditions that likely provided some

nectaring habitat for the island marble butterfly. However, few larval host plants germinated from the seed bank in the areas cleared of encroaching plants. Another area of focus under the work plan for controlling invasive species is herbicide treatment of Canada thistle in the dunes.

NPS, in collaboration with the Service and other partners, has supported experimental research into the active establishment of island marble butterfly habitat since 2003. In 2014, an experimental approach for establishing oviposition and larval habitat was proposed. The Service, in coordination with NPS, WDFW, and two local island conservation organizations (San Juan Preservation Trust (SJPT) and San Juan County Land Bank (SJCLB)), developed a plan to determine whether habitat patches for the island marble butterfly could be developed in a way that could be scaled up efficiently in a landscape context (Lambert 2014b, entire). Thirty habitat patches were created on park property at American Camp between 2014 and 2016, and 10 more will be created in 2017 (Lambert 2016a, p. 59). Early results from this work indicate that habitat can be created quickly and that island marble butterflies readily use these patches for egg laying and larval development if larval host plants germinate in time to provide oviposition sites for early-flying butterflies (Lambert 2015d, pp. 9–12).

Each year since 2013, NPS has collected and reared a small number of eggs and larvae in a captive-rearing program (see discussion under Factor C, below, for more information). In 2015, the captive individuals emerged from diapause much later than the wild population. Despite the use of the experimental plots for oviposition by these late-flying, captive-reared females, none of the eggs and larvae tracked in the experimental plots survived. The high mortality was attributed to increased predation pressure by late-season spiders and wasps (Lambert 2015d, p. 14) (see ''Direct Predation'' under Factor C, below). Results of captive-rearing were better in 2016, when captive-reared island marble butterflies emerged in synchrony with the wild population. Survivorship from egg to fifth instar larvae was also higher in the experimental plots in 2016; three percent of the tracked larvae survived to the fifth instar, which is a relatively high survival rate for the island marble butterfly.

The Service, in coordination with NPS, supports habitat conservation efforts by funding local conservation groups to establish habitat patches on three conserved sites across the former range of the island marble butterfly. Two of these experimental habitat patches were established outside of American Camp in 2015 and one in 2016. Each experimental patch has been fully fenced to exclude herbivores (primarily deer) and allow the larval host plants to grow without herbivory pressure (also see Factor C, ''Incidental Predation,'' below).

Education and Outreach

In 2009, the Service provided funding to WDFW for the creation of a species fact sheet and informational handout for the public about the biology and conservation needs of the island marble butterfly. This pamphlet provided outreach to interested parties and increased the awareness of the public about the decline of the island marble butterfly. The pamphlet provided basic information about how to protect and support habitat essential to the island marble butterfly. In 2011, the Service collaborated with NPS, WDFW, researchers from the University of Washington, and the Center for Natural Lands Management to reach out to the community in a local Island Prairie Educational Symposium to present information on current approaches to prairie management. Information gained through years of prairie conservation efforts in other north and south Puget Sound prairie landscapes was shared with the local island community. Information about the island marble butterfly and the educational materials developed were well distributed within the community; however, this effort did not lead to the protection or restoration of habitat adequate to ameliorate the threat of habitat loss for island marble butterfly. Despite considerable advances in habitat restoration, new habitat establishment, captive-rearing, herbivore exclusion, and outreach and education, the number of individual island marble butterflies remains small in the single remaining population.

Summary of Habitat or Range Destruction, Modification, or Curtailment

Habitat supporting the remaining population at American Camp is protected from development and agriculture, but is exposed to the threats of plant succession and invasive plant species; herbivory by deer, rabbits, and brown garden snails; and storm surges. Habitat loss is likely a major factor impeding the recolonization of areas outside of American Camp. Outside of American Camp, removal of larval host plants by mowing; roadside maintenance; road, residential, or urban development; certain agricultural practices (such as tilling, cropping, and grazing); and landscaping activities has substantially reduced the amount of habitat available for recolonization by the island marble butterfly, either temporarily (*e.g.,* mowing, tilling, cropping, or grazing) or permanently (*e.g.,* road, residential, and urban development), since the island marble butterfly was rediscovered (Miskelly and Fleckenstein 2007, p. 6; Miskelly and Potter 2009, p. 9; Hanson *et al.* 2009, p. 18; Vernon 2015b *in litt.,* p. 5). This habitat removal is a primary factor in the loss of all the remaining populations of this species outside of American Camp since 2006.

Since 2011, NPS has made substantial and sustained efforts to expand island marble butterfly habitat and to improve the composition and structure of the plant community to become more suitable for the island marble butterfly. Due to challenges in establishing suitable habitat and protecting it from the threats described above, only a few acres of high-quality habitat for island marble butterfly have been restored on the American Camp landscape. Many more acres within American Camp have been improved by restoration actions or protected from deer herbivory, but are not yet considered high quality or fully secure from herbivory by deer. To date, these efforts may have resulted in a small positive response in the island marble butterfly population, as evidenced by the 3 percent increase in survivorship from the fourth to fifth instar in 2016. However, the number of those individuals that will successfully pupate and emerge as winged adults in the spring remains to be seen. Conservation efforts by NPS have also resulted in significant contributions to our understanding of island marble butterfly habitat and threats to that habitat. Outside of American Camp, the only conservation efforts that specifically create habitat for the species are the small island marble butterfly habitat plots established by SJPT and SJCLB. These efforts will be crucial to establishing new populations of island marble butterfly in the future, but the achievement is too recent for their effectiveness to be evaluated, especially in the context of the extensive, ongoing habitat loss from changing land use, changing agricultural practices, and other factors that inhibit recolonization by island marble butterflies outside of American Camp.

Despite successful habitat restoration experiments, continued use of deer exclusion fencing, and the removal of woody plants and nonnative and native weedy species, the increase in the total area of currently suitable habitat within

American Camp has not been fully quantified, though it remains small (on the scale of quarters of acres). Despite these minor gains in habitat as a result of restoration since we published our 12-month finding on April 5, 2016 (81 FR 19527), the range of the species—the number of sites within American Camp where it is observed—has continued to contract, and the number of island marble butterflies observed each year remains low. Conservation measures will need to continue into the future, with monitoring to assess their long-term value to the island marble butterfly. Until measureable changes to the island marble butterfly population have been documented, it will be difficult to determine whether the implemented measures are effecting positive change in the status of the island marble butterfly. Based on the analysis above, we conclude that plant succession and competition with invasive species, herbivory by deer and brown garden snails, and storm surges are likely to have population-level impacts on the island marble butterfly.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for Commercial or Recreational Purposes

Under NPS regulations, collection of living or dead wildlife, fish, or plants, or products thereof, is prohibited on lands under the jurisdiction of NPS without a permit (36 CFR 2.1(a)(1)(i) and (a)(1)(ii)), but there are no State or County regulations that prohibit recreational collection of the island marble butterfly at this time.

Rare butterflies and moths are highly prized by collectors, and an international trade exists in specimens for both live and decorative markets, as well as the specialist trade that supplies researchers (Collins and Morris 1985, pp. 155–179; Morris *et al.* 1991, pp. 332–334; Rieunier and Associates 2013, entire). Before the island marble butterfly was formally described, collectors may have exerted little pressure on the taxon because it was unknown and because it occurs in remote islands that had been little-surveyed for butterflies. Following formal description of the species in 2001, at least three inquiries about potential for collection were made to WDFW, which is responsible for managing fish and wildlife in the State of Washington, and one with NPS at American Camp, which requires a permit for the collection of any plant or animal from park property (Reagan 2015, *in litt.*). WDFW has discouraged collection, and NPS rejected the single permit request for collection it received (Reagan 2015, *in litt.;* Weaver 2015a, *in litt.*). In addition to these permit requests, we are aware of one specimen of the island marble butterfly purportedly being listed for sale on a website devoted to trade in butterfly species (Nagano 2015, pers. obs.), although the origin and authenticity of this specimen could not be verified.

Even limited collection of butterfly species with small populations could have deleterious effects on the reproductive success and genetic variability within those populations and could thus contribute eventually to extinction or local extirpation (Singer and Wedlake 1981, entire; Gall 1984, entire). Capture and removal of females dispersing from a population also can reduce the probability that new populations will be established or that metapopulation structure will be developed or maintained. (A metapopulation is a group of spatially separated populations that interact when individual members move from one population to another.) Collectors pose a potential threat because they may not be aware of other collection activities, and are unlikely to know, and may not care, whether or not they are depleting numbers below the threshold necessary for long-term persistence of populations and the species (Martinez 1999, *in litt.*). This is especially true if collectors lack adequate biological training or if they visit a collection area for only a short period of time (Collins and Morris 1985, p. 165). In addition, collectors often target adult individuals in perfect condition, including females that have not yet mated or had the opportunity to lay all of their eggs. Some collectors go to the length of collecting butterfly eggs in order to rear perfect specimens (USDOJ 1995, p. 2).

Collection of the island marble butterfly, which is prohibited on NPS lands, could potentially occur without detection because occupied areas are not continuously patrolled and adult butterflies do move outside of protected areas onto adjoining lands where collection is not currently prohibited. Consequently, the potential for collection of adult island marble butterflies, and especially surreptitious collection of early stages (eggs, larvae, and pupae), exists, and such collection could go undetected, despite the protection provided on NPS lands. Taking into consideration the small remaining population, illegal collection could have strong detrimental effects on the known population, were it to occur. However, no illegal collection efforts for this species have been documented to date.

Scientific Overutilization

The widespread surveys that took place in the period 2005–2012 included capturing and releasing butterflies when necessary for positive identification, as specified in Miskelly and Fleckenstein 2007 (p. 4). Although a limited number of individuals may have been injured or killed during handling, no data exist on the number of individuals captured, injured, or killed. To our knowledge, there have been three documented instances of island marble butterfly collection or handling for scientific purposes since the rediscovery of the species. In 2005, two male specimens were collected by WDFW surveyors as vouchers to document newly discovered island marble sites (Miskelly and Potter 2005, pp. 4, 5; Potter 2016, *in litt.*). In 2008, a mark-release-recapture (MRR) study of the species' demography involved the capture and marking of 97 individual adult island marble butterflies and recapture of 56 butterflies across four separate sites, and some individuals were recaptured more than once (Peterson 2009, entire; Peterson 2010, entire). A single individual butterfly was collected as a voucher specimen under a WDFW scientific collection permit in 2008 for the MRR study (Potter 2016, *in litt.*). The other scientific use of the island marble butterfly of which the Service is aware took place in 2013, when two adult butterflies were collected by WDFW for a genetic assessment of the island marble butterfly, the results of which were inconclusive (Potter 2015b, *in litt.*).

The handling of adult butterflies for scientific purposes has been evaluated for effects on populations elsewhere in western North America (Singer and Wedlake 1981; Gall 1984). Murphy (1988, p. 236) reported that MRR work by others resulted in about 10 percent mortality to the endangered mission blue butterfly (*Icaricia icarioides missionensis*); however, studies by Singer and Wedlake (1981, entire) with other butterflies resulted in less than 2 percent of the marked butterflies being recaptured, suggesting that mortality from handling the butterflies may have been a factor.

Peterson's 2008 MRR study may have resulted in unintended injury or mortality to island marble butterfly individuals, but we have no evidence to suggest that the study resulted in population- or species-level effects. Surveyors were unable to recapture 38 percent of the handled individuals during the short duration of this

research, but whether this research directly increased mortality for the handled individuals is unknown. Several outcomes could have led to this low recapture rate: The butterflies may have fully matured after completing their life cycle and died during this period; they may have been injured during handling and died following release; they may have become more susceptible to other stressors after handling (*e.g.,* predation); or they may have simply eluded recapture. Based on the relative encounter rate for the island marble butterfly that was measured during subsequent years (see ''Abundance,'' above, for additional information), this research does not appear to have contributed to a constriction in the range of the species or a decline in the abundance of individuals.

The probability of numerous future collections of live island marble butterflies for research purposes is low because all researchers who study the island marble butterfly work collaboratively with the Service, NPS, and WDFW and are aware of the very low and declining number of individual butterflies. Any research proposal requiring the collection and removal of live island marble butterflies from the population is carefully reviewed to determine whether the conservation benefit to the species outweighs the loss of individuals.

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We continue to find that overutilization does not have a population-level impact on the island marble butterfly for the following reasons: The lack of evidence of commercial or recreational collection of island marble butterflies; our conclusion that handling of the species during the 2008 MRR study did not result in documented negative effects to island marble butterfly populations; and the small number of individuals collected for genetic evaluation.

Factor C. Disease or Predation

Disease

There is a single report of disease affecting the island marble butterfly (Miskelly 2004, p. 35). We discussed this observation with the author and discovered that this was an isolated event and that the mortality was likely attributable to causes other than disease (Miskelly 2015a, *in litt.*). Therefore, there is no evidence to suggest that disease is currently a threat to the island marble butterfly.

Direct Predation

Predation is a risk for island marble butterflies during all stages of their life cycle, although mortality is highest during the earliest stages of life: Egg to first instar (Lambert 2011, p. 92). A study conducted from 2005 through 2008 on survivorship of the island marble butterfly identified high levels of mortality attributable to predation by spiders and, to a lesser extent, paper wasps (*Polistes* sp.) (Lambert 2011, p. 117). Two species of spider, *Pardosa distincta* and *Zelotes puritanus,* both native to Washington State, prey on adult island marble butterflies and may also account for a large proportion of the predation on eggs and larvae (Lambert 2011, p. 100; Crawford 2016, *in litt.*). The paper wasp common to American Camp is the nonnative *Polistes dominula* (Miskelly 2015b, *in litt.*), discovered in the State of Washington in 1998 (Landolt and Antonelli 1999, entire).

Direct predation of eggs and larvae was the greatest source of mortality in this 4-year study, affecting 47 percent of all individuals tracked (Lambert 2011, p. 99). Mortality levels attributable to direct predation varied depending on the larval host plant used, with almost 80 percent mortality attributable to direct predation on Menzies' pepperweed and approximately 40 percent on field mustard (Lambert 2011, p. 117). These differences are likely attributable to variation in the structure and growth form of the larval host plants that can facilitate access by predators (Lambert 2011, p. 100).

In addition, predation on island marble butterfly larvae by spiders and wasps increases as the season advances (Lambert 2015d, p. 14). This increase is likely because: (a) As spiders mature, they are more effective at locating and consuming the larvae; and (b) wasps increase in number as the season progresses (Reeve 1991, pp. 104–106), and the predation pressure they exert on their prey species increases with these increased numbers. Later emergence of island marble butterflies has been observed to correlate closely with increased predation pressure on island marble larvae; in the 2015 field season, when emergence was notably late, none of the 329 individuals tracked from egg through their larval development survived to form a chrysalis (Lambert 2015d, p. 14) (see *Cumulative Effects,* below, for additional discussion). Predation on adult island marble butterflies by birds and spiders has been observed anecdotally, although no effort has been made to quantify mortality attributable to predation on adults (Lambert 2011, p. 90; Vernon and Weaver 2012, p. 10). We found no evidence to suggest that predation by small mammals or other vertebrate predators presents a threat.

Direct predation of island marble butterfly eggs and larvae is ongoing where the species occurs (at American Camp) and is expected to continue into the future. Direct predation of eggs and larvae is a significant cause of mortality for the island marble butterfly, consistently accounting for more than 45 percent of deaths for tracked individuals (Lambert 2011, p. 99; Lambert 2015d, p. 14). Native spiders are responsible for a significant proportion of observed predation, and the island marble butterfly presumably coexisted for hundreds or thousands of years with these spiders. However, the small and declining numbers of island marble butterflies, under pressure from habitat loss and other threats, cannot now tolerate what may once have been a sustainable rate of natural predation. The threat of direct predation affects the island marble butterfly at the individual, population, and species levels (see Factor E discussion, below, for more information).

Incidental Predation

Incidental predation by browsing black-tailed deer also is a common source of mortality for island marble butterfly eggs and larvae (Lambert 2011, pp. 93–97; Lambert 2015d, pp. 17–18). As discussed under Factor A, female island marble butterflies select oviposition sites on or near the tips of the inflorescences of the larval host plants, which is the same portion of the plant that deer prefer to browse (Lambert 2015c, *in litt.*). Similar to rates of direct predation, each species of larval host plant is correlated with differing levels of mortality attributable to deer browse. Incidental predation by deer was highest on field mustard, which accounted for slightly more than 40 percent of mortality tracked for this larval host plant over the course of the 4-year study (Lambert 2011, p. 117). Mortality attributable to deer browse was less than 10 percent for both Menzies' pepperweed and tumble mustard (Lambert 2011, p. 117).

In nearly every report provided to the Service, deer browse has been identified as particularly problematic for the island marble butterfly at American Camp as well as throughout the species' former range, where browsing deer continue to degrade the butterfly's habitat (Miskelly and Fleckenstein 2007, p. 6; Miskelly and Potter 2009, pp. 11, 15; Hanson *et al.* 2009, pp. 4, 13, 20; Hanson *et al.* 2010, pp. 21–22; Potter *et*

al. 2011, pp. 5, 13; Lambert 2011, p. 104; Lambert 2014a, entire; Vernon and Weaver 2012, p. 9; Weaver and Vernon 2014, p. 10; Lambert 2014a, p. 3; Lambert 2015d, pp. 17–18; Vernon 2015a, p. 12). Incidental predation by deer is a significant cause of mortality of the island marble butterfly at American Camp (Lambert 2014a, p. 3). Incidental predation by deer is a threat of increasing severity within American Camp, where it affects the island marble butterfly at the individual, population, and species level; outside American Camp, this source of habitat degradation is ongoing throughout the formerly occupied range of the species because of the apparent increase in deer numbers throughout the San Juan Islands (Milner 2015, *in litt.;* McCutchen 2016, *in litt.*).

Although incidental predation by other herbivores has not been as rigorously quantified as it has been for black-tailed deer, the negative effects of livestock on occupied larval host plants cannot be discounted (Miskelly and Fleckenstein 2007, p. 5; Miskelly and Potter 2009, pp. 9, 11, 15; Hanson *et al.* 2009, pp. 18, 20; Hanson *et al.* 2010, pp. 5, 16, 21; Potter *et al.* 2011, p. 13; Vernon 2015c *in litt.,* entire). Incidental predation by livestock, brown garden snails, and European rabbits is possible where the range of the island marble butterfly overlaps with these species. However, in the case of European rabbits, only two documented instances exist of rabbits consuming plants with eggs or larva on them (Lambert 2015d, p. 17). Suitable island marble butterfly larval habitat is closely monitored at American Camp, so while consumption of occupied larval host plants by European rabbits does occasionally take place, it is currently rare, geographically circumscribed, and does not have a population-level impact to the species. The existing information does not indicate that incidental predation by livestock, brown garden snails, and European rabbits is occurring at a rate that currently causes population-level impacts to the island marble butterfly.

Conservation Efforts To Reduce Disease or Predation

As described above under ''Habitat Conservation and Restoration,'' the Service and NPS installed deer exclusion fencing in American Camp from 2013 to 2016 to reduce browsing by black-tailed deer on the larval host plants field mustard and tumble mustard. The fencing was placed to reduce incidental predation, as well, by protecting areas where larval host plants are most likely to be occupied by island marble butterfly eggs and larvae.

The Service has supported ongoing research into the effects of deer exclusion fencing on island marble butterfly survival. The first deer exclusion fencing was erected in three locations of American Camp in 2013. Areas immediately adjacent to the fenced habitat with similar structure, quality, and connectivity as the fenced habitat were left unfenced as control plots. First-year monitoring of deer exclusion areas showed that 74 percent of eggs tracked survived to first instar in the fenced area compared with 41 percent survival to first instar in the control plots (Lambert 2014a, p. 6). In 2014, additional deer exclusion fencing was installed and different types of exclusion fencing were compared. Wire-mesh fencing was found to be effective at preventing incidental predation by deer, while electric fencing was determined to be largely ineffective at excluding deer, although mortality from deer in electric-fenced areas was lower than in previous years (Lambert 2015d, pp. 17–18). Deer exclusion fencing has emerged as an important tool for protecting eggs and early instar larvae from consumption by deer, especially early in the flight season when survivorship is expected to be the highest (Lambert 2015d, p. 19; Lambert 2016, pp. 3, 27).

Summary of Disease and Predation

The best available information does not indicate that disease is a threat to the island marble butterfly. However, a substantial amount of research completed since 2006 clearly documents the effects of predation. Direct and incidental predation rates, together, account for the vast majority of the recorded deaths of island marble butterfly eggs and larvae at American Camp. Although deer exclusion fencing at American Camp has been an important tool for reducing mortality due to incidental consumption since 2013, the number of island marble butterflies observed continues to be low. No conservation measures have yet been identified to address the threat of predation from paper wasps and spiders. Taken together, all forms of predation have pervasive, population-level impacts on the island marble butterfly.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms ameliorate or exacerbate the threats to the species discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and tribal laws, regulations, and other such mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Federal Laws and Regulations

American Camp, as part of San Juan Island National Historical Park, is managed under the National Park Service's Organic Act and implementing regulations. The National Park Service Organic Act of 1916, as amended (54 U.S.C. 100101 *et seq.*), states that the National Park Service ''shall promote and regulate the use of the National Park System . . . to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations'' (54 U.S.C. 100101(a)). Further, 36 CFR 2.1(a)(1)(i) and (a)(1)(ii) specifically prohibits collection of living or dead wildlife, fish, or plants, or parts or products thereof, on lands under NPS jurisdiction. This prohibition on collection extends to the island marble butterfly where it exists on NPS-managed lands. In addition, under the general management plan for San Juan Island National Historical Park, NPS is required to follow the elements of the conservation agreement (NPS 2008, p. 73). This includes restoring native grassland ecosystem components at American Camp, avoiding management actions that would destroy host plants, avoiding vegetation treatments in island marble butterfly habitat when early life-stages are likely to be present, and implementing a monitoring plan for the species (Pyle 2006, pp. 10–12).

The Bureau of Land Management (BLM) owns the 27–ac (11–ha) Cattle Point Lighthouse property east of American Camp and Cattle Point Natural Resource Conservation Area. This site was formerly occupied by island marble butterflies, is proximal to occupied habitat on American Camp,

and contains suitable habitat for the species. The Cattle Point Lighthouse property is part of the San Juan Islands National Monument established by Presidential proclamation on March 25, 2013, under the American Antiquities Act of 1906 (54 U.S.C. 320301 *et seq.*). Under this proclamation, the monument is being managed as part of the National Landscape Conservation System, requiring that the land be managed ''in a manner that protects the values for which the components of the system were designated'' (16 U.S.C. 7202(c)(2)). The first resource management plan for the National Monument is still in development, so specific regulatory protections for the species and its habitat have not yet been established. Nevertheless, anthropogenic threats at this site are unlikely given its current designation as a National Monument.

The island marble butterfly is also listed as a sensitive species for the purposes of the BLM's Sensitive Species Policy (BLM 2008, p. 3; USFS 2015, entire). This policy directs the BLM to initiate conservation measures that reduce or eliminate threats and minimize the likelihood of listing under the Act, but until the resource management plan for the National Monument is complete, the BLM has not identified the required conservation measures. At this time, it is unclear what protections, if any, these existing regulatory mechanisms will confer to the island marble butterfly.

State Laws and Regulations

State laws and regulations that apply across San Juan and Lopez Islands include provisions to limit collection of butterflies for scientific purposes, but no specific protections to island marble butterfly habitats. The island marble butterfly is currently classified as a candidate species by the State of Washington (WDFW 2015a, p. 2). Candidates are those species considered by Washington State to be sensitive and potentially in need of protection through the process of designation as endangered, following procedures established by the Washington Administrative Code (WAC) (232–12–297). However, candidates are not afforded any specific regulatory protections (Potter 2015c, *in litt.*). The island marble butterfly is afforded limited State regulatory protections from overcollection as the State of Washington requires a scientific collection permit for handling or collecting any fish, or wildlife, their nests, or eggs for scientific purposes (WAC 220–20–045; Revised Code of Washington (RCW) 77.32.240).

The island marble butterfly was identified as critically imperiled in the Washington State Comprehensive Wildlife Conservation Strategy (WDFW 2005, pp. 219, 314, 336–337). Since 2005, WDFW has retired the Comprehensive Wildlife Conservation Strategy and incorporated it into Washington's State Wildlife Action Plan (SWAP). Although the SWAP addresses the island marble butterfly's conservation status, identifies it as a ''species of greatest conservation need,'' and recommends conservation actions (WDFW 2015b, pp. 3–39), the SWAP is not a regulatory mechanism.

WDNR owns the Cattle Point Natural Resources Conservation Area consisting of 112 acres directly to the east of American Camp, a portion of which provides potentially suitable habitat for island marble butterflies. Natural resource conservation areas are managed to protect outstanding examples of native ecosystems; habitat for endangered, threatened, and sensitive plants and animals; and scenic landscapes. Removal of any plants or soil is prohibited unless written permission is obtained from WDNR (WAC 332–52–115).

Local Laws and Regulations

American Camp is the only area known to be occupied by the island marble butterfly, and because the area is managed by NPS under the National Park Service's Organic Act and implementing regulations, local laws and regulations governing land use do not apply. However, the following local laws and regulations may provide some benefit to the island marble butterfly, should the species expand its range or recolonize suitable habitat areas outside American Camp.

The Washington State Growth Management Act of 1990 (GMA) requires all jurisdictions in the State to designate and protect critical areas. The State defines five broad categories of critical areas, including: (1) Wetlands; (2) areas with a critical recharging effect on aquifers used for potable water; (3) fish and wildlife habitat conservation areas; (4) frequently flooded areas; and (5) geologically hazardous areas. The upland prairie habitat type that island marble butterflies may use, but are not restricted to, is considered both a fish and wildlife habitat conservation area and an area with a critical recharging effect on aquifers under the GMA. Identification as a fish and wildlife habitat conservation area mandates that each county within Washington State preserve and protect the fish and wildlife associated with each habitat conservation area by developing policies and regulations to protect the functions and values of critical areas. Within counties, the mandate to protect and regulate critical areas applies to all unincorporated areas. In addition, incorporated cities within counties are required to address critical areas within their ''urban growth area'' (UGA; the area in which urban growth is encouraged by the municipal government) independently. The only incorporated city within San Juan County is Friday Harbor, which is located outside of NPS-owned land on San Juan Island and outside of habitat currently occupied by the island marble butterfly. The Friday Harbor Comprehensive Plan provides no protections for animal species that are not listed as ''threatened or endangered.''

San Juan County encompasses the range of the island marble butterfly. The County regulates critical areas through a Critical Areas Ordinance, which mandates protection for species listed under the Act through San Juan County Critical Areas Ordinance (section 18.30.160, Fish and Wildlife Habitat Conservation Areas). The Critical Areas Ordinance also identifies species of local importance, including the island marble butterfly (San Juan County 2015, p. 26), and provides protection for the island marble butterfly by requiring that development applications for areas determined to be occupied by the island marble butterfly develop a habitat management plan consistent with County recommendations for the conservation of the island marble butterfly prior to permitting. The San Juan County Comprehensive Plan recommends that property owners with occupied island marble butterfly habitat avoid the use of insecticides and herbicides, limit grazing and agricultural disturbance, and protect areas with larval host plants during the development process (San Juan County 2015, pp. 40, 45). However, the conservation recommendations are not comprehensive enough to prevent local extirpation of the island marble butterfly because they do not address all of the stressors influencing its persistence (*e.g.,* landscaping, permanent landscape conversion, mowing, etc.), as evidenced by the complete loss of occupied island marble butterfly habitat within areas developed since 2006 (see ''Development,'' above, under Factor A).

In addition, the San Juan County Comprehensive Plan concentrates urban density within UGAs in order to preserve the rural nature of the San Juan archipelago (San Juan County 2010, entire). We considered the plan in our

2006 12-month finding (71 FR 66292, November 14, 2006), concluding that the restriction of high-density development would lead to the maintenance of suitable habitat on Lopez and San Juan Islands. While preserving the low-density agricultural environment on San Juan and Lopez Islands partially prevents the direct conversion of suitable island marble butterfly habitat to other incompatible uses (*e.g.,* impermeable surfaces, manicured lawns, residential housing), new evidence indicates that, despite these planning efforts, island marble butterfly habitat has been severely curtailed rangewide since 2006, due to a variety of factors (*e.g.,* mowing, landscaping, or removal of host plants) (Miskelly and Potter 2005, p. 6; Miskelly and Fleckenstein 2007, p. 6; Potter 2015a, *in litt.*).

Summary of Existing Regulatory Mechanisms

The island marble butterfly and its host plant are afforded substantial regulatory protections from anthropogenic threats at American Camp through NPS regulations and the current general management plan for San Juan Island National Historical Park. In addition, State- and County-level regulatory mechanisms that influence development and zoning on San Juan and Lopez Islands are generally beneficial to suitable habitat that could be occupied by the island marble butterfly in the future. In summary, the existing Federal, State, and local regulatory mechanisms provide some benefits to the island marble butterfly and its habitat, but do not sufficiently ameliorate all the threats to the species.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Under Factor E, we evaluate the island marble butterfly's small population size and its vulnerability to stochastic events, vehicular collisions, insecticide application, and climate change.

Small Population Size and Vulnerability to Stochastic Events

Since its rediscovery in 1998, the island marble butterfly has been documented to have a narrow distribution, which has become increasingly constrained as secure habitat has been reduced or destroyed throughout its range (Miskelly and Potter 2005, entire; Miskelly and Fleckenstein 2007, entire; Miskelly and Potter 2009, entire; Hanson *et al.* 2009, entire; Hanson *et al.* 2010, entire; Potter *et al.* 2011, entire; Vernon and Weaver 2012, entire; Weaver and Vernon 2014, entire; Potter 2015a, *in litt.;* Vernon 2015a, entire). Declining numbers for the island marble butterfly have been documented during annual monitoring at American Camp that has taken place from 2004 through 2015 (see ''Abundance,'' above), and the species now appears to be restricted to a single known population centered on American Camp.

Compared to large populations, small populations are disproportionately affected by environmental, demographic, and genetic stochasticity, and thus face greater risk of extinction (Frankham 1996, p. 1506; Saccheri *et al.* 1998, entire; Harper *et al.* 2003, pp. 3349, 3354). Environmental stochasticity is the variation in birth and death rates from one season to the next in response to weather, disease, competition, predation, or other factors external to the population (Shaffer 1981, p. 131). For example, drought or predation, in combination with a low population year, could result in extirpation, and butterflies are known to be sensitive to environmental variation, increasing the influence of this factor (Weiss *et al.* 1993, pp. 267–269). Stochastic environmental events can be natural or human-caused.

Demographic stochasticity refers to random variability in survival or reproduction among individuals within a population (Shaffer 1981, p. 131). This random variability has a proportionately large effect on small populations, such that any loss of beneficial alleles (genes that provide for more successful reproduction and survival) may result in a rapid reduction in fitness, making small populations much more likely to go extinct than large populations (Frankham 1996, p. 1507). Genetic stochasticity, or genetic drift, describes random changes in the genetic composition of a population that are not related to systemic forces such as natural selection, inbreeding, or migration. In small populations, genetic stochasticity is more likely to result in reduced fitness and ultimately a lower number of individuals contributed to each successive generation. Small, narrowly distributed populations generally have lower genetic diversity than larger populations, which can result in less resilience to changing environmental conditions.

Because the island marble butterfly persists in low numbers, loss of a portion of the remaining population could have disproportionately negative effects. Storm surges that destroy nearshore habitat containing overwintering island marble butterfly chrysalids may further deplete the genetic diversity of the island marble butterfly. Similarly, in grassland habitat, a poorly timed or uncontrolled fire could destroy a large portion of the remaining population. The effect of predation, which has always been at least a baseline limiting factor for the island marble butterfly, is magnified when there are so few individuals left. Additional stochastic events that could potentially be devastating include a late-spring weather abnormality, such as an extended hard freeze or a powerful storm during the flight season; a year in which predator populations were unusually high; or introduction of a novel predator. Given that the very small population at American Camp is likely the only remaining population of the species, we conclude that small population size makes it particularly vulnerable to a variety of likely stochastic events, and this constitutes a threat to the island marble butterfly at the individual, population, and species levels.

Vehicular Collisions

Habitat occupied by the island marble butterfly within American Camp is bisected by Cattle Point Road, a highway that is the only point of access for a small residential community at the southeastern tip of San Juan Island (approximately 100–150 housing units) and, as such, is routinely driven by the residents. The highway runs along the shoulder of Mount Finlayson, a landscape feature that male island marble butterflies typically follow when patrolling for females (Lambert 2016b, pers. comm.). While there have been no specific reports of island marble butterfly road kills, the presence of the highway within occupied habitat exposes the species to potential vehicle collisions. Few studies provide detail on the scale of vehicle-caused mortality for invertebrate species, and even fewer specifically examine butterfly mortality or the effects of traffic on individual butterfly species (Seibert and Conover 1991, p. 163; Munguira and Thomas 1992, entire; Rao and Girish 2007, entire).

One peer-reviewed study that examined vehicular mortality for butterflies found that a species in the same family as the island marble butterfly, *Pieris rapae,* was more likely to be struck and killed by vehicles in comparison to the other more sedentary species in the study, with 7 percent of a local population killed by cars in a 44-day period (Munguira and Thomas 1992, p. 325). The study was conducted along ''main roads'' in the United Kingdom that connected relatively large

cities (Munguira and Thomas 1992, p. 317); thus, it is likely they had more traffic than the highway at American Camp. While the authors of the study did not find the percentage of the population killed by vehicles to be significant in comparison to mortality caused by other natural factors affecting their survival (Munguira and Thomas 1992, p. 316), the loss of individual island marble butterflies could have disproportionately large negative effects on the species as a whole because of its restricted range and small population size.

Male island marble butterflies are attracted to white (ultraviolet-reflecting) objects that may resemble females and have been observed to investigate white flowers (*e.g.,* field chickweed and yarrow), white picket fences, and white lines painted on the surface of roads (Lambert 2011, p. 47). The highway through American Camp has fog lines that are painted white that could be attractive to adult butterflies, thereby increasing their risk of being killed by vehicles. The centerlines on the highway are painted yellow.

Given the presence of a highway within the single remaining site occupied by island marble butterflies, and their attraction to white road stripes that are present along the Cattle Point Road edges, we expect that some vehicular mortality is likely. However, we cannot estimate the severity of this stressor, as vehicular mortality has not been specifically studied for the island marble butterfly or documented at American Camp. Therefore, while there is the potential for mortality resulting from vehicular collisions, the best available information does not indicate that vehicular collision currently has an individual, population, or species-level impact to the island marble butterfly.

Insecticide Application

The best available information does not indicate any insecticide use in proximity to areas that are currently known to be occupied by the island marble butterfly at American Camp. However, remnant patches of potentially suitable habitat for the species are located within a matrix of rural agricultural lands and low-density residential development, where insecticides may be used. One such insecticide that has the potential to adversely affect the island marble butterfly if applied during its larval phase is *Bacillus thuringiensis* var. *kurstaki* (Btk). This insecticide, derived from a common soil bacterium, is used in a wide range of settings, including organic agriculture, for the control of lepidopteran (butterfly and moth) pest species (National Pesticide Information Center 2015, p. 1; Oregon Health Authority 2015, p. 1). In forestry, it is used broadly for the control of the Asian and European gypsy moth species (*Lymantria dispar,* and *L. dispar dispar,* respectively) (see WSDA 2015, entire). Btk is also more generally applied for other lepidopteran pest species, such as tent caterpillars (*Malacosoma* spp.).

Btk has the potential to kill the island marble butterfly larvae if applied in close proximity and upwind of an occupied site. Spraying of Btk has had adverse effects to nontarget butterfly and moth species (Severns 2002, p. 169; Wagner and Miller 1995, p. 19), with butterfly diversity, richness, and abundance (density) reduced for up to 2 years following the application of Btk (Severns 2002, p. 168). One study demonstrated that most nontarget lepidopteran species may be more susceptible to Btk than target species such as Asian and European gypsy moths or western tent caterpillars (Haas and Scriber 1998). For nontarget lepidopterans, the early instar stages of larvae are the most susceptible stage (Wagner and Miller 1995, p. 21).

Large-scale application of Btk in Washington State is done in a targeted fashion in response to positive trapping of pest species. In most years, Btk application is conducted at the scale of hundreds of acres per year, although in years when detection of pest species are high, such as in 2015, application of Btk may be scaled up to thousands of acres in response (WSDA 2015, p. 1). Large-scale application of Btk does not normally overlap with areas where the island marble butterfly is known to occur within American Camp, although if pest species were detected in close proximity and if the target species is active at the same time as larvae of the island marble butterfly, the effect of Btk treatment could be detrimental. Because the island marble butterfly produces a single brood per year, has a spring flight season, and has developing larvae during the summer insecticide application period, this species is more likely to be susceptible to the adverse effects of Btk than butterfly species with later flight and developmental periods or those that produce multiple broods per year. Btk is commonly used to control tent caterpillars and is likely to have been used on San Juan Island (Potter 2015d, *in litt.*), although the effect on the island marble butterfly at American Camp is not documented. At this time, the best available information does not indicate that Btk has been applied at or adjacent to any location where island marble butterflies are known to occur.

We recognize that the use of insecticides could have a negative impact on larvae of the island marble butterfly if applied in such a way that individuals were exposed. However, there is no documented exposure to insecticide use in the island marble butterfly at this time. While there is the potential for high levels of mortality resulting from insecticide exposure, we conclude that insecticide use is not having a known impact on the island marble butterfly, principally because of the low likelihood of exposure at American Camp.

Late Emergence of Adult Butterflies

Since regular transect surveys for the island marble butterfly began in 2004, the first date of the flight period has shifted an average of approximately 9 days later in the year (USFWS 2016 unpublished data). The reason for this change is unclear, and the existing time-series is too brief to ascertain whether this change is a trend or part of natural variability on a longer time scale. For example, no clear correlation exists between average winter temperatures and the beginning of the island marble flight season and the shift toward later emergence between 2004 and 2016. Later emergence cannot currently be attributed to climate change, although temperature may play a role. When conditions inside the captive-rearing lab for island marble butterflies were cooler than the ambient temperature in 2015, butterflies emerged later than the wild population (Shrum 2015b, *in litt.*). The temperature was increased inside in 2016, and the captive and wild adults emerged at the same time (Weaver 2015, *in litt.;* Shrum 2016, *in litt.*). Other environmental conditions, including moisture, likely influence emergence time as well (Bates *et al.* 2002, p. 3).

Ongoing research has recently detected a steep increase in mortality for late-season eggs and larvae compared to the mortality of early-season eggs, with none of the larvae observed in study plots surviving to the fifth instar in 2015 (Lambert 2015d, p. 14). Only a portion of the mortality documented was attributable to starvation (25 percent); the greatest cause of mortality was attributable to direct predation (60 percent) (Lambert 2015d, p. 14; and see discussion above under Factor C). The single, small population of island marble butterflies likely cannot sustain the increased late-season predation pressure, and probable survival of fewer offspring, over multiple years.

Climate Change

Our analyses under the Act include consideration of ongoing and projected

changes in climate. The majority of climate models for the Pacific Northwest region predict wetter winters, with an increase in the proportion of precipitation falling as rain rather than snow due to increasing ambient temperature, and drier summers as a result of reduced snowpack and ensuing hydrologic drought (Mote and Salathé 2010, p. 48). No downscaled climate models specific to the San Juan Island archipelago are available, and San Juan Island is not reliant on snowpack for its water. The portion of San Juan Island where the known population of the island marble butterfly occurs is in the rain shadow of mountain ranges on Vancouver Island, Canada, and in Washington State, resulting in weather patterns commonly drier than much of the rest of the Pacific Northwest (Mass 2009, entire). While the San Juan Island archipelago may be subject to the increasing average annual temperatures associated with climate change, it is unclear how changing temperatures will affect the island marble butterfly.

One predicted stressor associated with climate change for herbivorous (plant-eating) insect species is the potential for the development of phenological asynchrony (a mismatch in timing) between insects and their larval host plants (Bale *et al.* 2002, p. 8). If an herbivorous insect emerges earlier or later than the optimal stage of its larval host plant, the insect may not be able to find plants at the right stage for egg laying, or the insect's larvae may not have adequate food resources. If the insect emerges earlier than its larval host plant, the plants may not be detectable, leaving the animal with no place to lay her eggs, or the plants may be too small to provide enough forage for larvae, leading to starvation. Conversely, if the insect emerges when the plant is at a later phenological stage, eggs may be laid on a larval host plant that has matured to the point that plant tissues are too tough for the larvae to consume, or the plant may die before the insect has acquired enough resources to survive to the pupation stage. The island marble butterfly is an early-flying species, generally emerging in April and immediately mating and laying eggs on the larval host plants that are available. This strategy ensures that the host plants are young enough to provide tender plant tissue for first instar larvae, which have mouthparts incapable of consuming anything but the high-moisture flower buds. In the absence of access to tender buds, early instar larvae die from desiccation (Lambert 2011, p. 12). Although evidence exists that some larvae of late-emerging island marble butterflies have suffered starvation (Lambert 2015d, p. 14), perhaps as a result of mismatch between butterfly and food-plant phenology, no recurring pattern in such mismatch exists now that can be associated with climate change. However, monitoring of phenology and survival in the island marble butterfly is ongoing and may shed light on this relationship in the future.

Sea-level rise associated with climate change is expected to continue as polar ice melts, leading to an increase in ocean volume (Adelsman *et al.* 2012, p. 82). The warming climate is also expected to lead to rising ocean temperatures resulting in thermal expansion of the water, which will also increase the volume of the ocean (Dalton *et al.* 2013, p. 70). Both of these effects of climate change are expected to lead to rising sea level, which will have the direct effect of increasing the impacts of storm surges and flooding events in low-lying areas, such as the nearshore lagoon habitat of the island marble butterfly (MacLennan *et al.* 2013, pp. 4–5; Vose *et al.* 2014, p. 381; Friends of the San Juans 2014, p. 7; Whitman and MacLennan 2015, *in litt.;* NOAA 2015a, entire; NOAA 2015b, entire). Because the nearshore habitat is barely above sea level, rise in sea level increases the risk of inundation and direct mortality for island marble butterflies overwintering as chrysalids in low-lying nearshore habitat. Powerful storm surges have historically deposited large amounts of coarse sediment and driftwood in areas occupied by Menzies' pepperweed (an estimated 5–8 percent of habitat occupied in 2006) and where a number of island marble butterflies were overwintering as chrysalids, leading to low numbers of individuals detected in nearshore habitat in years following a storm surge event (Lambert 2011, pp. 99, 145–146; Lambert 2015f, *in litt.*). Due to the small number of individuals remaining, mortality and habitat loss resulting from storm surges likely has a population-level impact on the island marble butterfly, and we expect these impacts to increase over time as an effect of global climate change.

While some effects of global climate change, such as sea-level rise and storm intensity, are expected to be nearly universal, warming associated with climate change is expected to be variable or even patchy, depending on localized weather patterns (*e.g.,* patterns influenced by oceanographic phenomena such as El Niño and La Niña) (Adelsman *et al.* 2012, p. 37). The Pacific Northwest region of the United States abuts the eastern edge of the Pacific Ocean, which warms and cools in sync with the Pacific Decadal Oscillation (Mantua and Hare 2002, entire). Given the unclear direction of climate trends in the San Juan archipelago, we cannot conclude that the island marble butterfly is exhibiting phenological changes such as later emergence as a result of climate change, or that the species will do so in the future.

Climate conditions that affect phenology in a given year can have important impacts to the species, however. Cooler temperatures are associated with later emergence of butterflies reared in captivity (Weaver 2015, *in litt.*), and late emergence leads to a spike in late-season predation on island butterfly larvae, when spider and wasp populations are greatest (see discussions above under Factor C, and under ''Late Emergence of Adult Butterflies''). Compared with an abundant species with numerous, well-distributed populations, the island marble butterfly's small remaining population is far more vulnerable to such fluctuations in mortality.

Conservation Efforts To Reduce Other Natural or Manmade Factors Affecting Its Continued Existence

The Service, NPS, and other partners have been implementing multiple conservation efforts in an attempt to ameliorate the threats posed by small population size, vulnerability to stochastic events, and insecticide applications. No conservation efforts currently address collisions with vehicles or the effects of climate change. Below we summarize the conservation measures that have been implemented by NPS, WDFW, University of Washington researchers, and conservation partners on San Juan Island to address the threats to the island marble butterfly described above under Factor E.

The Service, NPS, and other partners have conducted conservation efforts to address the effects of small population size and vulnerability to stochastic events on the island marble butterfly since 2008. Specifically, NPS and other partners began exploring methods for captive-rearing island marble butterflies in 2008. In 2009, 16 island marble butterfly individuals were rescued from a construction site, reared to emergence as adult butterflies, and released in the spring of 2010 (Vernon 2015d, p. 2). In 2010, more individuals were reared as part of a food preference experiment (Trapp and Weaver 2010, entire), and 32 adults were released in 2011 (Vernon 2011, p. 5). These opportunistic events demonstrated that rescue, rearing, and

releasing of island marble butterflies could be successful. A handbook based on these captive-rearing events and more recent efforts was developed to guide captive-rearing and release efforts for the island marble butterfly (Vernon 2015d, entire).

In 2013, continued decline in the number of island marble butterflies observed in the wild led to the rescue, captive-rearing, and release of the species in an effort to improve survivorship and reverse the trend of declining numbers, and provide a safety net against stochastic events. Forty-seven individuals successfully formed chrysalids, and 40 adult island marble butterflies emerged in the spring of 2014, and were released at American Camp (85 percent survival) (Vernon 2015d, p. 3). NPS has scaled up and streamlined the captive-rearing program. In 2014, NPS converted an outbuilding into a rearing facility, and 89 eggs and larvae were brought in for captive-rearing. Of those, 75 adult island marble butterflies emerged (84 percent survival) in the spring of 2015, and were released at American Camp (Silahua 2015, *in litt.*). In 2015, 126 eggs and larvae were brought in for captive-rearing, 114 of which survived to become chrysalids (Silahua 2015, *in litt.*).

Although the number of adult island marble butterflies recorded during annual surveys remains small (fewer than 30 butterflies were observed each year during monitoring for the 2014 and 2015 flight seasons), the captive-rearing effort has likely provided crucial support to the population remaining in the wild and will remain necessary in the future. However, this ongoing conservation effort to address small population size and vulnerability to stochastic events is not without risk and does not ameliorate other threats to the species in the long term. For example, in 2015, individuals reared in captivity emerged late in the flight season (on or around May 13) (Weaver 2015b, *in litt.*), and available data suggest that the majority of the offspring of these captive-reared individuals died as a result of high late-season predation rates (Lambert 2015d, p. 14; see discussion under Factor C, above). In 2016, the date of emergence in the captive-rearing facility was better calibrated to ambient environmental temperatures by adjusting the temperature in the rearing facility to match those of the surrounding outdoor area, but there are likely to be other unforeseen challenges to successful captive-rearing.

Conservation efforts to reduce natural or manmade factors include efforts to reduce the application of the insecticide Btk in close proximity to sites occupied by the island marble butterfly. The final decision over the use of insecticide for control of invasive moths and butterflies has been, and will continue to be, made by the Washington State Department of Agriculture after coordination with the Service and WDFW. All pesticide used by the State of Washington is applied in compliance with label instructions, which are designed to reduce overspray, drift, and other negative impacts to nontarget organisms and areas.

Summary of Other Natural or Manmade Factors Affecting Its Continued Existence

The small population size of the island marble butterfly makes the species highly vulnerable to stochastic events (such as storm surges and climate anomalies) that directly or indirectly affect survival and reproductive success or the extent of habitat. Storm surges, which can cause direct mortality of island marble butterflies and habitat loss, are likely to increase with climate change. Although successful captive-rearing and release of island marble butterflies is an important achievement that has supplemented numbers at American Camp since 2013, threats to the species and its habitat continue. The range of the island marble butterfly has continued to contract at American Camp, and the number of island marble butterflies observed annually has continued to decline. These conservation efforts will need to be continued into the future and be monitored to assess their long-term conservation value to the island marble butterfly before we can determine their efficacy.

Cumulative Effects

In our analysis of the five factors, we found that the island marble butterfly is likely to be affected by loss and degradation of habitat, direct and incidental predation, and vulnerabilities associated with small population size. Multiple stressors acting in combination have greater potential to affect the island marble butterfly than each factor alone. For example, increased sea level resulting from climate change may enhance the impacts of storm surges and flooding on low-lying coastal habitat where the one native larval host plant for the species occurs. The combined effects of environmental and demographic stochasticity, especially on a small population, can lead to a decline that is unrecoverable and results in extinction (Brook *et al.* 2008, pp. 457–458). The impacts of the stressors described above, which might be sustained by a larger, more resilient population, have the potential in combination to rapidly affect the size, growth rate, and genetic integrity of a species that persists as a small, isolated population. Thus, factors that, by themselves, may not have a significant effect on the island marble butterfly, may affect the species when considered in combination.

Determination of Species' Status

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we evaluate all of the following factors to determine whether listing may be warranted: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

As required by the Act, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the island marble butterfly. Since the species was discovered in the San Juan Islands in 1998, the species' range has contracted from five populations on two islands (San Juan and Lopez) to a single population, at American Camp on San Juan Island, today. The causes of these extirpations are not well understood, but likely include habitat loss outside American Camp from a combination of sources. Within the single remaining population at American Camp, the number of sites where island marble butterflies are detected during surveys declined from 25 in 2007, to 4 in 2015. Encounter rates for adult butterflies calculated from survey data have declined each year, from almost 2 per 100 meters in 2004, to about 0.3 per 100 meters in 2015. The slight increase in this rate in 2016, to 0.6 per 100 meters, does not reverse the overall trend of decline. Captive rearing and release of the island marble butterfly shows promise for bolstering the remaining population of the species. However, the potential for this species to recolonize areas within its historical range is uncertain due to ongoing, pervasive habitat degradation that results from herbivory by deer and other animals on larval host plants, from plant succession and invasion by nonnative plants that render habitat unsuitable for

larval host plants, and potentially from cultivation and other land uses. The widespread occurrence of native (spiders) and nonnative (wasps) predators of eggs and larvae is also an ongoing threat that may hamper or prevent potential recolonizations. Furthermore, the source for any recolonizations consists of a single, small population already vulnerable to these threats and to stochastic sources of mortality, such as severe storms and other climate anomalies.

In summary, we have identified the following threats to the island marble butterfly: (1) Habitat loss and degradation from plant succession and competition with invasive species that displace larval host plants; herbivory by deer, European rabbits, and brown garden snails; and storm surges (Factor A); (2) direct predation by spiders and wasps and incidental predation by deer (Factor C); (3) small population size and vulnerability to stochastic events (Factor E); and (4) the cumulative effects of small population size and the restricted range combined with any stressor that removes individuals from the population or decreases the species' reproductive success (Factor E). These threats affect the island marble butterfly throughout the entirety of its range and are ongoing and likely to persist into the foreseeable future. These factors pose threats to the island marble butterfly whether considered individually or cumulatively. The existing regulatory mechanisms (Factor D) and ongoing conservation efforts are not currently sufficient to ameliorate the impact of these threats; despite intense focused efforts to conserve the species, population numbers continue to decline.

The ongoing threats of habitat loss and degradation, predation, the effects of small population size, and stochastic events that cause mortality or reduce reproductive success render this species in its entirety presently in danger of extinction throughout all of its range.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' The ongoing threats of habitat loss and degradation, predation, the effects of small population size, and stochastic events that cause mortality or reduce reproductive success render this species in its entirety presently in danger of extinction. We find that threatened species status is not appropriate for the island marble butterfly because of its already contracted range and single remaining population, because the threats are ongoing and affecting the entirety of the species, and because these threats are expected to continue into the future.

Therefore, on the basis of the best available scientific and commercial information, we propose listing the island marble butterfly as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act. Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the island marble butterfly is endangered throughout all of its range, we do not need to conduct an analysis of whether there is any significant portion of its range where the species is in danger of extinction or likely to become so in the foreseeable future. This is consistent with the Act because when we find that a species is currently in danger of extinction throughout all of its range (*i.e.,* meets the definition of an ''endangered species''), the species is experiencing high-magnitude threats across its range or threats are so high in particular areas that they severely affect the species across its range. Therefore, the species is in danger of extinction throughout every portion of its range and an analysis of whether there is any significant portion of the range that may be in danger of extinction or likely to become so would not result in a different outcome.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for downlisting (*i.e.,* reclassification from endangered to threatened status) or delisting (*i.e.,* removal from the List of Endangered and Threatened Wildlife or List of Endangered and Threatened Plants) and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. We intend to make a recovery outline available to the public concurrent with the final listing rule, if listing continues to be warranted. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive-propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species

requires cooperative conservation efforts on all lands.

If the island marble butterfly is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Washington would be eligible for Federal funds to implement management actions that promote the protection or recovery of the island marble butterfly. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the island marble butterfly is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Bureau of Land Management, Farm Service Agency, Federal Highway Administration, National Park Service, U.S Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, and the U.S. Coast Guard.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, or for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. Based on the best available information, the following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of island marble butterflies, including import or export across State lines and international boundaries, except for properly documented antique specimens at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the island marble butterfly or its host and nectar plants, for example, the introduction of competing, nonnative plants or animals to the San Juan Islands or the State of Washington;

(3) The unauthorized release of biological control agents that attack any life stage of the island marble butterfly, for example, Btk release in the range of the species;

(4) Unauthorized modification of the soil profiles or the vegetation components on sites known to be occupied by island marble butterflies; or

(5) Intentional disturbance of butterflies or their larvae, or mowing or burning of occupied habitats during the breeding season.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided

pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This is further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or

(2) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the

Service may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

As discussed above, there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, we next determine whether such designation of critical habitat would not be beneficial to the species. In our proposed listing determination, above, we determined that there are habitat-based threats to the island marble butterfly identified under Factor A. Therefore, we find that the designation of critical habitat would be beneficial to the island marble butterfly through the provisions of section 7 of the Act. Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and would be beneficial, we find that designation of critical habitat is prudent for the island marble butterfly.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the island marble butterfly is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where these species are located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the island marble butterfly.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential to the conservation of the island marble butterfly from studies of this species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential to the conservation of the island marble butterfly:

Space for Individual and Population Growth and for Normal Behavior

The island marble butterfly has previously been documented as having as many as five core populations across San Juan and Lopez Islands in the San Juan archipelago, but of those five, there is only one location where it has been consistently detected on an annual basis since its rediscovery in 1998 at American Camp, part of San Juan Island National Historical Park. The long-term occupancy of American Camp indicates that one or more aspects of this site provide the combination of habitat factors needed by the species. American Camp encompasses multiple small populations within large expanses of diverse habitat, including open south-facing slopes, varied broad-scale topographic features, and low-statured plant communities (Lambert 2011, pp. 151–152; Lambert 2016a, p. 4). Surface topography (slope and aspect) and landscape features that have topographic relief (slopes, bluffs, sand banks, or driftwood berms) are critical to the movement and dispersal of the island marble butterfly (Lambert 2011, p. 152).

The portion of the park where the island marble butterfly persists contains an open expanse of prairie and dune habitat greater than 700 ac (283 ha) and is bounded on two sides by marine shoreline. The island marble butterfly uses landscape features to fly low across the land, following shallow ridgelines associated with sand dunes, road cuts, and coastal bluffs. We surmise that the island marble butterfly uses the lee of rolling hills or hollows in broader expanses of prairie and dune habitats to facilitate their movements. Therefore, we determine habitat areas large enough to include broad topographic features (*e.g.,* ridgelines, hills, and bluffs) to be physical or biological features for the island marble butterfly.

At a rangewide scale, the island marble butterfly exhibits metapopulation dynamics, while on a local scale, ''patchy'' population dynamics best describes the movement of individuals between suitable habitat patches (Lambert 2011, pp. 147–148). Specifically, the island marble butterfly tends to occupy multiple habitat patches within a larger, heterogeneous area, with some small amount of movement between suitable habitat patches. Individual butterflies rarely move distances greater than 0.4 mi (600 m) (Peterson 2010, p. 3). Marked individuals are nearly always recaptured at the sites where they were marked, with a single exception when a marked individual was recaptured 1.2 mi (1.9 km) from its site of origin (Peterson 2010, p. 3). Within the last known occupied site, smaller occupied patches have been observed to undergo local extirpation events, but the close proximity of nearby populations within the larger contiguous area has allowed for recolonization (Lambert 2011, p. 155). Areas large enough to contain multiple small populations of island marble butterfly that allow for population connectivity and re-establishment are essential to the conservation of the species. Therefore, we conclude that areas large enough to

support multiple small populations of the species to be a physical or biological feature essential to the island marble butterfly.

Island marble butterflies tend to fly close to the ground, along the edges of treed areas or along marine shorelines. Therefore, forest and open water create natural barriers to movement (Lambert 2011, pp. 49, 50). Male island marble butterflies fly low (approximately 5 ft (1.5 m) above the ground) and follow ridgelines, bluffs, road-cuts, trail edges, fence lines, and shrub or forest edges in search of mates (Lambert 2011, pp. 47–48). Female island marble butterflies have been observed to fly in low (approximately 3 ft (1 m) above the ground), wide (330–980 ft (100–500 m)) circles above the ground searching for suitable host plants upon which to lay their eggs (Lambert 2011, p. 49). We conclude that large open areas with few trees are a physical or biological feature for the island marble butterfly.

Based on the best information available, we estimate that the conservation of the island marble butterfly is best supported by open, primarily treeless areas with short-statured forb- and grass-dominated vegetation. Areas should be large enough to allow for the inclusion of diverse topographic features and habitat types, including sites for mating, egg laying, feeding, refugia (places to safely harbor), and diapause locations, and should support multiple discrete occupied habitat patches, which increases the likelihood of recolonization if local extinction takes place. Therefore, we conclude that open, primarily treeless habitat areas that are large enough to support multiple, small populations and that include broad topographic features such as ridgelines, hills, and bluffs are physical or biological features essential to the conservation of the island marble butterfly.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The island marble butterfly needs larval and adult food resources in order to complete its life cycle: Larval host plants (food plants required by the immature stages of the butterfly) and nectar plants for the adults. The island marble butterfly has three known larval host plants, all in the mustard family (Brassicaceae). One is native, Menzies' pepperweed, and two are nonnative—field mustard and tumble mustard (Miskelly 2004, pp. 33, 38; Lambert 2011, p. 2). These three larval host plants are essential components of habitat for the island marble butterfly.

All three larval host plants occur in open grass- and forb-dominated plant communities, but each species is most robust in one of three specific habitat types, with little overlap: Menzies' pepperweed at the edge of low-lying coastal lagoon habitat; field mustard in upland prairie habitat, disturbed fields, and disturbed soils, including soil piles from construction; and tumble mustard in sand dune habitat (Miskelly 2004, p. 33; Miskelly and Potter 2009, p. 9; Lambert 2011, pp. 24, 121–123). While each larval host plant can occur in each of the three habitat types referenced above, female island marble butterflies typically lay eggs on only the most robust host plants in each aforementioned habitat type (Miskelly 2004, p. 33; Lambert 2011, pp. 24, 41, 50, 55–57, 121–123).

We conclude that the presence of Menzies' pepperweed, field mustard, or tumble mustard is a physical or biological feature upon which the island marble butterfly depends.

Adults primarily forage for nectar on their larval host plants (Potter 2015e, pers. Comm.). They also use a variety of other nectar plants that flower during the island marble butterfly's flight period, which is generally from mid-April to mid- to late-June. Adults have been observed to nectar on yellow sand verbena, yarrow, small-flowered fiddleneck, American sea rocket, field chickweed, common stork's bill, dovefoot geranium, hairy cat's ear, common lomatium, seashore lupine, common forget-me-not, California buttercup, trailing blackberry, dandelion, death camas, and Howell's Brodiaea (Miskelly 2004, p. 33; Pyle 2004, pp. 23–26, 33; Miskelly and Potter 2005, p. 6; Lambert 2011, p. 120; Vernon and Weaver 2012, Appendix 12; Lambert 2015a, p. 2, Lambert 2015b, *in litt.*). Of these additional nectar resources, island marble butterflies are most frequently observed feeding on yellow sand verbena, small-flowered fiddleneck, and field chickweed (Potter 2015e, pers. comm.). We conclude that adult nectar resources, including, but not limited to those listed here, are a physical or biological feature upon which the island marble butterfly depends.

Like many animals that rely on external sources of body heat (ectotherms), the island marble butterfly is more active at warmer temperatures; for this species, this generally means temperatures that are higher than 55 degrees Fahrenheit (F) (13 degrees Celsius (C)). This leads to adult (winged) island marble butterflies being most active between the hours of 10 a.m. and 4 p.m. The island marble butterfly relies upon solar radiation for the warmth that drives their development, mate-finding, and reproduction. We conclude that exposure to the sun provided by open, primarily treeless areas with some south-facing slopes and short-statured vegetation is a physical or biological feature upon which the island marble butterfly depends.

We consider open sunlit areas containing at least one species of larval host plant, Menzies' pepperweed, field mustard, and/or tumble mustard with both flower buds and blooms between the months of May through July to be physical or biological features of island marble butterfly habitat. We additionally consider the presence of adult nectar plants in flower to be a physical or biological feature of island marble butterfly habitat.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Male island marble butterflies are attracted to white and may investigate white picket fences, white lines on surface roads, or other white objects while searching for a mate (Lambert 2011, p. 47). The island marble butterfly primarily uses short-statured, white-flowering plants such as field chickweed as sites for mate attraction and mating (Lambert 2014b, p. 17). We conclude that the presence of short-statured, white-flowering plants during the flight period (generally from mid-April to mid- to late-June) for the island marble butterfly to be a physical or biological feature of the island marble butterfly habitat.

Once mated, gravid female island marble butterflies seek out larval host plants at an optimal growth stage for egg laying (recently hatched caterpillars require tender plant parts, such as immature flower buds, because their mouthparts are not developed enough to eat hardened plant matter) (Lambert 2011, pp. 9–10). Larval host plant flowering phenology (timing of flower opening) is important for island marble butterflies. If the plants emerge too early, there may not be enough tissue at the right stage available for the larvae to go through their developmental phases. If the plants emerge too late, female butterflies may not recognize the larval host plants as suitable sites to lay eggs.

Female island marble butterflies carefully gauge the suitability of each larval host plant, preferentially selecting plants that possess both flowers and buds to lay eggs on. Plants with greater than 50 percent of their flowers in bloom are more likely to be selected than plants in an earlier (less than 50 percent of flowers in bloom) or later

developmental stage (Lambert 2011, pp. 59–60). Female island marble butterflies tend to lay eggs singly on the immature buds of the flowers of their larval host plants, rarely laying eggs on inflorescences that are already occupied by eggs or larvae (Lambert 2011, pp. 51–57). Female island marble butterflies prefer larval host plants growing in low-density patches with less than one plant per meter square and tend to choose plants that are along the outer edge of a patch of larval host plants rather than in areas with a high density of host plants (Lambert 2011, pp. 53, 68–69; Lambert 2015d, p. 9). Additionally, host plant phenology (timing of development) plays a significant role in determining where females lay eggs. Low- to medium-density larval host plants for egg-laying and larval development, with both flower buds and blooms on them between the months of May through July, are a physical or biological feature of island marble butterfly habitat.

After hatching, larvae of the island marble butterfly rapidly progress through five instars (larval growth stages) and have been documented to then move up to 13 ft (4 m) from their larval host plant to nearby standing vegetation (usually tall grasses) to pupate (Lambert 2011, p. 19). Island marble butterfly larvae use nearby vegetation as bridges to other plants and appear to avoid being close to the ground while searching for a safe site to form a chrysalis (pupal casing) (Lambert 2011, pp. 20–21). Therefore, we find that the presence of larval host plants, in complement with tall, standing vegetation that provides the structure necessary to allow mature larvae to cross to a safe pupation site, is a physical or biological feature of island marble butterfly habitat.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

The island marble butterfly spends approximately 300 days in diapause (a form of dormancy) as a chrysalis (pupa) before undergoing metamorphosis to emerge as a winged adult the following spring. Unlike other butterfly species that may diapause underground or, alternatively, rapidly advance from egg to winged-adult and over-winter in an adult phase, the island marble butterfly enters diapause aboveground and very close to where it hatched. During diapause, the island marble butterfly is vulnerable to any activity such as trampling, mowing, harvesting, grazing, or plowing that may disturb or destroy the vegetative structure to which a larva has attached its pupal casing. The larval host plants for the island marble butterfly are annual (or biennial) and habitat patches for the island marble butterfly do not tend to persist in the same area continuously over time. Leaving the vegetation near where larval host plants established in the spring until mid-summer the following year provides a safe place for the island marble butterfly chrysalids to harbor until they emerge. Therefore, we find that sufficient areas of undisturbed vegetation surrounding larval host plants that are left standing for a sufficient period of time in order for the island marble butterfly to complete its life cycle is a physical or biological feature of island marble butterfly habitat.

Summary of Essential Physical or Biological Features

We have determined that the following physical or biological features of the areas on San Juan Island, Washington, that are essential to the conservation of the island marble butterfly are:

(a) Open, primarily treeless areas with short-statured forb- and grass-dominated vegetation that include diverse topographic features such as ridgelines, hills, and bluffs for patrolling, dispersal corridors between habitat patches, and some south-facing terrain. Areas must be large enough to allow for the development of patchy-population dynamics, allowing for multiple small populations to establish within the area.

(b) Low- to medium-density larval host plants for egg-laying and larval development, with both flower buds and blooms on them between the months of May through July. Larval host plants may be any of the following: *Brassica rapa, Sisymbrium altissimum,* or *Lepidium virginicum.*

(c) Adult nectar resources in flower and short-statured, white-flowering plants in bloom used for mate-finding, which may include, but are not limited to *Abronia latifolia* (yellow sand verbena), *Achillea millefolium* (yarrow), *Amsinckia menziesii* (small-flowered fiddleneck), *Cakile edentula* (American sea rocket), *Cerastium arvense* (field chickweed), *Erodium cicutarium* (common stork's bill), *Geranium molle* (dovefoot geranium), *Hypochaeris radicata* (hairy cat's ear), *Lomatium utriculatum* (common lomatium), *Lupinus littoralis* (seashore lupine), *Myosotis discolor* (common forget-me-not), *Ranunculus californicus* (California buttercup), *Rubus ursinus* (trailing blackberry), *Taraxacum officinale* (dandelion), *Toxicoscordion venenosum* (death camas, formerly known as *Zigadenus venenosus*), and *Triteleia grandiflora* (Howell's Brodiaea, formerly *Brodiaea howellii*).

(d) Areas of undisturbed vegetation surrounding larval host plants sufficient to provide secure sites for diapause and pupation. The vegetation surrounding larval host plants must be left standing for a sufficient period of time for the island marble butterfly to complete its life cycle.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. Because the island marble butterfly depends on vegetation that requires disturbance and open areas to establish, special management may be necessary to both maintain low-level disturbance and to prevent the invasion of weedy native and nonnative plant species, such as Douglas fir, Mediterranean pasture grasses, and thistle. Beneficial special management activities could include annual burning to remove standing vegetation and seedlings and reduce seed set of nonnative plant species. Additionally, the application of selective herbicides to combat specific invasive plants may also prove useful in vegetation management. For some weedy species, hand-pulling can be an effective vegetation management tool, if staffing and resources allow.

Special management considerations within the proposed critical habitat unit may include protection of larval host plants from herbivory by browsing deer, European rabbits, and brown garden snails. These herbivores constitute the primary threat to the larval host plants upon which the island marble butterfly depends in the proposed designation. Special management actions that could ameliorate the threat of herbivory by deer, European rabbits, and brown garden snails could include lethal control methods, such as targeted hunting or professional removal. For deer, exclusion fencing increases the survivorship of both larval host plants and the island marble butterfly in the fenced areas, but the fences are difficult to erect and maintain and provide a host of other challenges for the land management agencies. Additionally, exclusion fencing does nothing to reduce the number of deer, which is the primary cause of the intense browsing pressure on the larval host plants for the island marble butterfly (Lambert 2011,

pp. 85–104, 127; Lambert 2014a, p. 3; Lambert 2015d, pp. 14–18). Fencing is not effective against European rabbits and brown garden snails.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge. In this case, we used existing occurrence data for the island marble butterfly and information on the habitat and ecosystems upon which it depends. These sources of information included, but were not limited to:

(1) Data used to prepare the proposed rule to list the species;

(2) Information from biological surveys;

(3) Various agency reports and databases;

(4) Information from NPS and other cooperators;

(5) Information from species experts;

(6) Data and information presented in academic research theses; and

(7) Regional Geographic Information System (GIS) data (such as species occurrence data, land use, topography, aerial imagery, soil data, and land ownership maps) for area calculations and mapping.

Areas Occupied at the Time of Listing

In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we reviewed available information pertaining to the habitat requirements of the species, identified specific areas within the geographical area occupied by the species at the time of listing and examined whether we could identify any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. In this case, since we are proposing listing concurrently with the proposed designation of critical habitat, all areas presently occupied by the island marble butterfly constitute those areas occupied at the time of listing.

We plotted the known locations of the island marble butterfly where they occur in Washington using 2015 National Agriculture Imagery Program (NAIP) digital imagery in ArcGIS, version 10.4 (Environmental Systems Research Institute, Inc.), a computer geographic information system program, and determined that the currently occupied areas contain the physical or biological features needing special management, as discussed above. We also analyzed the appropriate quantity and spatial arrangement of these features in the context of the life history, status and conservation needs of the species.

Survey effort for the island marble butterfly has not been consistent spatially or temporally. Island-wide surveys of San Juan and Lopez Islands were discontinued by WDFW in 2012, due to decreased detections and the lack of larval host plants in previously occupied areas across both islands. In 2015, the Service funded an island-wide survey of San Juan, and no occurrences were documented outside of the known occupied area centered on American Camp at the south end of San Juan Island. The last survey of Lopez Island was conducted in 2012, and a single larva was observed. There have been no reports of island marble butterflies from Lopez Island since 2012.

Therefore, the Service considers areas to be occupied at the time of listing if there are occurrence records within those areas within the last 5 years or if areas adjacent to known occupied areas have the physical or biological features upon which the island marble butterfly depends and there are no barriers to dispersal. It is reasonable to conclude that the species regularly occurs in such areas because of the species' population dynamics and frequent movement between habitat patches, as discussed above. Occurrence records are deemed credible if recorded by a Federal, State, or contract biologist, or a qualified surveyor for the island marble butterfly.

We have also determined that all of these occupied areas (areas with documented occurrences as well as adjacent areas containing suitable habitat and where there are no barriers to dispersal) contain one or more of the essential physical or biological features. For these reasons and due to the restricted range of the island marble butterfly, we determined that all known occupied areas should be proposed for critical habitat designation. The only known occupied area is centered on American Camp at San Juan Island National Historical Park and includes adjacent lands to the east and the west of the National Park that are owned and managed by BLM, WDNR, San Juan County, Washington State Parks and Recreation, and private individuals.

In summary, we are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain one or more of the physical or biological features to support life-history processes essential to the conservation of the species. The one unit proposed for designation contains all of the identified physical or biological features and supports multiple life-history processes.

When determining the proposed critical habitat boundary, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as parking lots and roads), and other structures because such lands lack physical or biological features necessary for the island marble butterfly. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the map of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat. Please note that we specifically include road margins and shoulders in the critical habitat designation, as the island marble butterfly larval host plants often establish in these disturbed areas and may be used by the island marble butterfly for egg-laying and development. Special management considerations for road margins and shoulders may apply.

The critical habitat designation is defined by the map, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which the map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2016–0145, on our website at *https://www.fws.gov/wafwo/,* and by appointment at the Service's Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Areas Outside of the Geographic Range at the Time of Listing

We are not currently proposing to designate any areas outside the geographical area occupied by the species. While we know the conservation of the species will depend on increasing the number and distribution of populations of the island marble butterfly, not all of its historical range will be essential to the conservation of the species, and we are unable to delineate the specific unoccupied areas that are essential at this time. Sites both within and outside of the central valleys of San Juan and Lopez Islands were previously occupied by the island marble butterfly. A number of areas within and outside of these valleys continue to contain some or could develop many of the physical and biological features upon which the species depends, though the best available scientific data indicate all these areas are currently unoccupied. The areas of the central valleys with the potential to support the physical and biological features continue to be important to the overall conservation strategy for the island marble butterfly. However, due to the ephemeral and patchy nature of island marble butterfly habitat, only some of these areas within these larger central valley landscapes will likely be essential to the species' long-term persistence and conservation because of the ease with which field mustard recruits and the uncertainty associated with habitat patch longevity at any one site.

In addition, the specific areas essential to the species' conservation within these broader landscapes are not identifiable at this time. This is due to our current limited understanding regarding the ideal configuration for the development of future habitat patches to support the island marble butterfly's persistence, the ideal size and number of these habitat patches, and how these habitat patches may naturally evolve within and persist on the landscape. Finally, the specific areas needed for conservation will depend in part on landowner willingness to restore and maintain the species' habitat in these areas.

Consequently, the Service is considering proposing the future establishment of one or more experimental populations (such as, but not limited to, those provided for under section 10(j) of the Act) within these broad geographic areas should the island marble butterfly be listed under the Act. Section 10(j) of the Act authorizes the Service, by rulemaking, to establish new populations of listed species that are within the species' historical range but outside its current natural range. If designated a nonessential population, a special rule may minimize restrictions on landowners. Any such regulation would, to the maximum extent practicable, represent an agreement between the Service and affected landowners and government agencies (50 CFR 17.82(d)). Additionally, the Service, in collaboration with WDFW and private landowners, is working on the development of a programmatic candidate conservation agreement with assurances (CCAA). A CCAA is a voluntary conservation program to encourage willing landowners to partner with us to create, enhance, and maintain habitat that could be used by island marble butterfly on their lands while providing enrolled landowners with regulatory assurances should the species be listed. For more information, please contact the Washington Fish and Wildlife Office Listing and Recovery Division Manager (360–753–9440).

Proposed Critical Habitat Designation

The proposed critical habitat area described below constitutes our current best assessment of the areas that meet the definition of critical habitat for the island marble butterfly. The island marble butterfly critical habitat unit is currently occupied and therefore considered occupied at the time of listing.

TABLE 1—PROPOSED CRITICAL HABITAT FOR THE ISLAND MARBLE BUTTERFLY

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
Island marble butterfly proposed critical habitat	NPS	718 (291)
	BLM	19 (8)
	DHS	5 (2)
	WDNR and SJCLB	1 (0.4)
	WDNR	37 (15)
	SJCPD	30 (12)
	Private	2 (0.8)
Total		812 (329)

Note: Area sizes may not sum due to rounding. NPS = National Park Service, BLM = Bureau of Land Management, DHS = Department of Homeland Security (Coast Guard), WDNR = Washington Department of Fish and Wildlife, SJCLB = San Juan County Land Bank, SJCPD = San Juan County Parks Department.

The proposed critical habitat designation consists of 812 ac (329 ha) of land at the south end of San Juan Island, with San Juan Island National Historical Park (NPS) being the largest landholder of 718 ac (291 ha). The Bureau of Land Management (BLM) owns and manages 19 ac (8 ha), Washington Department of Natural Resources (WDNR) owns and manages 37 ac (15 ha) at Cattle Point, the Department of Homeland Security owns 5 ac (2 ha), WDNR and the San Juan County Land Bank (SJCLB) jointly own 1 ac (0.4 ha), San Juan County Parks Department owns 30 ac (12 ha), and approximately 2 ac (0.8 ha) is in private ownership. The proposed critical habitat designation is centered on the American Camp portion of San Juan Island National Historical Park, which is owned and managed by the National Park Service, but includes adjacent lands both to the east and the west of National Park Service lands. Boundaries for the critical habitat unit follow the open, generally treeless habitat that the island marble butterfly relies upon during its flight period for mate-finding, reproduction, feeding, and dispersal.

The entirety of the proposed critical habitat unit is within the geographical area occupied at the time of listing. The proposed designation contains all of the physical or biological features required to support the island marble butterfly.

The proposed critical habitat designation is almost entirely conserved for use by or for the benefit of the public and is heavily used for recreation, primarily in the form of day hiking on easy trails. NPS has maintained a conservation agreement for the island marble butterfly with the Service since 2006, although the most recent conservation agreement has lapsed and the next version has not yet been signed by both parties. Regardless, as the largest landholder within the proposed critical habitat unit, NPS continues to support and participate in ongoing research integral to the conservation of the island marble butterfly. BLM, DHS, WDNR, SJCLB, and San Juan County Parks are all engaged in the conservation of the island marble butterfly and meet with the Service multiple times annually to coordinate conservation efforts.

Within the proposed critical habitat designation, all of the current threats to the island marble butterfly are present. Please see Determination of Species' Status, above, for a summary of the threats and *Special Management Considerations or Protection* for additional recommendations.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

Section 7 consultation concludes with issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

If we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the island marble butterfly. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of this species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect island marble butterfly critical habitat, when carried out, funded, or authorized by a Federal agency, would result in consultation. These activities may include, but are not limited to:

(1) Actions that destroy the habitat within the critical habitat unit. Such activities could include, but are not limited to, new infrastructure developments, planting forests in historical prairie, or large paving projects. These activities could disrupt dispersal, mate finding, and patchy population dynamics, as well as prevent the recruitment of future habitat.

(2) Actions that would temporarily or permanently remove host plants from areas within the critical habitat unit that

were otherwise phenologically and spatially available for use by the species. Such activities could include, but are not limited to, mowing, burning, or applying herbicide to host plants leading up to or during the flight season. These activities could reduce the quantity or distribution of oviposition sites available to the species.

(3) Actions that would temporarily or permanently remove nectar resources or plants used for mate finding from areas within the critical habitat unit that were otherwise phenologically and spatially available for use by the species. Such activities could include, but are not limited to, mowing, burning, or applying herbicide to nectar or mate-finding plants leading up to or during the flight season. These activities could reduce nectaring opportunities or disrupt mate finding, both of which could reduce fecundity.

(4) Actions that would physically disturb appropriate areas for diapause and pupation. Such activities could include, but are not limited to, mowing, trampling, grazing, or burning between flight seasons. These activities could also kill island marble butterflies in diapause as pupae.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We are not proposing any areas for exclusion from this critical habitat designation.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory requirements imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an Incremental Effects Memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the island marble butterfly (Industrial Economics, Incorporated 2017). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that would be most likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the island marble butterfly and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If

sufficient data are available, we assess to the extent practicable the potential impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the potential incremental economic impacts that may result from the proposed designation of critical habitat for the island marble butterfly, first we identified, in the IEM dated July 5, 2017, potential incremental economic impacts associated with the following categories of activities: (1) Federal lands management (by National Park Service and Bureau of Land Management): Prairie restoration, island marble butterfly habitat restoration, island marble butterfly recovery projects, transportation management, and new facility construction; (2) State lands including lands jointly managed with the San Juan County Land Bank: Native prairie restoration, habitat restoration projects to benefit island marble butterfly prairie habitat, potential future infrastructure projects such as resurfacing of trail/pathways, and replacement of interpretive signs; and (3) County-owned lands: Transportation projects/road work. We considered each industry or category individually. Additionally, we considered whether these activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing of this species, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species in areas where the island marble butterfly is present. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the island marble butterfly's critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species and (2) any actions that would result in effects that would likely jeopardize the island marble butterfly would also be likely to adversely affect the essential physical or biological features of critical habitat. The IEM further explains these circumstances. This evaluation of the incremental effects has been used as the basis to evaluate the potential incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the island marble butterfly is comprised of a single unit and is considered occupied. We are not proposing to designate any units of unoccupied habitat. The proposed critical habitat designation consists of 812 ac (329 ha) and is owned and managed by NPS, BLM, DHS, WDNR, San Juan County, and private landowners. In these areas, any actions that may affect the species or its habitat would also affect designated critical habitat and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the island marble butterfly. Therefore, the potential incremental economic impacts of the island marble butterfly critical habitat designation are expected to be limited to administrative costs.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Our analysis of economic impacts makes the following assumptions about consultation activity over the next 20 years, most of which are more likely to overstate than understate potential impacts: Two programmatic consultations will occur with NPS; two programmatic consultations will occur with BLM; one formal or informal consultation will occur with either NPS or BLM annually; one formal or informal programmatic intra-Service consultation for funding conservation efforts on State lands will occur; and two formal or informal consultations with the Federal Highway Administration will occur related to roads on County-owned lands.

This may overstate the number of consultations that will occur given available information on forecast activity. As stated above, we anticipate that conservation efforts needed to avoid adverse modification are likely to be the same as those needed to avoid impacts to the species itself. As such, costs of critical habitat designation for the island marble butterfly are anticipated to be limited to administrative costs. We anticipate that the incremental administrative costs of addressing adverse modification of the island marble butterfly critical habitat in a section 7 consultation will be minor.

Total annualized incremental costs of critical habitat designation for the island marble butterfly are anticipated to be less than $150,000 over the next 20 years, or approximately $10,000 annually. The incremental administrative burden resulting from the designation of critical habitat for the island marble butterfly is not anticipated to reach $100 million in any given year based on the anticipated annual number of consultations and associated consultation costs, which are not expected to exceed $10,000 in most years.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the probable economic impacts of the proposed critical habitat designation and related factors. Potential land-use sectors that may be affected include conservation and recreation lands. In our DEA, we did not identify any ongoing or future actions that would warrant additional recommendations or project modifications to avoid adversely modifying critical habitat above those we would recommend for avoiding jeopardy to the species, and we anticipate minimal change in management at San Juan Island National Historical Park due to the designation of critical habitat for the island marble butterfly.

During the development of a final designation, we will consider any additional economic impact information we receive during the public comment period, and as such, areas may be

excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. Department of Homeland Security currently owns 5 ac (2 ha) of land that is surrounded by land owned and managed by BLM and lies within the proposed critical habitat boundary. Specifically, these lands include a lighthouse facility that is managed by the U.S. Coast Guard. The U.S. Coast Guard is in the process of transferring ownership of these lands to BLM, and, therefore, we anticipate no impact on national security from the inclusion of these lands in the proposed critical habitat designation. Consequently, the Secretary is not intending to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are not considering any exclusions at this time from the proposed critical habitat designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. Although there are no tribally owned lands within the proposed designation, some areas within the proposed critical habitat boundary include tribal trust resources under article five of the Point Elliott treaty of 1855. The treaty of Point Elliott states the following, ''The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands.'' We have initiated coordination with tribes regarding the proposed critical habitat designation and will continue to offer government-to-government consultation with them throughout development of the final rulemaking. In this proposed rule, we are seeking input from the public as to whether or not the Secretary should exclude any areas from the final critical habitat designation. (Please see **ADDRESSES**, above, for instructions on how to submit comments).

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(iii) The demonstrated implementation and success of the chosen conservation measures;

(iv) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(v) The extent of public participation in the development of the conservation plan;

(vi) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and safe harbor agreements (SHAs) are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an ''enhancement of survival'' permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

1. The permittee is properly implementing the CCAA/SHA/HCP, and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is, and has been, fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

2. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

3. The CCAA/SHA/HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

There are currently no CCAA/SHA/HCPs in the area proposed for designation, nor are we aware of any other non-federal conservation plans in the area. However, should such plan(s) be developed prior to publication of a final decision on critical habitat, we would consider whether exclusion of the area covered by such plan(s) may be warranted under section 4(b)(2) of the Act.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771

This rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use due to the absence of any energy supply or distribution lines from the proposed critical habitat designation. Therefore, this action is not a significant energy

action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because the area included in the proposed critical habitat designation is largely owned by Federal and State agencies (greater than 95 percent). None of these government entities fits the definition of ''small government jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the island marble butterfly in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this proposed designation of critical habitat for the island marble butterfly would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we request information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Washington. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The areas proposed to be designated as critical habitat are presented on a map, and the proposed

rule provides several options for the interested public to obtain more detailed location information, if desired.

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

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

It is also our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribally owned lands that are occupied by the island marble butterfly at the time of listing that contain the features essential for conservation of the species, and no tribally owned lands unoccupied by the island marble butterfly that are essential for the conservation of the species. While there are no tribally owned lands within the proposed critical habitat designation, some areas within the proposed critical habitat boundary may include tribal trust resources under article five of the Point Elliott treaty of 1855 (see *Exclusions Based on Other Relevant Impacts,* above, for further information). We have sought government-to-government consultation with these tribes during the development of this proposed rule. We will consider these areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of references cited is available on the internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Washington Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Butterfly, island marble'' in alphabetical order under ''INSECTS'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Insects				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* *	*	* *		* *
Butterfly, island marble	*Euchloe ausonides insulanus*	Wherever found	E	[**Federal Register** citation of the final rule]
* *	*	* *		* *

* * * * *

■ 3. In § 17.95, amend paragraph (i) by adding an entry for ''Island marble butterfly (*Euchloe ausonides insulanus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Island marble butterfly (*Euchloe ausonides insulanus*)

(1) Critical habitat is depicted for San Juan County, Washington, on the map below.

(2) Within the critical habitat area on San Juan Island, Washington, the physical or biological features essential to the conservation of the island marble butterfly consist of:

(i) Open, primarily treeless areas with short-statured forb- and grass-dominated vegetation that include diverse topographic features such as ridgelines, hills, and bluffs for patrolling, dispersal corridors between habitat patches, and some south-facing terrain. Areas must be large enough to allow for the development of patchy-population dynamics, allowing for multiple small populations to establish within the area.

(ii) Low- to medium-density larval host plants for egg-laying and larval development, with both flower buds and blooms on them between the months of May through July. Larval host plants may be any of the following: *Brassica rapa, Sisymbrium altissimum,* or *Lepidium virginicum.*

(iii) Adult nectar resources in flower and short-statured, white-flowering plants in bloom used for mate-finding, which may include, but are not limited to *Abronia latifolia* (yellow sand verbena), *Achillea millefolium* (yarrow), *Amsinckia menziesii* (small-flowered fiddleneck), *Cakile edentula* (American sea rocket), *Cerastium arvense* (field chickweed), *Erodium cicutarium* (common stork's bill), *Geranium molle* (dovefoot geranium), *Hypochaeris radicata* (hairy cat's ear), *Lomatium utriculatum* (common lomatium), *Lupinus littoralis* (seashore lupine), *Myosotis discolor* (common forget-me-not), *Ranunculus californicus* (California buttercup), *Rubus ursinus* (trailing blackberry), *Taraxacum officinale* (dandelion), *Toxicoscordion venenosum* (death camas, formerly known as *Zigadenus venenosus*), and *Triteleia grandiflora* (Howell's Brodiaea, formerly *Brodiaea howellii*).

(iv) Areas of undisturbed vegetation surrounding larval host plants sufficient to provide secure sites for diapause and pupation. The vegetation surrounding larval host plants must be left standing for a sufficient period of time for the island marble butterfly to complete its life cycle.

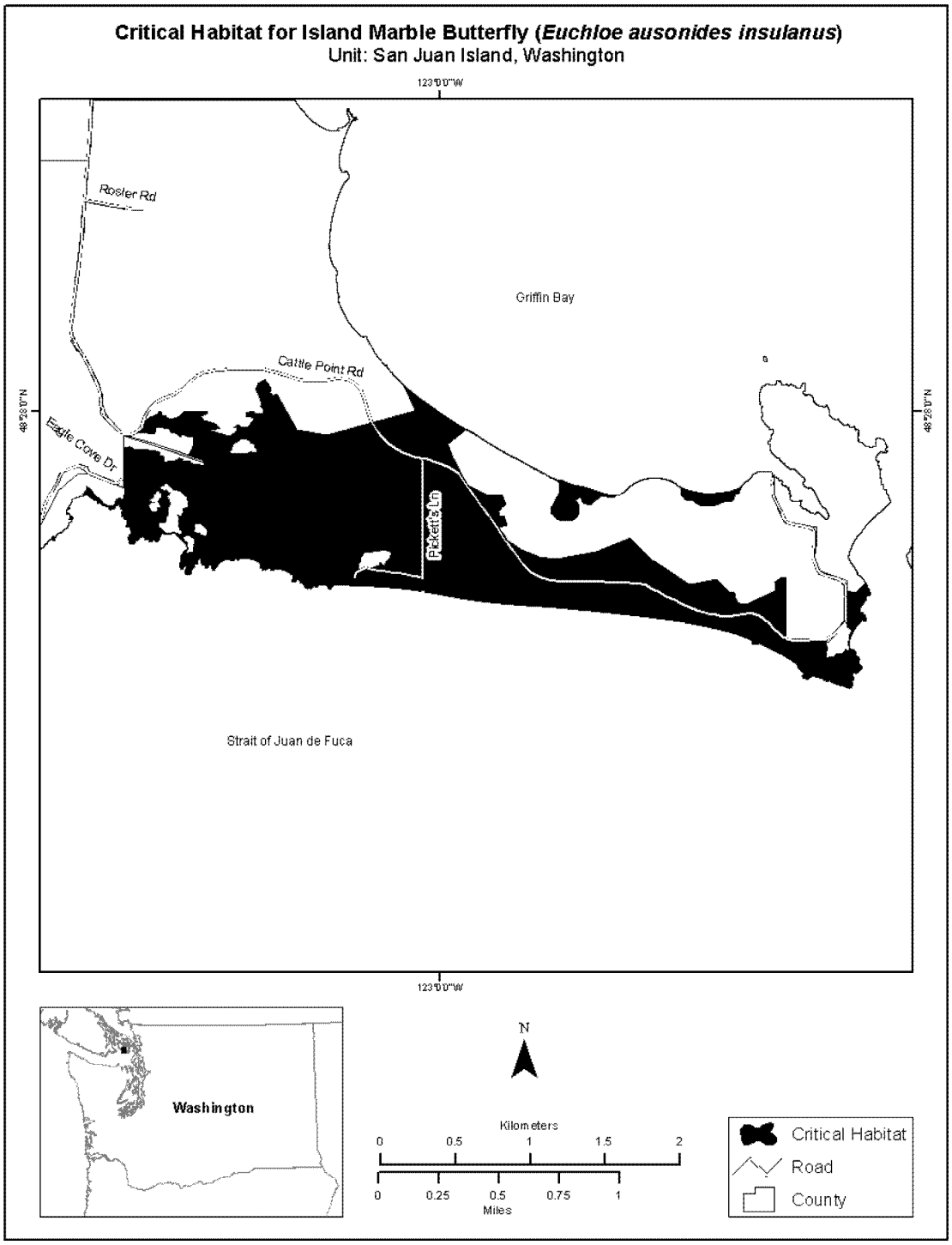
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map unit.* Data layers defining the map were created using 2015 National Agriculture Imagery Program (NAIP) digital imagery in ArcGIS, version 10.4 (Environmental Systems Research Institute, Inc.), a computer geographic information system program. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's internet site (*https://www.fws.gov/wafwo/*), at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2016–0145, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Island marble butterfly critical habitat, San Juan County, Washington.

(i) Island marble butterfly critical habitat consists of 812 acres (ac) (329 hectares (ha)) on San Juan Island in San Juan County, Washington, and is composed of lands in Federal (742 ac (301 ha)), State (37 ac (15 ha)), State/County joint (1 ac (0.4 ha)), County (30 ac (12 ha)), and private (2 ac (0.8 ha)) ownership.

(ii) Map of island marble butterfly critical habitat follows:



* * * * *

Dated: December 3, 2017.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

Editorial Note: The Office of the Federal Register received this document on April 5, 2018.

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